

ARBITRATION BOARD NO. 542

AWARD NO. 1

PARTIES TO THE DISPUTE: UNITED TRANSPORTATION UNION
AND
BURLINGTON NORTHERN RAILROAD COMPANY

QUESTION AT ISSUE: What shall be the conditions for interdivisional service between Fargo-Dilworth and Bismarck-Mandan?

BACKGROUND

On January 6, 1988, Carrier served notice on the United Transportation Union, of its intent to establish Interdivisional Pool Freight Service between Fargo-Dilworth and Bismarck-Mandan through Jamestown, North Dakota. This notice was given pursuant to Article IX, Section 1 of the October 31, 1985 UTU National Agreement. Section 1 of Article IX sets forth the conditions for establishment of interdivisional service as follows:

ARTICLE IX - INTERDIVISIONAL SERVICE

NOTE: As used in this Agreement, the term interdivisional service includes interdivisional, interseniority district, intradivisional and/or intraseniority district service.

An individual carrier may establish interdivisional service, in freight or passenger service, subject to the following procedure.

Section 1 - Notice

An individual carrier seeking to establish interdivisional service shall give at least twenty days' written notice to the organization of its desire to establish service, specify the service it proposes to establish and the conditions, if any, which it proposes shall govern the establishment of such service.

Section 3 of Article IX provides that the Parties will meet to discuss the details of operation and working conditions of the Carrier's proposed interdivisional service run during the twenty (20) day time period following the date of notice. Carrier forwarded its proposal with the Notice letter and suggested a meeting for January 20, 1988. Section 3 of Article IX reads in whole as follows:

Section 3 - Procedure

Upon the serving of a notice under Section 1, the parties will discuss the details of operation and working conditions of the proposed runs during a period

of 20 days following the date of the notice. If they are unable to agree, at the end of the 20-day period, with respect to runs which do not operate through a home terminal or home terminals of previously existing runs which are to be extended, such run or runs will be operated on a trial basis until completion of the procedures referred to in Section 4. This trial basis operation will not be applicable to runs which operate through home terminals.

Notwithstanding the time frame provided for in Section 3, above, the first of a series of meetings did not occur until April 5, 1988. The Parties exchanged proposals and counterproposals but were unable to reach agreement. During these negotiations, the Organization took the position that Article IX of the 1985 National Agreement did not supersede or amend the existing June 28, 1972 "System Agreement" governing the establishment and operation of interdivisional service on the former Northern Pacific territory of the Burlington Northern System. The Carrier disagreed, maintaining that preexisting rules had been superseded by Article IX. In order to resolve the impasse regarding the status of the June 28, 1972 System Agreement as it relates to the establishment of interdivisional service under the applicable provisions of Article IX of the 1985 UTU National Agreement, the Parties invoked the dispute resolution procedures provided for in Article XVI and put the issue to the Joint Interpretation Committee created to resolve disputes involving application of the National Agreement. Article XVI reads as follows:

ARTICLE XVI - JOINT INTERPRETATION COMMITTEE

Disputes arising over the application or interpretation of this agreement will, in the absence of a contrary provision, be referred to a Joint Interpretation Committee consisting of an equal number of representatives of both parties.

If the Committee is unable to resolve a dispute, it may consider submitting the dispute to arbitration on a national basis for the purpose of ensuring a uniform application of the provisions of this Agreement.

The question submitted by the Carrier to the Joint Interpretation Committee was articulated as follows:

On this property prior to the October 31, 1985 Agreement we had an agreement with the UTU, negotiated under the provisions of Article XII of the June 27, 1972 National Agreement, which established guidelines under which interdivisional service could be established. Since we did not opt to preserve existing rules or practices, did Article IX of the October 31, 1985 National Agreement supersede the prior agreement which established ID guidelines?

The Joint Interpretation Committee apparently adjourned, prior to adjudicating the issue, and the matter remained unresolved. The record indicates that Carrier notified the Organization of its intent to establish another Interdivisional Pool Freight Service run between the Twin Cities Terminal and Fargo-Dilworth through Staples on July 25, 1988 and served a second "Notice of Intent" on August 19, 1988 to establish Interdivisional Pool Freight Service between the very same points covered in its original proposal of January 6, 1988, specifically, between Fargo-Dilworth and Mandan through Jamestown, North Dakota. The Parties met on

August 18 and 30, 1988 and on five (5) subsequent dates in the first three months of 1989, attempting without success, to reach a mutual agreement.

In response to the stalemate, even though the issue regarding the status of the June 28, 1972 System Agreement was pending before the Joint Interpretation Committee, the Carrier notified the Organization on March 29, 1989 that it was submitting the matter to arbitration as provided for in Section 4, Article IX of the 1985 National Agreement reading as follows:

Section 4 - Arbitration

(a) In the event the carrier and the organization cannot agree on the matters provided for in Section 1 and the other terms and conditions referred to in Section 2 above, the parties agree that such dispute shall be submitted to arbitration under the Railway Labor Act, as amended, within 30 days after arbitration is requested by the carrier. The arbitration board shall be governed by the general and specific guidelines set forth in Section 2 above.

(b) The decision of the arbitration board shall be final and binding upon both parties, except that the award shall not require the carrier to establish interdivisional service in the particular territory involved in each such dispute but shall be accepted by the parties as the conditions which shall be met by the carrier if and when such interdivisional service is established in that territory. Provided further, however, if carrier elects not to put the award into effect, carrier shall be deemed to have waived any right to renew the same request for a period of one year following the date of said award, except by consent of the organization party to said arbitration.

The Organization in a series of communications reiterated its previous position asserting that, absent a resolution of the issue pending before the Joint Interpretation Committee, arbitration of the impasse over establishment of interdivisional service under Section 4 of Article IX was premature. In response, on April 18, 1989 the Carrier requested that the National Mediation Board (NMB) appoint a Neutral Arbitrator to serve as Chairman of a Special Board of Arbitration and resolve the dispute. The Organization strenuously objected and the NMB advised the Parties on May 17, 1989 that it was without statutory authority to grant the Carrier's request. On July 7, 1989, the Carrier requested the NMB to appoint a neutral arbitrator to serve as Chairman of a procedural public law board to resolve the following question:

May the Carrier properly invoke the provisions of Section 4, Article IX of the October 31, 1985 UTU National Agreement for the purpose of establishing a Board of Arbitration to determine the conditions of Interdivisional Service applicable between the Twin Cities Terminal and Fargo-Dilworth through Staples and between Fargo-Dilworth and Mandan through Jamestown, North Dakota.

The Organization continued to resist the establishment of a procedural public law board for various technical reasons until March 5, 1990 when the Parties met and agreed on the rules under which the procedural public law board (PLB 4812) would conduct its

business. The following question was submitted by the Organization and subsequently was considered by the Board:

Is the Organization's position correct that Carrier cannot invoke the provisions of Section 4, Article IX of the October 31, 1985 National Agreement for the sole purpose of revising the conditions for establishing interdivisional service, if such conditions have previously been set forth in a Memorandum of Agreement between the Parties dated June 28, 1972 and such conditions comply with Sections 1 and 2 of Article IX of the October 31, 1985 Agreement?

On April 18, 1990, the NMB officially appointed Referee George E. Larney to serve as Neutral Member and Chairman of Procedural Public Law Board No. 4812 for the purpose of making awards on the two (2) questions. Thereafter, a hearing of PLB 4812 convened on September 18, 1990 and an Award was rendered on February 22, 1993.

The Award issued by PLB 4812 held that the threshold question raised by the Organization concerning the status of the June 28, 1972 System Interdivisional Run Agreement was a proper subject for consideration by the Joint Interpretation Committee, however when that committee ceased to function, the Parties could properly assent to resolve the issue, as in the instant case, before a Public Law Board. Public Law Board 4182 therefore assumed jurisdiction of the dispute and ruled as follows:

. . . we conclude that in opting to adopt the provisions of Article IX (of the October 31, 1985 National Agreement), Carrier was no longer bound to the provisions of Article XII set forth in the 1972 National Agreement and concomitantly was no longer obligated to retain the June 28, 1972 System Agreement which implemented Article XII although it was not precluded from voluntarily adopting in part or in whole the terms set forth in the June 28, 1972 System Agreement for the purpose of implementing Section 2 of Article IX in connection with the subject two proposals for interdivisional service, the impasse reached is ripe for submission to arbitration as provided for in Section 4 of Article IX.

We, therefore, rule that the Organization's position as stated in its question submitted to this Board is not correct and therefore, Carrier may properly invoke the provisions of Section 4, Article IX of the October 31, 1985 UTU National Agreement for the purpose of establishing a Board of Arbitration to determine the conditions of Interdivisional Service applicable between the Twin Cities Terminal and Fargo-Dilworth through Staples and between Fargo-Dilworth and Mandan through Jamestown, North Dakota.

Acting in response to the Award of PLB 4419, Carrier directed a letter to the NMB on February 27, 1993 invoking the arbitration procedures contained in Section 4, Article IX of the 1985 National agreement to resolve the dispute over acceptable conditions for the establishment and operation of interdivisional service runs between the Twin Cities and Fargo-Dilworth through Staples and between Fargo-Dilworth and Mandan through Jamestown.

The Parties to this dispute happened to be meeting under jurisdiction of the NMB at its Washington D.C. headquarters in connection with another matter during the first

two weeks of March 1993. The Carrier and Organization decided, at that time, it would be appropriate to revisit the issue of interdivisional service, considering the length of time and changes within the industry occurring since the matter was last discussed. It was also agreed to delay arbitration until such time as the Parties had an opportunity to meet and more fully explore their respective positions. Meetings were scheduled for the dates of July 7, 8 and 9, 1993, when proposals were exchanged, and significant progress was made towards resolving the dispute. A second series of meetings was held on September 7, 8, 9 and 10, 1993 wherein a negotiated agreement was reached. The agreement was subsequently presented to the Organization's membership for ratification. On November 1, 1993, the Organization advised the Carrier that the agreement covering the interdivisional run between the Twin Cities and Fargo-Dilworth through Staples was accepted; however, the agreement covering interdivisional service between Fargo-Dilworth and Mandan through Jamestown failed to ratify.

Findings:

The board, after hearing upon the entire record and all evidence, finds that the Parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by the Agreement dated October 31, 1985 and has jurisdiction of the Parties and the subject matter.

The National Mediation Board assigned the undersigned Arbitrator to resolve the dispute and a hearing was scheduled and held in St. Paul, Minnesota on January 13, 1994.

It is noted that the Parties do not fail to agree on a great number of the elements necessary to include as part of an agreement designed to conform with National Agreement guidelines prescribing reasonable and practicable conditions for interdivisional service runs. Considerable time and resources were dedicated to the negotiation process resulting, without question, in the elimination of many areas of contention. However, the agreement failed to ratify and certain differences remain which the Carrier and Organization are unable to resolve. The Organization provides it was informed that the agreement was not accepted for the following exceptions.

1. Absence of an option for cash payments in lieu of the moving and real estate protective conditions set forth in Article XIII of the January 27, 1992 Agreement, and in addition a monetary housing allowance.
2. Absence of a provision requiring Carrier to provide protective benefits to residents of Jamestown who are working in the Engineer's craft.
3. Absence of a provision requiring a three hour call for employees who desire to maintain their current residence in Jamestown and commute to the new terminal.
4. Absence of a provision restricting implementation of interdivisional service until school is recessed for the year.
5. Absence of a provision requiring payment of a penalty to crews who are called in proper turn and thereafter are runaround departing the terminal.

6. The agreement provision regulating the number of crews to earn the average of between 4500 and 5000 miles per month is unreasonable with regard to time on duty, length of time at home, job stress, and the absence of manpower to permit reasonable lay off privileges.

The Organization asks the Board to consider these six areas of concern in determining the conditions which will govern the interdivisional service at issue. This Arbitration Board is empowered to resolve the dispute under Section 4 and is governed by the guidelines set forth in Section 2 contained in Article IX of the October 31, 1985 National Agreement. Section 2 states:

Section 2 - Conditions

Reasonable and practical conditions shall govern the establishment of the runs described, including but not limited to the following:

(a) Runs shall be adequate for efficient operations and reasonable in regard to the miles run, hours on duty and in regard to other conditions of work.

(b) All miles run in excess of the miles encompassed in the basic day shall be paid for at a rate calculated by dividing the basic daily rate of pay in effect on October 31, 1985 by the number of miles encompassed in the basic day as of that date. Car scale and weight-on-drivers additives will apply to mileage rates calculated in accordance with this provision.

(c) When a crew is required to report for duty or is relieved from duty at a point other than the on and off duty points fixed for the service established hereunder, the carrier shall authorize and provide suitable transportation for the crew.

NOTE: Suitable transportation includes carrier owned or provided passenger carrying motor vehicles or taxi, but excludes other forms of public transportation.

(d) On runs established hereunder crews will be allowed a \$4.15 meal allowance after 4 hours at the away-from-home terminal and another \$4.15 allowance after being held an additional 8 hours.

(e) In order to expedite the movement of interdivisional runs, crews on runs of miles equal to or less than the number encompassed in the basic day will not stop to eat except in cases of emergency or unusual delays. For crews on longer runs, the carrier shall determine the conditions under which such crews may stop to eat. When crews on such runs are not permitted to stop to eat, crew members shall be paid an allowance of \$1.50 for the trip.

(f) The foregoing provisions (a) through (e) do not preclude the parties from negotiating on other terms and conditions of work.

Bearing the afore stated considerations in mind, The Board will address the issues raised by the Organization and rules as follows.

Issue No. 1, requests a provision to substitute a cash payment for certain protective benefits. This board has no authority, under these circumstances, to enhance or eliminate moving benefits obtained through collective bargaining. Article IX, Section 7 of the 1985 UTU National Agreement prescribes the basic protection the employees are entitled to receive. The board recognizes that the negotiating Parties, to the rejected agreement covering interdivisional service between Fargo and Bismarck, determined that it would be appropriate to clarify and in some areas expand the basic National Agreement protective benefits. The conditions set forth in Section 19 of the rejected agreement will therefore be included, unchanged as part of the attached agreement, as will pertinent side letters with certain modifications forthcoming in this Award.

With regard to making provision for a monetary housing allowance. This Board determines that a unique situation exists between Jamestown and Bismarck-Mandan which warrants payment of a special allowance to discount the cost of comparable housing at Bismarck-Mandan. Therefore, a monetary allowance shall be included under the terms and conditions set forth below. This Board further determines that the elements associated with the computation and payment of comparable housing allowances are particular characteristics differing from location to location. The decision here is intended to apply exclusively to the situation existing at Jamestown and sets no precedent for the payment of housing allowances in connection with other interdivisional service.

1. Carrier will provide a monetary allowance to the employees covered under Side Letter No. 1 to the attached Agreement. The purpose of the allowance is to provide financial assistance to Jamestown employees who relocate their permanent residence to the Bismarck/Mandan area and shall be paid in addition to the moving, real estate and all other protective benefits the employee's are entitled to receive.
2. The housing allowance shall be an amount equal to 22% of the appraised value of the employee's home, but shall not exceed the amount of \$16,000.

Issue No. 2, requests protective benefits for Jamestown resident employees who elected to become engineers and are currently commuting to work as engineers at other locations. The Board recognizes that this category of employee is being forced to leave Jamestown to protect engineer positions under rules of the engineer's craft. Moreover, such employees, with dual engineer-groundmen seniority, return to Jamestown when their services as engineer are not required elsewhere and work the ground service jobs that will be eliminated and relocated to Bismarck with the advent of interdivisional runs. Agreement provisions set forth in Article XIII - Protection of Employees, of the January 27, 1972 UTU National Agreement stipulate that: "The scope and purpose of this Article XIII are to provide. . .for fair and equitable arrangements to protect the interests of certain of the carrier's employees represented by the United Transportation Union. . .". On this property UTU does not represent the engineer craft. This Board determines that Jamestown employees holding dual engineer-groundmen seniority do not fall within the purview of Article XIII when they

are required to relocate to a different point of employment on the seniority district as a condition of their engineer seniority. Such employees, who have continued to maintain their permanent residence in the Jamestown area, if otherwise qualified, will be entitled to receive the protective benefits of this agreement at the time when they are entitled to exercise their groundmen's seniority and would have been permitted to return to a regular or extra conductor or brakeman or fireman's position at Jamestown that was eliminated by the establishment of interdivisional service.

Issue No. 3, requests a permanent three hour call to provide adequate time for employees who remain in Jamestown to report for service at Bismarck. The Board notes that the Parties addressed this issue in side letter No. 4 to the rejected agreement, but not apparently to the employees satisfaction. It is the Carrier's position that agreement guidelines contemplate the employees will move and establish residence at their new point of employment. Carrier does not intend to permit the homes to linger on the market, preferring it's employees reside in the area where they report for work and requests an agreement provision which does not encourage otherwise. This Board agrees with the Carrier's position. The Carrier will determine the length of any call in excess of time provided under existing Schedule Rules which will be given to the Jamestown employees who are in the process of relocating their residence to the Bismarck-Mandan area. The penalty to the Carrier for failure to properly call the employees shall be as provided under existing Schedule Rules.

Issue No. 4, requests that implementation of this interdivisional service run be delayed until the end of the school year. The Board fully understands the underlying basis for the employees' request and is not without sympathy. However, Carrier obtained the right to establish interdivisional service runs under the provisions of Article IX of the 1985 National Agreement. Six (6) years have passed since the Carrier requested an agreement with the employees and the Board finds that it would be untenable to further delay the Carrier's ability to establish interdivisional service through Jamestown.

Issue No. 5, requests a provision providing payment of a penalty in situations when crews are called on duty in turn and subsequently are run around at terminals. The Organization insists that a substantial penalty is necessary to deter terminal managers from manipulating crews by assigning less desirable trains on the basis of favoritism or for other specious reasons. The Carrier does not object to exchanging trains when a crew is delayed in departing a terminal except in situations which would result in delay to time sensitive shipments or otherwise impede the operating efficiency necessary to compete for available transportation business. The Board notes that the Parties addressed this matter under Section 4 of the rejected Agreement and determines that the provisions for restoration of turn, contained therein, adequately protect the interests of crews who are runaround after reporting on duty.

Issue No. 6, requests a provision regulating the number of crews assigned to this interdivisional service run to provide reasonable conditions with regard to time on duty, length of time at home and lay off privileges. The Organization takes the position that a provision regulating the number of crews to earn the maximum average of 5000 line miles per month would produce stressful working conditions and compromise safety. The Organization requests a provision regulating the number of crews to earn between 4000 and 4500 miles per month based on the belief that train

speed, weather conditions and physical plant in this territory will require the employees to be away from home and work an excessive amount of time if the pool is regulated to average over 4500 line miles per month. Carrier argues that it is entitled to full time employment and that the very nature of railroad service requires the employees to be away from home as part of the job. The Carrier requests a provision granting Carrier the latitude to manage the pool to average between 4300 and 5000 miles per month, in order to protect the contingencies of service, and to stabilize the number of crews assigned to work in interdivisional service which will permit Carrier to more efficiently regulate the work load of the employees. The Board finds that the mileage regulation provisions contained in Section 1 of the rejected agreement are arguably reasonable from both perspectives and meet the guideline criteria set forth under Article IX, Section 2 of the 1985 Agreement. The Board determines that the pool should be regulated, as close as possible, to average 4500 miles per month, but not to exceed 5000 miles per month.

The Board has addressed the areas of disagreement in the Parties failed negotiations for an Agreement covering the establishment and operation of Interdivisional Service between Fargo/Dilworth and Bismarck/Mandan through the home terminal at Jamestown, North Dakota. The record in this case is evidence of protracted negotiations and pervasive points of argument which required six years and hundreds of hours before the Parties were capable of reaching an agreement. The complexities of interdivisional service were carefully considered by the Parties and a multitude of the related issues were addressed and resolved through the rigors of collective bargaining. The rejected Agreement and nine (9) Side Letters, as modified to conform with the six (6) decisions set forth above, are hereby incorporated in this Award.

AWARD

The dispute is resolved in accordance with the findings and decision set forth above.


Joseph Lazar, Arbitrator

Dated this 27th day of January, 1994.

COPY

AGREEMENT

between

BURLINGTON NORTHERN RAILROAD COMPANY

And The

UNITED TRANSPORTATION UNION (C&T&E)

(Former NP)

Pursuant to Article IX of the October 31, 1985 UTU National Agreement and the Carrier's notice dated January 6, 1988 to establish interseniority district through freight service between Fargo/Dilworth and Bismarck, ND, it is agreed that this service may be operated under the following conditions:

Section 1. A double ended pool of crews will be operated with home terminals at Fargo/Dilworth and Bismarck, ND sufficient to handle the service between these terminals. A pool of crews will be operated at each terminal in the manner prescribed hereinafter, with the understanding that the total number of crews in the pool will be regulated, as close as possible, to average 4500 line miles per month, but not to exceed 5000 line miles per month. Crews will consist of a conductor and a number of brakemen as provided under the May 20, 1993 Crew Consist Agreement.

Section 2. The service established by this agreement will be equalized in order to protect the prior rights of employees due to its operation over two existing seniority districts. Equalization of work between the employees will be 47.77% Minnesota Seniority District and 52.23% Montana-Dakota Seniority District.

Mileage and ratio of jobs:

Fargo/Dilworth-Jamestown 97.4 miles 47.77%
Jamestown-Bismarck 106.5 miles 52.23%

	Bismarck	Fargo/Dilworth
<u>Total crews required</u>	<u>(Montana/Dakota Dist)</u>	<u>(Minnesota Dist)</u>
15 crews	8	7
16 crews	8	8
17 crews	9	8
18 crews	9	9
19 crews	10	9
20 crews	10	10
21 crews	11	10
22 crews	11	11
23 crews	12	11
24 crews	13	11
25 crews	13	12
26 crews	14	12

27 crews	14	13
28 crews	15	13
29 crews	15	14
30 crews	16	14
31 crews	16	15
32 crews	17	15
33 crews	17	16
34 crews	18	16
35 crews	18	17
36 crews	19	17
37 crews	19	18
38 crews	20	18
39 crews	20	19
40 crews	21	19
41 crews	21	20
42 crews	22	20
43 crews	22	21
44 crews	23	21
45 crews	24	21
46 crews	24	22
47 crews	25	22
48 crews	25	23
49 crews	26	23
50 crews	26	24

Additional crews will be added to the pool at the exact same ratio and proportion.

Section 3.(a) Whenever the pool crews of one seniority district accumulate in excess of 4000 line miles above their percentage allowance, an adjustment will be made by the Carrier and the local committees by reducing the number of pool crews assigned from the seniority district having the over mileage or by increasing the number of pool crews assigned from the seniority district having the under mileage, or both.

(b) For the purpose of equalizing the mileage in this service, the actual line miles of each round trip tour of duty (407.8) will be used. When a brakeman is needed to assist a conductor only crew, an extra brakeman will be called from the appropriate extra board at the source of supply for pool freight service at the home terminal of the pool where the conductor is employed. Such extra brakemen are restricted to working only with conductors employed at the same home terminal. Mileage tabulation will therefore be based entirely on the number of trips made by conductors employed in the freight pools headquartered at Bismarck and Fargo/Dilworth. If, during such a tour, additional line miles are run, the conductor of that crew will furnish the Carrier a statement showing the miles to be included in the count. The Carrier will then furnish the local chairmen a statement showing the line miles run by the crews in this interdivisional service not later than the 17th day of the month showing the miles run during the first 15 days of the month. A similar statement will be furnished by the Carrier on the 2nd day of the following month showing the line miles run during the period from the 16th day to include the last day of the previous month. A copy of these statements will also be furnished to the General Chairman.

(c) The statements referred to above will be used as the basis for making the adjustments referred to in paragraph (a) of this section. Such adjustments will be made prior to 11:00 a.m. on the 1st day and the 16th day of each month.

Section 4.(a) Crews will be called and run in conformity with the rotation established at each terminal (first in-first out), provided that the first-out crew has sufficient time remaining under the applicable Hours of Service Law to perform the service for which they stand.

(b) Crews operating in this interdivisional service, who are not called in turn for this service, will be allowed 1 basic day at the unassigned less than 100 mile through freight rate for each time they are runaround, except as otherwise provided herein. Crews runaround shall retain their position on the board.

(c) Crew members assigned to this interdivisional service will not be entitled to runaround payments based on departure from the initial terminal of the trip in other than the order of call, runaround payment account not rested, and for other exceptions specified in this Agreement.

(d) If the first-out crew does not have sufficient time remaining, to deliver their train to either their home or distant terminal, under the Hours of Service Law, the next following crew which has sufficient time to perform the service in question will be used without penalty. If no crew having sufficient time to perform the service is available, then an extra crew may be set up to operate in the pool for one (1) round trip.

Section 5. Upon arrival at the objective terminal, a crew runaround after reporting for service will be restored to its original position with respect to other crews having the same home terminal if rested for its next tour of duty. If a crew is not returned to its proper turn at the away-from-home terminal, it will be placed in proper position upon arrival at the home terminal, except if not rested for the next tour out of that terminal it will establish a new position in the pool. The conductor of a crew runaround will be responsible for notifying the Carrier of the crew's proper position.

Section 6. Conductors and trainmen will only be relieved (allowed to mark or lay off) at their respective home terminal, except in cases of emergency as stipulated below.

(a) Interdivisional Crews consisting of a conductor and one or more brakemen.

Vacant positions of conductors and trainmen relieved at the distant terminal in such emergency will be filled by employees standing for extra service from the source of supply at the distant terminal and such extra employees will be deadheaded to their home terminal as soon as possible after arrival at the opposite terminal.

(b) Interdivisional crews consisting of a conductor.

In conductor only service the vacant position of a conductor relieved at the distant terminal in such emergency will be filled by the first-out promoted brakeman who was called extra from the source of supply maintained at the home terminal of that Conductor and thereafter was separated from his crew at the distant terminal under provisions of the May 20, 1993 Crew Consist Agreement. If such promoted brakeman is not available the position will be filled by an extra conductor in line with the procedures set forth under Section 6, (a), above.

Section 7. Normally, conductors and brakemen working or deadheading via freight train in this long pool crew service will not be permitted to stop their train for the purpose of taking a meal but, instead, will be allowed \$5.00. However, if an employee requests to be permitted to leave the train in order to eat en route and if granted permission to do so, the employee will not be entitled to the \$5.00 allowance. If the meal allowance of \$5.00, now provided for in the National Agreement pertaining to expenses away from home is subsequently increased, the amount provided for in this paragraph will be increased to the same extent.

Section 8. Suitable lodging, where applicable, will be provided by the Carrier pursuant to Memorandum of Agreement (Lodging Agreement) signed July 16, 1980, effective August 1, 1980.

Section 9. Wash room facilities and individual lockers (21" x 18" x 72") will be provided for employees assigned to this interdivisional service at the home and away-from-home terminals.

Section 10.(a) Crew members assigned to this service will not be used for short turnaround service between the two established terminals except in an emergency. Short turnaround service from the two terminals will be provided by crews in an unassigned short pool or from the extra list at the home terminal which would have performed the service prior to the advent of this agreement. Interdivisional crews used in emergency under this paragraph will be relieved by a crew regularly entitled to the service as soon as possible.

(b) Crew members assigned to work in this interdivisional service, who are used in other than an emergency (emergency defined as conditions such as inclement weather, wrecks, washouts, floods, fire, etc.) to provide other service as stated above, will be paid not less than they would have earned had they remained on their interdivisional pool freight turn.

Section 11.(a) Nothing contained in this agreement is intended to prohibit crews in this interdivisional service from being used on trains that only traverse a segment of the territory between Fargo/Dilworth and Bismarck, ND. Such crews must either work or deadhead to their objective terminal and shall be compensated for deadheading and service under the provisions set forth in Article VI, Section 1(a) of the October 31, 1985 National Agreement. When a crew has been called for service and subsequently is required to deadhead (or otherwise performs a combination of deadheading and service during a tour of duty), the crew will receive not less than the actual 203.9 line miles of the assignment for the tour of duty.

(b) It is not the intent of this agreement that these interdivisional crews be used in work or wrecker service. However, it is recognized that these crews may be so used in case of emergency as defined in Section 10(b) and, if so used, will be handled in accordance with the provisions of Section 10(a).

Section 12. When a crew in this service has been called and departs the terminal, it will be run or deadheaded to the opposite terminal, except in emergency. A crew that does not depart the terminal will be restored to the relative position which it held with respect to other crews in the terminal. Crews called and not used under this paragraph will be compensated pursuant to Rule 65(b) of the Schedule for Train and Yardmen (former NP) with a minimum of a basic day's pay at the unassigned less than 100 mile through freight rate. Crews called and not used under this paragraph will not be entitled to turnaround payments while securing rest.

NOTE: The provisions of this Section do not apply to individual extra employees when the call and release occurs at their extra board terminal; but, instead, such extra employees will be handled (and paid) in accordance with applicable schedule rules.

Section 13. Crew members required to report for duty or to be relieved from duty at a point other than the on and off duty points fixed for the service established shall be authorized and provided suitable transportation pursuant to Article IX, Section 2(c) of the October 31, 1985 UTU National Agreement.

Section 14(a). The parties understand that whenever crews are required to deadhead on a freight train adequate seating will be provided for all crew members. Crews, when practicable, will deadhead via Carrier owned or provided passenger carrying motor vehicle, taxi, or Amtrak trains. Crew members may deadhead via air provided the aircraft is operated by a regularly scheduled commercial airline, or its affiliate, holding a C.F.R. Title 14, Part 121 or 135 Certificate. It is understood that certain employees may have physical or psychological conditions which prevent flying and they will not be required to do so. Such employees will notify the Carrier in writing that they are incapable of flying, and will be permitted to lay off for that trip with the understanding that the employee is not thereby entitled to payments for lost wages, runarounds or other penalties as a result of the refusal to deadhead by air craft. An employee who is called at the away-from-home terminal to deadhead via aircraft will be permitted to return to the home terminal by train or another method of conveyance and shall be compensated for deadheading.

(b) When two crews are called, one for deadhead and the other for service, and the first crew lacks sufficient time under the Hours of Service Law to perform the service, the second crew may be used for the service trip while the first crew deadheads.

(c) In order to address possible inequity between crews being called to deadhead, a crew which has already performed a terminal to terminal deadhead during the current payroll period will not be called for a subsequent deadhead during the same payroll period if there is another crew with the same home terminal available which has not performed a terminal to terminal deadhead during the current payroll period. The involved crews will be restored to their relative position upon arrival at their home terminal. It is understood that there will be no runarounds generated as a result of this handling and this agreement does not guarantee that any given crew will not be required to perform more than one terminal to terminal deadhead during any single payroll period.

Section 15. Interseniorty district crews may be called to "deadhead out of turn" from their away-from-home terminal, at any time after arrival, regardless of their standing in relation to at home crews. It is understood that not more than two (2) away-from-home terminal crews may be deadheaded out of turn before a home terminal crew is ordered to work or deadhead, unless previously agreed upon by both the affected Local Chairman and the appropriate Carrier Officer. Crews so deadheaded, under this provision, will not constitute a runaround of a home terminal crew. It is further understood that a crew deadheaded, under this provision, may not runaround another crew with the same home terminal.

Section 16. Employees assigned to this interseniorty district freight service who are entitled to take personal leave days pursuant to the provisions of the applicable crew consist agreement will be allowed to compact and be paid for up to four (4) personal leave days

commencing at the time the crew is ordered at the home terminal until the turn is next again due to be ordered at the home terminal. This Section does not otherwise change any part of Article 20 of the December 5, 1980 Crew Consist Agreement.

Section 17.(a) Disciplinary hearings or investigations involving crew members in this interdivisional service will be held at their home terminal, except when the majority of the principals and witnesses who are to attend live at other locations. If the investigation is held at other than the home terminal, crew members will be paid for actual reasonable travel time and the time consumed by the hearing on a minute basis at the pro rata rate of pay which they received for the last service performed.

(b) Should a crew member lose a full round trip as a result of attending an investigation which does not establish a violation, which results in his record suspension, suspension, or discharge, he will be compensated under this Section only for the equivalent of the earnings of the appropriate crew member in whose place he would have worked.

(c) If it is established by the evidence heard that an employee charged is found guilty and he is assessed record suspension, suspension, or dismissed, no compensation under paragraphs (a) and (b) of this Section will be allowed.

(d) Should a crew member be tied up at the location where the investigation is held, the provisions of Article II (Expenses Away from Home) of the June 25, 1964 Agreement, as amended, will apply. Transportation to and from investigations held at other than home terminal will be provided by the Carrier.

(e) Travel to attend investigations will not be subject to payment under any rule applicable to deadheading.

Section 18. When this interseniority district service is initiated, conductors will not be required to qualify themselves over the territory with which they are not acquainted on their own time. If there is no member of the crew on the train who is acquainted with the territory, a pilot will be provided. If qualification becomes necessary, the Carrier will determine the number of trips a conductor should make to become qualified.

Section 19.(a) Conductors, brakemen and firemen, who are affected as a result of this agreement, and who have not previously participated in receiving similar benefits allowable under the Brotherhood of Locomotive Engineers agreement applicable to interdivisional service in this corridor, shall, pursuant to Section 7, Article IX of the October 31, 1985 UTU National Agreement, be afforded the protective conditions set forth in Article XIII of the January 27, 1972 UTU National Agreement.

(b) It is recognized that employees protected under the provisions of the Burlington Northern Merger Protective Agreements dated December 14, 1965, January 10, 1968 and January 15, 1968, who are affected as a result of this agreement, shall have the option to elect for the protective conditions provided therein, including those as defined under Section 6 of the applicable agreement, instead of those provided in Article XIII of the January 27, 1972 National Agreement.

(c) An eligible employee who once selects an option (a or b) under this paragraph shall not later be allowed to change that election.

(d) It is agreed that all of the applicable understandings and awards pertaining to the normal application of merger protective conditions will apply to a covered employee selecting protection under (b) above.

Section 20. Nothing in this Article shall be construed as depriving any employee of any rights or benefits or eliminating any obligations which such employee may have under any existing job security or other protective conditions or arrangement; provided, that there shall be no duplication or pyramiding of benefits to any employees, and provided further, that the benefits under this Article, or any other arrangement, shall be construed to include the conditions, responsibilities and obligations accompanying such benefits.

Section 21. This agreement does not supersede or modify the provisions of any rules or agreements, except as specifically provided herein.

Section 22. This agreement shall be effective upon the date signed and may be implemented by the Carrier at any time thereafter.

Signed at St. Paul, Minnesota this _____ day of _____, 1993.

For the
UNITED TRANSPORTATION UNION

For the
BURLINGTON NORTHERN RAILROAD

SIDE LETTER NO. 1

Mr. R. L. Marceau
Asst. General Chairman - UTU
336 North Robert St., Suite 1206
St. Paul, Minnesota 55101

Dear Mr. Marceau:

This is to confirm our various discussions concerning Section 19 of the Agreement dated _____, 1993, establishing interdivisional service between Fargo/Dilworth and Bismarck, ND.

Montana-Dakota Seniority District employees (whose principle residence is closer to Jamestown, ND than Bismarck, ND via the most direct highway route) who are in active service, furloughed, or are assigned to either a voluntary surplus or reserve status position will be afforded the change of residence benefits provided in Article XIII, Section 9 of the January 27, 1972 UTU National Agreement and Article IX, Section 7 of the October 31, 1985 UTU National Agreement. Such benefits are applicable to an employee if title to the home is solely in his/her spouse's name provided the home is the employee's principal place of residence and will also apply to employees whose principle place of residence is a mobile or modular home.

The term "residence" as used herein means the single primary abode of the employee, consisting of not more than one dwelling unit utilized for residential purposes only and on a building site of not more than two acres (or the minimum site required by zoning regulations in the community, if greater), including house trailer if permanently affixed to that site.

The Carrier will provide a monetary allowance to the employees covered under this side letter. The purpose of the allowance is to provide financial assistance to Jamestown employees who relocate their permanent residence to the Bismarck/Mandan area and shall be paid in addition to the moving, real estate and all other protective benefits the employees are entitled to receive.

The housing allowance shall be an amount equal to 22% of the appraised value of the employee's home, but shall not exceed the amount of \$16,000.

If the foregoing correctly sets forth the understanding reached in conference, please sign in the space provided below.

Sincerely,

AGREED:

SIDE LETTER NO. 2

**Mr. R. L. Marceau
Asst. General Chairman - UTU
336 North Robert St., Suite 1206
St. Paul, Minnesota 55101**

Dear Mr. Marceau:

This is to confirm our various discussions concerning Section 19 of the Agreement dated _____, 1993, establishing interdivisional service between Fargo/Dilworth and Bismarck, ND.

During our discussions of this Section, it was agreed that if an employee lost time as a result of conducting union business and was entitled to protection as a result of the implementation of this interdivisional service, such time would be counted in the computation of their protection rates under this agreement. It further was agreed that the Organization would provide the Carrier a record of the lost earnings of such employees.

Sincerely,

AGREED:

SIDE LETTER NO. 3

**Mr. R. L. Marceau
Asst. General Chairman - UTU
336 North Robert St., Suite 1206
St. Paul, Minnesota 55101**

Dear Mr. Marceau:

This is to confirm our various discussions concerning the agreement dated _____, 1993, establishing interdivisional service between Fargo/Dilworth and Bismarck, ND.

During our discussions of this agreement, it was agreed that employees transferring to Bismarck/Mandan will receive a driving allowance at the rate per mile indicated by the Internal Revenue Service for driving between their present residence and their new on duty point in Bismarck/Mandan. This driving allowance will be available commencing with the implementation of this agreement and shall continue until such time as the employee disposes of his/her former residence, but not to exceed six (6) months from the date this agreement is implemented.

As an alternative to driving, an employee would be entitled to utilize the Company provided lodging facilities in Bismarck/Mandan for the same time period.

If the foregoing correctly sets forth the understanding reached in conference, please affix your signature in the space provided below.

Sincerely,

AGREED:

SIDE LETTER NO. 4

**Mr. R. L. Marceau
Asst. General Chairman - UTU
336 North Robert St., Suite 1206
St. Paul, Minnesota 55101**

Dear Mr. Marceau:

The Carrier will determine the length of any call in excess of time provided under existing Schedule Rules which will be given to the Jamestown employees who are in the process of relocating their residence to the Bismarck-Mandan area. The penalty to the Carrier for failure to properly call the employees shall be as provided under existing Schedule Rules.

Sincerely,

AGREED:

SIDE LETTER NO. 5

**Mr. R. L. Marceau
Asst. General Chairman - UTU
336 North Robert St., Suite 1206
St. Paul, Minnesota 55101**

Dear Mr. Marceau:

This is to confirm our various discussions concerning board standings at the home and away from home terminals in connection with the agreement dated _____ establishing interdivisional service between Fargo/Dilworth and Bismarck, ND.

During our discussion, it was agreed that for board standing purposes only, crews would be placed on the board on a first in, first out basis according to the time the crew passed the terminal arrival point. Accordingly, terminal arrival points are designated as the switch at West Fargo (MP 12.9) for Fargo/Dilworth and the switch at East Mandan (MP 198.9) for Bismarck, ND. This does not change existing Final Terminal Delay rules.

Crews deadheading into a terminal will be placed on the board at the time the crew arrives at the off-duty location.

If the foregoing correctly sets forth the understanding reached in conference, please affix your signature in the space provided below.

Sincerely,

AGREED:

SIDE LETTER NO. 6

**Mr. R. L. Marceau
Asst. General Chairman - UTU
336 North Robert St., Suite 1206
St. Paul, Minnesota 55101**

Dear Mr. Marceau:

**This is to confirm our various discussions concerning the agreement dated _____
establishing interdivisional service between Fargo/Dilworth and Bismarck, ND.**

During our discussions of this agreement, the issue of utilizing Company provided lodging facilities in Bismarck/Mandan was reviewed. It was agreed that commencing with implementation of this agreement employees, changing their residence from Jamestown to Bismarck/Mandan may utilize the lodging facilities when inclement weather makes it unsafe for the employee to drive to or from Bismarck. This arrangement will continue until such time as the employee disposes of his/her former residence.

Example: Because of snow or ice conditions, an employee could utilize the lodging facility in order to be available for call.

If the foregoing correctly sets forth the understanding reached in conference, please sign in the space provided below.

Sincerely,

AGREED:

SIDE LETTER NO. 7

**Mr. R. L. Marceau
Asst. General Chairman - UTU
336 North Robert St., Suite 1206
St. Paul, Minnesota 55101**

Dear Mr. Marceau:

This has reference to the Memorandum of Agreement establishing interdivisional service between Fargo/Dilworth and Bismarck, ND.

During our negotiations the Organization expressed concern that when several crews have deadheaded during a pay period, the procedures established under Section 14 (c) may produce conditions which would result in following crews becoming susceptible to miss-call. It was therefore agreed that the Organization may notify the Carrier in writing that the procedures established under Section 14 (c) are cancelled. Crews thereafter will be called and run in conformity with the rotation established at each terminal as stipulated under Section 14(a), regardless of the number of deadhead trips previously performed.

If the foregoing correctly describes our understanding, please signify in the space provided below.

Sincerely,

AGREED:

SIDE LETTER NO. 8

Mr. R. L. Marceau
Asst. General Chairman - UTU
336 North Robert St., Suite 1206
St. Paul, Minnesota 55101

Dear Mr. Marceau:

This refers to the Agreement signed this date concerning the establishment of interdivisional service between Fargo/Dilworth and Bismarck, ND.

Article VIII - Road Yard and Incidental Work of the October 31, 1985 National Agreement provides in Section 1(d) that road crews may perform switching within switching limits without payment at times no yard crew is on duty except, on Carriers upon which the provisions of Section 1 of Article V of the June 25, 1964 Agreement are applicable, time consumed in switching under that provision "shall continue to be counted as switching time."

We discussed the performance of station switching at Jamestown, ND by the interdivisional service crews operating pursuant to Section 1 of the Agreement made this date and recognize that crews consisting of a conductor may not perform station switching at Jamestown, ND under provisions contained in the May 20, 1993 Crew Consist Agreement.

It is understood and agreed that crews consisting of a conductor and a number of brakemen may perform station switching at Jamestown, ND and that each crew member with seniority established prior to November 1, 1985 will be compensated for the actual time consumed with a minimum of one hour at road service rates as provided under the May 1 and May 15, 1969 Implementing Agreements.

Sincerely,

AGREED:

SIDE LETTER NO. 9

Mr. R. L. Marceau
Asst. General Chairman - UTU
336 North Robert St., Suite 1206
St. Paul, Minnesota 55101

Dear Mr. Marceau:

In connection with our negotiation of interdivisional seniority district service between Fargo/Dilworth and Mandan/Bismarck, the parties recognize that there are unique circumstances involved which have had a significant effect on the respective positions taken during the process. Therefore, it was understood and agreed that neither party would refer to this Agreement, in any forum, as being representative of acceptable terms and conditions which would be standard to any other existing or proposed interdivisional service.

Sincerely,

AGREED: