

**MEDIATION AGREEMENT  
A-13005, A-13006 AND A-13007**

**BETWEEN**

**NEBRASKA CENTRAL RAILROAD COMPANY**

**AND ITS EMPLOYEES  
REPRESENTED BY**

**THE  
UNITED TRANSPORTATION UNION**

**EFFECTIVE JUNE 1, 1999**

**ARBITRATION AWARD EFFECTIVE NOVEMBER 1, 2004**

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**PREAMBLE**

A. The following Agreement, between the Nebraska Central Railroad Company ("Carrier") and its employees represented by the United Transportation Union ("Organization" or "UTU"), recognizes that the short line railroad industry has grown and thrived, because the short line carriers have provided responsive and personalized service to their shippers.

B. The parties to this Agreement agree that the fundamental objective of the railroad, its management and employees is to provide service to its customers in the most efficient manner. Accordingly, the parties agree that in interpreting and implementing this Agreement, paramount emphasis shall be placed on interpretations that enhance providing efficient service to customers.

C. This Agreement is intended to be based on cooperation between the Carrier and its employees, to satisfy the objectives stated in Paragraph B in a manner that will provide long-term benefits to each of them.

D. In the event that any Federal or state legislation, governmental regulations or court decisions cause invalidation of any portion of this Agreement, such term or provision shall be void and of no effect. All other terms and conditions of this Agreement shall remain in full force and effect.

E. The right to make and interpret contracts covering rules, rates of pay and working conditions on behalf of employees covered by this Agreement shall be vested in the regularly constituted General Committee of the Organization.

F. Where the term Organization appears herein, it shall be understood to mean the duly elected Officers or General Committee of the United Transportation Union ("UTU"). Where the term "designated Company Officer" appears, it shall mean the officer of the Company who has been designated, by the Company, to handle such specific matters.

G. The use of such words as "he", "his" and "him", as they appear in this Agreement, are not intended to restrict the application of the Agreement or a particular rule to a particular sex, but are used solely for the purpose of grammatical convenience and clarity.

H. The provisions herein shall be applied without discrimination based on race, color, creed, religion, national origin, age or sex.

I. This agreement shall constitute a Labor Agreement between the Carrier and the organization and shall be uniformly applied to all Employees, as defined below.

Therefore, in consideration of the mutual promises and agreements herein contained, the parties mutually agree as follows:

## **ARTICLE I**

### **Scope and Definitions**

(a) The term "Transportation Specialist", as used in this Agreement, refers to persons, other than transportation supervisors, who work the preponderance of their time in train or engine service, and who are represented by the UTU. Transportation Specialists will perform primary and incidental duties related to the operation of trains by the Carrier, except as otherwise provided for in this Agreement.

(b) "Mechanical Specialists", as used in this Agreement, refers to persons primarily involved in the repair, maintenance or rehabilitation of the Carrier's rolling stock and the equipment, facilities and physical plant associated with these activities, and who are represented by UTU.

(c) "Maintenance of Way Specialists", as used in this Agreement, refers to persons primarily involved in the repair, maintenance or rehabilitation of the Carrier's right-of-way and physical plant, and the machines, equipment and facilities associated with those activities, and who are represented by UTU.

(d) The term "Employee", as used in this Agreement, refers to all of the persons identified in paragraphs (a), (b) and (c) above.

(e) Nothing in this Agreement may be construed to limit the Carrier's right to contract out the above-named work when (i) the Carrier lacks sufficient, qualified forces to perform the work in question, (ii) the Carrier lacks sufficient, qualified supervision to perform the work in question, (iii) the Carrier does not have the equipment necessary to perform the work in question, or (iv) the work must be completed within a time frame that cannot be accomplished using the Carrier's forces.

**ARTICLE 2**  
**Seniority Rule**

(a) All Employees covered by this Agreement will be placed on a single seniority roster in the order of their date of hire. The roster will include codes to indicate the category or categories of service the Employee is qualified to perform.

(b) The seniority standing and rights of each Employee will begin on the date and time they perform service for the Carrier. In cases where two or more Employees hired after the beginning of the Carrier's operations have the same seniority date, their seniority standing will be determined by their starting time on duty on that date or if identical, then by date of birth, with the older person shown first.

(c) Employees will not be permitted as a matter of right to bid into a position for which they are not qualified; however, the Carrier may temporarily assign an employee to a position for training purposes or where necessary for the efficient operation of the railroad.

(d) Service performed in accordance with paragraph ( c ) above will not provide a basis to establish seniority under this Agreement.

**ARTICLE 3**  
**Advertising and Filling Jobs**

(a) The Carrier will bulletin regular assignments at its discretion, by posting notices at on-duty points, which show: starting time, on duty point, rest days; general description of duties to be performed; and Carrier official to whom bids should be submitted.

(b) New assignments or assignments that become open permanently will be bulletined for a total of five (5) calendar days as permanent positions.

(c) An Employee desiring to be considered for a posted position shall execute the appropriate job bid form, deliver it to the proper supervisor and retain a copy for his own records. all such forms will then be reviewed, and the position filled by the senior qualified Employee submitting proper bid.

(d) Employees can voluntarily move from their assigned positions only by (i) bidding on a bulletined position or (ii) exercising their seniority, effective on the first day of the work week of a job to which exercising seniority ("Starting Date"). Bids under this section (d) (ii) must be submitted to the Carrier at least 48 hours before the Starting Date, and may not be made more frequently than every 180 days.

(e) One Employee may exercise his seniority to a temporary vacancy, which will be defined as a vacancy of not more than thirty (30) days or a vacancy of unknown duration, for which he is qualified. Bulletins will be posted in advance of the vacancy when it is known a vacancy will exist. Vacancies created by a person exercising his seniority in accordance with this paragraph will be filled from the extra boards. All temporary assignments will cease on the return of the absent Employee, and all Employees holding temporary assignments will revert to their regular assignment.



(f) The Carrier will rebulletin any assignment where the starting time will be permanently changed by more than two hours. In an emergency or other condition beyond the control of the Carrier, starting times may be temporarily changed without bulletining.

(g) The senior qualified Employee making application for a position opening will be assigned. If there are no bids received for a position from any qualified Employee, the junior qualified Employee on the seniority roster may be required to accept the position or assignment.

(h) Employees displaced on account of a position being abolished or displaced by a senior Employee may displace a junior Employee holding a position for which the senior Employee is qualified.

(i) An Employee displaced from his assignment must exercise his seniority as near as possible to 16 hours before the starting time of the position to which the seniority is exercised, and within 48 hours of the occurrence which necessitated the displacement. The Carrier will notify the Employee displaced as promptly as possible.

(j) A job that is worked five (5) consecutive days with the same starting time each day will, at the end of the fifth day, be bulletined as a regular assignment.

(k) In the event a job is abolished, employees assigned to the job will be given twenty-four (24) hours notice of the abolishment. Notice also may be given prior to the end of the last shift worked.

**ARTICLE 4**  
**Reduction in Force**

(a) When the force is reduced, junior Employees shall be demoted or furloughed in reverse order of seniority, unless doing so would deprive the Carrier of a person qualified to perform service essential to the operation of the railroad and who is being used to perform such service, in which case the next junior Employee lacking that qualification shall be furloughed. The Carrier will promptly notify the Organization of any force reductions made under this Article.

(b) When the force is increased, furloughed Employees will be recalled in seniority order, subject to being qualified to hold the position for which recall is being made, and will retain their original seniority dates and standing.

(c) The Carrier will initially contact furloughed Employees by phone to advise them of their recall. The Employee will advise the Carrier of the tentative date, subject to the limitation below, on which he will return to service. The Carrier will send written documentation of the phone call and the tentative date on which the Employee will return, by registered mail, return receipt requested, to the Employee. If the Employee is not available to receive the Carrier's phone call, the Employee will be sent a notice of recall by registered mail, return receipt requested, to the last address of record. The Employee must contact the Carrier within three (3) days from (1) the date the furloughed Employee receives notice of recall by registered mail, return receipt requested, or (2) the date upon which such mail is first attempted to be delivered but remains unclaimed or unaccepted. Employees recalled in accordance with this Article will return to work within ten (10) working days after contacting the Carrier.

(d) Until the Employee reports for duty in accordance with paragraph (c) above, the Carrier may fill the vacancy with a qualified, active employee, if available.

(e) A copy of the recall notice will be furnished to the Organization. If the Carrier has not been contacted by the Employee by the third day, it will notify the Organization of that fact.

(f) Furloughed Employees are required to keep the Carrier and the Organization currently informed of the permanent or temporary address and phone number at which they can be located; failure to do so or failure to report for duty within the time designated in the preceding paragraph will result in forfeiture of seniority and all employment rights.

## **ARTICLE 5**

### **Qualification and Training Rule**

(a) Transportation Specialists will be required to obtain their engineer's certification at the earliest opportunity offered by the Carrier and maintain their engineer's certification throughout their period of employment by the Carrier.

(b) The Carrier will provide training to Transportation Specialists on all motive power or remote control devices introduced into the Carrier's operation.

(c) Employees will be given the opportunity to cross train on other jobs, in seniority order, as the Carrier determines is necessary for the efficient operation of the railroad.

(d) The Nebraska Central Railroad Company (NCRC) encourages promotion and advancement of its employees and has developed programs for Train Service personnel. Carrier will post a bulletin to notify employees of training opportunities.

Employees who establish engineer's seniority will establish a date and utilize the same date for both conductor's and engineer's seniority. Their engineer's date and ranking will be in the relative order of their conductor's (Transportation Specialist 2's or TS2's) seniority. TS2 employees are required to promote to Engine Service by completing the Engineer's Training Program as submitted by the NCRC to the Federal Railroad Administration. Employees will be offered promotion (at the discretion of the Carrier in establishing Engineer classes) in seniority order. It is the intent of the Carrier and the Organization that all Train Service employees will become qualified Engineers; however, the three employees listed in the Side Letter dated May 25, 1999 are not required to pass engineer's promotion to retain employment as a conductor. Employees who successfully pass engineer's promotion will be paid a one-time payment of five hours at the TS3 rate. Any employee hired as a Transportation Specialist who fails to pass engineer's promotion will automatically forfeit all seniority as a Transportation Specialist; however, if an opening exists in mechanical or maintenance for which qualified, the employee may take that position, otherwise all seniority is forfeited.

New hires must successfully complete or test out of ground school to be promoted to the position of TS2 within one-hundred twenty (120) working days from date of hire. New hires that fail to pass by second attempt from either ground school or test out procedures within 60 additional working days beyond their probationary period will be terminated from employment.

**NOTE: The Carrier will make available to the Organization records to verify the number of working days.**

**(e) (1) When a "permanent vacancy" exists, is posted in accordance with Article 3 of this agreement and no bids are received from qualified employees, the most senior non-qualified employee making application will be awarded the assignment.**

**(2) When the Carrier anticipates a need for additional positions, a notice will be posted in advance describing the positions being added. Employees that are not qualified on the specific positions and desire to become qualified may submit a written request for training. The most senior non-qualified employee(s) making request will be trained for the position(s).**

***\* Employees receiving qualification training as described in paragraphs 1 or 2 must become qualified on the position within 20 working days from the date qualification training begins, or revert back to their previous assignment. The Carrier may elect to temporarily hold an employee on his/her current assignment (held at time bid is made) until such time as a qualified replacement is available to fill his/her vacancy, but not exceeding 30 working days.***

**(3) Employees who wish to become qualified for a specific position and choose not to become qualified in accordance with the provisions of either paragraph 1 or 2 above, may submit a written request and receive the qualification training without compensation during their non-working hours. Employees electing to become qualified in this manner must become qualified within 180 calendar days from the date request was submitted.**

**ARTICLE 6**  
**Accepting Other Positions**

(a) An Employee who is promoted to an official position with the Carrier or a full-time position with the Organization will continue to accumulate seniority.

**Article 6(a) is amended by adding the words "or an affiliate" after the word "Carrier."**

(b) An Employee who returns to service under this Agreement after performing service under paragraph (a) above must contact the Carrier within three (3) days from the date on which he ceases to hold such official position to advise the Carrier of his intentions. The employee will return to work within ten (10) working days after contacting the Carrier, unless additional time is requested and approved by the Carrier. Upon return to service, the Employee will exercise his seniority to a position held by a junior Employee or to an existing vacancy.

**ARTICLE 7**  
**Forfeiting Seniority**

(a) An Employee who leaves the service of the Carrier of his own accord shall forfeit his seniority rights and shall not be reinstated. If he is reemployed by the Carrier, his seniority rights shall date from the date and time he first performs service for the Carrier after reemployment.

(b) An Employee who is discharged from service for cause shall forfeit all seniority rights; however, this rule will not prevent, upon mutual agreement of the Carrier and the organization, the reinstatement of such Employee with seniority rights unimpaired, whether or not an appeal has been made under the provisions of Article 10 hereof.

## **ARTICLE 8**

### **Probationary Period**

Applications for employment will be approved or disapproved by the Carrier within a probationary period of sixty (60) working days following the day an Employee first performs service with the Carrier. A working day, for purposes of this Article, will be defined as any day on which an Employee reports for duty and performs service. An application that is rejected within this period will result in termination of the Employee's relationship with the Carrier without the discipline, grievance or arbitration procedures of Articles 10 and 11. During this probationary period, Employees will not be eligible for the benefits provided in Articles 13, 14, 15 and 16; However, when an Employee successfully completes his probationary period, he will be given credit for all of that time for purposes of calculating benefits under this Agreement.



**ARTICLE 9**  
**Leave of Absence**

(a) Employees may be granted a leave of absence of up to ninety (90) days without pay, upon the approval, and in the discretion of the Carrier. An Employee granted such leave will sign a copy of the written authorization and return it promptly to the Carrier.

(b) Employees engaging in Organization committee or legislative work including, Local, General or International officers, will, upon request describing the nature of their work, be granted a leave of absence, in writing, for the period so engaged. An Employee granted such leave shall sign a copy of the written authorization and return it promptly to the Carrier.

(c) Except as provided in paragraph (b) above, an Employee on leave of absence from the Carrier may not perform compensated service for another employer, unless approved by the Carrier and the Organization in advance.

## **ARTICLE 10**

### **Discipline**

(a) **Investigation.** Subject to the following, Employees who have completed their probationary period shall not be disciplined without just cause and without a fair and impartial investigation. The Employee will be notified in writing of the charge against him within ten (10) days after the occurrence on which discipline is to be based or after the Carrier Officer authorized to take action under this Article has or reasonably should have had knowledge of the incident. The investigation will be conducted by a Carrier Officer (the "Discipline Officer") with the Employee and the representative of his choice, if desired, in attendance. Each of the parties may have witnesses present at the investigation. Employees required by the Carrier to attend an investigation as witnesses during regular assigned hours will be made whole for time lost. Employees required by the Carrier to attend investigations commencing outside their assigned hours will be paid on a minute basis at the current rate of their regular assignment for the greater of (i) two hours pay or (ii) actual time spent attending the investigation. If discipline is assessed, upon request by the Employee, a written, complete and accurate transcript of the proceedings shall be prepared and provided by the Carrier to the Employee or his designee as promptly as possible. The Employee will be notified, in writing, of the discipline to be assessed, if any, as soon as practicable, but not more than thirty (30) after the completion of the investigation or at such other time as the Carrier and the Organization shall mutually agree.

(b) **Waivers of Investigation.**

1. An Employee notified to appear for investigation shall have the option, prior to the hearing, to meet with the appropriate Carrier Official and the Employee's Representative, to discuss the act or occurrence and the Employee's responsibility, if any.

2. When the Discipline Officer deems it appropriate, in situations such as but without limitation, where the severity of the offense or the Employee's record of discipline do not warrant discipline of dismissal, the Discipline Officer may offer the Employee under charge the opportunity to waive his right to an investigation and accept discipline of a specified amount.

3. If a disposition of the charges is made on the basis of the Employee's acknowledgment of responsibility, the disposition shall be reduced to writing and signed by the Employee and the official involved and shall incorporate a waiver of hearing and shall specify the full extent of discipline which will be imposed for the Employee's acceptance of responsibility.

(c) Holding Employees Out of Service. In cases management determines to be serious (such as, but not limited to, theft, altercation, GCOR 1.5 violations, insubordination, major accidents, serious misconduct, etc.) and when required by application of federal regulations governing the conduct of railroad operations, Employees may be withheld from service. It is understood that any Employee held out of service under this Article 10 who, as a result of the investigation, is found not to have committed the offenses charged will be reinstated immediately and paid for time lost, including time spent attending the investigation.

(d) Appeals.

(1) If the Employee desires to appeal the discipline assessed as a result of the investigation, a written appeal will be made to the highest designated Company Officer (the "Appeal officer") within thirty (30) calendar days from the date the discipline was assessed.

(2) A conference will be held between the Organization and the Appeal Officer within thirty (30) days from receipt of the appeal.

(3) If the Appeal Officer determines that an Employee has been unjustly disciplined or dismissed, such discipline shall be set aside and removed from the Employee's

record. The Employee shall be reinstated with his seniority rights unimpaired, and shall be compensated for wage loss, if any, suffered by him, resulting from such discipline or suspension, less any amount he earned during the period of discipline.

(4) If the issue is not resolved in conference, the Appeal Officer's decision will be final and binding unless within six (6) months of the date of the Appeal Officer's written decision, either party has progressed the dispute to arbitration by a tribunal having jurisdiction to dispose of such claims.

(e) Time Limiters. Any of the time limits shown in this Article may be changed by mutual agreement of the parties, which shall not unreasonably be withheld

**ARTICLE 11**  
**Grievance and Arbitration Procedure**

(a) An Employee who believes he has a claim or grievance must notify the Carrier Official involved in such violation at the time it occurs. All claims or grievances must be presented in writing by or on behalf of the Employee involved to the officer of the Carrier authorized to receive same, within thirty (30) days from the date of occurrence on which the claim or grievance is based. The claim must state the names of the Employees involved, the rule of the Agreement upon which the claim is based, the date and time of the incident, the Carrier Official notified of the violation and all relevant facts in support of the claim.

(b) Should any such claim or grievance be disallowed, the Carrier shall within thirty (30) days from the date same is filed, notify the Employee or his representative in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be considered valid and settled accordingly, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances.

(c) If a disallowed claim or grievance is to be appealed to the highest officer designated to handle claims or grievances ("Appeal Officer"), such appeal shall be taken within sixty (60) days from receipt of notice of disallowance from the first officer of the Carrier.

(d) A conference shall be held with the Appeal Officer within 30 days of receipt of the appeal, or at such time as the parties may mutually agree. Following conference, the Appeal Officer must notify the Organization, in writing, of his decision within 60 days from the date of conference.

(e) If claims denied by the Appeal Officer are to be progressed, proceedings must be instituted within six (6) months by the Employee or his representative before a tribunal having

jurisdiction pursuant to law or agreement of the claim or grievance involved.

(f) The Carrier and the Organization will each provide the other with the names and addresses of the individuals authorized to handle claims or grievances to each successive level of the process defined by Article 10 and 11.

(g) Any of the time limits show in this Article may be changed by mutual agreement of the parties, which shall not unreasonably be withheld.

## **ARTICLE 12**

### **Holidays**

(a) The carrier recognizes the following days as paid holidays: New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the day after Thanksgiving, Christmas Eve and Christmas Day. All holidays observed will be on the day Officially observed in the State of Nebraska.

(b) Holiday pay is computed as eight hours' pay at the Employee's current rate of pay. To be eligible for holiday pay, an Employee must have worked, or been available for work in the case of an extra board Employee, the last work day prior to and the first workday following the holiday. Employees who are on vacation or bereavement leave on those days are considered to have met this requirement and are eligible for holiday pay.

**Article 12 (b) is amended by changing the first sentence to read, "Holiday pay is computed as ten (10) hours' pay at the straight-time rate of the employee's last position worked."**

**ARTICLE 13**  
**Vacations**

- (a) Employees who qualify will receive paid vacation time on the following schedule:

After 1 year of service	2 weeks (10 working days)
After 5 years of service	3 weeks (15 working days)
After 10 years of service	4 weeks (20 working days)

(b) Once an Employee becomes eligible under Article 8 – Probationary Period for vacation, the first date of service will be used to calculate his vacation entitlement. Vacation time cannot be accumulated from year to year, and there will be no pay for vacation in lieu of time off without the prior approval of the Carrier.

(c) To be eligible for the full amount of vacation pay shown above, an Employee must have earned 200 vacation credits in the preceding calendar year. One (1) credit is earned for every completed tour of duty in which an Employee performs compensated service for the carrier.

(d) An Employee who has qualified for the full vacation pay will be paid 8 hours' pay at his straight-time rate of pay for each vacation day taken.

**Article 13 (d) is eliminated and in its place the following will apply:**

**(d) An employee who has qualified for the full vacation pay will be paid ten (10) hours' pay at the straight-time rate of the employee's last position worked for each vacation day taken, either in one week (five consecutive calendar days) or one-day increments (no more than five days may be taken in one-day increments).**

(e) An Employee who does not qualify for the full vacation pay may elect between receiving (i) a pro rated number of vacation days, calculated by multiplying the number of vacation days applicable to his years of service ("Applicable Days") by a fraction, the numerator of which is the number of vacation credits actually earned and the denominator of which is 200



("Vacation Ratio") or (ii) the full number of Applicable Days paid at the Employee's current rate of pay multiplied by the Vacation Ratio.

Example: An Employee has more than 10 year of service, which would entitle him to 4 weeks of vacation. His regular current rate of pay is \$12.00 per hour. However, he earned only 100 vacation credits in the previous year. In the current year, he may elect to either (1) take 2 weeks of vacation ( $100/200 \times 4$  weeks) at his current rate of pay or (2) take 4 weeks of vacation at \$6.00 per hour (half of his current rate or  $\$12.00 \times 100/200$ ).

(f) Vacation requests from those who qualify in a given calendar year, must be submitted in writing to the Employee's department supervisor no later than December 15 of the prior year. Senior Employees will have priority if duplicate requests for the same vacation times are received. When submitting requests, Employees should include at least three (3) choices in case of duplicate requests.

(g) All vacations will commence at the beginning of the tour of duty for the employee's designated work week and will ordinarily continue for that full week. However, an employee may be permitted to take up to one week of vacation one day at a time, and vacation taken in this manner need not be requested under paragraph (f) above. The Carrier will have the right to determine the feasibility of any request which may interfere with the Carrier's service or operations. (In this regard, a request for vacation of less than one week will be considered after requests for vacation of one week or more.) If one of the holidays recognized by the Carrier occurs during a vacation period, the Employee shall be given an additional day off.

**Article 13 (g) is amended by eliminating the last sentence in its entirety.**

**ARTICLE 14**  
**Sick Leave**

Employees will be granted up to five sick days per calendar year with compensation, to be used only for bona fide illness or injury. Days not used in a calendar year will be accumulated up to 15 days for use in future years. Sick days under this Article 14 will be paid 8 hours at the employee's regular rate of pay.

**Article 14 is changed by eliminating the caption "Sick Leave" and replacing it with the words "Compensated Leave." Also, the entire article is changed to read as follows:**

**Employees will be granted up to five compensated leave days per calendar year. Days not used in a calendar year will be accumulated up to 15 days for use in future years. Compensated leave days under this Article 14 will be paid at ten (10) hours per day at the straight-time rate of the employee's last position worked.**

**NOTE: All remaining sick days will be automatically converted to Compensated Leave days as of the effective date of this Memorandum of Agreement.**

**ARTICLE 15**  
**Bereavement Leave**

(a) Bereavement leave is designed to allow an Employee time off when a death occurs in the immediate family. An Employee may be given a leave of up to three days with pay, calculated at the straight-time daily rate of the last assignment.

(b) For purposes of this policy, the immediate family is defined as the Employee's spouse, child, parent, parent-in-law, grandchild, brother or sister, step-children, sister or brother-in-law, daughter or son-in-law and grandparents.

(c) The days of leave for which an Employee shall be paid will be limited to those days on which he is regularly scheduled to work (in the case of extra board Employees, those days on which he is protecting the board and has not already worked 5 days during the work week) and does not work because he is arranging for, traveling to and from or attending the funeral. No pay will be granted to Employees for this purpose who are already on vacation, leave of absence, lay-off or paid holiday.

## **ARTICLE 16**

### **Jury Duty**

(a) Subject to paragraph (b) below, employees who serve on jury duty will be paid the difference between the amount paid by the court for such service, and the amount of their normal straight-time pay that would have otherwise been earned. No pay will be granted if an Employee is on leave of absence, lay-off or vacation.

(b) Employees who are required to report at court but who are not selected on any given day must report available for duty as soon as excused on each day. The Employee will then be used or not used for service on that day, depending on the needs of the service and in accordance with applicable law. An Employee failing to report available will not be paid in accordance with paragraph (a) above.

(c) Employees required to attend court, coroner's inquest or give depositions at the request of an official of the Carrier, will be paid for actual time lost and reimbursed for actual expenses.

**ARTICLE 17**  
**Health and Welfare, Major Medical, and Dental Coverage**

(a) Employees will be covered by the Group Health Benefit Plan of the Nebraska Central Railroad Company (the "Plan"). A booklet outlining the coverage available can be obtained from the general office. Employees must first meet the qualifying criteria as described in The Plan before they can become eligible to receive benefits.

(b) Employees will be permitted to obtain optional family medical and dental coverage under the Plan in accordance with the Plan requirements at their own expense.

(c) Should an Employee fail to qualify for coverage during a calendar month, he will be afforded the ability to continue coverage under the Plan by paying the entire premium cost.

**ARTICLE 18**  
**Seniority Rosters**

A seniority roster, in the form attached hereto as Exhibit A, shall be prepared as of January 1 of each year and the revised rosters shall be posted on bulletin boards in convenient places and copies of such rosters shall be furnished to the Organization. All appeals from new or revised roster dates shall be made within thirty (30) days from the date of posting of the seniority roster on which the new or revised date shall first appear. Protests may be made only for changes made from the prior year's roster. If any Employee is absent due to being on leave of absence or by reason of sickness, injury or other unavoidable cause at the time the roster is posted, his time to appeal there from shall be limited to thirty (30) days after he first returns to work.

**ARTICLE 19**  
**Extra Board**

(a) A Transportation Specialists' extra board(s) may be established at the Carrier's option. A Transportation Specialist assigned to an extra board will be required to protect a vacancy for which he is qualified. The Carrier will notify the Organization in advance of any additions to, or deletions from, the extra board.

(b) Employees called to fill vacancies from the extra board will, to the extent possible, be given a two-hour call in advance of the starting time of the assignment.

(c) Employees who are subject to call must be accessible by telephone or beeper. They must advise the Carrier of the phone number at which they can be reached, and when on call, notify the Carrier of any change.

(d) When an Employee is called and reports for duty, and for any reason other than his own fault, is not used, he will be allowed two (2) hours' pay or the actual time held, if greater than two hours, at his current rate.

(e) If an Employee is paid less than four hours under this Article and performs no service, then he will be restored to his previous position on the extra board. If an employee performs service or is paid four or more hours under this Article, he will be placed at the bottom of the extra board.

(f) The work week for extra board Employees will begin at 12:01 a.m., on Monday.

**ARTICLE 20**  
**Medical Examinations**

(a) Should employees coming within the scope of this Agreement be required to take medical examinations, such examinations will not be more frequent than once each year, unless in the opinion of their supervisory officers, the Employees' health or physical condition is such that an examination should be made for the purpose of determining if the Employee is able to perform service. Examinations required under this Article will be paid for by the Carrier.

(b) If an Employee is disqualified following an examination by the Carrier's physician and feels that such disqualification is not warranted, the Employees may consult his own physician. If the Employee's physician does not agree with the medical diagnosis of the Carrier's physician, the two physicians will agree upon a specialist in the field involved in the disqualification who will examine the Employee. The determination of the third physician shall be final and binding upon the parties, and the cost of the examination shall be shared equally by them. If the determination of the third physician is that the Employee should be returned to work, the Carrier shall be liable for any time lost from work by the Employee between the time of its receipt of the third physician's opinion and its offer of work to the Employee. (It is the responsibility of the Employee to keep the Carrier informed of a current telephone number where the Employee can be reached.)



**ARTICLE 21**  
**Rates of Pay**

(a) **Hourly Rates.** Employees covered by this Agreement will be paid on an hourly basis for time actually worked. Each Employees' current salary will be divided by 50 hours per week in order to calculate his hourly rate of pay. An hourly rate that is below \$10.50 per hour will be increased to that amount.

(b) **Immediate Raise.** In the first pay period following the effective date of the agreement, the hourly rates of pay will be increased by three percent for all employees covered by the Agreement. Thereafter, Employees will be paid in the paycheck covering each pay period the increased hourly rate for all time actually worked.

(c) **Annual Increases.** Starting with the first anniversary of the effective date of this Agreement, the Hourly Rates will be adjusted annually by a percentage equal to the actual percentage adjustment in allowances paid to the Carrier by the Union Pacific Railroad in the prior year.

(d) **Additional Compensation.** Employees covered by the Agreement will be paid the Christmas bonus and profit sharing in the same manner as it is paid to other Carrier employees not covered by the Agreement.

(e) **Remote Control Premium Pay.** Transportation Specialists will receive an additional \$3.00 per hour for time spent working alone with a remote control device.

**Article 21 is eliminated and replaced with the following:**

**(a) Employees covered by this Agreement will be paid on an hourly basis for time actually worked, except as provided below.**

**(b) New position rates will be established as shown in the Table contained below in paragraph (c). Each employee's individual hourly rate will remain the same as they**

were as of December 31, 2004 and will not be adjusted in the future. The new position rates will be adjusted annually by a percentage equal to the actual percentage adjustment in allowances paid to the Carrier by the Union Pacific Railroad in the prior year. This adjustment will be made in the first half January pay period each year. Employees whose individual hourly rates exceed the position rate (if working in the highest rated position their seniority will allow) will be paid a lump sum equal to the January RCAF adjustment multiplied by 2600 (52 weeks x 50 hours/week) times their individual hourly rate. Once the position rates exceed all of the 2004 individual hourly rates, all employees only will be paid the position hourly rate.

(c) Effective with the signing of this agreement, new position rates will be established and will be paid to those employees whose personal hourly rates are lower than the position rates, provided they are maximizing their seniority. The position rates and the corresponding current class are shown as follows:

Position	Craft	Hourly rate effective 11/01/04
TS3	Engineer or Remote Control Operator	\$14.05
TS2	Conductor	\$13.04
TS1	Brakeman	\$11.16
MW3	Foreman	\$13.52
MW2	Machine Operator or Mechanic	\$12.28
MW1	Laborer	\$11.16
MC3	Loco. Mechanic or/Carman	\$13.52
MC2	Car Inspector	\$12.28
MC1	Laborer	\$11.16
All classes	Trainee	\$10.65

Employees hired after the effective date of the Memorandum of Agreement will be paid the position rate worked and will not be assigned a personal hourly rate.

(d) Employees working as TS3, TS2 or TS1 who are available for and accept all work offered throughout the work week (Sunday through Saturday) will be compensated a minimum of 100 payroll hours per pay period at the applicable hourly rate (personal or position). If a TS employee is not available or refuses work when called, the employee will be compensated for actual hours worked during the work week at the applicable rate.

(e) Employees in all classes of service will be required to work at the highest level position for which qualified, seniority permitting, (unless restricted by the Carrier) in order to receive the higher of either their personal hourly rate or the position

rate. A qualified employee who chooses to work a lower rated position when a higher rated position is available will be paid the position rate worked.

(f) Employees covered by this Agreement will be paid the Christmas bonus and profit sharing in the same manner as it is paid to other Carrier employees not covered by the Agreement.

(g) Transportation Specialists will receive an additional \$3.00 per hour for time spent working alone (a single-person assignment or without another crew member) with a remote control device.

(h) Maintenance of Way and Mechanical employees will be called out for emergency work in seniority order, if available. Maintenance of Way and Mechanical employees called out in an emergency who work four (4) hours or less will be paid four hours at the applicable rate. Maintenance of Way and Mechanical employees called out in an emergency who work more than four (4) hours will be paid for actual time worked at the applicable rate.

(j) Employees will be paid an allowance of \$100.00 annually for the purchase of proper safety boots. Carrier will continue to provide safety gloves to employees.

(k) When a vacancy occurs for a Transportation Specialist and no other Transportation Specialist is available to work, if a manager, contractor or employee whose normal duties are not those of a Transportation Specialist is used, the other Transportation Specialist on the assignment will have the choice of which position to work. If the TS works a higher rated position, that employee will be paid the higher applicable rate.

**NOTE:** If the local chairman believes that non-TS employees are being used excessively, the local chairman may confer with the Superintendent concerning manpower levels. If unresolved, the matter may be raised with the general chairman and vice president.

**ARTICLE 22**  
**Qualifying Rates of Pay**

When an Employee is engaged in on-the-job training during his time off of his regular assignment, for purposes of becoming qualified in a new job, he will be paid his current rate of pay for the time spent training.

**ARTICLE 23**  
**Union Shop**

(a) It shall be a condition of employment that all Employees of the Carrier covered by this Agreement who are members of the Organization in good standing and those who are not members on the effective date of this Agreement shall, on or before the thirtieth (30<sup>th</sup>) day following the effective date of this Agreement become and remain members in good standing in the Organization. It shall also be a condition of employment that all Employees covered by this Agreement and hired on or after its effective date, shall upon completion of their probationary period become and remain members in good standing in the Organization.

(b) Each Employee, who properly registers an objection with the Organization, shall pay reduced fees in an amount sufficient to cover their share of expenses related to collective bargaining, contract administration, or other activities germane to collective bargaining.

(c) The Carrier will within three (3) working days after receipt of notice from the Organization, discharge any Employee who is not in good standing in the Organization as required by paragraph (a) or (b) of this Article. The Organization will indemnify the Carrier against any liability resulting from its compliance with this Article 23.

**In Article 23 (c), change the word "discharge" to "suspend for a minimum of five (5) working days for the first occurrence in a calendar year and for thirty (30) days for the second and each subsequent occurrence in a calendar year".**

**ARTICLE 24**  
**Moratorium Agreement**

(a) This Agreement shall become effective June 1, 1999, and shall remain in effect until or unless changed under the provisions of the Railway Labor Act, as amended.

(b) The parties signatory hereto shall not serve not progress prior to January 1, 2004, any notice or proposal for the purpose of changing any provision contained herein, or which proposes matters presented by the parties during negotiations, and any proposals in pending notices relating to such subject matters are hereby withdrawn. This Article will not bar the Carrier and Organization from agreeing upon any subject of mutual interest.

For the

For the

**UNITED TRANSPORTATION UNION**

**NEBRASKA CENTRAL RAILROAD  
COMPANY**

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

**Article 24 is eliminated and its place the following will govern:**

(a) This Agreement will become effective November 1, 2004, and will remain in effect through December 31, 2008, until or unless changed under the provisions of the Railway Labor Act, as amended.

(b) The parties signatory to this Agreement will not serve or progress prior to November 1, 2008, any notice or proposal for the purpose of changing any provision contained herein, or adding thereto, or which proposes matters presented by the parties during negotiations, and any proposals in pending notices relating to such subject matters are hereby withdrawn. This Article will not bar the Carrier and Organization from agreeing upon any subject of mutual interest.

To become effective November 1, 2004

**Answer:**

**As outlined in Opinion.**

**Dated this 25<sup>th</sup> day of October, 2004, at Stigler, Ok.**

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**John B. Criswell, Arbitrator**

## **ARBITRATION AWARD**

Nebraska Central Railroad Company

and

United Transportation Union

### **Question at Issue:**

Should the collective bargaining agreement between the parties as a result of negotiations under Section 6 of the Railway Labor Act, as amended, be the Agreement submitted by the Carrier?

### **Opinion:**

The parties, in compliance with the Railway Labor Act and provisions of the National Mediation Board negotiated an agreement. The result was submitted for ratification, and twice failed. Thus, the question was submitted for arbitration.

The parties presented written briefs expressing their views that certain changes should be made by the arbitrator and they outlined the extensive history of negotiations. Appropriate officers of the carrier and organization also made oral presentations of their views at hearing in New Orleans, La., September 23, 2004.

The issues have been thoroughly reviewed, and it is determined that the following Agreement should be and is imposed.

### **Agreement**

1. Article 3 is amended by adding a new paragraph (j):

(j) A job that is worked five (5) consecutive days with the same starting time each day will, at the end of the fifth day, be bulletined as a regular assignment.

2. Article 3 is amended by adding a new paragraph (k):

(k) In the event a job is abolished, employees assigned to the job will be given twenty-four (24) hours notice of the abolishment. Notice also may be given prior to the end of the last shift worked.

3. Article 5 is amended by adding a new paragraph (d):

(d) The Nebraska Central Railroad Company (NCRC) encourages promotion and advancement of its employees and has developed programs for Train Service personnel. Carrier will post a bulletin to notify employees of training opportunities.



Employees who establish engineer's seniority will establish a date and utilize the same date for both conductor's and engineer's seniority. Their engineer's date and ranking will be in the relative order of their conductor's (Transportation Specialist 2's or TS2's) seniority. TS2 employees are required to promote to Engine Service by completing the Engineer's Training Program as submitted by the NCRC to the Federal Railroad Administration. Employees will be offered promotion (at the discretion of the Carrier in establishing Engineer classes) in seniority order. It is the intent of the Carrier and the Organization that all Train Service employees will become qualified Engineers; however, the three employees listed in the Side Letter dated May 25, 1999 are not required to pass engineer's promotion to retain employment as a conductor. Employees who successfully pass engineer's promotion will be paid a one-time payment of five hours at the TS3 rate. Any employee hired as a Transportation Specialist who fails to pass engineer's promotion will automatically forfeit all seniority as a Transportation Specialist; however, if an opening exists in mechanical or maintenance for which qualified, the employee may take that position, otherwise all seniority is forfeited.

New hires must successfully complete or test out of ground school to be promoted to the position of TS2 within one-hundred twenty (120) working days from date of hire. New hires that fail to pass by second attempt from either ground school or test out procedures within 60 additional working days beyond their probationary period will be terminated from employment.

NOTE: The Carrier will make available to the Organization records to verify the number of working days.

(e) (1) When a "permanent vacancy" exists, is posted in accordance with Article 3 of this agreement and no bids are received from qualified employees, the most senior non-qualified employee making application will be awarded the assignment.

(2) When the Carrier anticipates a need for additional positions, a notice will be posted in advance describing the positions being added. Employees that are not qualified on the specific positions and desire to become qualified may submit a written request for training. The most senior non-qualified employee(s) making request will be trained for the position(s).

*\* Employees receiving qualification training as described in paragraphs 1 or 2 must become qualified on the position within 20 working days from the date qualification training begins, or revert back to their previous assignment. The Carrier may elect to temporarily hold an employee on his/her current assignment (held at time bid is made) until such time as a qualified replacement is available to fill his/her vacancy, but not exceeding 30 working days.*

(3) Employees who wish to become qualified for a specific position and choose not to become qualified in accordance with the provisions of either paragraph 1 or 2 above, may submit a written request and receive the qualification training without compensation

during their non-working hours. Employees electing to become qualified in this manner must become qualified within 180 calendar days from the date request was submitted.

4. Article 6(a) is amended by adding the words "or an affiliate" after the word "Carrier."

5. Article 12 (b) is amended by changing the first sentence to read, "Holiday pay is computed as ten (10) hours' pay at the straight-time rate of the employee's last position worked.

6. Article 13 (d) is eliminated and in its place the following will apply:

(d) An employee who has qualified for the full vacation pay will be paid ten (10) hours' pay at the straight-time rate of the employee's last position worked for each vacation day taken, either in one week (five consecutive calendar days) or one-day increments (no more than five days may be taken in one-day increments).

7. Article 13 (g) is amended by eliminating the last sentence in its entirety.

8. Article 14 is changed by eliminating the caption "Sick Leave" and replacing it with the words "Compensated Leave." Also, the entire article is changed to read as follows:

Employees will be granted up to five compensated leave days per calendar year. Days not used in a calendar year will be accumulated up to 15 days for use in future years. Compensated leave days under this Article 14 will be paid at ten (10) hours per day at the straight-time rate of the employee's last position worked.

NOTE: All remaining sick days will be automatically converted to Compensated Leave days as of the effective date of this Memorandum of Agreement.

9. Article 21 is eliminated and replaced with the following:

(a) Employees covered by this Agreement will be paid on an hourly basis for time actually worked, except as provided below.

(b) New position rates will be established as shown in the Table contained below in paragraph (c). Each employee's individual hourly rate will remain the same as they were as of December 31, 2004 and will not be adjusted in the future. The new position rates will be adjusted annually by a percentage equal to the actual percentage adjustment in allowances paid to the Carrier by the Union Pacific Railroad in the prior year. This adjustment will be made in the first half January pay period each year. Employees whose individual hourly rates exceed the position rate (if working in the highest rated position their seniority will allow) will be paid a lump sum equal to the January RCAF adjustment multiplied by 2600 (52 weeks x 50 hours/week) times their individual hourly rate. Once the position rates exceed all of the 2004 individual hourly rates, all employees only will be paid the position hourly rate.

(c) Effective with the signing of this agreement, new position rates will be established and will be paid to those employees whose personal hourly rates are lower than the position rates, provided they are maximizing their seniority. The position rates and the corresponding current class are shown as follows:

Position	Craft	Hourly rate effective 11/01/04
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MW2	Machine Operator or Mechanic	\$12.28
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MC3	Loco. Mechanic or/Carman	\$13.52
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All classes	Trainee	\$10.65

Employees hired after the effective date of the Memorandum of Agreement will be paid the position rate worked and will not be assigned a personal hourly rate.

(d) Employees working as TS3, TS2 or TS1 who are available for and accept all work offered throughout the work week (Sunday through Saturday) will be compensated a minimum of 100 payroll hours per pay period at the applicable hourly rate (personal or position). If a TS employee is not available or refuses work when called, the employee will be compensated for actual hours worked during the work week at the applicable rate.

(e) Employees in all classes of service will be required to work at the highest level position for which qualified, seniority permitting, (unless restricted by the Carrier) in order to receive the higher of either their personal hourly rate or the position rate. A qualified employee who chooses to work a lower rated position when a higher rated position is available will be paid the position rate worked.

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called out in an emergency who work four (4) hours or less will be paid four hours at the applicable rate. Maintenance of Way and Mechanical employees called out in an emergency who work more than four (4) hours will be paid for actual time worked at the applicable rate.

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NOTE: If the local chairman believes that non-TS employees are being used excessively, the local chairman may confer with the Superintendent concerning manpower levels. If unresolved, the matter may be raised with the general chairman and vice president.

10. In Article 23 (c), change the word "discharge" to "suspend for a minimum of five (5) working days for the first occurrence in a calendar year and for thirty (30) days for the second and each subsequent occurrence in a calendar year".

11. Article 24 is eliminated and its place the following will govern:

(a) This Agreement will become effective November 1, 2004, and will remain in effect through December 31, 2008, until or unless changed under the provisions of the Railway Labor Act, as amended.

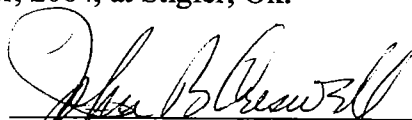
(b) The parties signatory to this Agreement will not serve or progress prior to November 1, 2008, any notice or proposal for the purpose of changing any provision contained herein, or adding thereto, or which proposes matters presented by the parties during negotiations, and any proposals in pending notices relating to such subject matters are hereby withdrawn. This Article will not bar the Carrier and Organization from agreeing upon any subject of mutual interest.

To become effective November 1, 2004

**Answer:**

As outlined in Opinion.

Dated this 25<sup>th</sup> day of October, 2004, at Stigler, Ok.

  
\_\_\_\_\_  
John B. Criswell, Arbitrator