

BEFORE INTEREST ARBITRATION BOARD No. 607

**Constituted Pursuant to an Agreement to Arbitrate
Under Section 157 of the Railway Labor Act**

Between

INTERNATIONAL ASSOCIATION OF)
SHEET METAL, AIR, RAIL, AND)
TRANSPORTATION WORKERS –)
TRANSPORTATION DIVISION)
GO-393)
Former ATSF Northern Southern Lines)
)
and)
)
BNSF RAILWAY)

**Arbitration Board No. 607
Mediation Dkt. No. A-14012 (April 9, 2022)**

AWARD IN CASE NO. 5

Joshua M. Javits, Chairperson
Sam Macedonio, Carrier Member
Brent Leonard, Union Member

INTRODUCTION

On November 6, 2024, BNSF Railway Company (“BNSF” or “Carrier”) and the International Association of Sheet Metal, Air, Rail and Transportation Workers – Transportation Division (by and through its general committees, GO-001, GO-009, GO-017, GO-386, GO-393, and GO-JTD) (“SMART-TD” or “Union”) entered into an interest arbitration agreement pursuant to Sections 7 & 8 of the Railway Labor Act (“RLA”), 45 U.S.C. §§ 157-158. A copy of that agreement is attached as Appendix A. The purpose of the parties’ agreement is to fully and finally resolve NMB Mediation Case No. A-14012 (BNSF/SMART-TD), including complete disposition of the Section 6 notices giving rise to that matter. The specific questions presented in the parties’ agreement are as follows:

For the Carrier: “What shall be the terms of the Parties’ agreement to resolve NMB Mediation case A-14012?”

For the Union: “Shall there be modification to the Parties current Crew Consist Agreements? If yes, what shall the terms be to resolve NMB Mediation Case A-14012?”

This Board was established pursuant to the parties’ November 6, 2024 agreement. The Board is comprised of Neutral Member Joshua M. Javits, Carrier Member Sam Macedonio, and Union Member Brent Leonard. This Award is issued pursuant to the authority provided in the November 6, 2024 agreement and Section 7 of the Railway Labor Act.¹

BACKGROUND

A. Freight Rail Train Crew Staffing.

For the last thirty years, most U.S. freight railroads, including BNSF, have operated with a minimum of two employees on each train, one engineer and one conductor. In some circumstances, however, BNSF has been required by its agreements with SMART-TD and/or its predecessors to include a second trainman position (e.g., brakeman or yard helper) as a third member of a crew. For example, a train crew must include a brakeman if the crew performs switching outside of a yard, and yard crews currently are required to have both a yard foreman and yard helper assigned.

The parties have had a long-standing disagreement about whether those residual second trainman positions should be abolished. BNSF has argued that because train brakes are now automated and do not require setting brakes on each train car, and as most of the work brakeman or yard helpers perform is duplicative in nature, second trainman positions are unnecessary. The railroad also maintained that second trainmen positions represent a large expense and that it is disadvantaged, vis a vis its competitors, by the requirement to continue staffing them on trains. For its part, SMART-TD has consistently argued that second trainmen positions continue to perform useful work and are needed for safety and/or other reasons.

¹ As provided in the November 6, 2024 agreement, this Board is issuing six separate Awards, one for each of the participating SMART-TD General Committees. Except for the designation of the Case Numbers, each Award is identical in all respects.

B. The Carrier’s 2019 Section 6 Notices.

On November 1, 2019, BNSF and its representative, the National Carriers’ Conference Committee (“NCCC”), served a Section 6 notice on SMART-TD concerning proposed changes in train crew staffing and deployment. In particular, the Carrier’s Section 6 notice proposed that BNSF should have discretion to determine train crew size, which would include the discretion to eliminate second trainmen positions as it deemed appropriate. The Carrier’s notice also asserted that there is no longer an operational need to have a conductor in the cab of every locomotive. The Carrier maintained that the conductor’s prior in-cab roles have been made redundant by Positive Train Control and other technologies. BNSF therefore proposed that it should have discretion to redeploy conductors to ground-based positions.

C. The Parties’ Bargaining Over Crew Consist.

SMART-TD initially resisted bargaining over the Carrier’s notice. Agreements from previous rounds of negotiated crew size changes in the 1980s and 1990s typically contain a moratorium listing specific topics that cannot be the subject of proposals for changes until after the retirement of all ground service employees who were employed when those agreements were negotiated. For many years, SMART-TD has argued that these decades-old moratoriums prohibit the railroads, including BNSF, from progressing any proposals for changes in crew consist.

The Union’s moratorium-related objections were arbitrated in 2021. In that case, Arbitrator John LaRocco held that the so-called “standard” moratoriums in crew size agreements – including BNSF agreements – do not justify a refusal to bargain over crew size.

In the wake of that arbitration, the parties proceeded with bargaining over the Carrier’s crew size proposals. At the same time, they were also in bargaining over proposals to change rates of pay, benefits, and other matters. When they were unable to resolve those matters, the dispute was referred to Presidential Emergency Board No. 250. That Board rejected the railroads’ proposed national solution for crew size issues, but did recommend that the parties be permitted to continue bargaining over those issues at the local level (*i.e.*, at each individual carrier). The Parties eventually reached a tentative agreement based on those recommendations. That tentative agreement failed to ratify, at which point Congress imposed it on the Parties.

In the months and years that followed, BNSF and SMART-TD continued to negotiate at the local level over crew deployment. On September 11, 2024, after considerable effort, they reached a series of identical tentative agreements (one for each SMART-TD general committee) that provided, among other things, for elimination of second trainman positions jobs in exchange for benefits for the employees. Copies of those agreements are attached hereto at Appendix B. At around the same time, SMART-TD reached a similar tentative agreement with BNSF’s primary railroad competitor, Union Pacific, which also provided for elimination of second train service positions, which included brakemen, switchman and yard helper positions.

In accordance with its usual procedures, the Union separately submitted the Union Pacific and BNSF agreements to its members on each respective railroad for ratification. The Union Pacific agreement was ratified; the BNSF agreement was not. Following the failed ratification vote, BNSF and SMART-TD agreed to this arbitration process.

PARTIES' POSITIONS

In accordance with the terms of the November 6 arbitration agreement, the Board conducted a hearing in this matter on December 2, 2024, in Fort Lauderdale. At that hearing, both sides were given a full and equal opportunity to make their arguments. In addition, the Board has received comprehensive written submissions and exhibits from both Parties. The Board has carefully considered all of the arguments from both sides, many of which are briefly summarized below.

A. SMART-TD's Position

The Union maintains that the Board should not impose any new agreement terms in modification of the Parties' existing crew consist agreements. There is no compelling need, the Union argues, to alter existing agreements or eliminate second trainman positions.

In the alternative, SMART-TD contends that if the Board does impose new agreement terms, it should award more favorable terms than those in the agreements that failed ratification. SMART-TD emphasized that its members conclusively rejected the tentative agreements, which, it says, shows that those terms are inadequate. More will be necessary, SMART-TD argues, to convince the employees that they are being treated fairly. According to the Union, that is especially so in light of BNSF's recent profits. The Union therefore proposes various enhancements to the tentative agreement to benefit its members.

B. BNSF's Position

The Carrier adopts the opposite view. It contends that a failed ratification does not justify perpetuating the status quo. To the contrary, BNSF maintains that the rejection of the tentative agreement should prompt a broad, open-ended assessment of what makes sense as a crew size rule in modern railroading. It further argues that such a broad assessment leads to the inevitable conclusion that the railroad should have far more discretion – and much lower costs – than what the Parties adopted in the tentative agreements. All second trainman positions should be eliminated, the Carrier should have the right to staff trains as it deems appropriate (including with support from “Road Utility Positions”, if desired), and the employees should not receive extra pay in perpetuity for working without a second trainmen position. In short, BNSF maintains that it should be allowed to remove the second trainmen position from all jobs, without having to pay all the add-ons included in the tentative agreement forever.

BNSF's alternative position is that the Board should impose the tentative agreements, subject only to adjustments in the bonus payments that reflect the substantial multi-week delay in implementation. It notes that other interest arbitration panels have routinely imposed tentative agreements following a failed ratification, and suggest that would be a reasonable outcome here. BNSF maintains that, if this approach is adopted, the Board should reduce the negotiated bonus payment from \$27,500 to roughly \$20,000 in order to account for both operational delays or inefficiencies and the associated loss of revenue over a six-week period between November 1, 2024 and the presumed date of this Award.

CONCLUSIONS OF THE BOARD

A. Relevant Precedent Supports Adoption of the Tentative Agreement

This is not the first time that these Parties (or their predecessors) have used interest arbitration to resolve a collective bargaining dispute after intensive, good faith negotiations led to a failed ratification of a tentative agreement. Indeed, they have used similar procedures several times in the past. In every case, the result was the adoption – in essentially all respects – of the parties’ tentative agreement.

One prominent example involved the 1994 round of national bargaining. On December 1, 1995, a group of carriers – including BNSF – and SMART-TD’s predecessor, the United Transportation Union (“UTU”) reached a tentative national agreement providing for wage adjustments and changes in work rules. The agreement was approved by the UTU general chairmen, but rejected by the members. The dispute was thereafter presented to an interest arbitration panel chaired by John Criswell. *See National Carriers’ Conf. Comm. v. UTU*, Arbitration Board No. 559 (May 8, 1996) (Appendix C). The parties’ arguments in that case are similar to the arguments here – the UTU asked the Board for “more money and less in the way of rules relief,” whereas the railroads “urge[d] more work rules relief and less money.” *Id.* at 6, 9.

Board No. 559 rejected the arguments of both sides. With respect to the UTU’s primary argument – that its members wanted more – the Board explained as follows:

The organization might be right as to what its members want. Whether it is right to give them that is another question. We believe it is not enough to simply claim "more" and be rewarded with more. **Good faith bargaining is put at risk by rewarding employees with greater gains for simply saying "no." The automatic rejection of agreements reached by experienced and elected organization representatives without further justification is a destructive practice that cannot be tolerated.** We may disagree with the Carriers’ remedy in these circumstances, but we do agree with the Carriers that a rejection of an agreement without any persuasive explanation is unacceptable.

Id. at 7 (emphasis added).²

The Board also rejected the carriers’ argument that they should get more and/or pay less. The Board noted that the “Carriers’ message” – *i.e.* that membership must “be taught a lesson” – had “some appeal.” *Id.* at 10. However, the Board concluded that such a “message” was not warranted under the circumstances. It noted, in particular, the context in which the tentative agreement arose, including other pending ratification efforts. It found, in the end, that “[t]here is no warrant for less favorable treatment of employees because of their vote. It is enough to adopt the same terms their leaders found acceptable.” *Id.* at 12.

² The Board likewise rejected the UTU’s claim that “record profits” justified a higher payment. *Id.* at 7-9.

Having rejected the lead positions of both sides, Board No. 559 came “to where our instincts have told us all along we should be. That is, to endorse in substance the parties’ December 1995 agreement.” *Id.* at 10. The Board noted that this conclusion was justified by several considerations, including (1) the fact that the agreement was “fair and reasonable,” (2) precedent supports the adoption of a tentative agreement following a failed ratification, and (3) the general goals of labor relations policy, including the idea that when hard negotiations lead to a successful compromise, that should not be rashly cast aside but instead reflects an appropriate middle ground outcome. *Id.* at 11-15. Board No. 559 therefore imposed the parties’ tentative agreement as its award, subject only to “certain modifications that are due to the passage of time and the issuance of this decision.” *Id.* at 16.

B. Application to the Pending Dispute

In virtually all respects, the reasoning and conclusions of Board No. 559 (and similar awards) apply in this case. First, the Board rejects the Union’s argument that no modifications should be made because the employees rejected the tentative agreement. Such an “automatic rejection of agreements reached by experienced and elected organization representatives” is destructive to collective bargaining. *Id.* at 7. For much the same reasons, the Board rejects the Union’s call for terms more favorable to the employees. The employees cannot simply claim “more” and be “rewarded with more.” *Id.*

Second, the Board likewise declines the Carrier’s proposal for terms that would be much more favorable to BNSF. As Board No. 559 noted, there is “some appeal” to the idea that employees should be “sent a message” that they cannot blithely reject the good faith efforts of their experienced and diligent representatives. Rejection of contracts has become all too common in this age of social media, and that is corrosive to labor relations. However, the Board concludes that it would not be conducive to improving labor relations at this juncture to punish the employees for their vote. That is especially so when the Carrier’s proposed changes would constitute a serious departure from the negotiated terms.

Third, the Board concludes that the tentative agreement is fair and reasonable. It was a hard-fought negotiation, and the resulting agreement provides benefits for both sides. It is also reasonable in context, comparing favorably to the similar agreement between SMART-TD and Union Pacific, as well as other industry crew consist agreements. As was true in 1996, the Parties “are entitled to their successes.” *Id.* at 15.

There are benefits to the member ratification process, namely, providing the employees who, will be most impacted by the agreement, the ultimate authority to approve or disapprove it. However, in the instant case there are compelling reasons to reaffirm the agreement reached. The negotiations were prolonged but successful in reaching a mutually beneficial result. The agreement ultimately reached was inevitable in light of the pattern in the industry and extraordinary delay in its resolution.

Moreover, currently, the parties are in a wholly new round of negotiations with new and different issues on the table, which could well be dragged down by a reversion to a resumption of the crew consist dispute. There is a real potential for a prolonged renegotiation as the other Carriers and unions forge ahead with new and potentially mutually beneficial benefits.

Furthermore, the trust and credibility of the Organization's negotiators is vital to the current negotiations. Undermining the authority of the negotiators' ability to carry out their promises at the table only weakens the credibility and reliability of the union in the current round, where the parties are diligently attempting to expedite bargaining for the benefit of all concerned.

Finally, neither party should expect to win everything it seeks in negotiations. An appreciation of the legitimate interests of both parties is the best formula for successful resolutions of disputes. Here that was fully achieved.

For all of these reasons, the Board finds that the tentative agreement should be imposed in all respects, subject only to "certain modifications to account for the passage of time." *Id.* at 16. It is both obvious and undisputed that the parties' agreement will, as a result of this process, become effective later than would otherwise have been the case. In order to account for the lost benefit to and additional costs incurred by BNSF over that period, the bonus payment provided in Article VII shall be reduced from \$27,500 to \$27,000. The Board find that this adjustment, while less than what BNSF has proposed, is sufficient to achieve the equivalent value of the original exchange reflected in the tentative agreement.

Finally, except as otherwise expressly provided, the Board rejects the Parties' proposals in all respects. As such, this Award's imposition of the tentative agreement on the Parties shall constitute the complete disposition of the disputes referenced in the November 6, 2024 arbitration agreement.

AWARD

For the reasons stated herein, the Questions presented in the parties' November 6, 2024 interest arbitration agreement shall be and hereby are answered and resolved as follows:

1. Carrier's Question:

"What shall be the terms of the Parties' agreement to resolve NMB Mediation case A-14012?"

Answer: The Parties' Tentative Agreement, attached hereto as Appendix B, shall be the Parties' Agreement and shall completely and finally resolve NMB Mediation case A-14012, except that the bonus payment provided in Article VII shall be reduced as provided herein to account for delay in implementation.

2. Union's Questions:

(a) "Shall there be modification to the Parties current Crew Consist Agreements?"

Answer: Yes

(b) If yes, what shall the terms be to resolve NMB Mediation Case A-14012?"

Answer: The Parties' Tentative Agreement, attached hereto as Appendix B, shall be the Parties' Agreement and shall completely and finally resolve NMB Mediation case A-14012, except that the bonus payment provided in Article VII shall be reduced as provided herein to account for delay in implementation.

This Award shall become effective immediately, and shall be final and conclusive on the Parties to the full extent provided in the November 6, 2024 arbitration agreement and Section 7 of the Railway Labor Act.

Signed by:
Josh Javits
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Josh Javits, Chairperson

Signed by:
Sam Macedonio
42FR4758AAF847A
Sam Macedonio, Carrier Member

Signed by:
Brent Leonard
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Brent Leonard, Union Member

Effective Date: __December 19, 2024__

Tentative Agreement
September 11, 2024

BNSF



SMART-TD



**MEMORANDUM OF AGREEMENT
BETWEEN
BNSF RAILWAY
AND
SMART-TD**

This Agreement amends or modifies the 1981, 1989, and 1992 Crew Consist agreements on the former ATSF properties, and/or all agreements and modifications prior to this Agreement with respect to the applicable rules (if any).

Article I: Productivity and Crew Utilization

- A. Effective upon ratification, BNSF shall have the right to eliminate any second train service position (i.e. brakeman, helper), but may continue to utilize such positions as it deems necessary.
- B. Effective upon ratification, there will be no work event restrictions enroute between terminals for trainmen in any class of service. Rules associated with conductor-only moves at the initial and final terminals, as well as road crews switching at the initial and final terminals where yard crews are on duty or employed are not modified. Rules associated with interchange remain unchanged.
- C. Any restrictions pertaining to foreman only yard and/or transfer crews are hereby eliminated.
- D. All right of refusal provisions pertaining to crew size are eliminated.
- E. Assigned road and yard service crew members working as a reduced crew under this Agreement will be paid an additional two (2) hours at the current applicable straight-time rate for each tour of duty worked. The rate is subject to General Wage Increase (GWI) and Cost of Living Adjustment (COLA). This payment applies to all existing road and yard assignments that are reduced under this Agreement, and all road or yard assignments that formerly would have had an assigned brakeman or helper that are established after the effective date of this Agreement.

NOTE 1: This payment will not be made if a second crew member is called and works as a brakeman/switchman/helper on that assignment for the entire tour of duty.

NOTE 2: This payment does not apply to single person crew assignments that are working under existing agreement provisions prior to the effective date of this Agreement.

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BNSF



SMART-TD



- F. A conductor or foreman-only crew member will not be censured, disciplined, or harassed if the crew member takes longer to perform work than the time taken by a crew with two (2) or more employees.

Article II: Road Utility Position

One or more Road Utility Conductor positions may be established at locations where Road Utility Conductor positions would benefit the operations. Additionally, this Agreement is reached in furtherance of the high safety standards of BNSF, to create long term sustainable jobs with a better quality of life, improve customer service and increase BNSF's competitiveness.

- A. BNSF may establish Road Utility Positions (RUPs) to perform supervision and administration of train operations in any class of service, and to perform any ground service work as contemplated in this Agreement. Once positions are established, the Parties agree to initially meet bi-monthly to determine what, if any, adjustments need to be made.
- B. Road Utility Positions (RUPs) will have a broad array of responsibilities and opportunities, pursuant to which the RUP may more fully deploy their talents and skills to advance the safety, quality, and efficiency of BNSF operations. During each tour of duty, each RUP may be required to perform any combination of ground service duties, perform any miscellaneous duties that do not encroach on the scope of another craft or class of service, and perform other lawful railroad duties as requested by BNSF, subject to time on-duty and other limitations, as described in this Agreement. Every RUP shall be an employee holding seniority on the qualification roster as defined in Article III and shall work as such under SMART-TD agreements. For all relevant purposes, the parties agree that each RUP position will be treated as if it is subject to hours-of-service laws as they are applicable to train, engine and yard service.
- C. A RUP may be required to assist any train or yard crew and augment/assist any train or yard crew in the performance of its duties, planned or unplanned, including any duties permitted under applicable agreements which would otherwise be performed by a ground service crew member of the train (e.g., handling of any on-the-line of road failure). The RUP may be required to assist multiple trains and/or yard jobs in each of their tours of duty but will not be required to assist more than one train at the same time. Neither remotely supervising train/yard operations, nor transporting employees will be considered "assisting" a train for purposes of limiting which duties may be performed at the same time.

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BNSF  SMART-TD 

- D. RUPs will be advertised and assigned in accordance with Article III(C) of the 2023 Article VI and VII Agreement, and awarded in seniority order using the applicable qualification roster (See Article III). Any equity provisions prior to or created by this Agreement will be preserved and taken into consideration when advertising any RUP job for assignment. In addition, any RUP assignments that are designated as yard assignments will be subject to all yard rules. If no bids are received for a RUP position, it will not be force assigned. Abolishment of these positions will be handled in accordance with existing rules.
- E. The basic daily rate (8 hours) for a RUP will be \$548.63 (all-inclusive including in-lieu-of-meal and short-crew payments, and any other arbitrary payments) subject to any GWI and/or COLA first effective on or after July 1, 2025. Employees will be paid no less than the number of hours their assignment is advertised for.
- F. Each RUP shall have assigned workdays and hours. RUPs will be assigned eight (8) hour workdays on a schedule of five (5) consecutive workdays followed by two (2) rest days. As mutually agreed to, RUPs may be assigned to alternative schedules/work weeks (e.g., 4x10s, rotating 12s of 4/3/3/4 or 3 on/3/off, etc.). Overtime will be paid commensurate with the work schedule. Any RUP who is required to work beyond their assigned shift and is unable to protect their next assigned shift, as a result of FRA required rest, shall be required to report for their next shift within two (2) hours of the assigned on-duty time of the next shift if rested; but if they are unable to work the next assigned shift because of the holdover, they will be paid lost earnings for the next assigned shift.

Example 1: Assignment A has a 5-day work schedule of 8 hours per day, totaling 40 hours per week. Overtime would begin after 8 hours each workday.

Example 2: Assignment B has a 4-day work schedule of 10 hours per day, totaling 40 hours per week. Overtime would begin after 10 hours each workday.

Example 3: Assignment C has a schedule of 3 on/4 off/4 on/3 off of 12 hours per day, totaling 36 hours one week and 48 hours the next week. Overtime would begin after 80 hours each 2-week period.

- G. Each RUP shall have a designated headquarters or on-duty point which will be at a home terminal, and the RUP shall begin and conclude each tour of duty at that point and will not layover at an outlying point.

Note: For locations that do not currently have an existing crew supply, BNSF and the General Chairperson will meet and discuss how to establish positions to cover these locations.

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- H. Utility positions may work within and outside switching limits restriction.
- I. Unless otherwise determined by the FRA, RUPs must meet FRA operating employee certifications, as well as other minimum requirements and/or training determined by BNSF.
- J. It is understood these RUPs will be required operate a BNSF owned motor vehicle on public roads. Therefore, in order to be qualified for the RUP position, the employee must possess a valid driver's license. If an employee holding a permanent assignment on the RUP should at any time be ineligible to operate a company vehicle pursuant to the Corporate Company Vehicle Policy ("the Policy"), including without limitation by having his or her driver's license revoked, suspended, or subjected to any court-ordered restriction, including but not limited to restrictions requiring the use of a monitoring or governing device, they must promptly notify a supervisor at which point they will be removed from the position and the position will be filled pursuant to the CBA. In addition, except where inconsistent with this Agreement, the RUP's use of company vehicles is subject to the Policy, including the Corporate Rules referenced in Section VIII of Policy, in effect at the time a company vehicle is operated.
- K. BNSF shall provide whatever vehicle, fuel, and equipment are necessary for each ground service employee to perform their duties. Any vehicle required to be operated by a ground service employee any distance over public roadways shall be an automobile, SUV, light truck, van, or similar, fully enclosed motorized vehicle having sufficient passenger seating for the service required, and which is properly insured and licensed by BNSF for use by the ground service employee, and it shall be made available at no expense to the ground service employee. A RUP may be required to drive themselves and any other BNSF employees, as the service may require, using such a company provided vehicle. RUP's will not incur any out-of-pocket expenses as a result of being required to drive a company vehicle. RUPs will not under any circumstances be required to utilize their personal vehicles to complete their duties.
 - 1. Vehicle Requirements include, but are not limited to:
 - o Comfortable seating, sufficient for the number of passengers to be transported
 - o Seat belts, including lap restraints and, subject to vehicle design and D.O.T. requirements, upper torso restraints for each passenger transported
 - o A separate baggage area shall be provided. If baggage is stored behind a seat, the baggage shall not extend above the top of the seat unless baggage restraints are provided and utilized
 - o Transport vehicle shall be maintained in safe operational condition to comply with State and Federal safety standards

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- Snow tires (with studs where they are legal), or all-weather tires, will be installed, at a minimum, on the drive wheels during the winter months. Where required by law, chains will be carried in the vehicle
- Where conditions may require the use of chains, they will be available during the winter months
- Two-way radio or cellular phone capable of reaching a base station of BNSF will be provided. This equipment will be for Company Business only.
 - It is recognized that there are locations where it is currently impossible to comply with the provisions of this Section because BNSF radio bases and cellular phone service are not available. This Section will not apply to those locations
- Road break down kit, including flares, reflectorized markers, and a standard first-aid kit with adequate supplies
- Vehicles will have working air conditioning and heat commensurate with weather conditions
- GPS enabled device to be provided by BNSF

2. Adverse Weather Conditions

- If employees are instructed to operate company vehicles in weather conditions that they feel are unsafe, they may follow the Good Faith Challenge procedures as outlined in the GCOR rules.
- L. Employees will not be held responsible for any damage that may occur where the vehicle is properly secured and parked during the shift/tour of duty and/or until next shift/tour of duty.
- M. Where an employee is found not at fault for an accident or incident that occurs while an employee is operating a company vehicle in the course of business, they will not be disciplined; and BNSF shall indemnify, defend, and hold harmless the employee from any third-party claims arising from such incident or accident.
- N. Extra RUP employees and vacancies will be called from the existing controlling trainman extra board(s). If the RUP is determined to be a yard position, that position will be filled from the controlling yard extra board and will be subject to applicable yard rules.
- O. The RUP will qualify for holiday pay and will qualify for vacation utilizing the 1.6 multiplier for eight (8) hour shifts; 2.0 multiplier for assigned ten (10) hour shifts (e.g. 4x10); and 2.7 for assigned twelve (12) hour shifts (e.g. 3/4/4/3).
- P. Employees assigned to RUPs remain subject to mandatory promotion pursuant to Article XIII, Section 4 of the 1985 UTU National Agreement.

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BNSF  SMART-TD 

- Q. In the event the parties enter into crew size negotiations, as a result of voluntary negotiations or a Section 6 Notice, the parties agree to negotiate over terms and work rules associated with the RUP, pursuant to the RLA.

Article III: Utility Qualification Roster

- A. Employees assigned to ground service (including ground service employees who are furloughed, on USBs, detached to a SMART-TD position) on September 5, 2024 will be placed on a Utility Qualification Roster in seniority order.
- B. Following the establishment of the initial Utility Qualification Roster, a bulletin will be posted for a period of thirty (30) days. During that period, any persons with a ground seniority date who were not working in ground service on the above date may make application to be placed on the Utility Qualification Roster below those employees identified in Paragraph A. Employees making application will be ranked in seniority order based on their earliest ground seniority date.
- C. Any employees hired into ground service after the effective date of this Agreement will be placed at the bottom of the Utility Qualification Roster in seniority order.

Article IV: End Of Train Devices (ETD)

When a yard crew is instructed by a supervisor to remove or install an ETD device in a yard where carmen are employed (meaning on duty and in the yard) each ground crew member of such yard crew would be compensated one (1) hour at the current applicable straight time rate, in addition to all other earnings. Only one payment is made to such yard crew during their shift.

Article V: Overtime for Pool Freight Service

Overtime in pool freight service shall begin when the time on duty exceeds the miles run divided by the controlling divisor, or in any case, when on duty in excess of eleven (11) hours until tie up.

Article VI: Protection

- A. All employees who have a seniority date as a trainman on the effective date of this Agreement will be considered "protected" employees.

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BNSF  SMART-TD 

- B. The number of ready work board protected positions (referred to as “slots”) will be equivalent to the total number of assigned second crew positions at each location on the date of this Agreement and the total number of brakeman/switchman starts called from the extra boards during the previous 12-month period divided by 260. If the second crew position is at an outlying point, the slot will be established at the home point which fills the outlying positions.

Note: If the decimal portion is less than 0.5, the total will round down. If the decimal portion is 0.5 or above, the total will round up.

- C. For a period of thirty (30) years following the effective date of this Agreement, protected employees, including any who were involuntarily furloughed thirty (30) days or less prior to the effective date of this Agreement, may fill slots established in Section B in seniority order. Any employees who were in furlough status more than thirty (30) days prior to the effective date of this Agreement would not be eligible for the Ready Work Board until recalled to active service.

When positions are needed on the Ready Work Board, slots will be filled through applications first, followed by trainpersons who would otherwise be furloughed, in seniority order. Protected employees who are furloughed or whose service is not needed at another location within their seniority district after the implementation of this Article VI will be placed on this Ready Work Board in seniority order, after active employees who submit application.

1. Employees awarded a position to the Ready Work Board must remain on the board a minimum of 120 days and may not be displaced, unless a more senior person is reduced and would otherwise be furloughed or removed from the board upon recall by BNSF.
 2. Employees awarded a position on the Ready Work Board will be allowed to voluntarily bid off the RWB after the 120-day minimum. Employees who voluntarily bid off the RWB will not be allowed to place on a subsequent Ready Work Board position until after working 120-days in active service, unless they are the junior employee subject to furlough.
- D. Such employees will receive 85% of the combination extra board guarantee rate (based on the number of days on the RWB) applicable to the location, subject to GWI and COLA until recalled.

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BNSF



SMART-TD



- E. Employees on the Ready Work Board retain the right to lay off, use personal leave, and take scheduled vacations as provided for in current agreement rules. Personal leave and vacation pay will be handled in accordance with existing agreements. Employees laying off for other than paid absence will have their Ready Work Board guarantee pay reduced for each 24-hour period they are laid off.
- F. Employees on Ready Work Boards must maintain their work certifications and/or territorial qualifications, as instructed by BNSF, while in such status, by successfully completing any retraining or refresher programs required of active employees to maintain those qualifications which may include the passing of tests or examinations (including physical examinations) to receive this guarantee. Any training pay received will be used to offset guarantee accordingly.
- G. Employees assigned to Ready Work Board may be called to fill vacancies in the event all the controlling extra boards at the location are exhausted. Any earnings will be used to offset guarantee accordingly.
- H. At noon (1200) CT each day the first out employee assigned to this board will be placed to the bottom of the board.
- I. Trainmen assigned to this Ready Work Board will be eligible to bid to USB, WRB or other similar boards.
- J. Trainmen assigned to the Ready Work Board are subject to recall in reverse seniority order and must accept recall within forty-eight (48) hours of notification. This board will be recalled ahead of trainmen assigned to USB, WRB, or other similar boards.
 - 1. In the event an employee cannot be immediately contacted, proper notification will be considered as having been accomplished eight (8) hours from the time BNSF calls all contact numbers listed in the employee's personal file in BNSF's workforce system, one time each and leaving a message if possible. Such attempts will be documented in the employee's work history. BNSF actually speaking to the employee, receiving a call back from the employee, or employee's acknowledgment will not be necessary to satisfy this requirement.

Note: Alternative electronic methods of contact (i.e., phone text, HUB message, etc.,) may also be used in addition to phone contact. It is understood employees may accept notification prior to the eight (8) hour period referred to above.

- 2. Should an employee not report within forty-eight (48) hours, protective benefits in this Article will stop, and they will be furloughed.

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- a. The first time an employee fails to report in accordance with Section 2 above, the employee will not be recalled until all employees assigned to the Ready Work Board have been recalled.
 - b. If an employee fails to report in accordance with Section 2 above for a second time, the employee will forfeit any rights to the Ready Work Board.
 - c. If any dispute arises regarding this Section J, it will be addressed between the General Chairperson and General Director of Labor Relations.
- K. Ready Work payments will be considered as compensable service in determining the compensation due for vacation in succeeding years. Other than outlined below, time spent on a ready work board will not count toward determining whether the employee is eligible for vacation in succeeding years but will count in determining the length of vacation to which an employee, otherwise eligible, is entitled. If an employee assigned to a Ready Work Board fills a vacancy in accordance with Section G, the miles earned from working that vacancy will count toward vacation eligibility the following year.
1. All days on the Ready Work Board, up to a maximum of ninety (90) days, will count toward vacation qualification for the following year, but without the benefit of the 1.3 or 1.6 multiplier (e.g., 90 days on the Ready Work Board with no working trip would count as 90 days toward vacation qualification). The multiplier would apply to any working trip worked off the Ready Work Board.
- L. Employees on the Ready Work Board are covered by Health and Welfare Plans, Union Shop, Dues Checkoff, Discipline Rules and the Grievance Procedures that are applicable to employees in active service.
- M. Employees assigned to ready work board are not eligible for holiday pay unless they work a qualifying job on the holiday.
- N. The protection identified in this Article may be suspended by BNSF upon an act of God, war or other unforeseeable event suspends BNSF's operations in whole or part for more than a 30-day calendar period.

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- O. Should legislation or other regulatory mandate limit or eliminate the terms negotiated under this Agreement, the terms of this agreement are subject to immediate negotiation to balance wage and protection enhancements exchanged in return for the ability to reduce crews under this Agreement. If agreement is not able to be reached the parties agree to mandatory mediation. Should mediation fail, all labor agreement provisions in effect between the parties immediately prior to the effective date of this Agreement shall automatically snap-back, less the signing bonus.
- P. There will be no duplication of protective benefits for any employee covered by this Agreement.

Article VII: Signing Bonus

Trainpersons who meet the criteria set forth herein will qualify for a lump sum payment as outlined below provided the Agreement is ratified:

- A. Qualifying trainmen will receive a lump sum payment of \$27,500.00.
- B. To qualify, train service employees must have an employment relationship with BNSF on or before the signing date of this Agreement and must be actively assigned as a trainperson in yard and/or road service as of September 5, 2024.
- C. Train service employees who are on Leave of Absence, furloughed, or are dismissed from service pending arbitration will, upon returning to active service by BNSF or by Board Award qualify for this lump sum payment, after the completion of 30 days of active service after their return to service.
- D. There will be no duplication of the lump sum payment by virtue of employment under any other agreement, nor will such payment be used to offset, construct, or increase guarantees in protective agreements or arrangements.
- E. The lump sum payment will not count towards a trainperson's 1/52 vacation rate of pay and will not count for purposes of vacation.
- F. BNSF will make all reasonable efforts to pay the signing bonus as soon as possible and no later than sixty (60) days after the ratification of the Agreement.

NOTE: The signing bonus is not for service performed.

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Article VIII: General Provisions

- A. Upon successful ratification, this Agreement settles, with respect to the territories covered by this Agreement only, the disputes related to modifications to the Crew Consist agreements growing out of the notice served upon the organization by BNSF on or subsequent to November 1, 2019 (including any notices outstanding as of that date.) No party to this Agreement shall serve or progress, prior to November 1, 2029 (not to become effective before January 1, 2030), any notice or proposal related to modifying existing Crew Consist agreements. The parties mutually commit to continued negotiations concerning future modifications of the Crew Consist agreements.

However, if SMART-TD reaches a ratified agreement regarding crew consist/size/conductor redeployment with any other Class I railroad, the parties agree to begin voluntary bargaining within 20-days to reach an agreement within 90 days. Barring successful bargaining, the parties agree to allow the serving of Section 6 notices followed by mandatory RLA bargaining, prior to the amendable date in this Agreements moratorium, to reach an agreement.

- B. Except as specifically set forth herein, no other agreement rules, practices, or interpretations are changed by the terms of this Agreement. In the event there is a conflict, the terms of this Agreement will prevail.

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Side Letter No. 1 – Agreed to Questions & Answers

Article I – Productivity and Crew Utilization

Q1: Will employees working in assigned road or yard service who are eligible for a short crew allowance from a previous Crew Consist Agreement or modification receive the two (2) hour payment if working without a brakeman/switchman?

A1: Yes, those employees will receive the two (2) hour payment in addition to the short crew allowance from previous Crew Consist Agreements or modifications. When such employees work with a brakeman/switchman, they will not receive a two (2) hour payment, but will receive any applicable short crew allowance provided in previous Crew Consist Agreements or modifications. Payments cannot be duplicated or pyramided.

Q2: Are employees hired after the effective date of this Agreement entitled to the two (2) hour payment if working without a brakeman/switchman?

A2: Yes.

Q3: If BNSF calls an extra brakeman or helper for the same job any three (3) days out of a seven (7) day rolling period, is BNSF required to bulletin and assign the job in accordance with Section III (C) of the Article VI and VII Agreement?

A3: Yes.

Article II – Road Utility Position

Q1: Will RUP's be utilized to perform work in the yard?

A1: RUP's may be required to assist any train or yard crew and augment/assist any train or yard crew in the performance of its duties, planned or unplanned; however RUP assistance/augmentation of any train or yard crew shall not relieve BNSF of the restrictions or penalties provided under the applicable Crew Consist Agreement as modified herein.

Q2: Who will perform work on the road if both the RUP and regular conductor are there?

A2: It is intended that the RUP and the conductor would work together to expedite resolution of any SI or work event.

Q3: May a RUP be used to fill a vacated position on a crew in the event a member of a road or yard crew fails to report for duty or discontinues duty before the completion of that assignment.

A3: No.

Q4: Does the RUP position replace yardmasters?

A4: No.

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Article III – Utility Qualification Roster

Q1: How will employees who are on a leave of absence be placed on the Utility Qualification Roster?

A1: If the employee on a ground service assignment prior to going on the leave of absence they will be placed on the roster under Article III(A) in seniority order. If the employee was on an engineer assignment prior to going on the leave absence and wishes to make application for the Utility Qualification Roster, they would be placed on the roster under Article III(B) in seniority order.

Article IV – End Of Train Devices (ETD)

Q1: Will handling for pre-95 ATSF yard crews be preserved?

A1: Yes.

Q2: Are yard employees hired after the effective date of this Agreement entitled to the ETD payment?

A2: Yes.

Article V – Overtime for Pool Freight Service

Q1: How will trip extenders be applied to Article V of this Agreement?

A1: Trip rate extenders will still apply for pools where overtime currently begins prior to eleven (11) hours. However, in no circumstance will overtime for any through-freight pool begin later than eleven (11) hours on-duty.

Q2: Are employees hired after the effective date of this Agreement entitled to the overtime payment?

A2: Yes.

Article VI – Protection

Q1: If BNSF utilizes employees off the RWB at a specific location more than 20% (based on the size of the RWB at that location) during a week, will they add a position to the trainman's extra board at that location.

A1: Yes. One position will be added for every 20% usage of the board and will remain on the board for at least seven (7) days.

Example: At Location X there are a total of 10 employees on the RWB. During the week the RWB was utilized 4 times (40% usage). On the next board change day, BNSF would need to add 2 positions to the road extra board and those positions would have to remain on the board for a minimum of seven (7) days.

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Q2: If there are open positions at any location where there are employees on a RWB, is BNSF obligated to recall the employees on the RWB ?

A2: Yes.

Q3: If BNSF utilizes any amount of employees off the RWB during a week, may the cut the extra board at that location during they next board change?

A3: No.

Q4: Can an employee from Location A bid to a RWB position at Location B?

A4: No. In order to be eligible to obtain a position on a RWB, the employee must 1) be a "protected employee", and 2) the protected employee must have been working at the RWB location for at least thirty days prior to bidding to be on the board.

Q5: If a specific location has both BN and ATSF extra boards, which rate will be used for the RWB board?

Q5: The applicable ATSF rate will be used for the RWB board at that location.

Q6: Can employees make their needed territorial qualification trips prior to being instructed by BNSF?

Q6: Yes, employees may notify Workforce that they wish to make a territorial trip any time any time within sixty (60) days of that qualification expiring and will be allowed to do so.

Article VII – Signing Bonus

Q1: Are employees that are on a Leave of Absence because they accepted a promotion, or accepted official positions with BNSF eligible for the signing bonus?

A1: No.

Q2: Will employees who are detached to a SMART-TD position, on a trainman USB, in New Hire Training, or in LETP class qualify for the signing bonus?

Q2: So long as all other qualifications are met, yes.

Q3: How will employees who went on a leave of absence, on vacation, or were dismissed prior to September 5, 2024 date for the signing bonus be handled in relation to qualifying for the signing bonus?

A3: If the employee was on a ground service assignment prior to going on the leave of absence, vacation or being dismissed, they will qualify for the signing bonus once they have met the conditions of Article VII(C). If the employee was on an engineer assignment prior to going on the leave absence, vacation or being dismissed, they will not qualify for the signing bonus.

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Note: Employees who were on vacation do not have to meet the 30-days of service condition prior to qualifying for payment of the signing bonus.

Q4: When can employees expect the signing bonus to be paid?

A4: If the Agreement is ratified by November 1, 2024, BNSF expects to have the signing bonuses paid by no later than December 15, 2024.

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RWB Example

At Location A there are the following brakemen/helper positions that are subject to elimination under Article I(A) of the Agreement:

Brakeman Positions – 4
Helper Positions – 16

Total Positions – 20

Over the course of the previous 12 months, the extra boards protected brakeman or helper positions at Location A a total of 984 times. 984 divided by 260 (as indicated by Article VI(B) of the Agreement) equals 3.78 – which rounds up to 4 additional positions.

This results in a total of 24 RWB positions for Location A.

RWB positions will only be opened up for placement at Location A in the event that a protected employee or employees (as defined by Article VI(A) of the Agreement) cannot hold a working assignment, including the extra board, at Location A as a result of the elimination of positions or reduction in volume. At that point, RWB positions (up to a total of 24) will be added at Location A for bid eligible to any protected employee who has been working at Location A for a minimum of thirty (30) days. RWB slots will be awarded to protected employees in seniority order. If no bids are received for RWB slots, the junior protected employees who cannot hold working positions at Location A will be placed on the RWB slots.