

**MEMORANDUM OF AGREEMENT
BETWEEN
BURLINGTON NORTHERN RAILROAD COMPANY
AND THE
UNITED TRANSPORTATION UNION (FWD)**

RE: Uniform Investigation Rule for UTU represented employees.

ARTICLE I - GENERAL REQUIREMENTS

- (a) No employee shall be discharged, suspended, censured (reprimanded), or otherwise disciplined without just cause determined by a fair and impartial hearing, except that an employee may waive a hearing in accordance with Article II(b) of this Agreement.
- (b) No employee shall be held from service pending hearing except in serious cases, such as theft, altercation, Rule 'G' violation, insubordination or other such serious misconduct, whereby the employee's retention in service could be hazardous.
- (c) Employees alleging unjust treatment may file a written request with the appropriate Carrier Officer for a formal investigation of the grievance.

ARTICLE II - FORMAL HEARING

- (a) Notice of Hearing
 - (1) An employee directed to attend a hearing to determine responsibility, if any, in connection with an incident shall be notified in writing by certified mail, return receipt requested, to the last known address within **ten (10) days** from the date of occurrence. When an occurrence is not immediately known to the Carrier, the employee shall be notified, as provided above, within **ten (10) days** from the time Carrier has knowledge of the occurrence upon which the charge is based. The notice shall contain a clear and specific statement of the matters to be investigated and the nature of the charge or charges which are brought against those named as principals. It shall include the date, time, place and nature of the occurrence or incident. The notice shall be sent in duplicate by certified return receipt so that the employee may *furnish* copy to his/her representative.

NOTE: This Rule does not preclude a Carrier representative from delivering the notice at the employee's work location. Such delivery shall be evidenced by a receipt signed by the accused employee.

(2) Unless otherwise agreed to, the notice shall state the date, time and place the hearing is to be held, which shall not be less than **five (5) days** nor more than **ten (10) days** after the date of notification. Date of notification will be the date the notice is received or first attempted delivery of certified mail (return receipt requested) notice to the last address on record with the Carrier's local officers, whichever date is earliest.

(3) The Carrier will be responsible to produce 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, including all witnesses the Carrier intends to call. The employee or the employee's representative may notify the Carrier of other witnesses who may provide material facts, understanding that this does not include an accumulation of witnesses with the same information. Carrier will direct notice to such witnesses, who shall be compensated under provisions of Article V(a) of this Agreement.

NOTE: A witness with material facts is an individual who can give pertinent testimony in connection with the specific occurrence resulting in charges against the employee and without whose testimony all essential facts upon which to base a decision would not be developed.

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

(5) Forty-eight (48) hours in advance of the hearing the Carrier and the individual identified as the accused employee's representative will exchange all records, documents, locomotive recorder tapes, etc, as well as any other items to be used as exhibits at the investigation, to allow both parties to prepare for the hearing.

(b) Waiver of Hearing

(1) An employee notified to appear for a hearing shall have the option, prior to the hearing, to meet with the appropriate Carrier official and the employee's representative, to discuss the act or occurrence and the employee's responsibility, if any.

(2) If a disposition of the charges is made on the basis of the employee's acknowledgment of responsibility, the disposition shall be reduced to writing and signed by the employee and the official involved and shall incorporate a waiver of hearing and shall specify the maximum discipline which may be imposed for the employee's acceptance of responsibility.

NOTE (i): The disposition of cases under this paragraph shall not establish precedents in the handling of any other cases.

NOTE (ii): No minutes or other record will be made of the discussions and, if the parties are unable to reach an agreed upon disposition, no reference shall be made to these discussions by either of the parties in any subsequent handling of the charges.

NOTE (iii): In cases where more than one (1) employee is notified to appear for a hearing all employees cited to attend as principles must agree to waive their right to a hearing, as otherwise provided by this Article, or the investigation will be held.

(c) Postponements of Hearing

(1) Reasonable postponements at the request of the Carrier or the employee *will be granted*. Telephone postponement request must be confirmed in writing.

(d) Conduct of Hearing

(1) The hearing shall be conducted by an officer of the employing Carrier who may be assisted by other officers; however, there shall be only one presiding officer. When practicable, the hearing shall be held at the home terminal of the employee involved or in the case where more than one employee, at the home terminal of the majority of the employees.

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

(2) 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 and to question all witnesses.

(3) The accused employee, his representative, or the Carrier, shall have the right to sequester the witnesses.

(4) An employee's personal service record will not be introduced or referred to in the hearing or in the transcript of the proceedings of the hearing. Only evidence presented at the investigation and contained in the transcript will be used in determining guilt or innocence.

(5) If the formal hearing is not held within the time limits specified in Article II, the employee will not be disciplined, will be paid for all time lost, and no entry will be made in the employee's personal service record.

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

Article III - Transcript of Hearing

- (a) The Carrier will produce an accurate written transcript of the hearing proceedings. However, this will not preclude the employee or employee's representative from making a record of the proceedings for their own use.
- (b) If, during the hearing, a partial transcript is made prior to the conclusion of the hearing such partial transcript will be made available to the employee and the employee's representative upon request, before the hearing is resumed. 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 the employee's representative at the appropriate Carrier facility.
- (c) In all cases a copy of the transcript will be furnished the employee and his representative within thirty (30) days of close of the hearing.

Article IV - Hearing Decision

- (a) If the formal hearing results in assessment of discipline, such decision shall be rendered within **fifteen (15) 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.
- (b) Date of discipline notification will be the date the notice is received or first attempted delivery of certified mail (return receipt requested) notice to the last address on record with the Carrier's local officers, whichever date is earliest.

NOTE: This Rule does not preclude on property delivery of the decision by a Carrier representative. Such delivery shall be evidenced by a receipt signed by the employee.

- (c) 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.

Article V - Compensation for Attending Hearings

- (a) Witnesses, as referred to in Article II (a)(3), 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, at rate of pay applicable to the last service performed. Employees who are directed to attend the investigation on their assigned rest day will be allowed the overtime rate. Carrier is required to pay the witnesses requested by the employee or his/her representative under provisions of this Article, provided such witnesses have first hand or material knowledge of the circumstance under investigation and meet the criteria set forth in Article II, (a)(3) and the note thereto.

- (b) 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 will be paid for actual time attending the hearing, with a minimum of four (4) hours, at rate of pay applicable to the last service performed. Employees who are directed to attend the investigation on their assigned rest day will be allowed the overtime rate.

Article VI - Effective Date

The effective date of this Agreement is SEPTEMBER 1, 1990.

This Agreement signed at Fort Worth, Texas, this 23rd day of JULY, 1994.

For: BURLINGTON NORTHERN
RAILROAD COMPANY

For: UNITED
TRANSPORTATION UNION

Daniel J. Koyser
Assistant Vice President
Labor Relations

Carl Valdesch
General Chairman

Gene Shire / Dgk
Director Labor Relations