

MEMORANDUM OF AGREEMENT
Between The
BNSF RAILWAY COMPANY
And The
SMART-TD

The parties enter into this agreement recognizing the effect of the Rail Safety Improvement Act on transportation employees and in an effort to mitigate the effect and provide the least financial impact due to implementation of the Act, it is agreed:

1. Provided that the service was governed by a work/rest initiative on April 1, 2009, unassigned pool freight service covering districts that comprise a run of 160 line miles or greater may, upon request of a representative of SMART-TD, adopt the conditions set forth under Attachment A hereto (the 7-3 conditions).
2. Provided that the service was governed by a work/rest initiative on April 1, 2009, unassigned pool freight service covering districts that comprise a run of less than 160 line miles may, upon request of a representative of SMART-TD, adopt the conditions set forth under Attachment B hereto (the 6-2 conditions).
3. Provided that the extra board was governed by a work/rest initiative on April 1, 2009, upon request of a representative of SMART-TD, the conditions set forth under Attachment B hereto (the 6-2 conditions) shall be applied to that extra board.
4. The provisions of Sections 1, 2 and 3 do not preclude adopting either the 7-3 or 6-2 conditions as applicable to any other service, but it shall be by mutual agreement of the parties.
5. In unassigned pool freight service, including extra boards, upon request of a representative of SMART-TD, a process shall be implemented that will allow employees at the home terminal who have had four or five consecutive starts to extend their rest time to a total of 24 hours after tie-up in order to avoid being placed on duty for a fifth or sixth consecutive calendar day ("Smart Rest").

- 5.1 BNSF shall grant the employee's request to exercise the "Smart Rest" option, subject to all of the conditions of this Section being satisfied.
- 5.2 Employees desiring "Smart Rest" must advise the proper authority of that fact immediately upon release from the previous tour of duty, and that decision is irrevocable.
- 5.3 Unavailability due to utilizing "Smart Rest" in compliance with this Agreement shall not be utilized to offset any guarantee.
 - 5.3.1 For example, an employee has had starts on 3 consecutive days, is then called on duty at 2100 on the 4th consecutive day and is relieved from duty at 0400 the following day (day five). By using "Smart Rest", the individual could avoid making a 5th consecutive start and he/she would then be rested at 0400 (day six). While the employee was unavailable to go on duty after 1400 until 0400 the following day, so long as the provisions of Section 5.4 are satisfied, there shall be no offset of guarantee for this unavailable time under "Smart Rest."
- 5.4 Provided that the individual observing "Smart Rest" works the next available tour of duty, which must be prior to any observed rest cycle, unavailability pursuant to the terms of this Section shall not be considered, in any manner, when calculating availability under the terms of any availability policy or attendance guidelines.
 - 5.4.1 If the employee does not work the next available tour of duty, all time in excess of 10-hours from the previous tie-up shall count as an absence for availability purposes and guarantee shall be appropriately offset.
 - 5.4.2 An individual subject to guarantee who exercises the "Smart Rest" option and is displaced prior to commencing a start on the following calendar day shall not be considered "unavailable" or subject to guarantee offset so long as that individual has a start on that following calendar day.

6. Assigned service may be advertised as follows:

- 6.1 At locations where existing agreements do not allow for the establishment of 5-day road assignments, on-duty starts on five (5) consecutive calendar days followed by two (2) consecutive calendar days of rest.
 - 6.1.1 Road assignments that currently work six (6) or seven (7) days that are reduced to five (5) days shall receive the five (5) day yard multiplier for vacation qualification.
 - 6.1.2 Employees on road assignments that are reduced to five (5) days pursuant to the terms of this agreement, who do not lay off of their own accord, or whose assignments are not annulled pursuant to the provision of the applicable assignment rule, shall be guaranteed minimum wages the equivalent of six (6) basic days at the rate of pay applicable to the class of service in which engaged each calendar week the assignment is in operation, against which earnings from assignment mileage, overtime payments and permissive switching payments may be applied.
 - 6.1.2.1 In instances where more than one employee performs service within a calendar week on a position which is assigned to five (5) days of service each week, it is understood that if payment for assignment mileage, road overtime and permissive switching does not produce the equivalent of six (6) minimum days, each employee will be paid what s/he actually earned and the amount necessary to make up the guarantee of six (6) minimum days will be pro rated to each employee on the basis of the number of days each employee worked on that assignment in that particular week.
- 6.2 On-duty starts on six (6) consecutive calendar days followed by not less than 48 consecutive hours of rest, followed by on-duty starts on five (5) consecutive calendar days followed by a complete calendar day of rest.
- 6.3 On-duty starts on five (5) consecutive calendar days followed by a complete calendar day of rest.

7. This agreement may be extinguished by either party serving thirty (30) days written notice on the other party, with the understanding that the parties shall meet and address the issue(s) that caused the service of the cancellation notice. Furthermore, the parties commit to seeking resolution of those issues in an effort to preserve this Agreement.

For: BNSF Railway Company

For: SMART-TD





Dated: _____

Attachment A

A scheduled work/rest cycle board may be established at _____ for employees assigned to the _____.

1. Employees will be allocated work/rest cycles by the Carrier at the Carrier's sole discretion. A work/rest cycle is defined as seven (7) consecutive days during which an employee is available for service, paid in lieu of service (PLDs, single-day vacation, Compensated company business, etc.) or performs work (the work cycle) followed by three (3) consecutive rest days (the rest cycle).
 - 1.1 Unless the employee elects to not observe all or a portion of the rest cycle, mark off for scheduled rest days will occur automatically at 9:00 a.m. or upon tie up from previous duty, whichever is later, on the first scheduled rest day. Markup will occur automatically so that the employee is available to protect service on duty after 9:00 a.m. on the day following the last scheduled rest day, and the employee(s) shall be placed pursuant to Sections 1.1.1 and 1.1.2 hereof.
 - 1.1.1 If the employee's turn is at the home terminal and not in active service, the employee shall be placed on the turn.
 - 1.1.2 In the event the employee's turn is either in active service or at the away-from-home terminal, the employee shall be placed to the bottom of the Board and shall assume the work/rest cycle of the turn. When the turn arrives back at the home terminal it shall be removed from this pool.
 - 1.1.3 Observed rest-cycle days must be consecutive.
 - 1.1.4 Employees who elect to not observe any portion of the rest cycle must advise Crew Support of their intent not less than 24-hours prior to the beginning of the rest cycle.
 - 1.2 Employees observing the rest cycle will not be called to protect service with an on-duty time between 9:00 p.m. on the day immediately preceding the rest cycle and 9:00 a.m. on the first day of the rest cycle. In order to insure that employees will have three full rest days available for each rest cycle, employees called prior to 9:00 p.m. on the day immediately preceding the start of the rest cycle, and who do not tie-up at or before 9:00 a.m. on the first day of the rest cycle, will have their scheduled

rest cycle begin upon tie up at the home terminal and it shall run for 72 hours.

- 1.3 Except as provided under Section 1.2, positions going on work cycle will be available for call for assignments that begin on or after the 9:00 a.m. cycle time. Employees on rest cycles that are extended due to the 72-hour provision of Section 1.2 will be available for call for assignments that begin on or after the expiration of the 72-hour rest cycle period.
 - 1.4 When the president, local chairman, secretary-treasurer and/or legislative representative of the Organization must be off during a work-cycle to conduct union business, the union officer shall not be deprived of observing the following rest-cycle due to the union business unavailability.
2. An employee who satisfies the conditions of the assigned work cycle, will not be considered to be in violation of any attendance guidelines or policies related to attendance then in effect, regardless of the number of weekend or total days absent during the rest cycle. To allow for "emergencies" the employee can take one unpaid layoff in each month, or if the employee remains on a position subject to the terms of this Agreement for three consecutive months, three unpaid days off during any three-month rolling period.
 3. Employees exercising displacement rights onto a turn in this pool must displace the junior employee and will assume the work/rest cycle of the employee or position to which they displace.
 - 3.1 In the event the turn held by the junior employee is either in active service or at the away-from-home terminal, the employee exercising seniority to this pool shall be placed to the bottom of the Board and shall assume the work/rest cycle as provided above. When the junior employee returns to the home terminal, that turn shall be removed from this pool.
 - 3.2 Employees in any work/rest pool shall not be allowed to bid or bump from one turn in the pool to another turn in the pool.
 4. When an employee returns to this pool after having observed either a temporary or vacation vacancy that employee shall be placed pursuant to Sections 4.1 and 4.2 hereof.
 - 4.1 If the employee's turn is at the home terminal and not in active service, the employee shall be placed on the turn.

- 4.2 In the event the employee's turn is either in active service or at the away-from-home terminal, the employee shall be placed to the bottom of the Board and shall assume the work/rest cycle of the turn. When the turn arrives back at the home terminal, it shall be removed from this pool.
5. Employees in this service who are scheduled to observe a vacation of seven (7) days or more shall be allowed to adjust the start of that vacation to begin upon the expiration of the rest cycle.
 - 5.1 Employees who desire to take advantage of this provision shall be required to notify Crew Support 24-hours prior to the start of the rest-cycle immediately preceding the vacation period.
 - 5.2 Employees shall not be allowed to observe split vacation periods that are separated only by a rest cycle.
6. This Agreement only modifies existing agreements to the extent set forth, and all other schedule rules, agreements and/or other rights remain in effect.
7. These conditions may be extinguished by either party serving thirty (30) days written notice on the other party, with the understanding that the parties shall meet and address the issue(s) that caused the service of the cancellation notices. Furthermore, the parties commit to seeking resolution of those issues in an effort to preserve these conditions.

Attachment B

Subject to the provisions of Sections 2 and 3 of the Agreement, a scheduled 6-2 work/rest cycle overlay may be established at _____ for employees assigned to the _____.

1. Employees will be allocated work/rest cycles by the Carrier at the Carrier's sole discretion. A work/rest cycle is defined as six (6) consecutive days during which an employee is available for service, paid in lieu of service (PLDs, single-day vacation, paid company business, etc.) or performs work (the work cycle) followed by two (2) consecutive rest days (the rest cycle).
 - 1.1. Unless the employee elects to not observe all or a portion of the rest cycle, markoff for scheduled rest days will occur automatically at 9:00 a.m. or upon tie up from previous duty, whichever is later, on the first scheduled rest day. Markup will occur automatically so that the employee is available to protect service on duty after 9:00 a.m. on the day following the last scheduled rest day, and the employee(s) shall be placed pursuant to Sections 1.1.1 and 1.1.2 hereof.
 - 1.1.1. If the employee's turn is at the home terminal and not in active service, the employee shall be placed on the turn.
 - 1.1.2. In the event the employee's turn is either in active service or at the away-from-home terminal, the employee shall be placed to the bottom of the Board and shall assume the work/rest cycle of the turn. When the turn arrives back at the home terminal it shall be removed from this pool.
 - 1.1.3. Where applicable, employees shall have their guarantee offset for each 24-hour period, or portion thereof, while observing the rest cycle.
 - 1.1.4. Employees who elect to not observe any portion of the rest cycle must advise Crew Support of their intent not less than 24-hours prior to the beginning of the rest cycle.
 - 1.1.5. The rest cycle shall not be comingled with any 48-hour or 72-hour rest period mandated by the Rail Safety Improvement Act.
 - 1.1.6. Employees who are required to observe either a 48-hour or 72-hour rest period mandate by the Rail Safety Improvement

Act during the work cycle shall not be eligible to observe the next-following rest cycle.

- 1.2. Employees observing the rest cycle will not be called to protect service with an on-duty time between 9:00 p.m. on the day immediately preceding the rest cycle and 9:00 a.m. on the first day of the rest cycle. In order to insure that employees will have two full rest days available for each rest cycle, employees called prior to 9:00 p.m. on the day immediately preceding the start of the rest cycle, and who do not tie-up at or before 9:00 a.m. on the first day of the rest cycle, will have their scheduled rest cycle begin upon tie up at the home terminal and it shall run for 48 hours.
 - 1.2.1. Where applicable, employees unavailable between 9:00 p.m. on the day immediately preceding the rest cycle and 9:00 a.m. on the first day of the rest cycle pursuant to the operation of this section shall not have guarantee offset due to unavailability during this 12-hour period.
 - 1.3. Except as provided under Section 1.2, positions going on work cycle will be available for call for assignments that begin on or after the 9:00 a.m. cycle time. Employees on rest cycles that are extended due to the 48-hour provision of Section 1.2 will be available for call for assignments that begin on or after the expiration of the 48-hour rest cycle period.
 - 1.4. When the president, local chairman, secretary-treasurer and/or legislative representative of the Organization must be off during a work-cycle to conduct union business, the union officer shall not be deprived of observing the following rest-cycle due to the union business unavailability. However, where applicable, guarantee shall be offset for each 24-hour period of unavailability, or portion thereof. Unavailability under this Section 1.4 shall not count toward guarantee forfeiture pursuant to Section 2 hereof.
2. Where applicable, more than one unpaid unavailability event (meaning unavailability during any 24-hour period or portion thereof) during a payroll period shall result in forfeiture of guarantee for that payroll period.
 3. An employee who stays marked up during the assigned work cycle, will not be considered to be in violation of any attendance guidelines or policies related to attendance then in effect, regardless of the number of weekend or total days absent during the rest cycle. For

availability calculation purposes and to allow for “emergencies,” an employee may take one unpaid layoff in each month, or if the employee remains on a position subject to the terms of this Agreement for three consecutive months, three unpaid days off during any three-month rolling period.

- 3.1. This Section 3 contemplates availability standards and does not affect Section 2 of this Agreement.
4. Employees exercising displacement rights or force assigned to this pool or guaranteed extra board must displace the junior employee and will assume the work/rest cycle of the employee or position to which they displace.
5. When an employee returns to this pool after having observed either a temporary or vacation vacancy that employee shall be placed pursuant to Sections 5.1 and 5.2 hereof.
 - 5.1. If the employee’s turn is at the home terminal and not in active service, the employee shall be placed on the turn.
 - 5.2. In the event the employee’s turn is either in active service or at the away-from-home terminal, the employee shall be placed to the bottom of the Board and shall assume the work/rest cycle of the turn. When the turn arrives back at the home terminal, it shall be removed from this pool.
6. Employees in this service who are scheduled to observe a vacation of seven (7) days or more shall be allowed to adjust the start of that vacation to begin upon the expiration of the rest cycle.
 - 6.1. Employees who desire to take advantage of this provision shall be required to notify Crew Support 24-hours prior to the start of the rest-cycle immediately preceding the vacation period.
 - 6.2. Employees shall not be allowed to observe split vacation periods that are separated only by a rest cycle.
7. This Agreement only modifies existing agreements to the extent set forth, and all other schedule rules, agreements and/or other rights remain in effect.
8. These conditions may be extinguished by either party serving thirty (30) days written notice on the other party, with the understanding that the parties shall meet and address the issue(s) that caused the service of the cancellation notices. Furthermore, the parties commit

to seeking resolution of those issues in an effort to preserve these conditions.

Side Letter #1

Re: Employees approaching the hourly caps imposed by RSIA

During the discussions giving rise to the agreement signed this date, we discussed the handling of employees who were at or nearing the time thresholds (applicable to either "limbo" time or monthly time on duty) imposed by RSIA.

The RSIA provides that a train employee may not "remain on duty, go on duty, wait for deadhead transportation, be in deadhead transportation from a duty assignment to the place of final release, or be in any other mandatory service for the carrier in any calendar month where the employee has spent a total of 276 hours on duty, waiting for deadhead transportation, in deadhead transportation from a duty assignment to the place of final release, or in any other mandatory service for the carrier."

We agreed that employees at or near the limbo time threshold (30/40), and who have enough time to work under the monthly time threshold (276), shall continue to be called for their assigned service.

We also agreed that employees nearing their monthly time threshold (276) shall be called or allowed to work their assigned service if there is a reasonable expectation that the employee will be able to complete the service (meaning a full round trip in freight service if being called at the home terminal) within their remaining hours. The determination of having sufficient time to perform service shall be based upon the average time necessary to complete the service during the previous calendar month. Employees having 252 hours or less shall always be considered as having sufficient time to complete the service.

In the event an employee is not called to perform the service due to the determination that the individual lacked sufficient time to complete the service, and it is ultimately determined that the employee had sufficient time remaining in order to complete the service, then the employee not called shall be "made whole" to earnings lost.

Agreed:



Milton H. Siegel
AVP Labor Relations



Joe Lopez
General Chairman SMART-TD

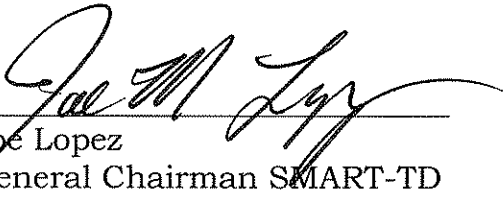
Side Letter #2

Re: Savings clauses

During our discussions giving rise to the agreement signed this date, the parties agreed that certain items such as offsets of extra board guarantees, pool guarantees, and protective benefits due to the additional required time off in accordance with RSIA would be covered by the savings clause(s) found in Attachment A, Section 6 and Attachment B, Section 7.

Agreed:


Milton H. Siegele
AVP Labor Relations

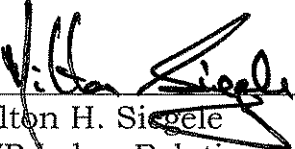

Joe Lopez
General Chairman SMART-TD

Side Letter #3

Re: RSIA Waivers

During the discussions giving rise to the agreement signed this date, BNSF agreed that it would work jointly with you to seek RSIA waivers to establish 6/1 assignments in both road and yard service where such a waiver made sense to both parties.

Agreed:



Milton H. Siegele
AVP Labor Relations



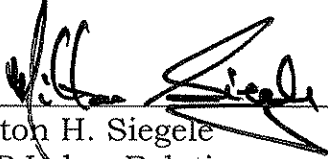
Joe Lopez
General Chairman SMART-TD

Side Letter #4


Re: Changing an employee's work/rest cycle

During our discussions giving rise to the agreement signed this date, we discussed circumstances where the rest-cycle of a conductor can be changed due to either the pool/board being reduced/increased or a conductor returning from vacation. We recognized that changing a conductor's rest-cycle can have implications that are contrary to the intent of rest-cycle pool/board, meaning that conductors cannot really have forecastable time off if a pool reduction/increase or a conductor returning from vacation changes that conductor's anticipated rest-cycle. We agreed that this situation needs attention and committed to jointly work toward a solution.

Agreed:



Milton H. Siegele
AVP Labor Relations



Joe Lopez
General Chairman SMART-TD

Side Letter #5

Re: Maintaining the work/rest cycle

During our discussions of this proposed agreement, there was some concern with the language of Section 1.1.2 of both Attachments "A" and "B," that reads:

In the event the employee's turn is either in active service or at the away-from-home terminal, the employee shall be placed to the bottom of the Board and shall assume the work/rest cycle of the turn. When the turn arrives back at the home terminal it shall be removed from this pool.

The concern is that a conductor returning from a rest-cycle whose turn is out of town may have his or her rest-cycle changed. That is not the case. The conductor will retain the same rest-cycle. The language Section 1.1.2 is addressing a case where that conductor's turn is either in active service or at the away-from-home terminal when s/he marks up. In that case, the conductor would be placed to the bottom of the board with the same rest-cycle, and when his or her regular turn returns to the home terminal it is to be removed from the pool.

Agreed:


Milton H. Siegel
AVP Labor Relations


Joe Lopez
General Chairman SMART-TD

Side Letter #6

Re: RSIA Implementation Proposal

During our discussions of the above captioned matter, the Organization expressed concerns about the provisions of Article 6 and its effect on existing Agreement Rules governing assigned local service.

It was agreed that the parties' concurrence, reflected in the RSIA Implementing Agreement, would be without prejudice to either parties' position. One position in particular is the Organization's position that existing Agreement Rules governing assigned local service (i.e., the ability to assign service to operate six days per week) were unaffected by the implementation of the RSIA of 2008, and the Organization's right to pursue the issue to arbitration was preserved.

It was further agreed that the validity of time claims submitted account assigned locals bulletined and/or worked less than 6 days per week, with a date of occurrence before the effective date of the RSIA Implementing Agreement, is unaltered by the Organization's acceptance of the Agreement.

If the above correctly recites our discussions, please indicate by affixing your signature in the space provided below.

Agreed:



Milton H. Siegel
AVP Labor Relations



Joe Lopez
General Chairman SMART-TD

Side Letter #7

Re: Moving vacation to coincide with a rest cycle

This is to confirm our discussion that Paragraph 5 of Attachment A and Paragraph 6 of Attachment B, regarding the ability to adjust the start of the employee's vacation, of seven days or more, to begin upon the expiration of the rest cycle, will not apply until Crew Support has programming in place. BNSF will notify the General Chairman when programming is in place and we anticipate that will be within three months of the effective date of this agreement.

If the above correctly recites our discussions, please indicate by affixing your signature in the space provided below.

Agreed:


Milton H. Siegle
AVP Labor Relations


Joe Lopez
General Chairman SMART-TD

Side Letter #8

Re: Modification to the 7 a.m. Markup Agreement

This is to confirm our discussion of the 7:00 a.m. markup agreement and the conflict with the 9:00 a.m. markup/mark off provisions in this agreement. Therefore, we agreed to modify the 7:00 a.m. Markup Agreement to read 9:00 a.m. on all properties governed by your committee.

If the above correctly recites our discussions, please indicate by affixing your signature in the space provided below.

Agreed:



Milton H. Siegele
AVP Labor Relations



Joe Lopez
General Chairman SMART-TD

Side Letter #9

Re: Application of this agreement

This will confirm our discussion of the potential problems attempting to apply this agreement to pools governed by more than one agreement. As an example, we discussed the South Coal Pool (Amarillo – Trinidad/La Junta) as it contains former FWD designated turns and former ATSF designated turns.

Therefore, we agreed that this agreement will only apply to pools where all General Chairmen with jurisdiction have ratified the RSIA Agreement. And, in applying the work/rest language in Attachments A and B, all General Chairmen involved would have to concur. Applying this understanding to the above mentioned example, we would not apply this Agreement to the South Coal Pool as the former ATSF committee has not yet ratified the RSIA Agreement (prior to the signing of this agreement).

If the above correctly recites our discussions, please indicate by affixing your signature in the space provided below.

Agreed:



Milton H. Siegele
AVP Labor Relations



Joe Lopez
General Chairman SMART-TD