

ARBITRATED AGREEMENT

between

NORFOLK AND WESTERN RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

June 12, 1992

WHEREAS, Section 11 of the recommendations for Maintenance of Way Employees of the report by Presidential Emergency Board No. 219 (PEB-219), as clarified and modified by the Special Board provided for in Public Law 102-29, which on July 29, 1991, became binding upon the Carrier and Organization with the same effect as though arrived at by agreement under the Railway Labor Act; and,

WHEREAS, the Carrier and Organization have taken conflicting positions with regard to the meaning and intent to the recommendations of PEB-219 and the clarifications and modifications of the Special Board made in connection with Section 11 of PEB-219's Report; and

WHEREAS, the Carrier and Organization submitted their differences to binding arbitration in accordance with Section 11(b) of the report of PEB-219 and Article XVI of the Imposed Agreement;

THEREFORE, The following shall constitute the Arbitrated Agreement of the parties hereto:

Designated Programmed Gangs (DPG's) may be established to perform production work throughout the Norfolk and Western Railway Company system without regard to former property lines or seniority districts.

For the purposes of this agreement, production work that may be performed by a DPG is confined to the following activities:

Rail Gangs

Removing worn rail and fasteners, replacing tie plates and adzing plate bearing surface of ties, installing new or relay condition rail and fasteners to standard gauge (and associated preparatory and clean up functions as long as the employees assigned are an integral part of the gang).

Timber and Surfacing Gangs

Replacing designated defective ties over specified track segments, ensuring anchor and spike pattern of ties are to standard, surfacing track to obtain necessary compaction lost in the tie replacement operation and ensuring track geometry is restored to standard (and associated preparatory and clean up functions as long as the employees assigned are an integral part of the gang).

The foregoing definition, however, does not limit Carrier's right to utilize non-DPG gangs to perform these work activities, nor does it limit the Carrier's right to propose and reach mutual agreement that other production work may be performed by DPG's in the future.

The terms and conditions of service on DPG's will be as follows:

Section 1 - Seniority Lists

A. DPG seniority lists shall be established for the following classifications:

Roster 1	Foremen
Roster 2	Assistant Foremen
Roster 3	Machine Operators
Roster 4	Track Laborers

All employees holding seniority under the several BMW Agreements in place on N&W, as of the date of the Arbitrated Agreement, shall be placed on the appropriate seniority list or lists according to their earliest valid seniority date in each classification. Any disputes as to which seniority list is appropriate shall be promptly resolved between the BMW Vice President assigned (or his designee) and the Director Labor Relations. If two or more employees have the same seniority date, they shall be placed on the seniority list in alphabetical order according to their last names.

B. Seniority lists shall show the names of the employees, their seniority ranking and their seniority dates. Each name shall be followed by one of the following zone designations:

NW	for employees on former N&W and Virginian rosters
WB	for employees on former Wabash Rosters
NP	for employees on former NKP and WLE Rosters

C. Seniority lists shall be furnished Foremen, General Chairmen and Local Chairmen, and shall be posted at convenient places available for inspection by employees interested. Seniority lists will be revised in January of each year,

and will be open to correction (as to changes and additions made to the list in the previous year) for a period of sixty days from the date the list is posted.

D. Employees obtaining seniority in a classification subsequent to the date of this Arbitrated Agreement shall be added to the appropriate seniority list according to the date such seniority is obtained.

Section 2 - Bulletining and Filling Positions

A. Bulletins advertising DPG positions will be posted at all reporting locations, with copies to the General Chairmen, Local Chairmen and all Foremen. Bulletins shall contain, at a minimum, the following information:

1. Type of gang and gang number.
2. List of positions (including types of machines in the gang).
3. Rates of pay for each territory over which the gang is programmed to work.
4. Starting date and location.
5. Rest days.
6. Hours of assignment.
7. Tentative schedule of the territory over which the work is programmed, with the statement that this is for information purposes only and its not intended to establish a guarantee that the gang will remain employed for the duration of the schedule.
8. Remarks.

B. At the start of each production season, all DPG positions, regardless of when the gangs commence work, will be bulletined for fifteen (15) calendar days and awarded within fifteen (15) calendar days from the close of the bulletin. Assignments will be effective as of the starting date specified in the bulletin.

C. Inasmuch as multiple gangs and positions might be bulletined at the same time, employees shall have the right to bid on any or all of such positions on such bulletins by indicating on the application their preference in order of the positions desired. The Carrier and Organization are directed to develop a bid form to facilitate this process.

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D. Positions on DPG's will be awarded to applicants in the following order:

1. To the senior employee ranked on the DPG seniority list in the classification bulletined, who has a zone designation corresponding to one of the zones over which the DPG is programmed to work.
2. To the senior employee ranked on the DPG seniority list in the next successive lower classification(s), who has a zone designation corresponding to one of the zones over which the DPG is programmed to work.
3. To the senior employee ranked on the DPG seniority list in the classification bulletined, but who does not have a zone designation corresponding to one of the zones over which the DPG is programmed to work.
4. To the senior employee ranked on the DPG seniority list in the next successive lower classification(s), but who does not have a zone designation corresponding to one of the zones over which the DPG is programmed to work.

NOTE In the application of Paragraphs 2 and 4, above, seniority shall prevail if fitness and ability are sufficient, of which management shall be the judge, subject to appeal. The assignment to a DPG shall not affect the seniority status of any employees in their respective zones, nor shall they establish seniority in any additional zones, except that employees promoted in accordance with Paragraphs 2 and 4, above, shall obtain seniority in the classification to which promoted in their zone in accordance with the Agreement applicable to that zone.

E. Positions which cannot be filled in accordance with Subsection D, above, may be filled by new employees, who will obtain seniority in the classification hired in the zone in which they first perform service, subject to the Agreement applicable to that zone.

F. Employees assigned to positions on DPG's will not be permitted to bid off such gangs for a period of ninety (90) calendar days from the first day of service on the gang, except with the concurrence of the General Chairman and the Director Labor Relations, or their designees. The failure to concur shall not be grievable. For the same ninety (90) calendar period, an employee assigned to a DPG may not be displaced by an employee not assigned to the gang, unless the senior employee's inability to displace would require him to be furloughed.

Section 3 - Work Week

The work week on DPG's will be governed by the National Forty Hour Work Week Rule as modified in Article 5 of the Report of PEB-219 and clarified and modified by the Special Board established pursuant to Public Law 102-29.

Section 4 - Work Force Stabilization

Work Force Stabilization as provided for in Section 13 of the Report of PEB-219 will be applicable to DPG's.

Section 5 - Effect of Other Agreements

Except as specifically provided herein, all other terms and conditions of employment for DPG's, including, but not limited to, rates of pay, filling of vacancies and payment of allowances, shall be governed by the Agreement applicable to the territory where the respective DPG commences service on the first work day of the work week for that entire work week, including rest days.

Section 6 - Additional DPG's

The terms and conditions provided for herein shall be applicable to all DPG's established in accordance with Section 11 of the Report of PEB-219. Carrier may serve notice upon the General Chairmen of its intent to create additional types of DPG's. If the parties, after thirty (30) calendar days following the notice, are unable to agree the gangs proposed by the Carrier are appropriate DPG's, either party may request expedited arbitration as set forth in Section 9, below.

Section 7 - Cancellation of this Arbitrated Agreement

Should either party desire cancellation of this Arbitrated Agreement, it may serve an appropriate Railway Labor Act Section 6 Notice of this intent, however, the notice must be consistent with existing moratorium provisions.

Section 8 - Modification of this Arbitrated Agreement

Should either party request modification of this Arbitrated Agreement, it shall serve notice of such intended modification upon the other party, and negotiations shall commence within ten (10) calendar days of such notice. If the parties are unable to reach agreement on the request to modify the Arbitrated Agreement after thirty (30) calendar days, either party may request the matter be submitted to expedited arbitration as set forth in Section 9 below, except that neither party may request arbitration until two years from the effective date of this Arbitrated Agreement.

Section 9 - Dispute Resolution

A. Disputes arising under Sections 6 or 8, of this Arbitrated Agreement, shall be resolved as follows:

1. Selection of Neutral Arbitrator

Should the Carrier and Organization fail to agree on the selection of a neutral arbitrator within five (5) calendar days from the date of submission to arbitration, either party may request the National Mediation Board to supply a list of at least five (5) potential arbitrators, from which the parties shall choose an arbitrator by alternately striking names from the list. The party requesting the National Mediation Board to supply the list of potential arbitrators shall strike first. Neither party shall oppose or make any objection to the NMB concerning a request for such a panel.

2. Fees and Expenses

The fees and expenses of the neutral arbitrator shall be borne equally by the parties, and all other expenses shall be paid by the party incurring them.

3. Hearings

The arbitrator shall conduct a hearing within thirty (30) calendar days from the date on which the dispute is assigned to him. Each party shall deliver all statements of fact, supporting evidence and other relevant information in writing to the arbitrator and to the other party, no later than five (5) working days prior to the date of the hearing. The parties shall be entitled to present oral testimony at the hearing, subject to cross-examination by the other party and examination by the arbitrator. The arbitrator shall have the power to direct the attendance of witnesses and the production of such books, papers, contracts, agreements, and documents as may be deemed by the arbitrator as material to a just determination of the matters submitted. An official transcript of the hearing may be made if the parties agree or if the arbitrator deems it appropriate. The parties may be represented by counsel.

4. Written Decision

The arbitrator shall render a written decision, which shall be final and binding, within thirty (30) calendar days from the date the record is declared closed.

5. Time Limits

Time limits stated herein may be extended by agreement between the Carrier and Organization, and if the extension would affect time limits applicable to the arbitrator's conduct, with his concurrence.

B. All other disputes regarding interpretation of this Arbitrated Agreement shall be resolved in accordance with Section 3 of the Railway Labor Act, as amended. Any interpretation of this Arbitrated Agreement shall take into consideration the Award of which this Arbitrated Agreement is a part.

Section 9 - Effective Date

This Arbitrated Agreement shall become effective June 15, 1992 and shall have the same force and effect as if the Carrier and Organization negotiated the result under the provisions of the Railway Labor Act. It shall remain in effect until canceled, changed or modified as provided in the procedures set forth in Sections 7 and 8.



John C. Fletcher, Arbitrator

Mt. Prospect, Illinois
June 12, 1992