ARBITRATION PROCEEDING UNDER
NEW YORK DOCK ARTICLE 1, SECTION 4

In the Matter of the Arbitration Between

WISCONSIN CENTRAL LTD, DULUTH, WINNIPEG AND PACIFIC RAILWAY COMPANY, DULUTH, MISSABE AND IRON RANGE RAILWAY CO.

OPINION & AWARD

and

UNITED TRANSPORTATION UNION

and

BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN

STB Finance Docket No. 35476

BEFORE: **Thomas N. Rinaldo, Esq.**
PO Box 1334
Williamsville, New York 14231-1334

DATE OF HEARING: October 27, 2011

APPEARANCES:

For Wisconsin Central LTD, Duluth, Winnipeg & Pacific Railway Company, Duluth, Missabe & Iron Range Railway Co.

Buchanan Ingersoll Rooney, PC by Robert S. Hawkins, Esq., of counsel
Timothy E. Rice, Director Labor Relations
Doug S. Fisher, Sr. Director Labor Relations
Douglas J. Mandalas, Labor Relations

For United Transportation Union

John W. Babler, International Vice President
John Wentzlaff, DW & P General Chairman

For Brotherhood of Locomotive Engineers & Trainmen

Marcus J. Ruef, Vice President Director of Arbitration
Michael D. Twombly, National Vice President
John Reynolds, General Chairman, CN/WC General Committee
Keith J. Stauber, General Chairman
Ricky M. Clark, General Chairman

The Arbitrator has been appointed to preside over and render an Award in this proceeding conducted pursuant to Article I, §4 of the *New York Dock* Labor Protective Conditions. The Applicant Carriers in this proceeding seek an Implementing Agreement to effectuate the intra-corporate merger of three railroads that are owned and controlled by the Canadian National Railway Company ("CNR"). The intra-corporate transaction will result in the merger of Wisconsin Central LTD ("WC"), Duluth, Winnipeg and Pacific Railway Company ("DWP"), and Duluth, Missabe and Iron Range Railway Co. ("DMIR")(collectively referred to as "Carrier"), with WC to remain as the surviving Carrier. The merger, because of its status as an intra-corporate transaction, is exempted from prior approval by the Surface Transportation Board ("STB"). 49 C.F.R. §1180.2(d)(3). A Notice of Exemption was filed with the STB on April 8, 2011 and, on May 8, 2011, became effective. STB Finance Docket No. 35476.

More specifically, the Carrier seeks to consolidate the Locomotive Engineers working under the United Transportation Union ("UTU") and DWP collective bargaining agreements and the Locomotive Engineers working under the Brotherhood of Locomotive Engineers and Trainmen ("BLET") and the DMIR Collective Bargaining Agreements and place said Engineers under a modified version of the BLET WC

Collective Bargaining Agreement. A single Agreement with a single spokesman would thus result.

The record shows that CN was incorporated in 1923 as a Canadian transcontinental railroad. DWP had been a subsidiary of CN or its predecessors since 1919. DWP extended the CN system from the international border at Fort Frances, Ontario/Ranier, Minnesota over DWP's lines to Nopeming Junction, Minnesota, located near Duluth. In 1999, CN acquired the Illinois Central Railway Company's carriers to strengthen its position as a north-south traffic market by extending its system from Chicago to the Gulf Coast of the United States.

In 2001, CN purchased WC, which is a regional carrier between Superior, Wisconsin and Chicago, Illinois. According to the Carrier, WC gave it a significant link for freight traffic moving between Chicago and Western Canada. In 2004, CN acquired the Great Lakes Transportation carriers, which included DMIR. DMIR provided the Carrier with a direct connection between DWP and WC in Duluth/Superior and also between Chicago and the CN lines west of the Great Lakes. The 2004 transaction also saw CN acquire Bessemer and Lake Erie Railway Company and the Pittsburgh & Conneaut Dock Company. Along with CN's ownership of DMIR and Great Lakes Fleet, LLC, which is a water carrier operating on the Great Lakes, the GLT transaction provided CN with a continuous supply chain for palletized iron ore moving from the Missabe iron ore range of Minnesota to the Union Railroad Company, which serves the Edgar Thomson Works of United States Steel Corporation near Pittsburgh, Pennsylvania. In

2008, CN also purchased the principal portion of the Elgin, Joliet & Eastern Railway, which allowed it to join its main lines that converge in the vicinity of Chicago and more effectively move traffic along the Chicago rail hub as well as to directly serve the United States Steel Corporation facility of Gary, Indiana along with other industries along the line.

Against the above factual backdrop, the Parties' positions can be set forth and ultimately analyzed by the Arbitrator to reach the required resolution in this proceeding.

POSITION OF THE CARRIER

The Carrier maintains that it has satisfied the *New York Dock* Notice and Negotiation Requirements. It notes the filing of its Notice of Exemption on April 8, 2011, which under 49 C.F.R. §1180(4)(g), became effective on May 8, 2011. The Carrier also observes that, on May 9, 2011, it both posted and served the *New York Dock* Section 4 notices that informed the affected employees of the Carrier's intent to merge WC, DWP, and DMIR and to consolidate the Engineers of these railroads into a single, consolidated workforce with WC as the surviving carrier. Further, the Carrier notes, on May 17, 2011 it posted and served revised *New York Dock* Section 4 notices, and on May 18, 2011 and May 23, 2011, conducted separate conference calls with the General Chairmen and Vice Presidents of both BLET and UTU to explain the Section 4 notice and the Carrier's intent to consolidate the WC, DMIR and DWP.

Following the notice filing and communications of the notice and its intent, the

Carrier, according to its position, then held meeting with UTU and BLET General Chairmen in Duluth, Minnesota on June 21 and June 22, 2011 at which the proposed *New York Dock* Implementing Agreement was delivered. On July 13 and 14, 2011, the Carrier observes, it held further meetings with the UTU and BLET General Chairmen in Minneapolis, Minnesota, which then were followed by meetings between and among the Parties in Green Bay, Wisconsin on August 24 and 25, 2011.

It is noted by the Carrier that, in Green Bay, BLET submitted a proposal to resolve the selection and assignment of forces pursuant to Section 4 of *New York Dock.* Nevertheless, according to the Carrier, UTU stated it had not authorized BLET to make the proposal and UTU refused to agree to it at that time. The Carrier observed that it then announced its intent to seek appointment of a neutral arbitrator to resolve the terms of the appropriate *New York Dock* Implementing Agreement. The Carrier further observes that, on September 19, 2011, UTU contacted the Carrier to advise that further bargaining could be useful based on the terms of the BLET's draft Implementing Agreement, and, on September 25, 2011, UTU submitted a revision to BLET's draft Implementing Agreement. According to the Carrier, after the Parties reached a tentative Agreement during a September 30, 2011, conference call, UTU, on October 7, 2011, communicated to the Carrier that it could not conclude a voluntary Implementing Agreement. The Carrier claims that UTU professed a concern over potential representation issues which prevented it from reaching a voluntary Agreement. Both the UTU and BLET, the Carrier maintains, have the ability, following a merger, to clarify any representation issues

through the representation procedures falling within the exclusive jurisdiction of the National Mediation Board ("NMB").

It is the Carrier's claim that the terms of the Implementing Agreement that it has proposed is consistent with the proposed Implementing Agreement that the Parties discussed and "largely agreed upon." This proposed Agreement, the Carrier observes, is one allowing for the selection and assignment of forces to protect work on the merged Carrier and one that places all Engineers under the existing WC Collective Bargaining Agreement as well as incorporating the *New York Dock* labor protective conditions for any employee who might be adversely affected by the transaction.

The Carrier observes that both BLET and UTU have asked it to agree to allow certain employment security and related prior rights for DWP and DMIR Engineers who transfer to WC under the proposed Implementing Agreement and that certain enhancements to various benefits included in the proposed Agreement be included. According to the Carrier, its typically opposes efforts to "cherry pick" beneficial aspects of a superseded agreement but, without prejudice to its position, and in light of the substantive agreement the Parties have reached on an Agreement save for the inability to reach a final agreement because of a representation issue which the Carrier claims falls outside the jurisdiction of this tribunal, the Carrier does not oppose the imposition of the employment security and prior rights provisions, including amendments agreed to in negotiations. As the Carrier puts it, "[t]hese benefits are beyond the scope of what a *New York Dock* arbitrator may impose, but, … because the unique circumstances of this case,

the Carrier is willing to forego its objection to them in this case only."

In support of its position, the Carrier claims that the integration of the engine service workforce under one Collective Bargaining Agreement represents "the type of transaction that reasonably flows from, and is necessary to effectuate the efficiencies of ... the merger." The Carrier notes that the voluntary Implementing Agreement with UTU regarding Trainmen involved in the merger is one that should be repeated here for the engine service workforce. It is the Carrier's position that the "public benefits made possible by the consolidation of WC, DWP, and DMIR are substantial and undeniable." The Carrier claims that, by having a single workforce under a single Agreement, it will have the ability to:

- Increase the availability of service to customers;
- Reduce disruptions caused by seasonal variations in traffic;
- Increase the availability of crews during severe weather and other emergencies;
- Design service and establish crew change points based on the needs of customers, not historical boundaries;
- Utilize crews efficiently in the event crews exhaust legally permissible hours of service;
- Provide cost-effective service to customers whose transportation needs span the lines of more than one of the formerly separate railroads.

The above alleged benefits, the Carrier maintains, "abundantly satisfy the STB's standard for consolidating a craft or class under a single agreement." Moreover, the Carrier argues, arbitral authority has consistently recognized "the need to consolidate

employees under a single collective bargaining agreement where doing so allows the public benefits of a merger to be achieved."

The Carrier maintains that "the legal standard of necessity is satisfied" in accord with the statutory authority permitting the STB or an Article 1, Section 4 *New York Dock* arbitration panel to "override the provisions of existing collective bargaining agreements as 'necessary' to carry out the approved 'transaction'." The "necessity" test, the Carrier puts forth, requires the establishment of a link or nexus between the modifications that are sought and the exempted transaction. In addition, the transactions, the Carrier puts forth, must provide "transportation benefit to the public."

The "necessity" test is met in the instant case, according to the Carrier, because "merging the engineers of the consolidated Carrier under one collective bargaining agreement will unlock the efficiencies made possible by the corporate merger of DWP and DMIR into WC." To this end, the Carrier observes that the merged railroads, in fact, "are interconnected; they operate in close proximity; and their train and engine crews can readily protect service on all three properties."

Moreover, the Carrier claims that its proposal should be imposed because "it is fair and equitable and complies with the requirements of *New York Dock*." The proposed Implementing Agreement, according to the Carrier, is one that allows for the "equitable selection of forces." The requirement under Article 1, Section 4 of *New York Dock* that a proposed Implementing Agreement "shall provide for the selection of forces from all employees involved on the basis accepted as appropriate in the particular case," the

Carrier argues, is served by a "consolidation of rosters based on seniority." When Parties agree that the selection of forces should occur via a consolidation of rosters based on seniority with a retention of prior rights, there is arbitral authority, according to the Carrier, that requires a neutral to respect the Agreement. Additionally, the Carrier maintains that its proposal is one that finds the affected employees receiving full *New York Dock* protections.

The Carrier also claims that its proposed Implementing Agreement "properly places all engine service employees under the surviving Carrier's Agreement in conformity with the Controlling Carrier Doctrine." Thus, the Carrier claims, it is a well accepted principal that a Collective Bargaining Agreement that is in place on a railroad receiving the work or surviving a merger is one that controls. The selection of the WC Agreement, in any event, the Carrier claims, is also "supported by the sound policy consideration that the agreement ratified by the greatest number of the consolidated workforce should remain in effect." The Carrier notes that WC has 263 Engineers while there are 63 Engineers on DMIR and 42 on DWP. The WC Agreement, according to the Carrier, thus "protects the majority of employees under an agreement that has already been ratified by more than two-thirds of the consolidated engineer workforce and ensures the least disruption."

Finally, the Carrier observes that its Implementing Agreement "embodies the proposals made by the BLET and the UTU." There is arbitral authority, the Carrier puts forth, that mandates that a neutral "should respect the negotiation process by selecting the

implementing the agreement that embodies the bargained consensus." In setting forth its position, the Carrier reminds the Arbitrator that he does not have jurisdiction to decide questions of representation, since such matters fall within the exclusive jurisdiction of the NMB as required by the Railway Labor Act.

POSITION OF BLET

The BLET acknowledges that the Carrier's notice of May 9, 2011, was proper under Section 4 of the *New York Dock* conditions. As to the Implementing Agreement issue, the BLET states its agreement with the Carrier's proposal to the extent that the proposal can be understood as placing the entire merged property under the BLET/WC Schedule Agreement regarding Locomotive Engineers and extinguishing the DMIR and DWP Schedule Agreements. In this regard, the BLET notes that "the vast majority of employees in the combined property already work under the WC Agreement, which certainly suggested a logical and rational basis to the Carrier's choice of Agreement."

According to the BLET, there are parts of the DMIR Agreement that it finds "unique to the circumstances on that property," which "should be retained." BLET observes that it "proposes maintaining the seniority rosters of the three constituent properties for prior rights purposes, and placing the remaining two constituent properties underneath each of the three properties, with Order Selection Lists ... being used to determine the relative standing of the engineers placed at the bottom of each of the three existing rosters." BLET notes that these rosters and the Order Selection Lists are

included as Appendix "A" to the draft Implementing Agreement, which reflects an understanding reached by the Parties in a conference call of October 20, 2011. The BLET also notes that the Order Selection Lists "contemplate that prior right engineers will move up in their respective prior right slots on each roster as attrition occurs." Prior rights, the BLET observes, "are administered by maintaining the prior right identity of all assignments in the combined territory as prior righted assignments for bidding purposes."

According to the BLET, when the matter was eventually discussed fully on October 7, 2011, during the Parties' conference call, the Carrier raised an objection to the maintenance of the three prior right rosters, stating a preference instead for a single seniority roster. BLET observes that it found this position of the Carrier "unacceptable ... because the Carrier's proposal placed all DMIR and DWP engineers at a disadvantage when bidding for jobs off of their respective prior right districts, since it placed all prior right WC engineers ahead of them on the bottom of each roster." Because the WC roster, according to BLET, reflects a large number of Engineers "whose relative standing on the seniority roster does not correlate with their actual seniority dates", the matter, BLET urges, cannot "be easily cured by using seniority dates to rank the 'bottoms' of each of the three prior right rosters" and thus it asks that the Board accept its proposal, reflected in Appendix "A" to the proposed Implementing Agreement. BLET also identifies that portion of the Carrier's initial proposal that sought to coordinate the Duluth/Superior Terminal by adding two additional home terminals - Proctor and Two Harbors – to the existing WC Seniority District 5. The BLET notes the Seniority District "presently

embraces WC engineers working in the Duluth/Superior area." According to the BLET, this portion of the Carrier's initial proposal was not acceptable, but BLET states that it "is agreeable to adopting the same provision [the latest proposal of Carrier – Article IV, Section 2] for the instant Implementing Agreement and believes the Board will recognize the obvious efficiency inherent in arranging the terminals for both crafts in a synchronous manner."

As to its further position on "prior rights," to the extent the Carrier wishes to establish guaranteed extra boards in the Duluth/Superior area that would protect prior right assignments of two or more of the prior right properties, BLET responds that, should this occur, "the positions on these GEBs should be established pursuant to an OSL that allocates positions on the GEB in an manner that reflects the relative contribution of work attributable to each prior right property in the Duluth/Superior area as outlined in Appendix 'A' ..."

Regarding employment security, the BLET observes that the WC, DMIR, and DWP Agreements differ regarding the effective date of seniority. The BLET notes that it supports the Carrier's proposal discussed during the October 7, 2011, conference call, which is contained in BLET Exhibit "C".

As to the effect of prior rights, BLET observes that, at present, Engineers protected under their respective employment security articles "are guaranteed a position within their respective seniority districts." According to BLET, the proposal that employment security of all prior right Engineers be continued to apply in the same

manner, which the Carrier has addressed in its proposed "icebox letter" under "prior rights", which is contained in BLET Exhibit "C", is acceptable to BLET.

There are specific issues BLET identifies with DMIR, and it notes that the DWP and the DMIR Agreements "are both conversions from longstanding mileage based agreements going back many, many years." BLET observes that during the early part of this year the DMIR conversion took place, which "represented a complex trade of work rules and the mileage basis of pay for a simpler set of work rules based on an hourly rate." To apply the WC Agreement to the DMIR workforce "without any modification", BLET argues, "will serve to deny the DMIR engineers several significant benefits that were achieved in the bargaining."

Specifically, BLET identifies "rest days" and "pool service and weekly board mark." As to rest days, the BLET notes that the Carrier's proposal reserves the right gained under the DMIR Agreement which saw an adoption of a "five and two pattern for all assignments" only until September 1, 2011. BLET argues that "[i]t would be manifestly unjust to use the NYD Section 4 process to immediately strip them [DMIR Engineers] of this right, and BLET supports the transitional preservation of this right reflected in BLET Exhibit 'C'."

The pool service and weekly board mark, BLET observes, reflect a rule specific to the DMIR property and states that it is agreeable to the adoption of those provisions as set forth in Articles V and VI of the Carrier's proposal, which are reflected in BLET Exhibit "C".

Finally, BLET states that it does not acknowledge that the Carrier's "proposed amendment to the WC Standing Bid provision is necessary" for the merger but "without prejudice to its position, BLET is agreeable to the inclusion of the proposal contained in the Carrier's latest proposal (BLET Exhibit 'C')."

POSITION OF UTU

The UTU raises the "contention that the consolidation of the UTU represented DWP engineers and BLET representative DMIR engineers under a modified version of the BLET WC Lines agreements does not meet the 'necessity' requirement for the CN to carry out the STB approved 'end-to-end' transaction." In the estimation of the UTU, the Carrier, with its "STB authorized trackage rights, which permits the operational flexibility sought in this arbitration" is able "to efficiently move traffic through the Twin Ports Terminal area and beyond." The UTU complains that the Carrier has not sought to use the authorized trackage rights, nor has it entered into any negotiations with the Unions in an effort to use the trackage rights to achieve similar operating efficiencies for the Twin Ports Terminal that the Carrier seeks in this merger transaction. As viewed by the UTU, the Carrier's decision not to use the authorized trackage rights "indicates the CN is more interested in using the 'merger' and its labor protective conditions as a sword to sever two collective bargaining agreements."

The UTU places emphasis on the fact that the Carrier's filing with the STB, in the UTU's assessment, "focused on getting relief to reduce delays to trains within and

through the Twin Ports Terminal area." This area, according to the UTU, is a small area that surrounds the Terminal and approximately a 20 mile radius. Nevertheless, the UTU puts forth, "all the proposals to date from CN affect all engineers working on three different properties, under three (3) separate agreements, in a geographic area ranging from Chicago, IL to Rainer, MN (International Falls area), and a straightaway distance of almost 700 miles." Moreover, the UTU argues that the three Agreements do not act as barriers to the efficient movement of trains "within or through the Twin Ports Terminal area." The "choke point" at the Twin Ports Terminal, as it is identified by the UTU, has resulted from train delays and operational shortcomings based on the Carrier's decisions. Seen in this light, UTU argues, "whether there are one or three collective bargaining agreements in effect, it makes no difference, because neither situation is going to overcome an unrealistic Operating Plan."

The Carrier's decision to consolidate WC, DWP, and DMIR, according to the UTU, "has the downstream effect of favoring the BLET" and the "single agreement" approach sought by the Carrier "is tantamount to interfering with union affiliation because it eliminates UTU's role as the duly authorized collective bargaining agent for the fifty-one (51) locomotive engineers, who work under the UTU's agreement on the DWP Lines." The "single" agreement approach, under the BLET WC Agreement, UTU argues, would result in a "dual dues" payment for UTU represented Engineers, which "requirement is unaffordable for the engineers, which economically forces them to join the BLET to maintain their seniority standing and to avoid the onerous dual dues

structure." The Agreement that results, UTU maintains, should provide "a caveat that on the DWP Lines territory the dual dues requirement is waived and the agreement is administered by the UTU."

In addition, the UTU maintains that the Carrier has not established that UTU's loss of representation on the DWP Lines territory would be "necessary" to carry out the transaction approved by the STB. According to the UTU, "[i]t has been held repeatedly that an arbitrator has no authority to address the 'single spokesperson' concept because that presents a 'representation dispute' within the exclusive jurisdiction of the NMB ..., and neither the carrier, nor the NMB may invoke the Board's representational jurisdiction under the Merger Procedures contained in Section 19 of the Representation Manual, as that may only be done by a 'representative'." A change to its Engineers' Agreement, UTU maintains, would affect the rights of Trainmen because the UTU DWP Lines agreements "are held jointly between the DWP trainmen's representative and the engineer's representative." Under *New York Dock*, the UTU argues, the Carrier "is required to serve notice to the DWP trainmen's representative, as well as the engineer's representative, of the imminent changes in the engineer's agreements." No notice, however, was served on the Trainmen's representatives, the UTU notes, and thus "the arbitration of this dispute is premature because the CN has failed to serve the appropriate '*New York Dock* notice' to the interested employees representative." According to the UTU, the only remedy at this point "is to remand this case back to the parties to complete the on-property handling required under *New York Dock* procedures."

The Carrier is accused by the UTU of seeking "to avoid the CN's legal obligations to the UTU for collective bargaining agreements and representation of engineers, but the STB," the UTU puts forth, "was not commissioned as a labor regulator, a lord over employees' representation rights or a labor relations agency." The UTU maintains that the Carrier has not produced any proof that the elimination of the DWP and DMIR agreements under any reasonable view would be considered "necessary" to allow the Carrier to carry out the approved transaction.

In setting forth its position, UTU notes that an exemption from legal requirements only can occur when "necessary to carry out a transaction approved by the STB." Clearly an exemption of the collective bargaining agreement obligations of the Carrier, according the UTU, would not meet the necessity test. The decision of the Fifth Circuit Court of Appeals in *City of Palestine v. United States*, 559 F.2d 408 (5th Cir. 1977), is cited by the UTU in support of its position. Under this case, the UTU maintains, "'necessary' requires something more ["than most efficient"], the absence of which would bar the consummation of the approved transaction." There must be, according to the UTU, an "actual inability to carry out an approved transaction, not on an assessment of the relative costs or possible efficiencies of proceeding in the absence of the alleged obstacle." The UTU also insists, "when the Section 11321(a) exemption power is applied to obligations arising in the context of labor relations - to labor laws like the RLA or obligations imposed by a collective bargaining agreement – there is an additional restriction on the exercise of that authority, i.e., Section 11326 requires the carrier to provide appropriate

labor protective conditions for the employees affected by the transaction." Judicial authority is identified by the UTU, which claims it supports it position on this point.

Thus, the UTU notes, the STB developed the labor protective conditions of *New York Dock.* It is clear, according to the UTU, that "the weight of arbitral authority and STB decisions indicate the applicants [Carrier] cannot use arbitration to accomplish changes left to the RLA negotiation process." In essence, the UTU puts forth "the changes sought by the applicants [Carrier] must be bargained for, not given to them by arbitral fiat." The UTU maintains that although the Carrier has the right to invoke the arbitration provisions of Article I, Sections 2 and 4 of the *New York Dock* conditions regarding the transaction, it can nevertheless be seen that "portions of the applicants' proposal are not covered by such approval, and they are not within the jurisdiction of the STB or any arbitrator chosen or appointed under applicable law." As to these "portions of the proposal," the UTU maintains that "the applicants may only obtain relief under Section 6 of the Railway Labor Act, since they require changes in agreements outside STB and arbitration jurisdiction." The UTU likens the factual record in the instant case to the one in UP/MKT merger, ICC Finance Docket No. 30800, and urges the neutral herein to consider that "[a] careful reading of that Award should convince anyone that changes in seniority, ebb and flow between the crafts, combining extra boards, elimination of the DWP and DMIR collective bargaining agreements and the like are issues that are considered non-merger related, particularly in what is essentially an end-to-end merger, with only one common point terminal."

Hence, UTU seeks an Award mandating that the collective bargaining agreements of WC, DWP, and DMIR remain in place "with only slight modifications", which "modifications shall address conditions to get and/or leave trains in and around, for the purpose of staging and/or Hours of Service relief, the 25-miles zone of the Twin Ports Terminal." Alternatively, the UTU requests "that the 'parties' best efforts' to date, be imposed" which "proposal is attached ... as Employees' Appendix 1." Should "'the parties' best efforts' or any other agreement type proposal" be imposed, the UTU states that it should be "with the understanding that it cannot alter or affect the UTU's engine service representation rights on the DWP Lines" and that "[a]ny conditions imposed ... applicable to the DWP Lines territory shall become the 'new DWP Lines agreement' under the sole jurisdiction of the UTU-E General Chairperson."

FINDINGS AND OPINION OF THE ARBITRATOR

The Arbitrator first addresses the contention of UTU that, under *New York Dock*, the Carrier failed to satisfy the notice requirements because it did not serve the DWP Trainmen's representative of imminent changes to the Engineer's Agreement. Thus, the UTU maintains, *New York Dock* was not satisfied because the Carrier did not serve the appropriate notice to all interested employee representatives.

The Arbitrator notes that the Carrier filed a Notice of Exemption on April 8, 2011, which, by operation of law became effective on May 8, 2011. Thereafter, the Carrier served the required notices under Article 1, Section 4 of *New York Dock* regarding its

intent to transfer all locomotive Engineer employed by DWP and DMIR to WC and to operate a single, consolidated engine service workforce with WC as the surviving corporation. The Arbitrator has examined all objections raised by UTU to the notice requirement and finds none of the objections to be availing. Insofar as the notice sought to inform affected employees of the intended transfer of all Locomotive Engineers, the Arbitrator finds no requirement under *New York Dock*, particularly in the absence of showing of actual prejudice, that mandated that the Trainmen's representatives be served as well. No authority for this proposition, the Arbitrator further notes, has been advanced by UTU.

Hence, the Arbitrator will determine if the proposed Implementing Agreement passes muster under applicable legal requirements. Under *New York Dock*, there is a "necessity test" which requires, in the first instance, a finding of a "nexus" between the exempted transaction (merger) and the proposed consolidation into the engine workforce and, secondly, whether the existing Collective Bargaining Agreements can be overridden as a necessary step to secure public transportation benefits from the merger. The exempted transaction, the Arbitrator would note, is linked to the proposed consolidation of the workforce based on what the Arbitrator finds to be the demonstrated inherent difficulties of operating separate railroads with separate workforces and Agreements, evidenced by specific operating inefficiencies as identified in the record by the Carrier.

The Arbitrator is mindful of the UTU's contentions that the necessity test has not been met based on UTU's observation that the greatest amount of operational

inefficiencies surround the Carrier's operations in the area of the Twin Ports Terminal. The Arbitrator observes, however, that the inefficiencies connected with operating three separate railroad in and around that location are not limited to that area, and specifically, the Arbitrator observes that attempts by CN to utilize existing trackage rights, in the final analysis, did not prove to be availing as a means to reduce meaningfully operational deficiencies. To the extent that UTU argues a consolidation cannot occur due to representational concerns, the Arbitrator finds that such concerns fall within the exclusive jurisdiction of the NMB, and no part of this Award can be taken to address any representational issue that UTU may have raised or wishes to raise in the future.

The necessity test also requires that there be public transportation benefits, which, as the Carrier has noted, would "include the promotion of safe, adequate, economical transportation, and the encouragement of sound economic conditions among carriers." The Arbitrator finds that the proposed merging of Engineers into a consolidated Carrier under one Collective Bargaining Agreement will clearly result in public transportation benefits. Significantly, the Arbitrator finds that the record substantially supports the conclusion advanced by the Carrier that the merging of Engineers into a consolidated Carrier "will unlock the efficiencies made possible by the corporate merger DWP and DMIR into WC." The unlocking of "the efficiencies," the Arbitrator observes, also underscores the link needed under the first aspect of the necessity test, given the interconnected nature of the merged railroads, their proximity, and, as observed by the Carrier, the fact that both "train and engine crews can readily protect service on all three

properties."

The Arbitrator also observes that, under *New York Dock,* the proposed Implementing Agreement must be fair and equitable and, specifically provide for an equitable selection of forces. In this regard, the proposed Implementing Agreement by consolidating rosters based on seniority conforms with this requirement since all affected Engineers are to be protected. Further, the proposed Implementing Agreement, in accordance with *New York Dock*, appropriately puts all engine service employees under the surviving Carrier's Agreement consistent with the "Controlling Carrier Doctrine."

The Arbitrator is particularly persuaded that the proposed Implementing Agreement conforms with the requirements of *New York Dock* since it embodies proposals made by both BLET and UTU. This observation carries with it a further recognition. The Carrier has presented argument that the Arbitrator should impose the Wisconsin Central collective bargaining agreement applicable to Locomotive Engineers in its entirety and that the Arbitrator lacks authority to alter or enhance the New York Dock labor protective conditions in any way. Nevertheless, because of the unique circumstances of this merger, the Carrier has advised the Arbitrator that, without prejudice to its position in this or any other proceeding, the Carrier will not object to the preservation of existing prior rights and employment security protections applicable solely to former DWP and DMIR Locomotive Engineers, or to the amendments to those provisions requested by the Organizations. Those provisions, as amended, are contained in Joint Exhibit A, which was introduced at the hearing in this matter. Accordingly, the

Arbitrator adopts Joint Exhibit A as part of the Implementing Agreement, based on the Carrier's agreement not to object to such provisions, and without precedent for any other proceeding. Any dispute concerning the interpretation or application of the provisions of Joint Exhibit A shall be resolved exclusively in accordance with the dispute resolution procedures set forth in Article I, Section 11 of the New York Dock Conditions.

Hence, the Arbitrator finds that the proposed Implementing Agreement should be awarded, and said Agreement is set forth as an attachment to this Award. In keeping with the above observation about non-precedential language, Joint Exhibit A, which will be part of the Agreement, is set forth as an attachment to the Carrier's proposed Implementing Agreement.

Thomas N. Rinaldo

THOMAS N. RINALDO, ESQ., ARBITRATOR

STATE OF NEW YORK)
COUNTY OF ERIE) SS.:
WILLIAMSVILLE, NEW YORK)

I, THOMAS N. RINALDO, do hereby affirm upon my oath as Arbitrator that I am the individual described herein and who executed the within Award on November 30, 2011.

Thomas N. Rinaldo

THOMAS N. RINALDO, ESQ., ARBITRATOR

MERGER IMPLEMENTING AGREEMENT

between

DULUTH, MISSABE AND IRON RANGE RAILWAY CO. / DULUTH, WINNIPEG AND PACIFIC RAILWAY COMPANY / WISCONSIN CENTRAL LTD

and

their Employees represented by

BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN

and

UNITED TRANSPORTATION UNION

(ENGINEERS)

WHEREAS, through a series of transactions, Canadian National Railway Company ("CNR"), and Grand Trunk Corporation (collectively, "CN") received approval from the Surface Transportation Board or its predecessor agency, the Interstate Commerce Commission ("STB"), permitting CN to acquire and exercise control over Duluth, Missabe and Iron Range Railway Company ("DMIR") (STB Finance Docket Nos. 34424) and Wisconsin Central Ltd. ("WC")(STB Finance Docket 34000);

WHEREAS, on April 8, 2011, WC, DMIR and Duluth, Winnipeg and Pacific Railway Company ("DWP") (collectively "Carriers") filed with the STB a Notice of Exemption, effective May 8, 2011, for the intra-corporate merger of DWP, DMIR into WC (STB Finance Docket No. 35476) ("Merger");

WHEREAS, the employee protective conditions set forth in *New York Dock Railway – Control – Brooklyn Eastern District*, 360 I.C.C. 60 (1979), ("New York Dock Conditions") apply to the Merger;

WHEREAS the Carriers have given proper notice under Article I, Section 4 of the New York Dock Conditions of their intent to transfer all locomotive engineers employed by DWP and DMIR to WC and to operate with a single, consolidated engine service workforce with Wisconsin Central Ltd. as the surviving corporation;

WHEREAS, the Carriers, the Brotherhood of Locomotive Engineers and Trainmen ("BLET") and the United Transportation Union ("UTU") bargained in good faith for the requisite amount of time for the purpose of reaching a voluntary implementing agreement

pursuant to Article I, Section 4 of the New York Dock Conditions and any other applicable labor protective conditions;

WHEREAS, the parties have been unable to reach a voluntary implementing agreement and have therefore submitted this dispute to arbitration pursuant to the New York Dock Conditions;

NOW THEREFORE, IT IS AGREED:

ARTICLE I – SLECTION AND ASSIGNMENT OF FORCES

Section 1. Upon at least ten (10) days' written notice by the Carriers ("Notice"), on appropriate bulletin boards, with copies to the General Chairmen signatory hereto, the Carriers may effect the selection or rearrangement of forces described herein.

Section 2. During the ten (10) day period prior to the effective date of the Carriers' Notice under Article I, Section 1 of this Agreement, all regularly assigned DMIR and DWP locomotive engineer assignments will be abolished.

Section 3. To protect service on the former DWP and DMIR, locomotive engineer positions will be bulletined and assigned as regularly assigned WC positions to be subject to the WC Collective Bargaining Agreement applicable to Locomotive Engineers. The bulletins will contain language advising applicants that the abolishment will be effective on the effective date of the Carriers' Notice and that the successful applicants will be subject to the WC Collective Bargaining Agreement applicable to Locomotive Engineers upon commencement of operations under this agreement.

ARTICLE II - COLLECTIVE BARGAINING AGREEMENT

Section 1. On the effective date of the Carriers' Notice under Article I, Section 1 of this Agreement, all Locomotive Engineers employed by DWP and DMIR shall be governed by WC's Collective Bargaining Agreement applicable to Locomotive Engineers, as such may be amended pursuant to the Railway Labor Act, unless otherwise specified herein.

Section 2. On the effective date of the Carriers' Notice under Article I, Section 1 of this Agreement, the DMIR Collective Bargaining Agreement with BLET covering locomotive engineers shall cease to exist and all locomotive engineers will be governed by all terms and conditions of the WC Collective Bargaining Agreement applicable to Locomotive Engineers, as such may be amended pursuant to the Railway Labor Act, unless otherwise specified herein.

Section 3. On the effective date of the Carriers' Notice under Article I, Section 1 of this Agreement, the DWP Collective Bargaining Agreement with UTU covering

locomotive engineers shall cease to exist and all locomotive engineers will be governed by all terms and conditions of the WC Collective Bargaining Agreement applicable to Locomotive Engineers, as such may be amended pursuant to the Railway Labor Act, unless otherwise specified herein.

Section 4. Inasmuch as the DWP Collective Bargaining Agreement with UTU covering locomotive engineers shall cease to exist as a result of this Implementing Agreement, any Section 6 notices served pursuant to the Railway Labor Act with respect to that Collective Bargaining Agreement shall be null and void. Section 6 notices served with respect to employees and agreements of Wisconsin Central Ltd., if any, shall apply to employees who transfer to WC pursuant to this Agreement.

ARTICLE III – SENIORITY AND PRIOR RIGHTS

Section 1. The right to work positions and assignments shall be determined by seniority. Subject to prior rights, seniority shall prevail as follows: first, by seniority within the terminal where the vacancy occurs; second, by seniority within the district where the vacancy occurs; and third, by system seniority. An Engineer who transfers into a terminal will exercise his/her seniority within that terminal based upon his/her system seniority date. It is understood that an Engineer will maintain seniority in only one (1) terminal (and district) at any given time (i.e., the terminal/district at which he is currently assigned).

Section 2. The seniority districts, each comprised of separate seniority terminals, as shown below:

Seniority District 1

Home Terminal 1 - Extra Board Location and Source of Supply – Schiller Park

- Protects vacancies including Chicago vacancies up to Leithton

Seniority District 2

Home Terminal 1 - Extra Board Location and Source of Supply – Waukesha

- Protects vacancies including vacancies at Burlington / Milwaukee / DBR Jct. / down to Mundelein

Home Terminal 2 - Extra Board Location and Source of Supply - Fond du Lac

- Protects vacancies including FVW vacancies and Spur 126

Seniority District 3

Home Terminal 1 - Extra Board Location and Source of Supply - Stevens Point

- Protects vacancies including FVW vacancies at Marshfield / Waupaca / Wausau / Rhinelander / Bradley

Home Terminal 2 - Extra Board Location and Source of Supply – Wisconsin Rapids

- Protects vacancies including FVW vacancies at Wisconsin Rapids / Merrillan / Arcadia

Home Terminal 3 – Extra Board Location and Source of Supply – Taylor

- Protects vacancies including FVW vacancies at Taylor / Chippewa Falls

Seniority District 4

Home Terminal 1 - Extra Board Location and Source of Supply – Superior

- Protects vacancies including vacancies at Pokegama / Virginia / Ranier / Ladysmith / Mellen / Park Falls / North Ironwood / Stone Lake

Home Terminal 2 - Extra Board Location and Source of Supply - New Brighton

- Protects vacancies including vacancies at New Richmond

Home Terminal 3 – Extra Board Location and Source of Supply – Proctor

- Protects vacancies including vacancies at Proctor

Home Terminal 4 – Extra board Location and Source of Supply – Two Harbors

- Protects vacancies including vacancies at Two Harbors

Home Terminal 5 – Extra board Location and Source of Supply – Keenan

- Protects vacancies including vacancies at Keenan / Minntac / Biwabik

- Note: The Company shall have the option to have the Superior Guaranteed Extra Board at either Pokegama or Proctor. Additionally, the Company shall have the option to maintain separate Guaranteed Extra Boards at Pokegama and at Proctor until such time as GEB Engineers become qualified on all territories. In the event

the Company decides to move, combine or separate the Boards, it will give the General Chairman ten days written notice.

Seniority District 5

Home Terminal 1 - Extra Board Location and Source of Supply – Green Bay

- Protects vacancies including SSAM vacancies at Marinette
- Protects vacancies including FVW vacancies at Wrightstown / Manitowoc

Home Terminal 2 - Extra Board Location and Source of Supply – Neenah

- Protects vacancies including FVW vacancies at Oshkosh / New London / Appleton / Kimberly / Kaukauna / Hilbert

Seniority District 6

Home Terminal 1 - Extra Board Location and Source of Supply – Gladstone

- Protects vacancies including SSAM vacancies at Escanaba / Quinnesec / Niagara / Pembine / Ishpeming / L'Anse

Home Terminal 2 – Extra Board Location and Source of Supply – Trout Lake

- Protects vacancies including Trout Lake / Sault Ste. Marie / Newberry

A. The Company will consult with the Union prior to bulletining positions where it is proposed to establish any new seniority terminals additional to those shown above.

B. The Company will normally bulletin assignments at outlying points not listed above to the terminal in closest geographic proximity within the district.

Prior Rights

Assignments, including Guaranteed Extra Board assignments (and vacation slots) shall be designated as Prior Rights if requested by the General Chairman. The designation of assignments as Prior Rights is in the discretion of the General Chairman provided that such discretion shall be reasonably exercised and shall not be used as the basis for any time claims. Consistent with the manner in which seniority is exercised, these positions

shall be subject to selection by Prior Right Engineers according to their designation on the seniority roster.

Prior Rights designation may be afforded to assignments as follows;

DWP: Assignments that operated predominantly on the former Duluth, Winnipeg and Pacific Railway as it existed prior to October 14, 2011.

DMIR: Assignments that operated predominately on the former Duluth, Missabe and Iron Range Railway Company as it existed prior to October 14, 2011.

FVW: Assignments formerly operated by the former Fox Valley and Western at various locations in Wisconsin

SSAM: Assignments formerly operated by the Sault Ste. Marie Bridge Company in the Upper Peninsula of Michigan and Wisconsin

WCSP: Assignments operating within the Chicago Consolidated Terminal as contained in the Chicago Merger Implementing Agreement effective November 1, 2004

WC: Assignments that operated predominately on the WC as it existed prior to October 14, 2011.

The General Chairman shall decide the Prior Right designation in the case of assignment(s) that operate over multiple territories.

For Engineers with seniority dates on or prior to January 1, 2012, who bid and are assigned to positions outside of their prior right property (WC, DWP or DMIR), for the purpose of awarding them to an assignment, will be assigned pursuant to the order they appear on Appendix A.

The Organization agrees to compile the initial seniority roster(s) prior to January 1, 2012 in order to aid in assigning positions as set forth above. The roster(s) will show each Engineer's name, employee number, date of seniority, status and prior rights code, if applicable.

Engineers with seniority dates after January 1, 2012 will be considered System Engineers without any prior-rights and placed on the bottom of the seniority roster(s).

Disputes arising out of the interpretation or application of this Article shall not be used as a basis for time claims, but will be directed to the Labor/Management Committee and shall not be handled through the normal grievance process. Any dispute that is not resolved in the Labor/Management Committee shall be resolved exclusively in accordance with the dispute resolution procedures set forth in Article I, Section 11 of the New York Dock Conditions.,

ARTICLE IV - GUARANTEED EXTRA BOARDS (GEB)

Article 8 Section 1 E of the WC Collective Bargaining Agreement applicable to Locomotive Engineers shall be amended as follows:

Guaranteed Extra Board assignments will be established where the needs of service dictate and will be primarily bulletined to work six (6) days with two (2) consecutive scheduled rest days (not less than 48 consecutive hours) and then work five (5) days with one (1) scheduled rest day on alternating weeks.

Alternately, GEB assignments may be bulletined to work five (5) days with two (2) consecutive scheduled rest days (not less than 48 consecutive hours). Until September 1, 2012, DMIR and DWP prior-righted Engineers assigned to the GEB shall be provided an assignment that works five (5) days with two (2) consecutive scheduled rest days (not less than 48 consecutive hours). With mutual agreement between the Company and the General Chairman, GEB assignments may be bulletined to work alternative schedules, in which case, the GEB guarantee will be pro-rated accordingly.

Article 11 D of the WC Collective Bargaining Agreement applicable to Locomotive Engineers shall be amended as follows:

Unless otherwise provided for herein, Engineer assigned to GEB's shall fill temporary vacancies and extra assignments at the location of the Board and at outlying points within the Seniority District as necessary.

In the event the GEB is exhausted, the assignment shall be filled by:

1. The senior rested Engineer at the Terminal who has marked up to the Available Board as provided for by Article 12; if none,
2. The senior rested Engineer at the Terminal who has marked up to the Supplemental Extra Board as provided for by Article 12; if none,
3. The first-out qualified and rested Engineer on the nearest Guaranteed Extra Board(s) within the Seniority District via highway miles; if none,
4. The senior rested Engineer who has marked up to the Supplemental Extra Board at the nearest Terminal within the Seniority District via highway miles; if none
5. The first-out qualified and rested Engineer on the nearest Guaranteed Extra Board via highway miles on the adjacent Seniority District.
6. Engineers used under provisions of D-3 or D-5 may be held for up to five (5) days or until he is displaced by the return of

the regular Engineer, or by a senior Engineer on Board Change Day. Engineers in this situation will be subject to the provisions of Article 19. Engineers released from an assignment shall return to their GEB and shall be placed on the bottom of the Board in accordance with their tie-up time.

The calling procedures as contained in this Article shall be modified in the following manner at Proctor and Pokegama:

Once the Pokegama Guaranteed Extra Board is exhausted:

1. Call Pokegama Out of Cycle Engineers
2. Call Pokegama Available Board
3. Call Proctor Extra Board
4. Call Pokegama Supplemental Board
5. Call Proctor Supplemental Board
6. Call Two Harbors Extra Board
7. Call Keenan Extra Board

Once the Proctor Guaranteed Extra Board exhausted

1. Call Proctor Out of Cycle Engineers
2. Call Proctor Available Board
3. Call Pokegama Extra Board
4. Call Proctor Supplemental Board
5. Call Pokegama Supplemental Board
6. Call Two Harbors Extra Board
7. Call Keenan Extra Board

ARTICLE V – POOL SERVICE ON THE FORMER DMIR

The following conditions shall apply to Engineers in pool service.

1. In lieu of call windows or assignments with regular start times, Pool service may be established at Proctor, Two Harbors and/or Keenan Home Terminals. Such pool service shall be regulated by the Superintendent, or his/her designee, consistent with customer projections. Any combination of call windows, regular assignments and Pool service may be adopted.
2. Pools will be advertised with two consecutive rest days.
3. An Engineer in Pool Service shall be guaranteed a minimum of five (5) Basic Day's pay for a weekly period. One Basic Day's pay shall be used to reduce the guarantee for any 24 hour period, or portion thereof (other than a rest day) an Engineer is unavailable for service as outlined herein. The one-fifth (1/5th) of the weekly rate shall be used for prorating the guarantee of an Engineer who

is not assigned to the Pool for the full weekly period. All compensation credited to the Engineer during the pay period, except mileage allowances and payments flowing from a violation of this Agreement, will be deducted from that guarantee.

4. Engineers in this service shall be operated on a first in, first out basis, based on tie-up at the home terminal.
5. When an Engineer is off for any reason or misses a call for any service, his/her turn is removed from the pool and he shall be held off the pool board for a minimum of twelve (12) hours. This does not prevent the Company from calling the Engineer if the board is exhausted.
6. When an Engineer marks up from being off for any reason he shall be placed to the bottom of the board.

ARTICLE VI – WEEKLY MARK ON THE FORMER DMIR

In order to accommodate the ebb and flow of traffic between the mines and the docks, positions shall be assigned on a weekly or bi-weekly basis.

ARTICLE VII – HEALTH AND WELFARE

Employees coming under the scope of this Agreement and their dependents, if eligible, will be subject to the Railroad Employees National Health and Welfare Plan, the Railroad Employees National Early Retirement Major Medical Benefit Plan, The Railroad Employees National Dental Plan and the Railroad Employees National Vision Plan, as negotiated nationally and subsequently amended, including employee cost-sharing provisions. Retired, disabled and inactive employees will remain in their existing coverage, if any.

ARTICLE VIII - BESSEMER NON-CONTRIBUTORY PENSION PLAN

As of July 25, 2011, the Bessemer Non-Contributory Pension Plan was closed to new participants. Effective July 25, 2017, employees participating in the Bessemer Non-Contributory Pension Plan will have their service frozen for purposes of calculating their accrued benefits. Future service will continue to be accumulated for retirement eligibility purposes only. Future salary growth will be considered in the calculation of the pension benefit payable upon retirement or other termination of employment.

ARTICLE IX- PROTECTION

Adversely affected employees covered by this Agreement shall be subject to the New York Dock Conditions. The New York Dock Conditions are attached hereto as Attachment "A" and considered as contained herein.

ARTICLE X– GENERAL PROVISIONS

Section 1. Except to implement the terms and conditions provided for herein, all other terms of the WC's Collective Bargaining Agreement applicable to Locomotive Engineers will apply to all locomotive engineers working on the territory described in Article IV above on the effective date of this Implementing Agreement.

Section 2. Should the provisions of the respective Collective Bargaining Agreement conflict with the terms and conditions contained herein this Agreement will apply.

Section 3. There shall be no duplication or pyramiding of benefits by an employee under this Implementing Agreement and any other agreement or protective arrangement. Nothing in this Agreement shall be interpreted to expand or contract the protective benefits set forth in the New York Dock Conditions and incorporated into this Agreement.

Section 4. Any dispute over the interpretation, application or enforcement of this Implementing Agreement will be directed to the Labor/Management Committee and shall not be handled through the normal grievance process. Any dispute that is not resolved in the Labor/Management Committee shall be resolved exclusively in accordance with the dispute resolution procedures set forth in Article I, Section 11 of the New York Dock Conditions.

Section 5. This Implementing Agreement satisfies the Section 4 Notices served by the Carrier and constitutes the necessary agreement for the selection and assignment of forces to implement the Merger described in STB Finance Docket No. 35476, and also provides the necessary and appropriate level of employee protective benefits required under the New York Dock Conditions.

Section 6. It is recognized that, in the future, other implementing agreements may be necessary to carryout the financial transactions set forth in STB Finance Docket Nos. 34000, 34424 and 35476, or any other past or future STB-approved transactions.

Section 7. This Agreement shall become effective on December 1, 2011 (but will not be implemented prior to January 1, 2012) and thereafter until changed or modified in accordance with the provisions of the Railway Labor Act, as amended, or until changed or amended in accordance with Article I, Section 4 of the New York Dock Conditions or other applicable labor protective conditions.

Attachment A – New York Dock Conditions

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:

ARTICLE I

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 collecting 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 earning 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 or 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 service 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 representative; 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 within 90 days after the date on which the expenses where 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 representative 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 grated 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 re-training physically and mentally can become, qualified, not, however, in contravention of collective bargaining agreements relating thereto.

2. In the event such training or re-training is requested by such employee, the railroad shall provide for such training or re-training 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 1 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.

Exhibit A

Employment Security

A. Active Engineers who have established seniority as an engineer on the Wisconsin Central Ltd. prior to February 1, 2009, on the Duluth, Missabe and Iron Range Railway Company prior to July 24, 2011 or as an active engineer or active conductor on the Duluth, Winnipeg and Pacific Railway Co. prior to September 6, 2006 will be provided an assignment (which may be a Regular Assignment or a Guaranteed Extra Board assignment) established pursuant to Article 8 Section 1, and not be subject to furlough, provided that they have exercised their seniority to the fullest extent and they remain available for service.

B. In the case of Engineers who do not qualify for the Employment Security provided in Paragraph A of this Article, when no vacancies exist, the Company will endeavor to provide the individual with details of any other openings that may exist on other CN companies. These opportunities may be in other occupations and may require the Engineer to transfer at his/her own expense and commence a new employment relationship with the new Company.

C. All employees who qualify as an Engineer subsequent to the dates specified in Paragraph A above will be afforded the Employment Security provided in Paragraph A above upon their completion of sixty (60) months of cumulative compensated service as a Locomotive Engineer under this Agreement. 15 days of service as a locomotive engineer in a calendar month shall qualify an Engineer for one month's service as it relates to this paragraph.

Prior Rights

A. DWP prior-righted Engineers who established seniority as a conductor or engineer on or prior to September 6, 2006 will not be required to exercise seniority to a permanent assignment or position outside of Pokegama or Proctor. DWP prior-righted Engineers who established seniority as a conductor or engineer after September 6, 2006 but prior to May 1, 2011 shall not be required to exercise seniority to a permanent assignment or position outside of Pokegama, Proctor or Virginia but may be furloughed if unable to hold an assignment or position at these locations unless they exercise their seniority elsewhere. DWP prior-righted Engineers who established seniority as a conductor or engineer on or after May 1, 2011 but on or prior to January 1, 2012 shall not be required to exercise seniority to a permanent assignment or position existing outside the former DWP (including Ranier) or Proctor, but may be furloughed if unable to

hold an assignment or position at these locations unless they exercise their seniority elsewhere.

B. DMIR prior-righted Engineers with a seniority date on or prior to July 25, 2011 shall not be required to exercise seniority to a permanent assignment or position outside the former DMIR or Pokegama. DMIR prior-righted Engineers with a seniority date subsequent to July 25, 2011 but on or prior to January 1, 2012 shall not be required to exercise seniority to a permanent assignment or position existing outside the former DMIR or Pokegama, but may be furloughed if unable to hold an assignment at these locations unless they exercise their seniority elsewhere.

C. WC prior-righted Engineers with Employment Protection shall not be required to exercise seniority to a permanent assignment or position outside the former WC or Proctor. WC prior-righted Engineers without Employment Protection shall not be required to exercise seniority to a permanent assignment or position existing outside the former WC or Proctor, but may be furloughed if unable to hold an assignment or position at these locations unless they exercise their seniority elsewhere.

Standing Bid

Effective September 1, 2012 or as otherwise mutually agreed, a Standing Bid system shall operate and employees' job preferences will be maintained in crew calling system and can be updated under the rules as outlined below. To effect this change, all vacations of at least one week in duration will begin on a Monday and conclude on a Sunday, regardless of the Engineer's rest days.

A standing bid system will operate and employees' job preferences will be maintained in crew calling system and can be updated under the following rules.

This procedure permits employees to submit their choice for assignments in order of preference and such assignments will be awarded to employees based upon their relative seniority standing.

Definitions

C.O.C. – Change of Card

C.O.C. Day - 0001 Monday
P - Initial used herein to designate a Permanent position with a 28-day cycle.
T - Initial used herein to designate a Temporary position with a 7-day cycle
P-C.O.C.=Permanent Change of Card, will occur each 28-day cycle at 0001 Monday

T-C.O.C.=Temporary Change of Card, will occur each 7-day cycle at 0001 Monday

SECTION 1 Submitting Choices

A. All Permanent Assignments and all Temporary Assignments (excluding GEB) will be adjusted based upon the preferences Engineers have submitted on their Permanent and Temporary C.O.C. (Change of Card).

B. Temporary vacancies of seven (7) days or more will be filled in accordance with the provisions contained herein. Engineers will be permitted to submit changes or insert new assignments to their T-C.O.C. (Temporary Change of Card) Form weekly between 00:01 Sunday to 23:59 Friday.

Note: There are no Temporary Vacancies on the GEB.

C. 1. Engineers will be permitted to insert new assignments to their P-C.O.C. (Permanent Change of Card) Form weekly between 00:01 Sunday to 23:59 Friday, without altering the sequence of previous choices.

2. Engineers will be permitted to delete choice(s) from their P-C.O.C., except for the permanent position currently assigned to them. Any movement resulting from any deletions will coincide with Board Adjustment. Deletions can be made between 06:00 Monday to 23:59 Friday. The change will be effective on the next T-C.O.C. (Change of Card) day. Once deleted, the permanent assignment cannot be re-added until the time period provided in Section 1 C 1.

3. The last week (Monday to Friday) of each 28-day period Engineers will be permitted to submit changes to their P-C.O.C. (Permanent Change of Card) Form. Changes may be submitted between 00:01 Sunday to 23:59 Friday during the last week in each 28-day period.

D. Bid cards can be submitted via any internet enabled computer or Company kiosk.

E. Employees who are off on authorized leaves of absence throughout the entire period of the Change of Card bulletin will submit a bid card prior to resuming duty.

F. Employees who do not submit a bid card at the Change of Card will be assigned according to their previous choices.

Abolishment of Assignments

The Company will, when possible, abolish and/or establish assignments to be effective at 0001 on Monday of any given week. Newly established assignments that are bulletined after 2359 on a Friday will be run extra until the assignment is awarded by Standing Bid. When it is not possible for the Company to abolish an assignment to be effective 0001 hours on Monday of any given week, Engineer's will have full rights to:

If the assignment is immediately re-established, at the Engineer's option the Engineer may remain on the assignment;

OR

Be assigned to the Guaranteed Extra Board.

Engineers will be assigned to the Guaranteed Extra Board until the next C.O.C. Day when they will be assigned in accordance with their applicable C.O.C. Form (Perm/Temp) subject to the provisions contained herein.

As a result of the application of the above, Engineers who are placed to the Guaranteed Extra Board will:

i) For the remainder of the week is afforded a guarantee payment of a basic day's pay for each day if the employee is available for the calendar day and does not perform any compensated service, and was available immediately after notification of the abolishment.
ii) Upon request of the employee, be assigned by the CMC with Sunday as a rest day if the employee has not had a day-off in the 7-day period.

For the purpose of this Rule when assignments are bulletined on the seniority districts established under this agreement, the following information will be identified:

(a) Prior rights

Engineers will be notified on Saturday by 2359 hours prior to C.O.C. if they will be on a different assignment on C.O.C. Day and if this does not happen regularly, the General Chairman and the Director Labor Relations, or their respective designates,
will meet within 30 days to discuss and resolve.

Section 2 Assignment of Engineers

A. 1. Calling windows (spread time) will be adjusted so as not to overlap

00:01 Monday C.O.C. (Change of Card) Day.

Employees will protect the conditions of their current assignment up to the effective date/time of the Board Adjustment. After the award of the weekly board adjustment, be it at the Change of Card or P-C.O.C., employees will assume the conditions of the new assignments.

2. At each C.O.C. (Change of Card) day, Engineers will be assigned based upon their tie up time at the home terminal from their last tour of duty, in accordance with their C.O.C. (Change of Card) Form. Engineers newly assigned to the Guaranteed Extra Board will be placed at the BOTTOM of the board by the board change effective date and time. If two or more Engineers are to be placed by this time, seniority will prevail.

B. When it is known at least 48 hours prior to a C.O.C. (Change of Card) day that an Engineer will be off the working board for the entire adjustment period, the Engineer will be unassigned at the C.O.C. (Change of Card) Day, and the next senior Engineer indicating their preference will be assigned.

C. When it is known at least 48 hours prior to a C.O.C. (Change of Card) day that an Engineer who was previously unassigned will become available within the next period, that Engineer will be assigned in accordance with Section 1 Paragraph B & C herein.

D. Engineers returning to work from an extended absence of unknown duration after a C.O.C. (Change of Card) day (or after the 23:59 Friday cut-off) will be assigned by the Crew Management Center to the Guaranteed Extra Board until the next C.O.C. (Change of Card) day when their C.O.C. (Change of Card) Form can take effect. A position on the GEB will be created if none exists. The Engineer assigned to the GEB will receive payment as described in Section 1 Paragraph F 5 (i) herein.

E. In the event there are no bids for an assigned position, it will be filled in accordance with the following:

1. Senior Locomotive Engineer who was displaced on C.O.C. (Change of Card) Day and does not have any recorded positions left; if none,

2. Senior Locomotive Engineer who does not record any bids; if none,

3. Junior Locomotive Engineer on the Locomotive Engineer's Extra Board where the vacancy exists if there is a surplus; if none,

4. Senior demoted Locomotive Engineer not working as such within the terminal; if none,

5. The senior demoted Locomotive Engineer on the Seniority District nearest via highway miles to the location where the vacancy exists; if none,

6. The junior Engineer on the Seniority District who is occupying a GEB that is defined as having a surplus number of employees, and is nearest via highway miles to the location where the vacancy exists.

F. An Engineer who does not record all available positions will, when unable to hold positions recorded, be assigned in the following manner:

1. Unfilled position at the home terminal, if none,

2. Unfilled position on the GEB at the home terminal, if none,

3. Will be assigned to the Guaranteed Extra Board at such employee's home terminal with an assigned rest day as determined by the CMC.

Article 11 A 2 will apply when GEB Engineers are awarded a different off day.

Example: Engineer A has Friday as his/her regular day off. Engineer A is displaced off
Friday as his/her day off and is notified the Saturday before C. O. C. day that he will be assigned Monday as his/her new day off at 0001 hours on Monday. Engineer A will not be called for services the commences after 20:00 hours on the Sunday that precedes the change in his/her day off.

Section 3 General

A. The Parties agree that changes to the Standing Bid process can be made with the concurrence of the Union and the Director Labor Relations.

Standing Bid Questions & Answers

Engineers that are awarded Sunday/Monday as their days off on the GEB, displaced from Sunday and Monday while on the GEB, or their regular GEB assigned rest day combination of Sunday/Monday in the first or second week of the biweekly pay period is abolished, the following will apply:

1. If displaced Engineer's choice is to remain on the GEB with different rest days, the Engineer will observe the rest day of Monday and the new rest day(s) will take effect the following week.

2. If displaced GEB Engineer decides to exercise seniority to a new assignment other than the GEB, the Engineer must protect the new assignment on Monday and assume the rest day(s) of the assignment.

3. The Engineer awarded a Sunday/Monday combination for days off on the GEB will only observe the Monday portion of the Sunday/Monday combination if such combination is already being observed on the Sunday prior to the effective day (Monday) of the award.

Example: Engineer Jones awarded a Sunday/Monday day off combination on the GEB, displacing a junior engineer Brown off the Sunday/Monday combination. The displacement does not take effect until Monday and engineer Brown is already observing Sunday as one of his/her regular days off.

Question 1: Will Engineer Brown also observe Monday as his/her regular assigned day off?

Answer 1:Yes, but only if Engineer Brown stays on the GEB and is assigned a new combination of days off, which will take effect the following week.

Question 2: What if Engineer Brown is assigned another assignment that is other than the GEB?

Answer 2:Engineer Brown will not observe Monday as his/her regular day off and he will assume the regular day(s) off the his/her new assignment.

Question 3: What day(s) off will Engineer Jones observe?

Answer 3:Under this example Engineer Jones will only observe Monday since the standing bid takes effect on Monday.

Question 4: Will Engineer Jones be off the following Sunday and Monday?

Answer 4:No, not under this example.

Question 5: Will Engineer Jones or Brown be subject for Call at 6:00 p.m. or after on Sunday?

Answer 5:No.

Question 6: Instead of being displaced by the standing bid Engineer Brown's Sunday/Monday combination is abolished on Monday of the Sunday/Monday combination. What are Engineer Browns' options?

Answer 6: The same as indicated in Questions 2 and 3.

APPENDIX "A"

SENIORITY ROSTERS

This Appendix describes the method utilized to determine the proper order selection used to establish the proper placement of WCL, DW&P and DM&IR prior right engineers at the bottom each of the WC, DW&P and DM&IR prior right seniority rosters, respectively. This Appendix shall also be used to determine the bidding and awarding of Guaranteed Extra Board positions when combined at Proctor or Pokegama.

SECTION I: Order of Selection List for Common Rosters

1.) The three (3) current rosters (WC, DW&P and DM&IR) shall be maintained unaltered as of the effective date of this agreement and be considered as the Top(s).
2.) Such rosters will be used in application of prior rights and Engineers holding seniority on each of the above mentioned properties shall have the right to select prior right assignments on their prior right property based upon their prior right seniority.
3.) Prior right assignment(s) that are not filled by prior right Engineers on a particular prior right seniority district may be bid by Engineers from the other prior right districts in accordance with their relative seniority ranking on the "Bottom" of the prior right seniority district roster associated with the assignment(s).
4.) The "Bottom" portion of each prior right roster shall be established by order of selection based on the relative percentage of prior right Engineers holding seniority on each of the two (2) seniority rosters comprising the "Bottom" of each of the three (3) prior right rosters;

WC/DWP/DMIR Order of Selection Rosters

Note: Each of the three (3) properties' own current Engineer rosters will be on "TOP" for the purpose of prior rights assignment to position on their former property.

A snapshot of all assignments on the three (3) properties as of October 6, 2011 was taken reflecting all "actively assigned" Engineers to both Regular and G.E.B. positions. That number along with all Engineers currently enrolled in the E.T.P. program, were used in the determination of Order of Selection (O.S.L.'s) for the "BOTTOM" rosters used to fill positions on a property that an opening goes unfilled by a prior right designated Engineer from that property.

These numbers generated the following ratios:

WC	DMIR	DWP
110 Regular	45 Regular	20 Regular
143 G.E.B.	17 G.E.B.	24 G.E.B.
24 E.T.P.	13 E.T.P.	3 E.T.P.
277 Total Active Engineers	75 Total Active Engineers	47 Total Active Engineers

A-1: Top	A-2: Top	A-3: Top
(277 Engineers) WC Roster	(47) Engineers DW&P Roster	(75) Engineers DM&IR Roster
Bottom DM&IR (61.5%)/DW&P(38.5%)	Bottom WC (78.7%)/DM&IR(21.3%)	Bottom WC(85.5%) DW&P(14.5%)

DM&IR/DW&P Ratio	WC/DM&IR Ratio	WC/DW&P Ratio
1.6 to 1	3.7 to 1	5.9 to 1

Note: To properly assemble each "BOTTOM" roster, Engineers will be placed in blocks based on these ratios in sets of repeating tens (10)s for the smaller property to allow the tenths (1/10)s in the ratio as follows.

5.) The relative number of prior right Engineers on each prior right roster as of the date of this agreement will determine the percentage/formula used to combine the "Bottom" rosters. (Example purpose only) Actual names and #s to be added on the effective date of the Agreement.

A-1: DW&P "TOP"

DW&P "TOP" roster with WC/DM&IR "BOTTOM"

WC/DMIR "BOTTOM"

1. WC Engineer # 1
2. WC Engineer # 2
3. WC Engineer # 3
4. WC Engineer # 4
5. DMIR Engineer # 1
6. WC Engineer # 5
7. WC Engineer # 6
8. WC Engineer # 7
9. WC Engineer # 8
10. DMIR Engineer # 2
11. WC # 9
12. WC # 10
13. WC # 11
14. WC # 12
15. DMIR # 3
16. WC # 13
17. WC # 14
18. WC # 15
19. WC # 16
20. DMIR # 4
21. WC # 17
22. WC # 18
23. WC # 19
24. WC # 20
25. DMIR # 5
26. WC # 21
27. WC # 22
28. WC # 23
29. WC # 24
30. DMIR #6
31. WC # 25
32. WC # 26
33. WC # 27
34. WC # 28
35. DMIR # 7
36. WC # 29
37. WC # 30
38. WC # 31
39. DMIR # 8
40. WC # 32
41. WC # 33
42. WC # 34
43. DMIR # 9
44. WC # 35
45. WC # 36
46. WC # 37
47. **DMIR # 10**

REPEAT PATTERN UNTIL WC # 277 & DMIR # 75 ARE REACHED.

A-2: WC "TOP"

WC "TOP" roster with DMIR/DWP "BOTTOM". The pattern of DMIR: DWP will be 2 DMIR Engineers to 1 DWP Engineer for the first 6 DWP slots and 1 DMIR for DWP slot 7 thru 10.

1. 1-2 DMIR (2 slots)
2. 3 DWP # 1
3. 4-5 DMIR (2 slots)
4. 6 DWP # 2
5. 7-8 DMIR (2 slots)
6. 9 DWP # 3
7. 10-11 DMIR (2 slots)
8. 12 DWP # 4
9. 13-14 DMIR (2 slots)
10. 15 DWP # 5
11. 16-17 DMIR (2 slots)
12. 18 DWP # 6
13. 19 DMIR (1 slot)
14. 21 DWP # 7
15. 22 DMIR (1 slot)
16. 23 DWP # 8
17. 24 DMIR (1 slot)
18. 25 DWP # 9
19. 26 DMIR (1 slot)
20. **27 DWP # 10**

REPEAT PATTERN

A-3: DM&IR "TOP"

DMIR "TOP" roster with WC/DWP "BOTTOM". The pattern of WC: DWP will be six (6) WC Engineers to one (1) DWP Engineer for the first nine (9) DWP slots with five (5) WC's for the tenth.

1. 1-6 WC (6 slots)
2. 7 DWP # 1
3. 8-13 WC (6 slots)
4. 14 DWP # 2
5. 15-20 WC (6 slots)
6. 21 DWP # 3
7. 22-27 WC (6 slots)
8. 28 DWP # 4
9. 29-34 WC (6 slots)
10. 35 DWP # 5
11. 36-41 WC (6 slots)
12. 42 DWP # 6
13. 43-48 WC (6 slots)
14. 49 DWP # 7
15. 50-55 WC (6 slots)
16. 56 DWP # 8
17. 57-62 WC (6 slots)
18. 63 DWP # 9
19. 64-68 WC (5 slots)
20. **69 DWP # 10**

REPEAT PATTERN

NOTE – As attrition occurs, prior right Engineers will move up to the next highest prior right slot(s) until all prior right Engineers have attrited.

SECTION II: SUPERIOR GUARANTEED EXTRA BOARD ORDER SELECTION LIST.

Order of Selection - Combined G.E.B.

The following formula will be used in the determination of G.E.B. bidding rights in the event the Carrier exercises its ability to combine spare boards in the Twin Ports area of Pokegama and/or Proctor.

As of October 6, 2011, the number of Engineers in the potentially affected terminals is as follows:

WC @ Pokegama = 25

DWP @ Pokegama = 46

DMIR @ Proctor = 36

In the event the Carrier combines DWP and WC the ratio shall be 46:25 or 1.8 DWP to 1 WC.

Likewise if DWP and DMIR combine the ratio shall be 46:36 or 1.3 DWP to 1 DMIR.

Likewise if DMIR and WC combine the ratio shall be 36:25 or 1.4 DMIR to 1 WC.

These ratios will be used as closely as possible in application of G.E.B. assignment selection.

In the event the Carrier does a three (3) way combination of the WC, DMIR and DWP the overall ratios shall be based on percentages as follows:

107 Total Engineers / # of Engineers in the affected area.

WC – 23%

DWP- 43%

DMIR – 34%

Due to uneven amounts, the percentages may be turned into ratios by rounding to the nearest tenth.

The overall ratio of a three (3) way combined GEB at either Proctor or Pokegama shall be:

WC – 2

DW&P- 4

DM&IR-3

SECTION III: VACATION ALLOTMENTS AND BIDDING

Vacation allotments shall be bid separately for each prior rights territory (WC, DWP, and DMIR).

Vacations shall be awarded in seniority order, subject to prior rights.

Vacation allotments for each week shall be determined by dividing the total number of vacation weeks that have been earned on each Prior Rights Territory (WC, DW&P and DM&IR) in the subsequent year being determined, by Fifty-Two (52).

Uneven remainders shall be applied through the year at times determined by the Superintendent in consultation with the Local Chairman to satisfy the ratio.

In the event that the calculated ratio is less than one, the allotment per week ratio shall be one.