

MEMORANDUM OF AGREEMENT
Between
BURLINGTON NORTHERN RAILROAD COMPANY
(Former CB&Q)
And
UNITED TRANSPORTATION UNION (C,T&Y)

IT IS AGREED:

The following portion of the "National Investigation Rule" is adopted in lieu of existing agreements, understandings and practices in regard to discipline investigations (hearings) and the assessment of discipline.

SECTION A. General Requirements

1. An employee shall not be discharged, suspended or otherwise discipline without just cause and without a fair and impartial hearing, except that an employee may waive a hearing in accordance with Section B(2) of this Article
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2. An employee shall not be held from service pending hearing except in serious cases, such as theft, altercation, Rule 'G' violation, insubordination, major accidents, serious misconduct and major offenses whereby the employee's retention in service could be hazardous.

SECTION B. Formal Hearing

1. Notice of Hearing

(a) An employee directed to attend a formal hearing to determine the employee's responsibility, if any, in connection with an occurrence or incident shall be notified in writing by certified mail, return receipt requested, to the last known address within a reasonable period of time but not to exceed ten (10) days from the date of occurrence, or where the occurrence is of a nature not immediately known to the employee's supervisor(s), from the time they first have knowledge thereof. The notice shall contain a clear and specific statement of the date, time, place and nature of the occurrence or incident that is to be the subject of the hearing. The notice shall be sent in duplicate in order that the employee may transmit a copy to the employee's representative if the employee desires.

NOTE: This rule does not preclude delivery of the notice at reasonable times by a carrier representative. Such delivery at the employee's home shall be made

only when other means of delivery are not practicable.

(b) The notice shall state the date, time and place the hearing is to be held which shall not be less than five (5) days after the date of notification or more than ten (10) days after the date of notification unless otherwise agreed to.

(c) The Carrier will have the responsibility of producing sufficient witnesses to develop the facts concerning the incident or occurrence being investigated and the notice of hearing shall include the name of each person receiving the notice and the names of all witnesses known at the time of the notice that the carrier intends to have in attendance at the hearing. The employee or the employee's representative may bring to the attention of the responsible carrier official the name or names of other witnesses who may provide material facts.

(d) The notice shall inform each employee so notified of the right to representation and to bring in witnesses.

(e) If an employee who is to receive a notice of hearing will not be permitted to exercise the option under Section B(2) of this Article, the notice of hearing shall so specify.

2. Waiver of Hearing

(a) An employee who has been notified to appear for a hearing shall have the option, prior to the hearing, to discuss with the appropriate carrier official, either personally, through or with the employee's representative, the act or occurrence and the employee's responsibility, if any.

If disposition of the charges is made on the basis of the employee's acknowledgement 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 maximum discipline which may be imposed for employee's acceptance of responsibility.

Disposition of cases under this paragraph

(a) shall not establish precedents in the handling of any other cases.

(b) No minutes or other record will be made of the discussions and, if the parties are unable to reach an agreed upon disposition on this basis, no reference shall

be made to these discussions by either of the parties in any subsequent handling of the charges under the discipline procedure.

3. Postponements of Hearing

Consistent with the provisions of Section A. 1 for a fair and impartial hearing, postponements of the formal hearing may be requested by either party on reasonable grounds and consent shall not be unreasonably withheld.

4. Conduct of Hearing

(a) The hearing shall be conducted by an officer of the employing carrier who may be assisted by other officers. If practicable to do so, the hearing shall be held at the home terminal of the employee involved or in the case where more than one employee is involved at the home terminal of the majority of the employees.

NOTE: When another carrier is involved, this will not preclude an officer of that carrier from conducting the hearing or assisting in the hearing recognizing, in any case, that there shall be only one presiding (hearing) officer.

(b) The employee shall have the right to be represented at the hearing by an employee or an organization representative of the employee's own choosing. The employee and/or the employee's representative shall have the right to introduce witnesses in the employee's behalf, to hear all testimony introduced, and to question all witnesses.

(c) An employee's personal service record will not be included in or referred to in the hearing or in the transcript of the proceedings of the hearing. The employee's personal record may be taken into consideration in assessing the amount of discipline imposed, if any.

(d) If the formal hearing is not held within the time limits specified in Section B. 1(b), the employee will not be disciplined, will be paid for all time lost, and no disciplinary entry will be made in the employee's personal service record.

(e) The employee and witnesses will be permitted time off if requested in order to have sufficient rest prior to and following the hearing.

SECTION C. Transcript of Hearing

It is recognized that the Carrier is responsible for ensuring that an accurate transcript of the hearing proceedings is made. However, this will not preclude the employee or employee's representative from making a record of the proceedings for their own use.

If, during the hearing, a partial transcript is made prior to conclusion of the hearing such partial transcript will be made available to the employee and employee's representative upon request. If electronic recording devices are used and recordings are available for review by carrier officials, they also shall be made available upon request for review by the employee and employee's representative at the appropriate carrier facility.

In any cases where discipline is assessed, or in cases where discipline is not assessed but nevertheless there is a transcript, copy of the transcript will be furnished to the employee and the employee's representative promptly upon request.

SECTION D. Hearing Decision

1. If the formal hearing results in assessment of discipline, such decision shall be rendered within fifteen (15) calendar days from the date the hearing is concluded, and the employee will be notified in writing of the reason therefore by certified or registered U. S. mail with additional copy provided for the employee representative.

NOTE: This rule does not preclude delivery of the decision at reasonable times by a carrier representative. Such delivery at the employee's home shall be made only when other means of delivery are not practicable.

2. If the hearing does not result in discipline being assessed, any charges related thereto entered in the employee's personal service record shall be voided.

SECTION E. Compensation for Attending Hearings

1. Witnesses, as referred to in Section B. 1. (c), who are directed by the carrier to attend a hearing, shall be compensated for all time lost and, in addition, will be reimbursed for actual, reasonable and necessary expenses incurred for each day of the hearing. Where no time is lost they will be paid for actual time attending the

hearing, with a minimum of four (4) hours, to be paid for at the rate of pay applicable to the last service performed.

2. When an employee involved in a formal hearing is not assessed discipline, the employee shall be compensated for all time lost. In addition, the employee will be reimbursed for actual, reasonable and necessary expenses incurred for each day of the hearing. Where no time is lost the employee shall be paid for actual time attending the hearing with a minimum of four (4) hours for each day of the hearing, to be paid for at the rate of pay applicable to the last service performed.

SECTION F. Time Limit on Appeals

The current Time Limit on Claims Rule (BN Agreement 3/14/84 OPS. 19-84) between the parties hereto, insofar as it applies to the presentation and appellant handling of discipline, shall continue to apply.

This agreement signed at Omaha, Neb., this 24th day of October, 1984, and effective November 1, 1984.

For the
UNITED TRANSPORTATION
UNION (C,T&Y)

By H. D. Metz
General Chairman

By Bur Long
Associate Chairman

For the
BURLINGTON NORTHERN RAILROAD
COMPANY (former CB&Q)

By D. J. Rancieff
Asst. Vice President
Labor Relations

By C. J. Bryan
Senior Vice President-
Regional Operations