

Agreement NS 4 OPS - Lynchburg Terminal

IMPLEMENTING AGREEMENT

between

NORFOLK AND WESTERN RAILWAY COMPANY
SOUTHERN RAILWAY COMPANY

and their engineers

represented by

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

WHEREAS, Carriers have served notice upon the Interstate Commerce Commission ("ICC") in Finance Docket 29430 (Sub-No. 1) Norfolk and Western Railway Company ("NW") and Southern Railway Company ("SR") of their desire to merge, consolidate and coordinate facilities and operations as described in said notice;

AND WHEREAS, it is anticipated that the ICC Order will impose the employee protective conditions set forth in New York Dock Ry Control - Brooklyn Eastern Dist. 354-ICC-399 (1978) as modified at 360 ICC 60(1979) ("New York Dock conditions"), copy attached as Appendix "A";

AND WHEREAS, pursuant to Article 1, Section 4(a), of the New York Dock II conditions, NW and SR have notified the employees of their intention to coordinate their respective facilities, operations and services at Lynchburg, Virginia.

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NOW THEREFORE, it is agreed:

ARTICLE I - SCHEDULE AGREEMENT:

A. Southern Engineers' Schedule Agreement will be effective in Lynchburg consolidated Terminal for all yard engineers. This shall not constitute a precedent with regard to other coordinations.

B. Road engineers of either railroad involved in the consolidation may be required to perform service throughout the consolidated terminal in accordance with their applicable schedule agreements in the same manner as though such consolidated terminal were a terminal of said railroad.

C. Road and Yard engineers may be required to report and be relieved at designated points in the consolidated terminal as long as such points meet the requirements of applicable schedule agreements, interpretations and practices thereunder.

D. When a road engineer is required to report for duty or is relieved from duty at a point other than the on and off duty points fixed for the service established hereunder, the Carrier shall authorize and provide suitable transportation for the engineer.

NOTE: Suitable transportation includes Carrier-owned or provided passenger carrying motor vehicles or taxi, but excludes other forms of public transportation.

ARTICLE II - SWITCHING LIMITS

The consolidated switching limits are as indicated below and on Appendix "B"

| | | |
|-------|-----|--------------------------|
| East | NW | N-196 + 1584' (Old Line) |
| East | NW | P-14 + 2199.4' |
| West | NW | P-16 + 4238.9' |
| South | NW | L-2 + 660' |
| North | SOU | 170.3 |
| North | SOU | 171.1 (Old Main Line) |
| South | SOU | 176.8 |

ARTICLE III

A seniority roster will be established (Appendix "C") for purpose of filling regular and extra yard engineer vacancies within the consolidated Lynchburg Terminal by integrating the seniority roster of yard engineers of the NW Lynchburg Yard into the roster of the Southern Danville District yard engineers, on the percentage basis of NW 39.87% and Southern 60.13%.

NOTE 1: Percentages for yard engineers were calculated by using total engine hours for the 12-month period November 1, 1980 through October 31, 1981.

NOTE 2: Southern Danville District yard engineers who are regularly assigned or on the extra board at Lynchburg on the 10th day after the ICC Order will be afforded prior rights at Lynchburg and slotted accordingly; after which the remaining engineers on this roster will be slotted in accordance with their relative standing.

NOTE 3: The roster established under the above formula takes into consideration disabled and promoted engineers by slotting such engineers in seniority order within the same slot as respective active engineers so that each equity slot contains one active engineer.

ARTICLE IV

Engineers promoted subsequent to the effective date of this Agreement in the consolidated Lynchburg Terminal will be placed

on the bottom of the Danville District Engineers' Roster (attached) and will acquire seniority rights on the Danville District (Road and Yard).

ARTICLE V

Adequate locker room facilities including hot and cold running water, showers with soap and paper towels will be provided. The facility shall be adequately heated, lighted and ventilated and will be provided with sufficient lockers for use by regular and extra engineers. Should a parking problem exist, such as lighting, ample space, all weather surfacing, etc., the parties will meet promptly for the purpose of correcting such problem.

ARTICLE VI

Not applicable.

ARTICLE VII - QUALIFYING:

Engineers having an employment relationship on the effective date of this agreement will not be required to lose time or utilize off-duty time for the purpose of qualifying on physical characteristics within the coordinated territory.

ARTICLE VIII

A. The labor protective conditions set forth in the New York Dock Railway Control, Brooklyn East District 360 ICC 60(1979) (New York Dock) imposed by the Interstate Commerce Commission in Finance Docket 29430 (Sub No. 1) and related proceedings, and which are attached and made a part hereof as Appendix "A" shall be applicable to both road and yard engineers determined to be "displaced employees" or "dismissed employees" as a result of the coordinated operation as set forth herein.

B. The potential earnings of yard and/or road engineer assignments operating at or out of the home terminals of the engineers protecting coordinated service or within a thirty (30) mile radius therefrom, will be posted in \$50.00 increments by the Carriers to be used as a guide for engineers to evaluate seniority and compensation. Such information will be only for the guidance of protected engineers and will not be construed as a guarantee that any assignment will earn the amounts specified.

ARTICLE IX

A. In order that the provisions of the first proviso set forth in Article I, Section 3 of the conditions contained in New York Dock may be properly administered, each engineer determined to be a "displaced employee" or a "dismissed employee" as a result of this Agree-

ment who also is otherwise eligible for protective benefits and conditions under some other job security or other protective conditions or arrangements shall, within ten (10) days after having established "displaced" or "dismissed" status under the conditions set forth in New York Dock, elect between the benefits under such other arrangement and this Agreement. This election shall not serve to alter or affect any application of the substantive provisions of Article I, Section 3.

B. In the event an engineer fails to make such election within the said ten (10) day period, he shall continue to be entitled to the protective benefits under the provisions of such other protective conditions or arrangement, and will not be subject to the protective benefits of this Agreement.

C. There shall be no duplication of protective benefits receivable by any engineer under this Agreement and any other agreement or protective arrangement.

D. If, subsequent to the effective date of the coordination described herein, Carrier officers, supervisory officials or organization representatives exercise seniority rights in road and/or yard service, then, during the period such seniority is exercised, such persons who meet the definitions of "displaced" or "dismissed" employees in the New York Dock Conditions shall be entitled to the

same protection afforded engineers in road or yard service in which such seniority is exercised. When determining the "average monthly compensation" for such engineers, it is understood that:

1. As to "full time" organization representatives, Carrier officers and supervisory officials who do not work in the class or classes in which they hold seniority while holding office, will have his average monthly compensation and average monthly time paid for calculated by taking the average of the average monthly compensation and average monthly time paid for of the two (2) protected engineers immediately above and below him on the same seniority roster provided he does not work in his craft twelve (12) months prior to being adversely affected.

2. As to other than "full time" organization representatives, their "average monthly compensation" will first be arrived at as provided in Section 1 above. The "average monthly compensation" as thus determined will then be increased by the amount of 1.2 basic day's pay at the rate of service in which engaged at the time the individual laid off for each date on which the individual lost time (or, in the case of an extra engineer, was laying off) to participate in organization business.

3. The dates, and rate of pay applicable to each, on which the individual lost time (or, in the case of an extra engineer, was laying off) in order to participate in organization business will be certified by the individual involved and by an officer of his organization and furnished to the designated officer of the Carrier.

E. If, subsequent to the effective date of this Agreement, officials or supervisory personnel exercise seniority rights in the craft or class of employees protected by this Agreement, no engineers subject to this Agreement shall be deprived of the protection afforded herein.

ARTICLE X

A. Each "dismissed employee" shall submit to the Carrier a claim with the following information for the month in which he is claiming benefits on a form (sample to be attached) provided by the Carrier and in accordance with the applicable claim or grievance procedures for handling protective conditions.

1. The day(s) claimed by such employee under any unemployment insurance act.

2. The day(s) each such employee worked in other employment, the name and address of the employer and the gross earnings made by the "dismissed employee" in such other employment.

B. In the event an employee referred to in this Article X is entitled to unemployment benefits under applicable law but forfeits such unemployment benefits under any unemployment insurance law because of failure to file for such unemployment benefits (unless prevented from doing so by sickness or other valid causes) for purposes of the application of Subsection (c) of Section 6 of Appendix "A" he shall be considered the same as if he had filed for, and received, such unemployment benefits.

C. If the employee referred to in this Article X has nothing to report under this Article X account not being entitled to benefits under any unemployment insurance law and having no earnings from any other employment, such employee shall submit, within the time period provided for in Section A of this Article X the appropriate form stating "Nothing to Report."

ARTICLE XI

An employee whose job is abolished as a result of the transaction or who is displaced by such an employee and becomes unable to secure

a position through the exercise of seniority under existing agreements and is eligible to receive a dismissal allowance, may be offered a position by the Carriers in their craft (Every effort to be made to limit such offers to adjacent seniority districts). Such employee shall be given thirty (30) days' notice of such offer and must elect one of the following options prior to the expiration of the notice:

1. To accept the offer;
2. Resign from all service and accept a lump sum payment computed in accordance with Section 9 of the Washington Job Protection Agreement of May 1936; or
3. To be furloughed without protection during the furlough.

In the event an employee fails to make such an election, he shall be considered to have exercised option 3.

Employees accepting a job offer pursuant to this Article XI requiring a change of residence will be subject to the moving and real estate expenses provided in Sections 9 and 12 of the New York Dock Conditions. Employees accepting the offer will be ranked on the appropriate roster as of the date of acceptance.

Employees transferred to other rosters pursuant to this Section will retain seniority rights and recall rights on their previous

rosters. If recalled, they shall accept such recall in accordance with the appropriate Agreement or forfeit all seniority on their previous roster. If they accept such recall, they shall forfeit all seniority on the roster to which they have previously accepted transfer. The application of this paragraph shall not involve any expense to the Carrier for moving or real estate costs, or otherwise, unless the employee is furloughed within three years after changing his point of employment, in which case the provisions of Section 9 of Article I of New York Dock will apply.

NOTE: This Article XI has no application to an employee (engineer) who is eligible to exercise seniority in any other craft or class in which he holds seniority.

ARTICLE XII

The signatory parties are in accord that any inadvertent errors, omissions or inclusion in this Coordination Agreement, including attachments thereto recognized by both parties as being inconsistent with the purpose and intent of this Agreement, will be corrected, included or deleted as the case may be, to properly reflect the understanding reached through negotiations.

ARTICLE XIII

This agreement does not impose any restrictions that did not exist on the effective date of this agreement on work rights of any other assignments operating within or through the territory covered by this agreement.

ARTICLE XIV

Where the rules of the respective schedule agreements conflict herewith, the provisions of this agreement will apply. Rules or portions thereof, that are not in conflict with this agreement are preserved.

ARTICLE XV

This agreement shall be effective only upon ICC approval of the transaction and upon 15 days written notice to the respective General Chairmen and will fulfill the requirements stipulated in Article I, Section 4, of the New York Dock II Conditions imposed in the Order issued in ICC Finance Docket No. 29430. Nothing in this agreement is intended to diminish the protection in New York Dock II.

This agreement is signed *March 4, 1982*

FOR THE EMPLOYEES:

S. I. Smith

S. I. Smith, General Chairman
Brotherhood of Locomotive Engrs

R. E. Branton

R. E. Branton, General Chairman
Brotherhood of Locomotive Engrs.

R. B. Curtis

R. B. Curtis, Vice President
Brotherhood of Locomotive Engrs.

C. N. Moore

C. N. Moore, Vice President
Brotherhood of Locomotive Engrs.

FOR THE CARRIERS:

R. E. Loomis

R. E. Loomis, Asst. Vice President
Labor Relations

THE SOUTHERN RAILWAY COMPANY

R. C. Steele, Jr.

R. C. Steele, Jr., Vice President
Labor Relations

NORFOLK AND WESTERN RAILWAY CO.

Carrier File: LF-846-E-LYNB
LF-846-T-LYNB

LETTER NO. 1

January 1982

LF-846-E-LYNB
LF-846-T-LYNB

Mr. S. I. Smith
Mr. R. E. Branton

Gentlemen:

This will confirm our understanding that the following will be effective with the coordination of SR and NW yard operations at Lynchburg, Virginia.

Copies of the coordination Agreement signed today will be made available by the Carriers to all employees working in coordinated service.

In the application of the "Labor Protective Conditions" (Attachment "A"), any employee whose regular assignment is abolished on or about the effective date of this agreement as a result of implementation of this coordinated service, plus all employees who are in turn displaced by such employees, will be recognized as having established as valid basis for protective benefits if "placed in a worse position with respect to his compensation". The foregoing is not intended to imply automatic certification to employees so recognized.

Very truly yours,

R. C. Steele, Asst. Vice Pres.
Labor Relations
NORFOLK AND WESTERN RAILWAY CO.

R. E. Loomis, Asst. Vice President
Labor Relations
SOUTHERN RAILWAY COMPANY

cc: Mr. R. B. Curtis
Mr. C. M. Moore

March 4/ 1982

Mr. R. E. Branton
General Chairman, BLE

Dear Sir:

It is understood that after issuance of the ICC Order approving Finance Docket No. 29430 (Sub-No. 1) regularly assigned and extra board engineer positions at Lynchburg, Durham and Winston Salem will be promptly advertised in accordance with Article 26, B, Filling Permanent Vacancies of the Engineer's Agreement

It is also understood that engineers exercising seniority in accordance with the provisions contained herein will not be subject to provisions of the Deadhead Rule.

It is further understood that engineers exercising seniority in accordance with the above provisions do not trigger protective benefits provided for in New York Dock II Conditions.

Very truly yours,

R E Loomis

R. E. Loomis
Asst. Vice President Labor Relations
Southern Railway Company

We Concur:

R. E. Branton

R. E. Branton
General Chairman, BLE

R. B. Curtis

R. B. Curtis
Vice President, BLE

C. M. Moore

C. M. Moore
Vice President, BLE

March 4, 1982

Mr. R. B. Curtis
Vice President, BLE

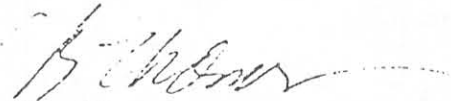
Mr. C. M. Moore
Vice President, BLE

During our conference on March 4, 1982, it was mutually agreed that seniority rosters for Lynchburg, Durham and Winston Salem will be established on the 10th day following the Interstate Commerce Commission's Order approving the transaction. This will be done at 12:00 noon.

Very truly yours,



R. D. Kidwell
System Director Labor Relations
Norfolk and Western Railway Co.



C. B. Thomas
Director of Labor Relations
Southern Railway Company

cc: Mr. S. I. Smith
Mr. R. E. Branton

APPENDIX "D"

THE FOLLOWING QUESTIONS AND ANSWERS CONSTITUTE AGREED-UPON INTERPRETATIONS OF AGREEMENT COVERING COORDINATION OF NW AND SOU YARD OPERATIONS AT LYNCHBURG, VIRGINIA

Q. 1. Must a "Displaced Employee" exercise his seniority to an equal or higher-paying job to which he would be entitled in order to qualify for displacement allowance:

A. Not necessarily. However, a "Displaced Employee" failing to do so will be treated for purposes of the guarantee as occupying an available higher paying position, subject to application of the one-for-one principle as set forth in Question and Answer 4.

Q. 2. Is an employee hired after the effective date of the coordination agreement eligible for protection under this agreement under any circumstances?

A. Yes, provided subsequent action taken by the carriers, pursuant to authorization in F. D. 29430, results in such employee attaining status as a "Displaced employee" or a "Dismissed Employee."

Q. 3. Assuming the coordination of operations covered by this agreement is effective July 1, 1982. An employee attains status as a "Displaced Employee," as a result of the coordination on March 1, 1983. When does his protection expire?

A. Six (6) years from the month in which such employee is determined to be a "Displaced Employee." However, the protective period for any particular employee shall not continue for a longer period following the date he was "displaced" or "dismissed" than the period during which such employee was in the employ of the railroad prior to the date of his "displacement" or his "dismissal."

Q. 4. A job is available to more than one protected employee with higher posted earnings than any of their guarantees. Will the earnings of the higher, posted assignment be charged against the guarantees of all such employees?

A. No more than one protected employee will be treated at any one time as occupying a higher rated position held by a junior man. That is to say, the senior employee who is not earning his

guarantee will be treated as occupying the position producing the highest earnings, the second such senior employee will be treated as occupying the position producing the second highest earnings, and so forth.

Q. 5. An employee performs service as Extra Yardmaster, both prior to and subsequent to the effective date of the coordination. How will such service be computed?

A. (1) Such service and time prior to the coordination shall be included in the test-period computations.

(2) Compensation for such service and time paid for subsequent to the coordination shall be applied against the test-period guarantee.

Q. 6. Is it necessary that an employee be displaced from his assignment or position in order to establish eligibility for protective benefits under New York Dock?

A. No, provided it can be shown that as a result of the involved "Transaction" such employee "is placed in a worse position with respect to his compensation."

Q. 7. An employee with a guarantee of \$1,900 per month fails to exercise seniority to obtain a position with posted earnings of \$1,900-\$1,950. In a particular month, he earns \$1,850. What payment, if any, would be due?

A. None, subject to the one-for-one principle - See Q. and A. 4.

Q. 8. Employee Jones' guarantee is \$1,800 per month, and he claims a job with posted earnings of \$1,800-\$1,850 per month. A junior employee, Smith, has guarantee of \$1,700 per month and claims a job with posted earnings of \$1,850-\$1,900 a month. In a month, Jones has earnings of \$1,750 and Smith earns \$1,875 in the same month. Can the job to which Smith is assigned be charged against Jones?

A. No. Jones fulfilled his obligation by exercising seniority to an assignment with posted earnings exceeding his guarantee. Provided Jones met all other requirements, he will be due \$50.

EXAMPLES

Jones is senior to Smith and their respective test period monthly components are as follows:

(Jones) Average monthly compensation... \$1,600.00
Average monthly time paid for.. 200 hours
Monthly average hourly rate*... \$8.00

(Smith) Average monthly compensation... \$1,550.00
Average monthly time paid for.. 190 hours
Monthly average hourly rate*... \$8.16

* For computation of earnings lost due to voluntary absences only.

Q. 9. Jones was available for service the entire month and worked 210 hours and earned \$1,680. What compensation would be due Jones?

A. The \$1,680 he earned.

Q. 10. Jones was available for service the entire month and worked 190 hours and earned \$1,575. What compensation would be due Jones?

A. His earnings of \$1,575 plus \$25, or \$1,600, the amount of his monthly earnings guarantee.

Q. 11. Jones marked off two (2) days (his assignment worked 8 hours on each of the two days) during the month and worked 190 hours and earned \$1,575. What compensation is due Jones?

A. He is only due \$1,575, his actual earnings, as he was not available for service equivalent to his base period of 200 hours; hence, 200 hours minus 190 hours leaves 10; 10 hours times his \$8 hourly rate equals \$80, which amount is deductible from the \$1,600 monthly guarantee.

Q. 12. Jones marked off two (2) days (his assignment worked 8 hours on each of the two (2) days) during the month and worked 195 hours and earned \$1,550. What compensation would be due?

A. His earnings of \$1,550 plus \$10, or \$1,560 calculated as follows: \$1,550 plus \$50 minus \$40 (200 hours minus 195 hours equals 5 hours times \$8 equals \$40 to be deducted).

Q. 13. Jones marked off two (2) days during the month and worked 170 hours and earned \$1,500. What compensation is due?

A. \$1,500 as the calculation of his monthly guarantee, with deductions for two days' absence, resulted in less than his actual earnings, i.e., 16 hours (hours his assignment worked on the two off days) times \$8 equals \$128. \$1,600 minus \$128 equals \$1,472.

Q. 14. Jones, during the month, earned \$1,555 while during the same period Smith earned \$1,595. In the premise that they met the necessary requirements for the full guarantee allowances, could the earnings of Smith be used against the claim of Jones for \$45?

A. No, provided Jones has exercised seniority according to the bulletin listing average job earnings. If Jones did not exercise seniority to the position held by Smith in accordance with bulletin listing the average job earnings he would only be entitled to \$5 under his guarantee.

Q. 15. Jones worked his average monthly hours (200), but in such period did not earn his average monthly compensation. During the month Jones marked off for two days. May the Carrier make deduction for the days Jones was off?

A. No deduction would be made as Jones worked his average monthly hours during the month.

Q. 16. A job is advertised and the potential earnings are not posted. Jones is the successful bidder and earns \$1,550 during the month. Could the earnings of any assignment with either higher or lower earnings be charged against Jones?

A. No, since the potential earnings of the job were not posted Jones would be entitled to \$1,550 plus \$50, or \$1,600, the amount of his monthly earnings guarantee, provided he met all other requirements. When the potential earnings of the job are posted, Jones would then be expected to place himself on a higher-paying position, in accordance with normal bidding or displacement rules at his first opportunity, subject to principles outlined in Q. and A. 1.

Q. 17. May an employee called and used as an emergency conductor or engineer, as the case may be, be charged with a loss of earnings on his regular assignment or with higher posted earnings on other assignments account of being so used?

A. No, as he is protecting his seniority as conductor or engineer in accordance with the requirements of the applicable Agreement.

Q. 18. How is vacation pay treated in computing guarantees under this Agreement?

A. Hours of compensation for days on vacation during a calendar month are treated, for the purposes of the guarantee, the same as any other compensation and hours creditable to that month. Thus, if a vacation falls entirely within one month, the compensation and hours shall be treated as all other compensation and

hours creditable to that month. However, when a vacation commences in one month and ends in another, the vacation compensation and hours will be proportioned between the months in accordance with the number of vacation days falling in each month.

Q. 19. In computing monthly guarantees, may a protected employee be charged with voluntary absence when directed or summoned by the Company to attend investigation, or court?

A. No, provided such employee attends the investigation or court as a witness for the Carrier or, in the case of an investigation, attends as a charged employee and no discipline is assessed as a result thereof.

Q. 20. If an employee elects to accept the protective conditions of this Agreement while otherwise eligible for protection under a former protective arrangement or agreement, will such employee resume protection under the former agreement at the expiration of the protective period under this Agreement?

A. Yes, provided protection under the former agreement has not been exhausted or expired.

Q. 21. What is the meaning of "change in residence?"

A. A "change in residence" as referred to in Section 5(b) and 6(d) of New York Dock shall only be considered "required" if the reporting point of the employee would be more than thirty (30) normal highway miles, via the most direct route, from the employee's point of employment at the time affected, and the normal reporting point is farther from the employee's residence than his former point of employment.

Q. 22. Do Sections 9 and 12 of Article I also apply in the case of a "required" change of residence in the exercise of seniority on the employee's own seniority district?

A. Yes, provided the employee cannot hold a position which does not require a change of residence and has been instructed by the Carrier to so exercise his seniority.

Finance Docket No. 28250

APPENDIX III

Labor protective conditions to be imposed in railroad transactions pursuant to 49 U.S.C. 11343 et seq. [formerly sections 5(2) and 5(3) of the Interstate Commerce Act], except for trackage rights and lease proposals which are being considered elsewhere, are as follows:

1. Definitions.-(a) "Transaction" means any action taken pursuant to authorizations of this Commission on which these provisions have been imposed.

(b) "Displaced employee" means an employee of the railroad who, as a result of a transaction is placed in a worse position with respect to his compensation and rules governing his working conditions.

(c) "Dismissed employee" means an employee of the railroad who, as a result of a transaction is deprived of employment with the railroad because of the abolition of his position or the loss thereof as the result of the exercise of seniority rights by an employee whose position is abolished as a result of a transaction.

(d) "Protective period" means the period of time during which a displaced or dismissed employee is to be provided protection hereunder and extends from the date on which an employee is displaced or dismissed to the expiration of 6 years therefrom, provided, however, that the protective period for any particular employee shall not continue for a longer period following the date he was displaced or dismissed than the period during which such employee was in the employ of the railroad prior to the date of his displacement or his dismissal. For purposes of this appendix, an employee's length of service shall be determined in accordance with the provisions of section 7(b) of the Washington Job Protection Agreement of May 1936.

2. The rates of pay, rules, working conditions and all collective bargaining and other rights, privileges and benefits (including continuation of pension rights and benefits) of the railroad's employees under applicable laws and/or existing collective bargaining agreements or otherwise shall be preserved unless changed by future collective bargaining agreements or applicable statutes.

3. Nothing in this Appendix shall be construed as depriving any employee of any rights or benefits or eliminating any obligations which such employee may have under any existing job security or other protective conditions or arrangements; provided, that if an employee otherwise is eligible for protection under both this Appendix and some other job security or other protective conditions or arrangements, he shall elect between the benefits under this Appendix and similar benefits under such other arrangement and, for so long as he continues to receive such benefits under the provisions which he so elects, he shall not be entitled to the same type of benefit under the provisions which he does not so elect; provided further, that the benefits under this Appendix, or any other arrangement, shall be construed to include the conditions,

responsibilities and obligations accompanying such benefits; and, provided further, that after expiration of the period for which such employee is entitled to protection under the arrangement which he so elects, he may then be entitled to protection under the other arrangement for the remainder, if any, of this protective period under that arrangement.

4. Notice and Agreement or Decision - (a) Each railroad contemplating a transaction which is subject to these conditions and may cause the dismissal or displacement of any employees, or rearrangement of forces, shall give at least ninety (90) days written notice of such intended transaction by posting a notice on bulletin boards convenient to the interested employees of the railroad and by sending registered mail notice to the representatives of such interested employees. Such notice shall contain a full and adequate statement of the proposed changes to be affected by such transaction, including an estimate of the number of employees of each class affected by the intended changes. Prior to consummation the parties shall negotiate in the following manner.

Within five (5) days from the date of receipt of notice, at the request of either the railroad or representatives of such interested employees, a place shall be selected to hold negotiations for the purpose of reaching agreement with respect to application of the terms and conditions of this appendix, and these negotiations shall commence immediately thereafter and continue for at least thirty (30) days. Each transaction which may result in a dismissal or displacement of employees or rearrangement of forces, shall provide for the selection of forces from all employees involved on a basis accepted as appropriate for application in the particular case and any assignment of employees made necessary by the transaction shall be made on the basis of an agreement or decision under this section 4. If at the end of thirty (30) days there is a failure to agree, either party to the dispute may submit it for adjustment in accordance with the following procedures:

(1) Within five (5) days from the request for arbitration the parties shall select a neutral referee and in the event they are unable to agree within said five (5) days upon the selection of said referee then the National Mediation Board shall immediately appoint a referee.

(2) No later than twenty (20) days after a referee has been designated a hearing on the dispute shall commence.

(3) The decision of the referee shall be final, binding and conclusive and shall be rendered within thirty (30) days from the commencement of the hearing of the dispute.

(4) The salary and expenses of the referee shall be borne equally by the parties to the proceeding; all other expenses shall be paid by the party incurring them.

(b) No change in operations, services, facilities, or equipment shall occur until after an agreement is reached or the decision of a referee has been rendered.

5. Displacement allowances - (a) So long after a displaced employee's displacement as he is unable, in the normal exercise of his seniority rights under existing agreements, rules and practices, to obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, he shall, during his protective period, be paid a monthly displacement allowance equal to the difference between the monthly compensation received by him in the position in which he is retained and the average monthly compensation received by him in the position from which he was displaced.

Each displaced employee's displacement allowance shall be determined by dividing separately by 12 the total compensation received by the employee and the total time for which he was paid during the last 12 months in which he performed services immediately preceding the date of his displacement as a result of the transaction (thereby producing average monthly compensation and average monthly time paid for in the test period), and provided further, that such allowance shall also be adjusted to reflect subsequent general wage increases.

If a displaced employee's compensation in his retained position in any month is less in any month in which he performs work than the aforesaid average compensation (adjusted to reflect subsequent general wage increases) to which he would have been entitled, he shall be paid the difference, less compensation for time lost on account of his voluntary absences to the extent that he is not available for service equivalent to his average monthly time during the test period, but if in his retained position he works in any month in excess of the aforesaid average monthly time paid for during the test period he shall be additionally compensated for such excess time at the rate of pay of the retained position.

(b) If a displaced employee fails to exercise his seniority rights to secure another position available to him which does not require a change in his place of residence, to which he is entitled under the working agreement and which carries a rate of pay and compensation exceeding those of the position which he elects to retain, he shall thereafter be treated for the purposes of this section as occupying the position he elects to decline.

(c) The displacement allowance shall cease prior to the expiration of the protective period in the event of the displaced employee's resignation, death, retirement, or dismissal for justifiable cause.

6. Dismissal allowances. - (a) A dismissed employee shall be paid a monthly dismissal allowance, from the date he is deprived of employment and continuing during his protective period, equivalent to one-twelfth of the compensation received by him in the last 12 months of his employment in which he earned compensation prior to the date he is first deprived of employment as a result of the transaction. Such allowance shall also be adjusted to reflect subsequent general wage increases.

(b) The dismissal allowance of any dismissed employee who returns to service with the railroad shall cease while he is so reemployed. During the time of such reemployment, he shall be entitled to protection in accordance with the provisions of section 5.

(c) The dismissal allowance of any dismissed employee who is otherwise employed shall be reduced to the extent that his combined monthly earnings in such other employment, any benefits received under any unemployment insurance law, and his dismissal allowance exceed the amount upon which his dismissal allowance is based. Such employee, or his representative, and the railroad shall agree upon a procedure by which the railroad shall be currently informed of the earnings of such employee in employment other than with the railroad, and the benefits received.

(d) The dismissal allowance shall cease prior to the expiration of the protective period in the event of the employee's resignation, death, retirement, dismissal for justifiable cause under existing agreements, failure to return to service after being notified in accordance with the working agreement, failure without good cause to accept a comparable position which does not require a change in his place of residence for which he is qualified and eligible after appropriate notification, if his return does not infringe upon the employment rights of other employees under a working agreement.

7. Separation allowance. - A dismissed employee entitled to protection under this appendix, may, at his option within 7 days of his dismissal, resign and (in lieu of all other benefits and protections provided in this appendix) accept a lump sum payment computed in accordance with section 9 of the Washington Job Protection Agreement of May 1936.

8. Fringe benefits. - No employee of the railroad who is affected by a transaction shall be deprived, during his protection period, of benefits attached to his previous employment, such as free transportation, hospitalization, pensions, reliefs, et cetera, under the same conditions and so long as such benefits continue to be accorded to other employees of the railroad, in active or on furlough as the case may be, to the extent that such benefits can be so maintained under present authority of law or corporate action or through future authorization which may be obtained.

9. Moving expenses.-Any employee retained in the service of the railroad or who is later restored to service after being entitled to receive a dismissal allowance, and who is required to change the point of his employment as a result of the transaction, and who within his protective period is required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects for the traveling expenses of himself and members of his family, including living expenses for himself and his family and for his own actual wage loss, not exceed 3 working days, the exact extent of the responsibility of the railroad during the time necessary for such transfer and for reasonable time thereafter and the ways and means of transportation to be agreed upon in advance by the railroad and the affected employee or his representatives; provided, however, that changes in place of residence which are not a result of the transaction, shall not be considered to be within the purview of this section; provided further, that the railroad shall, to the same extent provided above, assume the expenses, et cetera, for any employee furloughed with three (3) years after changing his point of employment as a result of a transaction, who elects to move his place of residence back to his original point of employment. No claim for reimbursement shall be paid under the provision of this section unless such claim is presented to railroad with 90 days after the date on which the expenses were incurred.

10. Should the railroad rearrange or adjust its forces in anticipation of a transaction with the purpose or effect of depriving an employee of benefits to which he otherwise would have become entitled under this appendix, this appendix will apply to such employee.

11. Arbitration of disputes.- (a) In the event the railroad and its employees or their authorized representatives cannot settle any dispute or controversy with respect to the interpretation, application or enforcement of any provision of this appendix, except section 4 and 12 of this article I, within 20 days after the dispute arises, it may be referred by either party to an arbitration committee. Upon notice in writing served by one party on the other of intent by that party to refer a dispute or controversy to an arbitration committee, each party shall, within 10 days, select one member of the committee and the members thus chosen shall select a neutral member who shall serve as chairman. If any party fails to select its member of the arbitration committee within the prescribed time limit, the general chairman of the involved labor organization or the highest officer designated by the railroads, as the case may be, shall be deemed the selected member and the committee shall then function and its decision shall have the same force and effect as though all parties had selected their members. Should the members be unable to agree upon the appointment of the neutral member within 10 days, the parties shall then within an additional 10 days endeavor to agree to a method by which a neutral member shall be appointed, and, failing such agreement, either party may request the National Mediation Board to designate within 10 days the neutral member whose designation will be binding, upon the parties.

(b) In the event a dispute involves more than one labor organization, each will be entitled to a representative on the arbitration committee, in which event the railroad will be entitled to appoint additional representatives so as to equal the number of labor organization representatives.

(c) The decision, by majority vote, of the arbitration committee shall be final, binding, and conclusive and shall be rendered within 45 days after the hearing of the dispute or controversy has been concluded and the record closed.

(d) The salaries and expenses of the neutral member shall be borne equally by the parties to the proceeding and all other expenses shall be paid by the party incurring them.

(e) In the event of any dispute as to whether or not a particular employee was affected by a transaction, it shall be his obligation to identify the transaction and specify the pertinent facts of that transaction relied upon. It shall then be the railroad's burden to prove that factors other than a transaction affected the employee.

12. Losses from home removal.- (a) The following conditions shall apply to the extent they are applicable in each instance to any employee who is retained in the service of the railroad (or who is later restored to service after being entitled to receive a dismissal allowance) who is required to change the point of his employment within his protective period as a result of the transaction and is therefore required to move his place of residence:

(i) If the employee owns his own home in the locality from which he is required to move, he shall at his option be reimbursed by the railroad for any loss suffered in the sale of his home for less than its fair value. In each case the fair value of the home in question shall be determined as of a date sufficiently prior to the date of the transaction so as to be unaffected thereby. The railroad shall in each instance be afforded an opportunity to purchase the home at such fair value before it is sold by the employee to any other person.

(ii) If the employee is under a contract to purchase his home, the railroad shall protect him against loss to the extent of the fair value of equity he may have in the home and in addition shall relieve him from any further obligation under his contract.

(iii) If the employee holds an unexpired lease of a dwelling occupied by him as his home, the railroad shall protect him from all loss and cost in securing the cancellation of said lease.

b) Changes in place of residence which are not the result of a transaction shall not be considered to be within the purview of this section.

(c) No claim for loss shall be paid under the provisions of this section unless such claim is presented to the railroad within 1 year after the date the employee is required to move.

(d) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of a lease, or any other question in connection with these matters, it shall be decided through joint conference between the employee, or their representatives and the railroad. In the event they are unable to agree, the dispute or controversy may be referred by either party to a board of competent real estate appraisers, selected in the following manner. One to be selected by the representatives of the employees and one by the railroad, and these two, if unable to agree within 30 days upon a valuation, shall endeavor by agreement within 10 days thereafter to select a third appraiser, or to agree to a method by which a third appraiser shall be selected, and failing such agreement, either party may request the National Mediation Board to designate within 10 days a third appraiser whose designation will be binding upon the parties. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

ARTICLE II

1. Any employee who is terminated or furloughed as a result of a transaction shall, if he so requests, be granted priority of employment or reemployment to fill a position comparable to that which he held when his employment was terminated or he was furloughed, even though in a different craft or class, on the railroad which he is, or by training or retraining physically and mentally can become, qualified, not, however, in contravention of collective bargaining agreements relating thereto.

2. In the event such training or retraining is requested by such employee, the railroad shall provide for such training or retraining at no cost to the employee.

3. If such a terminated or furloughed employee who had made a request under section 1 or 2 of the article II fails without good cause within 10 calendar days to accept an offer of a position comparable to that which he held when terminated or furloughed for which he is qualified, or for which he has satisfactorily completed such training, he shall, effective at the expiration of such 10-day period, forfeit all rights and benefits under this appendix.

ARTICLE III

Subject to this appendix, as if employees of railroad, shall be employees, if affected by a transaction, of separately incorporated terminal companies which are owned (in whole or in part) or used by railroad and employees of any other enterprise within the definition of common carrier by railroad in section 1(3) of part I of the Interstate Commerce Act, as amended, in which railroad has an interest, to which railroad provides facilities, or with which railroad contracts for use of facilities, or the facilities of which railroad otherwise uses; except that the provisions of this appendix shall be suspended with respect to each such employee until and unless he applies for employment with each owning carrier and each using carrier; provided that said carriers shall establish one convenient central location for each terminal or other enterprise for receipt of one such application which will be effective as to all said carriers and railroad shall notify such employees of this requirement and of the location for receipt of the application. Such employees shall not be entitled to any of the benefits of this appendix in the case of failure, without good cause, to accept comparable employment, which does not require a change in place of residence, under the same conditions as apply to other employees under this appendix, with any carrier for which application for employment has been made in accordance with this section.

ARTICLE IV

Employees of the railroad who are not represented by a labor organization shall be afforded substantially the same levels of protection as are afforded to members of labor organizations under these terms and conditions.

In the event any dispute or controversy arises between the railroad and an employee not represented by a labor organization with respect to the interpretation, application or enforcement of any provision hereof which cannot be settled by the parties within 30 days after the dispute arises, either party may refer the dispute to arbitration.

ARTICLE V

1. It is the intent of this appendix to provide employee protections which are not less than the benefits established under 49 USC 11347 before February 5, 1976, and under section 565 of title 45. In so doing, changes in wording and organization from arrangements earlier developed under those sections have been necessary to make such benefits applicable to transactions as defined in article I of this appendix. In making such changes, it is not the intent of this appendix to diminish such benefits. Thus, the terms of this appendix are to be resolved in favor of this intent to provide employee protections and benefits no less than those established under 49 USC 11347 before February 5, 1976 and under section 565 of title 45.

2. In the event any provision of this appendix is held to be invalid or otherwise unenforceable under applicable law, the remaining provisions of this appendix shall not be affected.