

MEMORANDUM OF UNDERSTANDING

between

NORFOLK SOUTHERN RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

for

SYSTEM DISCIPLINE RULE

IT IS AGREED, Rule 30 of the July 1, 1986 NW-WAB Agreement, as amended, and Rule 40 of the October 1, 1972 SOUTHERN Agreement, as amended, are modified as follows:

(a) An employee who has been in service more than sixty (60) calendar days shall not be disciplined or dismissed, nor will an unfavorable mark be placed upon their record without a fair and impartial investigation. This provision recognizes the Carrier's right to issue letters of counseling and instruction and that such letters do not constitute discipline. At such investigation the employee may be assisted by duly authorized representatives. The employee may be held out of service, except for minor offenses, pending such investigation and in such cases shall be given written confirmation thereof as soon as practicable.

An employee who is required, after being cited to a discipline investigation, to make a written statement in connection with any matter that may eventuate in the application of discipline, shall be accompanied by their union representative should they so desire, provided that such representative is readily available. A copy of the employee's statement, if reduced to writing and signed by the employee, shall be furnished to the employee and union representative.

An employee required to attend a discipline investigation will be given not less than ten (10) days' advance notice, in writing, of the date of the investigation which shall set forth the precise charge against the employee with a copy to the duly authorized representative. The investigation shall be held within 30 days of first knowledge of the offense. The location of the investigation will be the Carrier's office closest to the location at which the incident occurred. However, an alternative site for the

investigation may be selected based on mutual agreement between the Carrier and the employee's duly authorized representative.

At the request of either party the investigation will be postponed; however, such investigation will not be postponed in excess of ten (10) calendar days beyond the date first set except by mutual agreement. If the charged employee fails to attend the duly scheduled investigation, without having provided evidence of good cause for such failure to attend, the Carrier may proceed with the investigation in absentia and such proceeding in absentia shall not constitute the basis for any claim with respect to such employee's right to contractual due process.

A written transcript of statements taken at the investigation will be made, and a copy furnished to the duly authorized representative at the time the decision is rendered. Decision will be rendered in writing to the employee and representative within twenty (20) days after completion of the investigation unless an extension of time is agreed upon.

It is recognized that the Carrier is responsible for ensuring that an accurate transcript of the investigative proceedings is made. However, this will not preclude the use of comparable equipment by the employee or the duly authorized representative to make a record of the proceedings for their own use.

(b) At the investigation or on appeal an employee may be represented by one or more "duly authorized (accredited) representatives" as designated by the General Chairman. The General Chairman shall determine the duly authorized (accredited) representatives and so inform the Carrier in writing in advance.

(c) An employee who has been notified to appear for an investigation shall have the option, prior to the investigation, to discuss with the appropriate Carrier official and General Chairman or representative designated by the General Chairman, 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 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 investigation and shall specify the maximum discipline which may be imposed for employee's acceptance of responsibility.

Disposition of cases under this paragraph (c) shall not establish precedence in the handling of other cases. Discipline imposed in accordance with this paragraph (c) of this Section is final with no

right to appeal.

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.

(d) If the charge against the employee is not sustained, it shall be stricken from the employee's record and employee reinstated. If the employee lost time due to such discipline, such employee shall be paid the difference between the amount that would have been earned had the employee not been disciplined and the amount actually earned during the discipline period. The intent of this provision is to make the employee whole for any actual wage or benefit (consistent with the benefit plans) loss suffered as a result of discipline served that is subsequently reduced or not sustained.

(e) Employees who were dismissed and subsequently reinstated to service or any employee displaced by return to service of an employee dismissed under this rule shall exercise seniority in accordance with applicable rules covering exercise of displacement rights.

(f) Pertinent witnesses called by the Carrier to testify in disciplinary investigations will be compensated for the assigned working hours actually lost and will be allowed expenses, in accordance with the Attending Court Rule; with pay at the straight time rate for any time spent in testifying outside the hours that their assignment actually was worked. Employees who are not called by the Carrier but, at the request of the charged employee, attend and testify in a discipline investigation will be compensated in this same manner if the testimony they provide is material and relevant to the matter under investigation.

(g) The right of appeal in the usual manner is accorded under the applicable rule governing the time limits for presenting and progressing claims or grievances. However, the initial appeals concerning dismissal, suspension or reprimand are to be made directly to the highest officer of the Carrier designated to handle appeals of such disputes within 30 days of date discipline decision was rendered and any disallowance of such appeal must be issued within 30 days from the date such appeal is filed.

A special board of adjustment shall be established with

jurisdiction over such disputes involving disciplinary matters resulting in dismissal, suspension or reprimand to provide expedited resolution of such disputes. However, either party may notify the other of its intention to progress a particular disciplinary matter to the National Railroad Adjustment Board or other Public Law Board or Special Board of Adjustment.

(h) The time limits of this Rule may be extended by written agreement between the authorized Carrier Officer and the employee's duly authorized representative. When U.S. mail is used, the postmark will determine when the correspondence was placed in the mail.

This agreement made and executed in Norfolk, Virginia, this 14th day of March, 2001.

FOR THE ORGANIZATION:

David D Cox
General Chairman, BMWE

J.R. McLogh, Jr
General Chairman, BMWE

R.L. Taylor
General Chairman, BMWE

P.K. Sullivan
General Chairman, BMWE

J. Bell
General Chairman, BMWE

J.R. Beard
General Chairman, BMWE

FOR NORFOLK SOUTHERN RAILWAY COMPANY:

Harold R. Mobley
Assistant Vice President,
Labor Relations

APPROVED:

R. A. Law
Vice President, BMWE