

MEMORANDUM OF AGREEMENT**Between****THE BURLINGTON NORTHERN AND SANTA FE RAILWAY****And****UNITED TRANSPORTATION UNION**

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

Part I - Alternative Handling**I. Definition of Alternative Handling**

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

II. Scope

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

III. Applicability

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

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

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

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

IV. Eligibility

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

V. Exceptions

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

VI. Process

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

A. Classes of Covered Offenses Subject to Alternative Handling

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

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

B. Employee Eligibility for Alternative Handling

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

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

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

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

C. Alternative Handling

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

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

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

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

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

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

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

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

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

VII. Time Limits

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

VIII. Compensation

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

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

Part II - Safety Participation

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

I. Safety Coordinator Position(s)

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

II. Duties and Responsibilities of a Safety Coordinator

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

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

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

III. Establishment of Safety Committees

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

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

IV. Duties and Responsibilities of Safety Committees

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

V. Risk Identification Process

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

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

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

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

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

VI. Compensation

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

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

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

VII. Dispute Resolution

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

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

VIII - General Provisions

I. Cancellation Clause


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

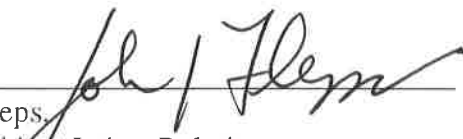
II. Savings Clause


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

Signed this 28th day of February, 2002.

Effective on March 1, 2002.


D.B. Snyder
General Chairman
United Transportation Union


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


M. David Dealy
Vice President Transportation
Burlington Northern and Santa Fe
Railway Company

Alternative Handling Process

An alternative handling process has been developed to assist supervisors and local chairmen in helping employees to consistently make the right low-risk decisions when they apply the work rules in the performance of their jobs.

When an incident occurs, (accident, injury, operations testing failure, and locomotive operation) that falls into class I, II, or III rules violation categories an alternative handling process begins.

Rules violations that are exempt from alternative handling include:

1. Late reporting of a personal injury
2. Non-compliance with the company drug and alcohol policy
3. Gross negligence as defined in Federal Regulations as a willful violation
4. Rule violation resulting in very serious personal injury to anyone (life threatening or career ending) or major property damage (\$250,000 or greater)
5. Violation of personal conduct rule such as dishonesty, felony conviction, physical altercation
6. Serious EEO violation
7. Job abandonment as specified in applicable agreements.

An alternative handling team, consisting of the immediate supervisor, local chairman and employee will meet and discuss the class rules violation and its contributing factors. A complete description is developed that thoroughly describes the incident. The team will jointly create a safety action plan. Selections are made from the preventive actions listed in the table below. *Our team goal is to eliminate at-risk work practice and prevent future accidents and injuries.*

Preventive actions are divided into three categories:

1. Supervisor's Safety Activities
2. Local Chairman's Safety Activities
3. Employee Safety Activities

Each class of incident/rules violation safety activity plans will have a measurement period. Class I, 180 days, class II, 120 days, and class III, 60 days. The General Manager and General Chairmen through the General Manager's Monthly Safety Report will review safety activities.

Alternative Handling Process

Rules Violations	Preventive Actions/Activity Plans	Plan Duration	Participants
<p><i>Class I Offenses</i> Rule violations that: Subject BNSF or individual to FRA fines. Result in engineer decertification. Violate protection of people and equipment Results in significant injury (not life threatening or career ending). Results in significant property damage (less than \$250,000).</p>	<ul style="list-style-type: none"> • <i>Supervisor safety activities:</i> <ol style="list-style-type: none"> 1. Conduct rules violation analysis using the 5 whys problem solving process 2. Operations testing: <ul style="list-style-type: none"> • Class I violated rules • Related Class I, II, and III rules 3. Training and education: <ul style="list-style-type: none"> • Net Sims • Computer Based Training (CBT) • Safety Skills Training <ol style="list-style-type: none"> a. Classroom instruction b. On-The-Job coaching 4. Workplace hazard correction 5. Mentorship of employee based on rules violation category – 180 days 6. Analysis of job/rule related tasks to determine risk areas 7. Communicate rule violation injury risks through: <ul style="list-style-type: none"> • Job Safety Briefing/Job Planning • Marathon Safety Meetings • Site Safety Meetings • Safety Conference Call 8. Train check-out rides 9. Safety subject contacts 10. Development of Safety Alert/Bulletin • <i>Union Leadership Activities:</i> <ol style="list-style-type: none"> 1. Participate with supervisor in rules violation analysis using the “5 whys” problem solving process 2. On-The-Job coaching and mentoring of employee based on rules violation category 3. Jointly develop Safety Alert/Bulletin • <i>Employee Participation Safety Activities</i> <ol style="list-style-type: none"> 1. Participate with supervisor and union leader in rules violation analysis using the 5 whys problem solving process 2. Training and education : <ul style="list-style-type: none"> • Net Sims • Computer Based Training (CBT) • Safety Skills Training <ol style="list-style-type: none"> a. Classroom instruction b. On-The-Job coaching c. Required training or certification 3. Workplace hazard identification /correction 4. Communicate rule violation injury risks through: <ul style="list-style-type: none"> • Job Safety Briefing/Job Planning • Marathon Safety Meetings • Safety Conference Call 5. Train check-out rides/safety subject contacts 6. Development of Safety Alert/Bulletin 	180 days	

Alternative Handling Process

Rules Violations	Preventive Actions/Activity Plans	Plan Duration	Participants
<p><i>Class II Offenses</i></p> <ul style="list-style-type: none"> • Operation testing failures designed to prevent Class I violations: 201 – Restricted speed 202 – Blue signal – Trains 203 – Dark signal 204 – Block system rules–Restricted speed 205 – Block signal – Stop 206 – Automatic interlocking 207 – Banner – trains 208 – Block system – Stop and proceed • Rule violations considered serious: 101 – On/Off Moving Equipment 102 – Between cars and locomotives 103 – Failing to provide 50 ft. between cars 104 – Riding end of freight car 105 – Fouling adjacent track 106 – Running while switching 107 – Riding freight cars to joint 108 – Utility employee • (Consequence related rules violations) 601 – Speed requirements 602 – Trains, Engines, Cars left unattended 607 – Signal awareness form 608 – Releasing authority 609 – Whistle signal 	<ul style="list-style-type: none"> • Supervisor safety activities: <ol style="list-style-type: none"> 1. Conduct rules violation analysis using the 5 whys problem solving process 2. Operations testing: <ul style="list-style-type: none"> • Class II violated rules • Related Class I, II, and III rules 3. Training and education: <ul style="list-style-type: none"> • Computer Based Training (CBT) • On-The-Job safety skills coaching 4. Workplace hazard correction 5. Mentorship of employee based on rules violation category – 120 days 6. Analysis of job/rule related tasks to determine risk areas 7. Communicate rule violation injury risks through: <ul style="list-style-type: none"> • Job Safety Briefing/Job Planning • Marathon Safety Meetings • Safety Meetings • Safety Conference Call 8. Train check-out rides 9. Safety subject contacts 10. Development of Safety Alert/Bulletin • Union Leadership Activities: <ol style="list-style-type: none"> 1. Participate with supervisor in rules violation analysis using the “5 whys” problem solving process 2. On-The-Job coaching and mentoring of employee based on rules violation category – 180 days 3. Jointly develop Safety Alert/Bulletin • Employee Participation Safety Activities <ol style="list-style-type: none"> 1. Rules violation analysis using the 5 whys problem solving process 2. Training and education : <ul style="list-style-type: none"> • Computer Based Training (CBT) • Safety Skills Training <ol style="list-style-type: none"> a. Classroom instruction b. On-The-Job coaching c. Required training or certification 3. Workplace hazard identification / correction 4. Communicate rule violation injury risks through: <ul style="list-style-type: none"> • Job Safety Briefing/Job Planning • Marathon Safety Meetings • Site Safety Meetings • Safety Conference Call 5. Train check-out rides/safety subject contacts 6. Development of Safety Alert/Bulletin 	<p>120 days</p>	

Alternative Handling Process

<p style="text-align: center;">at grade crossing</p> <ul style="list-style-type: none"> • General Code of Operating Rules Violations: 6.5 – Handling cars ahead of engines 7.1 – Switching safely (Fouling adjacent tracks) 7.2 – Communication between crews switching 7.13 – Protection in bowl tracks BNSF Air brake and train handling rules – Any violation of an existing air brake test rule Locomotive Engineer Deficiencies Requiring Alternative Handling Noted through auto scan exceptions: 1. Engineer induced emergencies – 2 2. Conductor induced emergencies – 2 3. Power braking >10 seconds >20 MPH – 25 4. Heavy reductions >10 seconds >20 MPH – Engineers with incidents in top 10% for division 5. Ind brake >10 MPH >30 seconds – 5 6. Stalls >2 mins – 5 7. Train handling with train mishandling cause (200 code) – 2 8. Human factor derailments attributed to train handling - 1 			
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Alternative Handling Process

Rules Violations	Preventive Actions/Activity Plans	Plan Duration	Participants
<p><i>Class III Offenses</i> Violations of all other rules not included in Classes I and II</p> <p>Any failure of:</p> <ul style="list-style-type: none"> • Operations Test Numbers <p>603 – Radio usage 606 – ETD 610 – Horsepower compliance 611 – Locomotive shutdown</p> <p>Other rule violations not covered in Class I or Class II specifically exempted including:</p> <ol style="list-style-type: none"> 1. Late reporting of a personal injury 2. Non-compliance with the company drug and alcohol policy 3. Gross negligence 4. Violations of personal conduct: <ul style="list-style-type: none"> • Dishonesty <ul style="list-style-type: none"> • Conduct leading to a felony conviction • Physical altercation • Serious EEO violations • Failure to protect job or job abandonment as specified in applicable agreements 	<ul style="list-style-type: none"> • <i>Supervisor safety activities:</i> <ol style="list-style-type: none"> 1. Conduct rules violation analysis using the 5 whys problem solving process 2. Operations testing: <ul style="list-style-type: none"> • Class III violated rules • Related Class I, II, and III rules 3. Training and education: <ul style="list-style-type: none"> • Computer Based Training (CBT) 4. On-The-Job safety skills coaching 5. Communicate rule violation injury risks through: <ul style="list-style-type: none"> • Job Safety Briefing/Job Planning • Marathon Safety Meetings) • Safety Meetings • Safety Conference Call 6. Safety subject contacts 7. Development of Safety Alert/Bulletin • <i>Union Leadership Activities: :</i> <ol style="list-style-type: none"> 1. Participate with supervisor in rules violation analysis using the “5 whys” problem solving process 2. On-The-Job coaching and mentoring of employee based on rules violation category – 180 days 3. Jointly develop Safety Alert/Bulletin • <i>Employee Participation Safety Activities</i> <ol style="list-style-type: none"> 1 Participate with supervisor and union leader in rules violation analysis using the 5 whys problem solving process 2 Training and education : <ul style="list-style-type: none"> • Net Sims • Computer Based Training (CBT) • Safety Skills Training <ol style="list-style-type: none"> d. Classroom instruction e. On-The-Job coaching f. Required training or certification 3 Workplace hazard identification /correction 4 Communicate rule violation injury risks through: <ul style="list-style-type: none"> • Job Safety Briefing/Job Planning • Marathon Safety Meetings • Safety Conference Call 5 Train check-out rides/safety subject contacts 6 Development of Safety Alert/Bulletin 	<p>60 days</p>	