

## **MEMORANDUM OF AGREEMENT**

**Between**

**THE BURLINGTON NORTHERN AND SANTA FE RAILWAY**

**And**

**UNITED TRANSPORTATION UNION**

This Agreement is presented in two parts. Part I introduces an alternative approach to discipline that stresses training and counseling instead of punitive discipline. Part II introduces a new safety culture that focuses on the active participation of employees, managers and the union leadership as we partner to create a safer workplace through recognition that we must all focus as a team on safety.

### **Part I - Alternative Handling**

#### **I. Definition of Alternative Handling**

Alternative handling is a non-punitive response to rule violations that includes training and other non-disciplinary measures. An alternative handling event will be recorded on the employee's operational testing record rather than the employee's personal record. It will not be considered discipline and may only be used to determine eligibility for future alternative handling in the event of a subsequent violation and to document non-punitive counseling given to the employee. Where possible, notices of investigation will contain alternative handling options.

#### **II. Scope**

Except as modified in this Agreement, existing schedule agreements remain in effect. Nothing in this Agreement infringes on the right of an employee to formal investigation under the existing collective bargaining agreement. However, once the employee agrees to alternative handling, he/she waives all rights to formal investigation and appeal and agrees to abide by the terms specified by this Agreement, except as contained in Part I, Section VII of this Agreement.

#### **III. Applicability**

Alternative handling, if requested, will be made available for all types of rule violations formerly subject to company discipline except for the following:

- A. late reporting of a personal injury
- B. non-compliance with the company drug and alcohol policy

- C. gross negligence as defined in Federal Regulations as a willful violation
- D. rule violation resulting in very serious personal injury to anyone (life threatening or career ending) or major property damage (\$250,000 or greater)
- E. violation of personal conduct rule such as dishonesty, felony conviction, physical altercation
- F. serious EEO violation
- G. job abandonment as specified in applicable agreements.

Rule violations to which alternative handling is applicable are referred to as “covered” rule violations.

#### IV. Eligibility

Each employee subject to this Agreement is eligible for alternative handling provided he/she accepts responsibility for the violation and does not exceed the time period limitations described in Part I, Section VI (B) of this Agreement.

#### V. Exceptions

Exceptions to Part I, Sections III & IV may be granted as part of the dispute resolution process outlined in Part II, Section VII of this Agreement. If an exception is not granted, the employee retains full contractual rights established under the applicable schedule agreement, consistent with Part I, Section VII of this Agreement.

#### VI. Process

When the company is in possession of information that causes it to believe that an employee has violated a rule, the employee will be so notified and may request alternative handling. If the employee is eligible and the rule violation is covered, training and corrective action will be based on the “class” of the offense and the employee’s work history.

##### A. Classes of Covered Offenses Subject to Alternative Handling

- (i) Class I offenses – rule violations that subject the company or individual to FRA fines, result in an accident or injury, or result in decertification, violations of all rules designed to protect people and equipment (other than PPE)
- (ii) Class II offenses – operations testing failures involving rules designed to prevent Class I violations including test failures that result in decertification

(iii) Class III offenses – violations of all other rules not included in Classes I & II

#### B. Employee Eligibility for Alternative Handling

Calculations for eligibility will consider only those events that have occurred after the signing of this Agreement. Rule violations that occur prior to the signing of this Agreement will not be used to determine eligibility for alternative handling.

(i) Class I offenses – An employee is ineligible for alternative handling if he/she has: (1) more than three prior alternative handling events for Class I violations, (2) three violations of any kind in the previous 12 months, (3) a Class I violation in the previous 12 months, or (4) a violation of the same Class I offense in the previous 24 months.

(ii) Class II offenses – An employee is ineligible for alternative handling if he/she has had: (1) three alternative handling events for Class II offenses, (2) one Class I or two Class II violations in the previous 12 months, or (3) a violation of the same rule in the previous 12 months.

(iii) Class III offenses – An employee is ineligible for alternative handling if he/she has more than 3 events of any kind in the previous 12 months.

#### C. Alternative Handling

Alternative handling of operating and safety rule violations shall be accomplished through a written plan of employee education. Each written plan will be developed based on the following general guidelines:

(i) The plan will be tailored to the employee's work environment and the specific nature of offense, and the entire alternative handling plan will, in general, be less than ten days.

(ii) An employee participating in alternative handling will be compensated at the prescribed rate for the entire term of the plan. If alternative handling is used for a 49 CFR Part 240 event, the revocation period will be reduced to the shortest revocation period within the company's discretion.

(iii) Educational and training materials, classroom training, on-board training, simulators and netsims, rules awareness training, examinations without recorded scoring (except where required by existing rule, *e.g.*, six month absence), safety awareness meetings, independent study, computer aided learning and contractor provided training are examples of acceptable alternative handling plan elements. Alternative handling plans are to be challenging and genuine.

(iv) Alternate handling may be accomplished at distant locations at BNSF's expense provided this training does not place an undue hardship on the employee.

(v) The labor representative, or his/her designee, will participate in the creation of the alternative handling plans and may participate in the actual administration of the alternative handling plan without compensation from the company.

(vi) An employee shall not have the same alternative handling plan as administered for a previous offense within a 12-month period.

(vii) Each alternative handling plan will be consistent with established guidelines and designed specifically to address the offense that gave rise to alternative handling.

(viii) An alternative handling plan must be in place and started not later than 30 days from the offense unless agreement is reached between local management and the labor representative for cases involving unavoidable delay such as medical treatment or other circumstances whether related to the offense or otherwise.

## VII. Time Limits

The time limits listed in the applicable schedule agreement apply with the following exceptions: In any case where an employee requests alternative handling, the time limit will stop upon receipt of the request by a company officer. If, as a result of action taken by the company, the employee is denied his/her request for alternative handling, the employee shall be given notice of the decision, which shall start the remaining time limit running to completion. The notice of denial by the company must be received by the employee not later than ten days from submission of request for alternative handling. If, by action or inaction of the employee, the alternative handling plan is stopped, aborted or otherwise not completed by the employee, the time limits for investigation and all subsequent time limits for appeal will start anew in their entirety at the date the company issues notice of failure to meet the requirements of the alternative handling plan. This notice of failure to meet the requirements of the alternative handling plan must be received not later than ten days from the scheduled completion date of the alternate handling plan for that employee.

## VIII. Compensation

The employee will be compensated during any training or other corrective action stemming from alternative handling. An employee who participates in alternative handling that lasts four hours or less, will be compensated at a minimum of one half of a basic day at the straight time rate of the last service performed. Alternative handling that lasts more than four hours, will be paid at a minimum of a basic day at the straight time rate of the last service performed. When an employee is required to miss time from his/her assignment, he/she will be compensated for actual lost earnings. Employees withheld from service pending formal investigation under the terms of existing labor agreements will be compensated for all time withheld from service if admitted into the alternative handling process, except that no compensation shall be paid for time withheld

as required by 49 CFR Part 240, except for alternative handling training as provided for in this Agreement. Extra board employee's guarantee will be offset by compensation under this Section; however, participation in an alternative handling plan will not count as a layoff for purposes of determining guarantee.

## Part II - Safety Participation

The rail transportation workplace is a complex environment involving employees who are mostly self-supervised. In light of the complexity of this environment and our desire to create a safer workplace, we have agreed that our safety culture must be focused on safe production. One of the hallmarks of our safety culture should be active participation by our employees, our managers, and the union leadership. Through this Agreement and our commitment to partnership in promoting safety, our mutual objective is to identify and eliminate risks (physical plant risks, behavioral risks, and attitudinal risks) and create a safer workplace through a process of continuous improvement. To that end, we agree to the following:

### I. Safety Coordinator Position(s)

On each operating division where the UTU is a party to this Agreement, that division will have at least one full-time safety coordinator. Additional full-time or part-time safety coordinators may be added at the discretion of management. The UTU General Committee(s)/State Legislative(s) Director with jurisdiction shall select and/or replace the Safety Coordinator(s) by consensus.

### II. Duties and Responsibilities of a Safety Coordinator

A. The safety coordinator will work with employees, union leaders and the designated company officer(s) (currently the general manager and the manager safety) to facilitate change and improve the safety process.

B. The evidences of success for this position would include: behavior changes to reduce risk, environment improvements (e.g. walking conditions) and improvement in the percentage of safe work practices. Continuous improvement is expected and quantifiable goals will be developed jointly.

C. A safety coordinator will not be called to testify or otherwise furnish evidence of any kind in any formal investigation or other disciplinary proceeding involving charges against an employee.

### III. Establishment of Safety Committees

At any location, the division management and UTU may agree to establish a local safety committee which will meet on a regular basis, but not less than quarterly. The number of UTU participants will be determined by management, with the safety committee members selected by any involved UTU local. Each UTU local retains the option of

replacing its safety committee members with thirty days written notice to the appropriate company officer. All decisions and recommendations of the local safety committee will be by consensus. Where issues cannot be resolved by the local safety committee, the issue in question will be progressed to the Division General Manager and Safety Coordinator.

#### IV. Duties and Responsibilities of Safety Committees

The duties and responsibilities of each local safety committee will be to identify safety concerns and make recommendations for resolution of identified issues.

#### V. Risk Identification Process

At locations where local union representatives and local management agree, a formal risk identification process may be included as one tool in our effort to build a safer workplace. Where the parties agree to this process, the safety coordinator will work with the designated company officers to develop a program for training safety observers and coordinating the information received from them.

A. Management will determine the appropriate number of safety observers at each location, but selection of the safety observers will be made by the involved UTU local. Safety observers will monitor specific critical work tasks. They will be given the necessary training on the process and will keep a "blind" report of specific risks identified. The blind report should note whether the work tasks are performed properly, but make no notation of date, time, train number, names of employees observed, or any other identifying information.

B. At designated intervals prescribed by the coordinator and management, safety observers will furnish the safety coordinator a report of the tasks observed. The safety coordinator will combine all such reports into a single report. This report will also be "blind" and not contain the names of the safety observers or any other identifying information as outlined in item A, above.

C. The safety coordinator will work with the designated company officer to analyze the information contained in the report to identify areas of risk. They will then jointly develop countermeasures necessary to address those areas of risk and insure that risk is reduced.

D. Where the parties have mutually agreed to include Risk Identification Process as part of the joint safety initiative, this process may be discontinued by either party serving 10 days' advance written notice.

#### VI. Compensation

A. A full-time safety coordinator will be paid on a salaried basis, ensuring that he/she experiences no loss of earnings compared to what he/she earned in

scheduled service during his/her highest paid six months of the previous calendar year. Lump sums and any other unusual payments received during that six months shall be approximately factored into his/her salary to prevent any windfall either to the employee or company. Service as a safety coordinator shall not deprive the employee of any element of compensation he/she would have received had he/she remained in typical scheduled service. All normal employment benefits which the employee would have received in typical scheduled service will remain in place on the same basis. Full-time safety coordinators will be reimbursed for necessary business expenses consistent with BNSF's policy.

B. A member of a local safety committee or a safety observer who attends an authorized safety meeting or training that lasts four hours or less, will be compensated at a minimum of one half of a basic day at the straight time rate of the last service performed. Individuals attending meetings or training sessions that last more than four hours, will be paid at a minimum of a basic day at the straight time rate of the last service performed. However, when an employee is required to miss time from his/her assignment, he/she will be compensated for actual lost earnings. Compensation received as a member of a local or division safety committee or a safety observer who attends an authorized safety meeting or training session will be used to calculate vacation credit for following year. Part-time safety coordinators will be compensated pursuant to this Section B. All positions identified in this Section B will be reimbursed for necessary business expenses consistent with BNSF policy.

## VII. Dispute Resolution

Disputes may arise between the parties regarding issues such as whether a particular employee is eligible for alternative handling, appropriateness of a specific alternative handling plan, safety coordinator duties or safety committee handling. In the event such disputes cannot be resolved locally, the following process will be followed:

- A. In the event that an interpretation of this Agreement causes a disagreement between local labor and management, the general committee may request a conference with the line AVP or his/her designee.
- B. If no agreement is reached, the incident will be handled under prevailing collective bargaining agreements, company policies and procedures. Time limits will be administered in accordance with Part I, Section VII of this Agreement.

## VIII - General Provisions

### I. Cancellation Clause

This Agreement will remain in effect for a minimum of one year, after which it may be cancelled, in its entirety, by the General Chairman serving sixty days' written notice to the Vice President, Labor Relations BNSF. Otherwise, this Agreement will remain in effect for a minimum of two years, after which it may be cancelled, in its entirety, by the Vice President, Labor Relations BNSF serving sixty days' written notice on the General Chairman. In the event this Agreement is cancelled, the parties shall fully retain the same rights and prerogatives which they held prior to this Agreement, as if the Agreement had never been made.

### II. Savings Clause

This Agreement is made without prejudice to either party's right to exercise any other rights or prerogatives that it may possess. Except in connection with efforts to enforce any aspect of this Agreement, the existence of this Agreement shall not constitute evidence of a course of dealing or past practice, and shall not be cited or referred to in any other case or controversy to support any argument that either party has a duty to bargain over any particular subject matter.

Signed this 16<sup>th</sup> day of August, 2002.

Effective on August 23, 2002.

/s/ J.D. Fitzgerald

General Chairman  
United Transportation Union

/s/ John J. Fleps

John J. Fleps  
Vice President Labor Relations  
Burlington Northern and Santa Fe  
Railway Company

/s/ M. David Dealy

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