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ARBITRATION PURSUANT TO ARTICLE I, SECTION 4  
OF THE NEW YORK DOCK CONDITIONS

PARTIES	NORFOLK SOUTHERN RAILWAY COMPANY,	)
	CSX TRANSPORTATION, INC., and	)
	CONSOLIDATED RAIL CORPORATION.	)
		)
TO	and	)
		)
DISPUTE	BROTHERHOOD OF MAINTENANCE OF WAY	)
	EMPLOYES; INTERNATIONAL BROTHERHOOD	)
	OF BOILERMAKERS, IRON SHIP BUILDERS,	)
	BLACKSMITHS, FORGERS AND HELPERS;	)
	BROTHERHOOD RAILWAY CARMEN DIVISION	)
	- TRANSPORTATION COMMUNICATIONS	)
	INTERNATIONAL UNION; INTERNATIONAL	)
	BROTHERHOOD OF ELECTRICAL WORKERS;	)
	NATIONAL CONFERENCE OF FIREMEN AND	)
	OILERS; INTERNATIONAL ASSOCIATION OF	)
	MACHINISTS AND AEROSPACE WORKERS; and	)
	SHEET METAL WORKERS' INTERNATIONAL	)
	ASSOCIATION	)

DECISION

HISTORY OF DISPUTE:

In October 1996 CSX Corp. (CSX) and Conrail, Inc. (Conrail) consummated an agreement to merge rail operations. In response Norfolk Southern Corp. (NSC) set about to purchase all outstanding Conrail voting stock. In April 1997 NSC and CSX agreed upon a plan for joint acquisition of Conrail which resulted in an application to the Surface Transportation Board (STB), successor to the Interstate Commerce Commission (ICC), to effectuate the plan.

In a Decision served July 23, 1998, CSX Corp. and CSX Transportation, Inc., Norfolk Southern Corp. and Norfolk Southern Railway Co.-- Control and Operating

Lease Arrangements -- Conrail Inc. and Consolidated Rail Corp. Finance Docket No. 33388, Decision No. 89 (Decision No. 89), the STB approved the plan subject to the labor protective conditions set forth in New York Dock Ry. — Control — Brooklyn Eastern District Terminal, 360 ICC 60 (1979) (New York Dock Conditions). Decision No. 89 approved the acquisition by Norfolk Southern Railway Company (NSR) and Norfolk and Western Railway Company (NW) (collectively known as Norfolk Southern (NS) and CSX Transportation, Inc. (CSXT) of the vast majority of Consolidated Rail Corporation's (CRC) rail assets, operations and employees the distribution of which was authorized as per agreement of the three Carriers involved. According to that agreement thousands of CRC rail miles and employees were to be allocated to CSXT and NS and integrated with the operations of those Carriers with CRC continuing its railroad operations only in three specific geographic locations known as the Shared Assets Areas (SAAs) to be operated by CRC with a drastically reduced employee complement for the joint benefit of NS and CSXT.

On August 24, 1998 the rail carriers involved in Decision No. 89 gave notice under Article I, Section 4 of the New York Dock Conditions to the Carriers' employees represented by the Brotherhood of Maintenance of Way Employees (BMWE) and the six shopcraft labor organizations, i.e., the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, (IBBB), the Brotherhood Railway Carmen Division - Transportation Communications International Union (BRC), International Brotherhood of Electrical Workers (IBEW), National Conference of

Firemen and Oilers (NCFE), International Association of Machinists and Aerospace Workers (IAMAW) and the Sheet Metal Workers' International Association (SMWIA). The notice stated that NS and CSXT would coordinate maintenance of way operations, including centralization of rail welding and equipment repair functions, performed by CRC with their maintenance of way operations except for the SAAs which would have greatly reduced maintenance of way operations most of which would be performed by CSXT and NS. In so doing, the notice further detailed, existing CRC seniority districts would be abolished and new ones formed on NS and CSXT. Moreover, except on the SAAs and one seniority district of one Carrier, the CRC collective bargaining agreements (CBAs) would not apply. Rather, NS and CSXT CBAs or those of their subsidiaries would apply as designated by the Carriers.

Further pursuant to Article I, Section 4, the Carriers and the BMWE began negotiations for an implementing agreement on September 1, 1998 and met on other dates thereafter. However, negotiations were unproductive. The Carriers met with both BMWE and the shopcraft organizations on September 24 for negotiations. Those negotiations fared no better.

On October 28, 1998 the Carriers invoked arbitration under Article I, Section 4. The parties were unable to agree upon selection of a Neutral Referee, and as provided therein the Carriers requested that the National Mediation Board (NMB) appoint such Referee. The NMB appointed the undersigned by letter of November 13, 1998.

By conference call among the Neutral Referee, the Carriers and the Organizations, a prehearing briefing schedule was established, and hearings were set for December 15 through 18, 1998. Prehearing briefs were filed, and hearings were held as scheduled.

FINDINGS:

After a thorough review of the record in this case the undersigned concludes that the various issues raised by the parties are properly before this Neutral Referee for determination.

Further review of the extensive record, consisting of approximately 300 pages of prehearing submissions or briefs together with several hundred pages of exhibits and attachments thereto as well as over 1,000 pages of hearing transcript, forces the conclusion that in order for this Decision to be clear and cogent some parameters must be established at the outset. First, while all the relevant facts and the arguments of the parties have been thoroughly reviewed and evaluated, only those deemed to be decisionally significant by the Neutral Referee are dealt with or addressed in this Decision. Secondly, there must be some mechanism for the orderly consideration of the issues or disputes.

Accordingly, while recognizing that this is a single proceeding which must result in an arbitrated implementing arrangement or arrangements which dispose of all outstanding issues, this Neutral Referee deems it appropriate to distinguish the issues or disputes between the BMW and the Carriers from those between the shopcraft

organizations and the Carriers. The undersigned recognizes that there may be some overlap of these considerations inasmuch as LAMAW has an interest in some maintenance of way functions in addition to those involved in the consolidation of shops and that BMW has an interest in shop consolidations other than its interest in general maintenance of way functions. Nevertheless, separate consideration is deemed most appropriate.

1. Nonshop Maintenance of Way Issues or Disputes

Negotiations between BMW and the Carriers produced final proposals for an implementing agreement by each side the terms of which differ significantly with respect to several issues. With some exceptions the BMW proposal would preserve the terms of the CRC CBAs with that organization and make them applicable to the CRC employees transferred to CSXT and NS. By contrast, the Carriers' proposal with some exceptions would apply CBAs between the BMW and CSXT, NS or their subsidiaries to CRS employees who become employed by the two Carriers. CRC CBAs would continue to apply on the SAAs.

This situation is subject to certain provisions of the New York Dock Conditions and the ICC, STB court and arbitral authorities pertaining thereto.

In addition to Article I, Section 4 of the New York Dock Conditions, the proceeding in this case is governed by Article I, Section 2 which provides:

The rates of pay, rules, working conditions and all collective bargaining and other rights, privileges and benefits (including continuation of pension rights and benefits) of the railroads' employees under applicable laws and/or existing collective bargaining agreements or otherwise shall be preserved unless changed by future collective bargaining agreements or applicable statutes.

At issue in this case is the authority of the undersigned under Article I, Section 4 to override or extinguish, in whole or in part, the terms of pre-transaction CBAs. That authority is defined by Article I, Section 2. The most recent authoritative pronouncement with respect to such authority came in the STB's Decision in CSX Corp -- Control -- Chessie System, Inc. and Seaboard Coast Line Industries, Inc., Finance Docket No. 28905 (Sub-No. 22) and Norfolk Southern Corp. --Control -- Norfolk and Western Ry. Co. and Southern Ry. Co., Finance Docket No. 29430 (Sub-No. 20), served September 25, 1998 (Carmen III). Therein the STB defined the authority "... by reference to the practice of arbitrators during the period 1940 - 1980 ..." under the Washington Job Protection Agreement (WJPA) and ICC adopted labor protective conditions and by the following limitations:

**The transaction sought to be implemented must be an *approved transaction*; the modifications must be *necessary* to the implementation of that transaction; and the modifications cannot reach CBA *rights, privileges or benefits* protected by Article I, Section 2 of the New York Dock conditions.**

The STB went on to detail the meaning of the terms "a proved transaction," "necessary" and "rights, privileges and benefits." The undersigned deems it best to apply the STB interpretations of those terms to the various issues and disputes in this case as they are addressed.

BMW and the Carriers are in dispute as to how CRC employees should be allocated among CSXT, NS and CRC as operator of the SAAs. The Carriers' proposal would allocate those employees to the Carrier which is allocated the territory upon which the employees worked for CSC. BMW, on the other hand, proposes to have CRC abolish all jobs and have the three Carriers rebulletin those jobs to be bid upon by the transferring employees. Also, the BMW proposes to allow all such employees a type of "flowback" right whereby after initially bidding a position on one of the three Carriers, an employee could exercise seniority to a position on either of the other two Carriers. Thus, a senior employee furloughed on one of the Carriers could avail himself or herself of a position on one of the other two.

BMW argues that only under its allocation plan would employees have a meaningful choice as to where they want to work. Such choice, urges the Organization, is guaranteed to affected employees under the New York Dock Conditions.

The Carriers in support of their proposal argue that it is the most efficient and least disruptive method by which to allocate the employees. The Carriers point out that it does not involve job abolishments and rebidding which the Carriers foresee will result in

substantial delays to implementation of the transaction as well as relocation of hundreds and perhaps thousands of employees.

The undersigned believes the Carriers have the stronger position on this point. While employee choice is a laudable goal, it cannot be placed ahead of efficient implementation of the transaction. In Decision No. 89 the STB approved the transfer of CRC operation and employees to the three Carriers. Prompt effectuation of those objectives was an implicit element of the transaction. Moreover, in imposing the New York Dock Conditions the STB presumably intended application of the strict time limits of Article I, Section 4. BMW's proposal could delay implementation of the transaction several months beyond what would be required under the Carriers' plan. Moreover, the BMW's "flowback" proposal could impair establishment of a well-trained and unified work force one each of the three Carriers. It certainly would stifle the competition between CSXT and NS envisioned by the STB when it approved the transaction.

Based upon the foregoing, the undersigned believes that the Carriers' proposal for the allocation of former CRC employees is the most appropriate. Adoption thereof meets the tests set forth by the STB in *Carmen III*. It falls within the gambit of the selection and assignment of forces made necessary by the transaction, a subject matter frequently dealt with by arbitrators in the 1940-80 era. It involves the principle transaction approved by the STB in Decision No. 89. Its adoption is necessary to the implementation of that transaction which, as the STB explained in *Carmen III*, means that it is necessary to secure a public transportation benefit. It does not involve a right, privilege or benefit

under any CBA required to be maintained by Article I, Section 2 of the New York Dock Conditions.

The parties also are in dispute as to the proper modifications of seniority in connection with the transaction. As noted above, the Carriers' propose to abolish CRC's seniority districts and create new ones on their respective properties. Doing so would contravene the seniority provisions of the CRC/BMWE CBA. BMW's proposal would modify somewhat existing CRC seniority districts but basically would maintain and apply them to the operations of the three Carriers.

Under the CRC/BMWE CBA there are eighteen seniority districts. Under the plan for allocation of CRC rail operations, NS and CSXT will receive some of those districts as a whole and some as fragments. NS plans to organize the CSC lines it is allocated into one new Northwest Region consisting of three (Dearborn, Pittsburgh and Harrisburg) Divisions. These would be added to NS's existing two operating regions encompassing nine operating divisions. CSXT will organize the CRC operations it receives by combining them with certain CSXT seniority districts into three new consolidated districts (a Northern District, a Western District and an Eastern District). CRC as operator of the SAAs in three geographic areas will maintain separate seniority districts for those areas. The three acquiring Carriers propose to dovetail the seniority of CRC employees onto the rosters of the new seniority districts.

At the outset the BMW argues that at least in some of the Carriers' seniority districts there is no genuine transaction within the meaning of the New York Dock

Conditions and thus this Neutral Referee has no authority to effectuate any changes in the seniority arrangements. The Organization maintains that there is no genuine consolidation or coordination of functions.

The Carriers attack the BMWWE seniority proposal, much as they did the Organization's proposal for allocation of employees, as an attempt to maintain the status quo of CRC operations. The Carriers emphasize that within the CRC seniority districts are over 120 zones outside of which employees are not required to exercise seniority. This fact allows CRC employees to decline work outside the zones which is wholly inconsistent with the operating efficiencies which were an important factor in the STB's Decision No. 89. Accordingly, the Carriers urge, their proposal must be adopted in order to effectuate an important purpose of the transaction. Moreover, the Carriers emphasize, the BMWWE proposal will provide for a separation allowance for furloughed employees which, given the effect of zone seniority, would significantly increase the Carriers' costs in connection with this transaction.

BMWWE argues that its proposal protects CRC employees from being forced to work over much larger geographic areas thereby increasing travel time and time away from home for such employees. BMWWE asserts that its membership will make every effort to secure work thus minimizing the possibility of numerous and expensive separation allowance payments. The Organization urges that on NS former CRC employees will be deprived of significant work equities, and the CSXT would be worse.

The Organization contends that the dovetailing would be detrimental to existing NS and CSXT employees.

Once again, this Neutral Referee concludes that the Carrier has the stronger case.

While the nature of this transaction is somewhat unusual, the fact remains that the very matters BMWWE contends do not constitute a transaction were considered by the STB when it approved the transaction. NS, CSXT and CRC as the operator of the SAAs have simply sought to implement the transaction by taking the very actions contemplated by the STB in Decision No. 89. Imposing the seniority structure of CRC upon NS and CSXT operations would seriously hamper them in terms of increasing efficiencies and competition between NS and CSXT. Flexibility with respect to the work force is key to the success of the transaction. The CRC seniority arrangements would severely restrict that flexibility. Moreover, even if this Neutral Referee had the authority under Article I, Section 4, to include a provision for a separation allowance, which he doubts he possesses because it would expand benefits of the New York Dock Conditions, to do so in this case would expose the Carrier to undue expense.

The undersigned believes his decision on this point complies with the applicable tests set forth in *Carmen III*. Adjustment or modification of seniority arrangements by arbitrators under protective conditions was common during the period from 1940 to 1980. The adoption of the adjustments and modifications in this case are necessary to realize a public transportation benefit. The STB has determined that seniority is not a right, privilege or benefit under Article I, Section 2 of the New York Dock Conditions.

The parties further disagree as to what working agreement will apply to the CRC employees taken over by CSXT, NS and CRC as operator of the SAAs. BMWWE argues that with limited modifications the CRC/BMWWE agreement should apply. With the exception of CSXT's Northern District where the CRC/BMWWE CBA would continue to apply without substantial modification and the three geographical SAAs where that agreement would apply with some modifications, NS and CSXT would apply the existing CBA between those Carriers and BMWWE applicable to the territory on which former CRC employees will work.

The basic argument advanced by BMWWE in favor of its proposal is that such application would minimize disruption to the lives of former CRC employees and would preserve rates of pay rules and working conditions as provided in Article I, Section 2 of the New York Dock Conditions for those employees. Emphasizing that the former CRC employees will be working for NS and CSXT in maintenance of way operations the structure of which is different on those Carriers from that of CRC as it presently exists, both CSXT and NS maintain that applying the CRC/BMWWE agreement as BMWWE urges would materially detract from the increased efficiency expected in connection with the transaction.

The Carriers also argue that they must be free to apply their own policies with respect to their maintenance of way operations and that the best way to do so is to apply their BMWWE agreements. As examples, the Carriers point out that BMWWE has agreed with CSXT to apply the System Production Gang (SPG) agreement which has been

highly efficient and successful on that property and that BMW has agreed with NS to apply the District Production Gang (DPG) agreement on its property which has had similar success. However, the Carriers point out, application of the CRC working agreement to CRC employees coming to work for the two Carriers will materially diminish the efficiencies and economies otherwise available under the DPG and SPG agreements.

Again, the record in this case convinces the Neutral Referee of the superiority of the Carriers' position on this issue. Two plain goals of the STB's approval of the transaction in Decision No. 89 are more efficient and less costly operations by the Carriers involved and a serious competitive balance between NS and CSXT. Application of the CRC/BMW CBA as the working agreement for former CRC employees who become employed by CSXT and NS strikes at the heart of both propositions.

Accordingly, this Neutral Referee concludes that the Carriers' proposal for application of CBAs should be adopted over that of BMW. The undersigned believes that this determination complies with the tests set forth by the STB in *Carmen III*. The public transportation benefit to be derived is, as noted above, increased operating efficiencies, reduced costs and the promotion of competition between NS and CSXT. It does not involve a right, privilege or benefit protected from change by Article I, Section 2 of the New York Dock Conditions.

The parties are in further dispute with respect to the use of outside contractors by NS and CSXT for rehabilitation and construction projects necessary to link the Carriers'

system with allocated CRC lines and to upgrade track and increase capacity. The Carriers emphasizes that these projects would be temporary and that under the BMWWE's proposal it would be required to hire and then lay off substantial numbers of employees. Nor, emphasizes the Carriers, does BMWWE's proposal allow for NS, CSXT or third parties to perform maintenance of way functions for CRC as operator of the SAAs where those functions cannot be performed efficiently by the drastically reduced employee complement of CRC.

Once again the Carriers' arguments are more persuasive than those of the BMWWE. Restriction on contracting out, either through the scope clause of a CBA or a specific prohibition therein, is a common provision in railroad CBAs. As BMWWE points out, it is entitled to respect and observance under the STB's decision in Carmen III. However, the application of such restrictions in the instant case would cause serious delay to implementation of the transaction insofar as capital improvements are concerned and would unduly burden CRC with an employee complement it could not keep working efficiently. Accordingly, elimination of those restrictions meets the necessity test set forth by the STB in Carmen III. Moreover, it is not a right, privilege or benefit guaranteed maintenance under Article I, Section 2 of the New York Dock Conditions.

However, BMWWE maintains that there are several rights, privileges and benefits in this transaction protected from abrogation or modification by Article I, Section 2 of the New York Dock Conditions. First among these, urges the Organization, is the CRC/BMWWE Supplemental Unemployment Benefit, (SUB) Plan. The Carriers contend

that the plan falls within the category of wages, hours and working conditions under Article I, Section 2 which are not immutable but which may be eradicated or modified under the necessity test. Moreover, the Carriers urge the plan is in the nature of an alternative protective arrangement to the New York Dock Conditions to be accepted or rejected by employees as an exclusive source of protection.

The undersigned believes the Organization has the stronger position on this point. As the Organization points out, the STB in Carmen III specifically identified unemployment compensation as a protected right, privilege or benefit. Supplemental unemployment benefits are so closely related as to attain the same status. Accordingly, the arbitrated implementing arrangement or arrangements resulting from this proceeding are deemed to include the CRC/BMWE Supplemental Unemployment Benefit plan.

The Organization also contends that a CRC shoe allowance and an L&N laundry allowance which would be applicable on CSXT also are rights, privileges and benefits under Article I, Section 2. This Neutral Referee cannot agree. The Carriers make the stronger argument that these benefits are analogous to other provisions of collective bargaining agreements which do not represent vested or accrued rights of the nature identified by the STB in Carmen III as being elemental to rights, privileges and benefits. Accordingly, the undersigned finds that they are not rights, privileges and benefits which must be preserved under Article I, Section 2.

In its prehearing submission the BMWE argued that the New Jersey Transit (NJT) rail operations flowback rights allowing NJT commuter employees who formerly worked

for CRC the right to exercise seniority on CRC if furloughed from NJT constituted a right, privilege or benefit under Article I, Section 2. The Carriers while denying such status for the arrangement pointed out that under both BMW's and the Carriers' proposals the arrangement would be honored. Accordingly, it is to be considered part of the arbitrated implementing arrangement or arrangements which issue in connection with this Decision.

Also in its prehearing submission BMW contended that the CRC Continuing Education Assistance Plan and the CRC Employee Savings Plan constituted rights, privileges and benefits under Article I, Section 2. However, at the hearing when the Carriers demonstrated that they had plans superior to those at issue, BMW withdrew its contention that the plans arose to such status in this particular case, reserving the right to raise the issue in another context. Accordingly, the CRC plans will not be considered part of any arbitrated implementing arrangement or arrangements resulting from this Decision.

The IAMAW has CBAs with CRC covering approximately thirty-eight employees performing nonshop maintenance of way work. As a result of the transaction in this case those employees will be allocated to NS, CSXT and CRC as operator of the SAAs. Under the Carriers' proposal those employees would be placed under the applicable BMW CBA with each Carrier. As a result IAMAW no longer would represent those employees.

The IAMAW challenges the jurisdiction of this Neutral Referee to impose the BMW agreements upon the thirty-eight employees transferred to the three Carriers as violative of the representational rights of those employees, a matter within the exclusive jurisdiction of the NMB to resolve. IAMAW urges retention of the CRC BMW agreement for application to those employees because that agreement protects the representation status of the IAMAW and the rights of the employees it represents. Alternatively, the Organization seeks application of its agreements with the three Carriers which would preserve its status as representative of those employees when they come to work for the three Carriers.

The Organization's point is well taken that questions of employee representation are within the exclusive jurisdiction of the NMB to resolve under the Railway Labor Act. However, the STB has long held, with judicial approval, that rights under the Railway Labor Act must yield to considerations of the effective implementation of an approved transaction. The most recent statement of that doctrine came in a case involving this transaction. See Norfolk & Western Ry. Co., et al & Bro. of RR. Signalmen, et al, Case No. 98-1808, USCA 4<sup>th</sup> Cir, Dec. 29, 1998. Accordingly, the Organization's jurisdictional argument is without merit.

Nor is this Neutral Referee persuaded that he should adopt IAMAW agreements with the three Carriers to apply to the thirty-eight employees who come to work for those Carriers rather than the BMW agreements with those Carriers. Although there was some discussion at the hearing that the IAMAW and the Carriers might reach an

agreement as to the applicability of one or more agreements with that Organization to the transferred employees, the undersigned has not been informed that agreement on such applicability was reached. In the absence thereof the LAMAW's request for implementation of its proposal is based solely upon its desire to maintain its status as representative of the employees. While that desire is understandable, as noted above it raises an issue beyond the scope of the jurisdiction of this arbitrator.

In view of the foregoing, the LAMAW's proposal will not be adopted.

## **2. Consolidation of Roadway Equipment Maintenance and Repair Functions and Rail Welding Functions**

Presently CRC maintains and repairs roadway equipment at its shop in Canton, Ohio. That shop will be closed and the work transferred to the CSXT Shop in Richmond, Virginia and the NS Roadway Shop in Charlotte, North Carolina. Additionally, CRC's rail welding shop at Lucknow (Harrisburg), Pennsylvania will be closed and its functions transferred to the CSXT's Rail Fabrication Plant in Atlanta, Georgia and to CSXT rail welding facilities in Russell, Kentucky and Nashville, Tennessee. The Carriers' proposal would allow affected CRC employees at Lucknow and Canton to follow their work to the shops to which it is transferred. Their seniority would be dovetailed onto existing rosters at those points and the employees would work under CBAs applicable to those locations. BMW's interest in this phase of the transaction is that it represents most of the CRC employees to be transferred from Lucknow and Canton. The shopcrafts' interests arise

by virtue of the fact that those Organizations represent CSXT and NS employees at one or more of the shops receiving the work and employees from Canton and Lucknow.

At the outset the shopcrafts raise jurisdictional objections to this Neutral Referee's authority to impose an arbitrated implementing arrangement on the parties with respect to the consolidation of the maintenance of way shop work. The basis for this contention is that the Carriers did not engage in the prerequisite negotiations with the shopcraft organizations as required by Article I, Section 4 of the New York Dock Conditions. The Organizations point out that in reality there was but one meeting between the Carriers and the Organizations which took place on September 24, 1998 and lasted a scant three hours. This, the Organizations urge, did not comply with the spirit or the letter of the thirty-day negotiating period contemplated by Article I, Section 4.

Although the Organizations characterize the September 24, 1998 meeting as a take it or leave it session on the Carrier's part, it appears that the Organizations actually informed the Carriers that before they should negotiate with the Carriers for an implementing agreement the Carriers should reach a master implementing agreement with BMW. Negotiations with that Organization never were fruitful and such an agreement apparently was not possible. The Carriers thus were looking at an unacceptable delay in negotiations that would extend far beyond any time for such contemplated by Article I, Section 4. Under these circumstances the undersigned does not believe the Carriers' handling of this matter constituted a violation of its negotiating obligations under Article I, Section 4.

The shopcraft organizations also challenge the propriety of the Carriers providing notice by fax of the meeting to attempt to select a Neutral Referee for this case. The Organizations argue that the notice of the meeting, to be accomplished by conference call, did not reach many of the Organizations and thus effectively eliminated them from participation therein. The use of a fax machine to transmit important information has the advantage of speed. However, there are drawbacks. Nevertheless, this Neutral Referee cannot conclude that what occurred in this case amounted to a violation of the terms of Article I, Section 4.

The shopcraft organizations seek to expand bidding opportunities for the jobs to be created for employees following their work from the closed CRC shops to the NS and CSXT facilities. The Organizations also question the qualifications of transferring employees as legitimate craft members, citing the fact that the work performed in the closed shops was not under shopcraft contracts and the employees performing that work never met the more rigid craft qualifications applicable at NS and CSXT facilities. The IBEW, in particular, seeks modifications to the Carriers' proposed implementing agreement to assure that the shopcrafts agreement in effect at the location to which employees are transferred will be strictly followed.

The Carrier maintains that to open the new jobs to bid as desired by the shopcrafts would seriously dilute the principle that an employee should follow his or her work to where it is transferred. Moreover, the Carriers emphasize, there are provisions in the existing applicable CBAs for training or retraining employees who cannot qualify for jobs

within a craft. The Carriers maintain that the changes such as those sought by IBEW in the Carriers' implementing proposal are unnecessary.

This Neutral Referee agrees with the Carrier on this issue. To over extend the bidding process would compromise the right of employees to follow their work. Problems with qualifications can be resolved by application of training and retraining provisions in existing CBAs. While clarification of agreement terms always is desirable, the undersigned believes that in this case what the IBEW seeks borders upon establishing the terms of a CBA which is beyond the jurisdiction of a Neutral Referee under Article I, Section 4.

BMWE apparently has no objection to the consolidation of the shop work here at issue or with the dovetailing of seniority. However, BMWE's proposal would seek to restrict the performance of transferred work to the particular facility to which transferred when existing applicable CBAs permit the Carrier more flexibility. Moreover, BMWE apparently seeks a bidding pool even broader than that sought by the shopcrafts. Based upon foregoing holdings in this case, the undersigned believes that neither position has merit.

Accordingly, this Neutral Referee finds that the Carriers' proposal with respect to the closing of CSC shops and the transfer of maintenance of way work performed there and the employees performing it to NS and CSXT facilities is appropriate for application to this case and that the proposals of BMWE and the shopcraft organizations are not.

Attached hereto and made a part hereof are arbitrated implementing arrangements the purpose of which is to resolve all outstanding issues and disputes raised by the parties in this proceeding.

  
William E. Fredenberger, Jr.  
Neutral Referee

DATED: January 14, 1999

IMPLEMENTING AGREEMENT

BETWEEN

CSX TRANSPORTATION, INC.  
and its Railroad Subsidiaries

and

NORFOLK SOUTHERN RAILWAY COMPANY  
and its Railroad Subsidiaries

and

CONSOLIDATED RAIL CORPORATION

and

their Employees Represented by

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

WHEREAS, Norfolk Southern Corporation ("NS"), Norfolk Southern Railway Company and its railroad subsidiaries ("NSR"); and CSX Corporation ("CSX") and CSX Transportation, Inc. and its railroad subsidiaries ("CSXT"); and Conrail, Inc. ("CRR") and Consolidated Rail Corporation ("CRC") have filed an application with the Surface Transportation Board ("STB") in Finance Docket No. 33388 seeking approval of acquisition of control by NS and CSX of CRR and CRC, and for the division of the use and operation of CRC's assets by NSR and CSXT (and the operation of Shared Assets Areas by CRC for the exclusive benefit of CSX and NS the "transaction");

WHEREAS, in its decision served July 23, 1998 in the proceeding captioned Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company - Control and Operating Leases/Agreements - Conrail, Inc. and Consolidated Rail Corporation, and related proceedings, the STB has imposed the employee protective conditions set forth in New York Dock Ry. - Control - Brooklyn Eastern District, 360 I.C.C. 60 (1979) ("New York Dock conditions") (copy attached) on all aspects of the Primary Application; Norfolk and Western Railway Company - Trackage Rights - Burlington Northern, Inc., 354 I.C.C. 653 (1980), on related authorization of trackage rights; Oregon Short Line Railroad - Abandonment - Goshen, 360 I.C.C. 91 (1979), on related abandonment authorizations; and Mendocino Coast Railway, Inc., - Lease and Operate - California Western Railway, 360 I.C.C. 653 (1980), on the related authorization of the operations by CSXT or NSR of track leases;

WHEREAS, the parties signatory hereto desire to reach an implementing agreement in satisfaction of Article I, Section 4 of the

New York Dock conditions and other aforementioned labor protective conditions:

NOW, THEREFORE, IT IS AGREED:

ARTICLE I

Section 1

Upon seven (7) days' advance written notice by CSXT, NSR and CRC, CSXT, NSR and CRC may effect one or more of the following coordinations or rearrangements of forces:

- (a) BMWWE represented employees will be allocated among CSXT, NSR and CRC as provided in Appendix A.
- (b) The work on the allocated CRC lines to be operated by CSXT will be coordinated and seniority integrated in accordance with the terms and conditions outlined in Article II of the agreement.
- (c) The work on the allocated CRC lines to be operated by NSR will be coordinated and seniority integrated in accordance with the terms and conditions outlined in Article II of the agreement.
- (d) Regional and System-wide Production Gang operations will be coordinated between the NSR lines currently covered by the June 12, 1992 Arbitrated Agreement, as amended, establishing Designated Programmed Gangs ("DPG's") (which includes the territories of the former Norfolk and Western Railway Company, the former New York, Chicago and St. Louis Railway Company ("Nickel Plate"), and the former Wabash Railroad Company) and the allocated CRC lines operated by NSR, by placing the allocated CRC lines operated by NSR under the coverage of the June 12, 1992 Arbitrated Agreement, as amended. The allocated CRC lines operated by NSR will constitute a newly established "CR Zone" added under Section 1 of that DPG Agreement. All CRC employees allocated to NSR will have their seniority dates on the CRC District Seniority Rosters covering Foreman, Assistant Foreman, Machine Operator and Trackman classifications, formerly applicable to the allocated CRC lines operated by NSR, dovetailed into the corresponding existing DPG rosters and given CR as their zone designation on such rosters.
- (e) System and regional production gang activities will be coordinated on existing CSXT lines and the allocated CRC lines operated by CSXT by placing the allocated CRC lines operated by CSXT under the coverage of the CSXT-BMWE System Production Gang Agreement, as amended, (the "SPG Agreement"). Likewise, CSXT will adopt its current practice of assigning roadway equipment

mechanics to System Production Gangs and all roadway mechanics will be placed under the CSXT Labor Agreement No. 12-126-92 now in place on CSXT (the "Roadway Mechanics Agreement").<sup>1</sup>

- (f) The rail welding work performed at the Lucknow Plant for the allocated CRC lines operated by NSR may be transferred to the NSR rail welding facility at Atlanta, Georgia. The work performed at the Lucknow Plant for the allocated CRC lines operated by CSXT may be performed at the CSXT rail welding facilities at Russell, Kentucky or Nashville, Tennessee.
- (g) The maintenance of any CRC roadway equipment allocated to NSR formerly maintained at the Canton Shop may be performed at Charlotte Roadway Shop and/or other locations on the expanded NSR system.<sup>2</sup> The maintenance of any CRC roadway equipment allocated to CSXT formerly maintained at the Canton Shop may be performed at the Richmond, Virginia Roadway Shop and/or other locations on the expanded CSXT system.<sup>3</sup> This coordination may be accomplished in phases.
- (h) Contractors may be used without notice to augment CSXT, NSR, or CRC forces as needed to perform construction and rehabilitation projects such as initial new construction of connection tracks, sidings, mainline, yard tracks, new or expanded terminals and crossing improvements) initially required for implementing the Operating Plan and to achieve the benefits of the transaction as approved by the STB in Finance Docket No. 33388.
- (i) The parties recognize that, after the transaction, CRC will no longer have the system support it formerly had available. Therefore, to permit operation of the Shared Assets Areas in a reasonable and efficient manner:

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<sup>1</sup> The coordination of MW roadway equipment repair work and employees on the CRC lines allocated to CSXT is addressed in the attached agreement signed by CSXT, CRC, BMWE, IAM and SMWIA, which is incorporated herein by reference.

<sup>2</sup> The coordination of MW roadway equipment repair work and employees at the Charlotte Roadway Shop is addressed in the attached agreement signed by NSR, CRC, BMWE, IAM, IBB, IBEW, BRC-TCU, SMWIA and NCF&O, which is incorporated herein by reference. The allocation and coordination of employees engaged in line-of-road equipment repair and maintenance work on certain lines to be allocated to NSR is addressed in the attached agreement signed by NSR, CRC, BMWE, and IAM, which is incorporated herein by reference.

<sup>3</sup> The coordination of MW roadway equipment repair work and employees at the CSXT Richmond facility is addressed in the attached agreement referenced in note 1.

- (1) Major annual program maintenance such as rail, tie, and surfacing projects will be provided by CSXT and/or NSR in accordance with their respective collective bargaining agreements and/or practices.
- (2) CRC will purchase continuous welded rail ("CWR") from CSXT and/or NSR.
- (3) CRC will obtain from CSXT and/or NSR, in accordance with their respective collective bargaining agreements and/or practices, services such as component reclamation and pre-fabricated track work.
- (4) CRC will obtain from CSXT and/or NSR, in accordance with their respective collective bargaining agreements and/or practices, roadway equipment overhaul/repair that cannot be accomplished on line of road by CRC forces.
- (5) Changes, additions, improvements, and rationalizations that are over and above routine maintenance will be provided by CSXT and/or NSR in accordance with their respective collective bargaining agreements and/or practices.

## Section 2

Coordinations in which work is transferred under this agreement and one or more employees are offered the opportunity to follow that work will be effected in the following manner:

- (a) By bulletins giving a minimum of five (5) days' written notice, the positions that no longer will be needed at the location from which the work is being transferred will be abolished and concurrently therewith the positions that will be established at the location to which the work is being transferred will be advertised for a period of five (5) days to all employees holding regular BMW assignments at the transferring location.
- (b) The positions advertised pursuant to paragraph (a) above will be awarded in seniority order and the successful bidders notified of the awards by posting same on the appropriate bulletin boards at the transferring location on the day after the bidding process closes. In addition, each successful bidder shall be notified in writing of the award together with the date and time to report to the officer in charge at the receiving location. The employees so notified shall report upon the date and at the time specified unless other arrangements are made with the proper authority or they are prevented from doing so due to circumstances beyond their control.

- (c) Should there remain unfilled positions after fulfilling the requirements of Article I, Section 2(a) and 2(b) above, the positions may be assigned in reverse seniority order, beginning with the most junior employee holding a regular assignment at the transferring location; until all positions are filled. Upon receipt of such assignment, those employees must, within seven (7) days, elect in writing one of the following options: (1) accept the assigned position and report to the position pursuant to Article I, Section 2(b) above, or (2) be furloughed without protection. In the event an employee fails to make such an election, the employee shall be considered to have exercised option (2).
- (d) Employees transferring under this section will have their seniority date(s) dovetailed in accordance with the procedures set forth in Article II on the appropriate roster(s) at the receiving location.

## ARTICLE II

### Section 1

Upon advance written notice by CSXT, NSR and CRC under Article I Section 1, CRC employees will be allocated to CSXT, NSR and CRC, as detailed in Appendix B, and each such employee will be employed exclusively by either CSXT or NSR or CRC.

Those CRC employees who are allocated to CSXT will be available to perform service on a coordinated basis. The agreement to be applied is as described in Appendix B. All employees holding a regular assignment will continue to hold that assignment under the newly applicable agreement unless or until changes are made under the advertisement and displacement rules or other applicable provisions.

Those CRC employees who are allocated to NSR will be available to perform service on a coordinated basis. The current agreement in effect on NSR between BMWE and Norfolk and Western Railway Company ("NW") dated July 1, 1986, as amended, (agreement currently applicable on former Norfolk and Western and Wabash lines) will be applied to cover all of the former CRC territories operated by NSR. All employees holding a regular assignment will continue to hold that assignment under the newly applicable agreement unless or until changes are made under the advertisement and displacement rules or other applicable provisions.

CRC employees who transfer from Lucknow to the NSR facility at Atlanta, Georgia will become employees exclusively of NSR and will be

subject to the current October 1, 1972 Southern BMW Agreement applicable at that facility.

Those CRC employees who remain in the Shared Asset Areas will continue to perform service under the applicable CRC/BMW Agreement, except as modified in accordance with the authorized transaction and elsewhere herein.

## Section 2

Upon the date provided in the applicable notice under Article I:

- the seniority districts on the former CRC territories allocated to and operated by NSR will be consolidated and realigned to establish a new Northern Region seniority district under Rule 2 of the July 1, 1986 Agreement, as amended, and will correspond to three NSR operating Divisions - Dearborn, Pittsburgh and Harrisburg. The Harrisburg Division will consist of the CRC Albany and Philadelphia Division territories allocated to NSR; the Pittsburgh Division will consist of the CRC Pittsburgh Division territory allocated to NSR; and the Dearborn Division will consist of the CRC Indianapolis and Dearborn Division territories allocated to NSR.

The CRC employees allocated to NSR will have their seniority dates listed on the corresponding CRC District Seniority Rosters formerly applicable to the involved territories allocated to NSR dovetailed to establish new Northern Region seniority rosters for the Track Sub-Department. CRC employees having only Regional seniority will have their CRC Regional seniority dates dovetailed into the DPG seniority rosters and will establish a new Northern Region seniority date upon their first performance of service after the advance notice given under Article I. New Dearborn, Pittsburgh, and Harrisburg Division seniority rosters will be established in the same manner for the B&B Sub-Department and Roadway Equipment Repairmen.

- the seniority districts on the former CRC territories allocated to and operated by CSXT will be consolidated and realigned into three (3) consolidated seniority districts (the Eastern, Western and Northern Districts) as indicated in Appendix B. CRC employees having only Regional seniority will have their CRC Regional seniority date apply only for SPG service and will establish a seniority date on the Eastern, Western or Northern District upon their first performance of service after the advance notice given under Article I.

- the seniority districts in the Shared Assets Areas will be realigned to establish one seniority district for each of the respective Shared Assets Areas. Current work zones within each Shared Asset Area will be combined and realigned to provide that each seniority district will comprise only one work zone for the purpose of recall or automatic bidder rights in making assignments to positions on that respective seniority district.

### Section 3

The seniority dates of employees recorded on existing rosters will be accepted as correct. When rosters are integrated or names are integrated into new or existing rosters, and as a result thereof, employees on such rosters have identical seniority dates, then the roster standing among such employees shall be determined as follows:

1. earlier hire date shall be ranked senior;
2. previous service with carrier shall be ranked senior;
3. employee with earlier month and day of birth within any calendar year shall be ranked senior.

### Section 4

When seniority rosters are integrated, employees who hold a regular assignment on the NSR-operated or CSXT-operated territories at the time of the integration (i.e., "active employees," including employees on sick leave, leave of absence, promoted, suspended from service or dismissed employees who are subsequently restored to service) will be dovetailed using their seniority dates as shown on the respective rosters and their names listed in dovetailed order on the roster. Thereafter, employees' rights to exercise seniority will be governed by the applicable provisions of the collective bargaining agreement.

### Section 5

Employees will be transitioned to the payroll cycles of their new employer where applicable. The transition may result in a change in pay day, pay hold back, and/or pay period for these employees, as well as a one-time adjustment in pay periods to convert to the new pay cycle.

## ARTICLE III

The parties further agree that after the initial division of the use and operation of CRC's assets between CSXT and NSR pursuant to this agreement, if either CSXT or NSR serves a subsequent notice related to

the Application but limited to a coordination of its CRC allocated assets and not affecting the other railroads, then only that railroad needs to be the party to the subsequent implementing agreement.

ARTICLE IV

This Agreement shall fulfill the requirements of Article I, Section 4 of the New York Dock conditions and all other conditions which have been imposed in Decision No. 89 by the STB in Finance Docket No. 33388.

## Appendix A - ALLOCATION OF EMPLOYEES

CRC employees represented by BMWF will be allocated to one of the three railroad employers (CSXT, NSR, and CRC (Shared Assets ("SAA"))) based upon position held on the date the applicable notice is served under Article I of this Implementing Agreement, (the "allocation date") as set forth below:

### I. Available Employees

A. Employees assigned to a District position are allocated by their work location as follows:

1. Buffalo, New England, or Mohawk Seniority Districts all to CSXT
2. Southern Tier, Alleghany A, Alleghany B, Pittsburgh, or Michigan Seniority Districts all to NSR
3. Youngstown Seniority District to NSR, except positions at Lima to CSXT
4. Cleveland Seniority District to CSXT, except positions at Rockport Yard to NSR
5. Toledo Seniority District to NSR, except positions at Stanley Yard to CSXT
6. Chicago Seniority District to NSR, except positions on Ft. Wayne line and positions west of Ft. Wayne to CSXT
7. Columbus Seniority District to NSR, except positions at Crestline and Kenton and certain positions as determined by the railroads, at Buckeye Yard to CSXT
8. Southwest Seniority District to CSXT, except positions at Anderson to NSR
9. Harrisburg Seniority District to NSR, except certain positions as determined by the railroads, at Baltimore to CSXT
10. Detroit Seniority District to SAA until sufficiently staffed, as determined by the railroads, rest to NSR
11. New Jersey or Philadelphia Seniority Districts positions to respective Carrier acquiring headquarters point

B. Employees assigned to a Production Zone or Regional position are allocated by their respective earliest District seniority date as follows:

1. Zone employees
  - a. Southern Tier, Harrisburg Pittsburgh, Alleghany A, Alleghany B, Youngstown, Michigan, Toledo, or Chicago all to NSR
  - b. Buffalo, New England, Mohawk, or Cleveland all to CSXT
  - c. Detroit to SAA until sufficiently staffed, as determined by the railroads, rest to NSR
  - d. New Jersey to SAA until sufficiently staffed, as determined by the railroads, rest to NSR and certain positions to CSXT, as determined by the railroads
  - e. Philadelphia to SAA until sufficiently staffed, as determined by the railroads, rest to NSR and certain positions to CSXT, as determined by the railroads
  - f. Columbus or Southwest to CSXT, except certain positions, as determined by the railroads, to NSR.
  
2. Regional employees
  - a. District seniority only on a single District
    - i. Buffalo, New England, Mohawk, Cleveland, or Southwest to CSXT
    - ii. rest to NSR
  - b. District seniority on Multiple Districts
    - i. use District having earliest seniority date
    - ii. Buffalo, New England, Mohawk, Cleveland, or Southwest to CSXT, rest to NSR
  - c. Only Regional seniority - apportion by residence
  
- C. Roadway Shop and Rail Plant employees
  1. Canton
    - a. 56 transferred to Charlotte (NSR)
    - b. 20 transferred to Richmond (CSXT)
    - c. non-transfers (all to NSR)
  2. Lucknow
    - a. 5 transferred to Atlanta (NSR)
    - b. non-transfers (all to NSR)
  
- D. Employees eligible for Sub-Plan benefits, on leave of absence, or disabled allocated as set forth above, treating the last position held as if it was the position held on allocation date:
  1. if was District position allocate as in Part A
  2. if was Production Zone or Regional position allocate as in Part B

3. if was Roadway Shop or Rail Plant position  
allocate as in Part C

## II. Unavailable Employees

Other CRC employees with BMW seniority will be placed on a list, in the order of their respective CRC District seniority, for new hire preference. An attempt to offer these employees available positions will be made prior to employing new hires.

## CSXT Appendix B

### I. CSXT Eastern Seniority District

A. Track and Bridge and Building operations and associated work forces of the former B&O, and portions of the former C&O, Conrail, RF&P and SCL will be merged into the newly formed operating district and seniority district hereinafter described:

The area from New York/New Jersey to south of Richmond, VA west to Charlottesville, VA, Huntington, WV, north to Willard, OH and Cleveland, OH.

The above includes all mainlines, branch lines, yard tracks, industrial leads, stations between points identified, and all terminals that lie at the end of a line segment except: North and South Jersey SAA.

B. All employees assigned to positions within the above-described district will constitute one common work force working under one labor agreement. The B&O labor Agreement, as modified by this implementing agreement, will apply in the Eastern District.

### II. CSXT Western Seniority District

A. Track and Bridge and Building operations and associated work forces of the former B&O, and portions of the former B&O, B&OCT, C&O(PM), C&O, C&EI, Monon, L&N and Conrail will be merged into the newly formed operating district and seniority district hereinafter described:

The area from St. Louis, MO to Chicago, IL to a point east of Cleveland, OH and south to Cincinnati, OH and Columbus, OH and Louisville, KY and Evansville, IN.

The above includes all mainlines, branch lines, yard tracks, industrial leads, stations between points identified, and all terminals that lie at the end of a line segment except Detroit SAA.

B. All employees assigned to positions within the above-described district will constitute one common work force working under one labor agreement. The B&O labor Agreement, as modified by this implementing agreement, will apply in the Western District.

### III. CSXT Northern Seniority District

A. Track and Bridge and Building operations and associated work forces of the former Conrail not included in either the above CSXT Eastern or Western Districts will be merged into the newly formed operating district and seniority district hereinafter described:

The area from New York/New Jersey east to Boston/New Bedford, MA north to Adirondack Junction, Quebec and west to Cleveland, OH.

The above includes all mainlines, branch lines, yard tracks, industrial leads, stations between points identified, and all terminals that lie at the end of a line segment except: North Jersey SAA.

B. All employees assigned to positions within the above-described district will constitute one common work force working under one labor agreement. The CRC labor Agreement, as modified by this implementing agreement, will apply in the Northern District.

AGREEMENT

BETWEEN

CSX TRANSPORTATION, INC.  
And its Railroad Subsidiaries

and

CONSOLIDATED RAIL CORPORATION

and

their Employees Represented by

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS  
SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION

WHEREAS, CSX Corporation ("CSX"), CSX Transportation, Inc. and its railroad subsidiaries ("CSXT"); and Norfolk Southern Corporation ("NS"), Norfolk Southern Railway Company and its railroad subsidiaries ("NSR"); and Conrail, Inc. ("CRR") and Consolidated Rail Corporation ("CRC") have filed an application with the Surface Transportation Board ("STB") in Finance Docket No. 33388 seeking approval of acquisition of control by CSX and NS of CRR and CRC, and for the division of the use and operation of CRC's assets by NSR and CSXT and the operation of Shared Assets Areas by CRC for the exclusive benefit of CSX and NS ("the transaction");

WHEREAS, in its decision served July 23, 1998 in the proceeding captioned Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company - Control and Operating Leases/Agreements - Conrail, Inc. and Consolidated Rail Corporation, and related proceedings, the STB has imposed the employee protective conditions set forth in New York Dock Ry. - Control - Brooklyn Eastern District, 360 I.C.C. 60 (1979) ("New York Dock conditions") (copy attached) on all aspects of the Primary Application; Norfolk and Western Railway Company - Trackage Rights - Burlington Northern, Inc., 354 I.C.C. 653 (1980) on related authorization of trackage rights; Oregon Short Line Railroad - Abandonment - Goshen, 360 I.C.C. 91 (1979), on related abandonment authorizations; and Mendocino Coast Railway,

Inc. - Lease and Operate - California Western Railway, 360 I.C.C. 653 (1980), on the related track leases:

WHEREAS, the railroads gave notice on August 24, 1998, of their intention to consummate the transaction and to coordinate certain maintenance-of-way work, including performing roadway equipment maintenance and repair work pursuant to Article I, Section 4 of the New York Dock conditions and other employee protective conditions.

NOW, THEREFORE, IT IS AGREED:

#### ARTICLE I

Upon seven (7) days advance written notice by CSXT and CRC, CSXT and CRC may affect this consolidation as set forth below.

#### ARTICLE II

CSXT will integrate its allocated former CRC roadway equipment mechanics into CSXT's Roadway Mechanic system under CSXT Labor Agreement 12-126-92, as amended, on a basis similar to the method used to integrate those employees who were present at the time of the original roadway equipment consolidation on CSXT. As such, CSXT will advertise all of the roadway mechanic positions on the allocated CRC lines to be operated by CSXT and the CRC allocated roadway shop positions to be established at CSXT's Richmond facility at the same time and follow the general principles of the original CSXT Labor Agreement 12-126-92. Once integrated, the former CRC employees will work under and be governed by the provisions of CSXT Labor Agreement 12-126-92, as amended.

#### ARTICLE III

This Agreement shall fulfill the requirements of Article I, Section 4, of the New York Dock conditions and all other

- conditions which have been imposed in Decision No. 89 by the STB  
in Finance Docket No. 33388.

AGREEMENT

BETWEEN

NORFOLK SOUTHERN RAILWAY COMPANY  
and its Railroad Subsidiaries

and

CONSOLIDATED RAIL CORPORATION

and

their Employees Represented by

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS  
INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS,  
BLACKSMITHS, FORGERS AND HELPERS  
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS  
BROTHERHOOD RAILWAY CARMEN DIVISION - TCU  
SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION  
NATIONAL CONFERENCE OF FIREMEN AND OILERS

WHEREAS, Norfolk Southern Corporation ("NS"), Norfolk Southern Railway Company and its railroad subsidiaries ("NSR"); and CSX Corporation ("CSX") and CSX Transportation, Inc. and its railroad subsidiaries ("CSXT"); and Conrail, Inc. ("CRR") and Consolidated Rail Corporation ("CRC") have filed an application with the Surface Transportation Board ("STB") in Finance Docket No. 33388 seeking approval of acquisition of control by NS and CSX of CRR and CRC, and for the division of the use and operation of CRC's assets by NSR and CSXT and the operation of Shared Assets Areas by CRC for the exclusive benefit of CSX and NS (the "transaction");

WHEREAS, in its decision served July 23, 1998 in the proceeding captioned Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company - Control and Operating Leases/Agreements - Conrail, Inc. and Consolidated Rail Corporation, and related proceedings, the STB has imposed the employee protective conditions set forth in New York Dock Ry. - Control - Brooklyn Eastern District, 360 I.C.C. 60 (1979) ("New York Dock conditions") (copy attached) on all aspects of the Primary Application; Norfolk and Western Railway Company - Trackage Rights - Burlington Northern, Inc., 354 I.C.C. 653 (1980), on related authorization of trackage rights; Oregon Short Line

report at the date and time specified unless he makes other arrangements with the proper authority or is prevented from doing so due to circumstances beyond his control. Any remaining positions no longer needed at the Canton, Ohio Maintenance-of-Way Equipment Repair Shop as a result of the transfer of work will be abolished by giving a minimum of five calendar days notice.

(c) Should there remain unfilled positions after fulfilling the requirements of Article I, Section 1(a) and 1(b) above, the positions may be assigned in reverse seniority order, beginning with the most junior employee holding a regular assignment at the transferring location, until all positions are filled. Upon receipt of such assignment, those employees must, within seven (7) days, elect in writing one of the following options: (1) accept the assigned position and report to the position pursuant to Article I, Section 2(b) above, or (2) be furloughed without protection. In the event an employee fails to make such an election, the employee shall be considered to have exercised option (2).

(d) Employees transferring under this section will have their seniority date(s) dovetailed in accordance with the procedures set forth in Article II on the appropriate roster(s) at the receiving location.

## ARTICLE II

### Section 1

Employees transferring to the Charlotte Roadway Equipment Shop under Article I, Section 1 above will have their respective Canton Shop seniority date as shown on the respective roster dovetailed on the appropriate seniority roster of the respective craft and location in which they obtained a position. Thereafter, employees' rights to exercise seniority will be governed by the applicable provisions of the respective collective bargaining agreements.

Employees holding active positions at Canton Shop on the effective date of the Agreement who do not transfer to Charlotte under Article I, Section 1 above will establish seniority pursuant to Article II of the BMW Master Implementing Agreement or other arrangement entered into under the employee protective conditions to govern the allocation of CRC BMW-represented employees.

Section 2

The seniority dates of employees recorded on existing rosters will be accepted as correct. Where employees are dovetailed into existing rosters, and as a result thereof, employees on such rosters have identical seniority dates, then the roster standing among such employees shall be determined as follows:

1. earlier hire date shall be ranked senior;
2. previous service with carrier shall be ranked senior;
3. employee with earlier month and day of birth within any calendar year shall be ranked senior.

ARTICLE II

This Agreement shall fulfill the requirements of Article I, Section 4, of the New York Dock conditions and all other conditions which have been imposed in Decision No. 89 by the STB in Finance Docket No. 33388.

AGREEMENT

BETWEEN

NORFOLK SOUTHERN RAILWAY COMPANY  
and its Railroad Subsidiaries

and

CONSOLIDATED RAIL CORPORATION

and

their Employees Represented by

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS

WHEREAS, Norfolk Southern Corporation ("NS"), Norfolk Southern Railway Company and its railroad subsidiaries ("NSR"); and CSX Corporation ("CSX") and CSX Transportation, Inc. and its railroad subsidiaries ("CSXT"); and Conrail, Inc. ("CRR") and Consolidated Rail Corporation ("CRC") have filed an application with the Surface Transportation Board ("STB") in Finance Docket No. 33388 seeking approval of acquisition of control by NS and CSX of CRR and CRC, and for the division of the use and operation of CRC's assets by NSR and CSXT and the operation of Shared Assets Areas by CRC for the exclusive benefit of CSX and NS (the "transaction");

WHEREAS, in its decision served July 23, 1998 in the proceeding captioned Finance docket No. 33388, CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company - Control and Operating Leases/Agreements - Conrail, Inc. and Consolidated Rail Corporation, and related proceedings, the STB has imposed the employee protective conditions set forth in New York Dock Ry. - Control - Brooklyn Eastern District, 360 I.C.C. 60 (1979) ("New York Dock conditions") (copy attached) on all aspects of the Primary Application; Norfolk and Western Railway Company - Trackage Rights - Burlington Northern, Inc., 354 I.C.C. 653 (1980), on related authorization of trackage rights; Oregon Short Line Railroad - Abandonment - Goshen, 360 I.C.C. 91 (1979), on related abandonment authorizations; and Mendocino Coast Railway, Inc., - Lease and Operate - California Western Railway, 360 I.C.C. 653 (1980), on the related track leases;

WHEREAS, the railroads gave notice on August 24, 1998, of their intention to consummate the transaction and to coordinate certain maintenance-of-way work, including work associated with maintenance-

of-way equipment repair, pursuant to Article 1, Section 4 of the New York Dock conditions and other employee protective conditions; and

WHEREAS, the parties signatory hereto desire to reach an agreement providing for the selection and rearrangement of forces performing line-of-road maintenance and repairs to roadway equipment on the former New York Central lines of the allocated CRC territory to be operated by NSR.

NOW, THEREFORE, IT IS AGREED:

## ARTICLE I

### Section 1

Upon seven (7) days advance written notice by NSR and CRC, all work of line-of-road maintenance or repairs of roadway equipment performed on the allocated CRC territory to be operated by NSR, that prior to this transaction was contained within the scope of the agreement between CRC and IAM, will be placed under the scope of the agreement in effect on NSR between BMWE and Norfolk and Western Railway Company ("NW") dated July 1, 1986, as amended (agreement currently applicable on former Norfolk and Western and Wabash lines), which is extended to cover all of the allocated CRC territory to be operated by NSR.

### Section 2

On the date specified in the notice served under Article I, Section 1 of this Agreement, those employees located on the former New York Central lines of the allocated CRC territory to be operated by NSR, who are represented by IAM and performing work of line-of-road maintenance or repairs of roadway equipment (i.e., D. D. Hill, E. D. Walker, T. D. Dancer, B. R. Eckel, D. M. Stevens, J. K. Becker, and B. J. Keatts, or their successors holding such positions at the time of the Notice provided under Article I, Section 1) will become employees exclusively of NSR and will be available to perform service on a coordinated basis subject to the NW/Wabash Agreement dated July 1, 1986, as amended.

These employees will have their IAM seniority dates as shown on the applicable CRC roster dovetailed into the applicable BMWE Agreement Roadway Machine Repairman Roster covering the Dearborn Division and will be removed from any IAM seniority roster applicable to NSR or CRC. Thereafter, employees' rights to exercise seniority will be governed by the applicable provisions of the collective bargaining agreement.

Section 3

The seniority dates of employees recorded on existing rosters will be accepted as correct. Where employees are dovetailed into new or existing rosters, and as a result thereof, employees on such rosters have identical seniority dates, then the roster standing among such employees shall be determined as follows:

1. earlier hire date shall be ranked senior;
2. previous service with carrier shall be ranked senior;
3. employee with earlier month and day of birth within any calendar year shall be ranked senior.

ARTICLE II

This Agreement shall fulfill the requirements of Article I, Section 4, of the New York Dock conditions and all other conditions which have been imposed in Decision No. 89 by the STB in Finance Docket No. 33388.

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CO

SERVICE DATE - LATE RELEASE MAY 5, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33388 (Sub-No. 88)

CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK SOUTHERN  
CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY  
— CONTROL AND OPERATING LEASES/AGREEMENTS—  
CONRAIL, INC. AND CONSOLIDATED RAIL CORPORATION

(ARBITRATION REVIEW)

Decided: May 5, 1999

In an arbitration award issued on January 14, 1999 (the Award), an implementing arrangement was established to carry out certain changes affecting employees in this proceeding. The Award would affect employees in crafts performing maintenance-of-way functions in the field and in shops. The Award was appealed by the Brotherhood of Maintenance of Way Employes (BMWE) and the International Association of Machinists and Aerospace Workers (IAM). Both unions requested stays while their appeals were heard. BMWE subsequently reached a settlement with the carriers, subject to ratification by its members, as to the issues raised by that union on appeal. On April 29, 1999, IAM filed a request for expedited action on its request for stay. The carriers filed a reply to this request on April 30, 1999.

In its appeal and request for stay filed on February 12, 1999, IAM asserts that it was afforded the opportunity to conduct only limited negotiations with the carriers prior to the carriers' invocation of the arbitration process. The arbitrator, in his Award, at 19, attributes the limited negotiations to the time constraints associated with the implementing agreement process, and, at least in part, to the union's position that, before it should negotiate with the carriers for an implementing agreement, the carriers should reach a master implementing agreement with BMWE.

The Board has just been advised that BMWE membership has ratified the agreements reached by BMWE and the carriers. With the BMWE agreements in place, IAM is the only organization with which the carriers have not arrived at a resolution of issues raised by the implementing process. In the hope that a settlement of all issues with BMWE might facilitate an agreement with IAM, the Board will provide IAM and the carriers a 2-week period to conduct further negotiations to reach a settlement regarding an implementing agreement for the affected IAM employees. During this 2-week period, implementation of the Award will be stayed to the extent the Award covers the rights of IAM employees that are the subject of IAM's appeal.

The stay to permit these negotiations reflects the Board's strong preference for resolution of differences by negotiation. The Board expects the parties to negotiate accordingly.

It is ordered:

1. The effect of the arbitration decision is stayed to the extent described above until May 20, 1999.

2. This decision is effective on its date of service.

By the Board, Linda J. Morgan, Chairman.

Vernon A. Williams  
Secretary

**Case** (Released after 10:30 AM)

<b>Docket No.</b>	<b>Title</b>
FD 33388 88	CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY--CONTROL AND OPERATING LEASES/AGREEMENTS--CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION (ARBITRATION REVIEW)

**Decision Summary**

DISMISSED THE APPEALS OF BMW AND IAM AND DISCONTINUED THIS PROCEEDING

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WP Envoy (requires viewer) WordPerfect

Graphics/Maps/Figures:



[-30043.evy](#)



[-30043.wpd](#)

**Full Text of Decision**

30043

SERVICE DATE - LATE RELEASE MAY 18, 1999

SEC

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33388 (Sub-No. 88)

CSX CORPORATION AND CSC TRANSPORTATION, INC., NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RY. COMPANY

-- CONTROL AND OPERATING LEASES/AGREEMENTS --

CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

(ARBITRATION REVIEW)

Decided: May 18, 1999

By letter-motion filed on May 14, 1999, the International Association of Machinists and Aerospace Workers (IAM) advised this agency that "the Board's May 5 decision granting a stay in the above-referenced proceeding enabled the parties to reach agreement on the issues presented by the IAM's pending Petition to Review" and that IAM was withdrawing its appeal and request for stay in this proceeding. On May 17, 1999, the Brotherhood of Maintenance of Way Employees (BMW) filed a notice withdrawing its appeal and request for stay, stating that BMW and the applicants have reached final settlement agreements. Because both appellants have withdrawn their appeals and all disputes have been settled, we will discontinue this proceeding and dismiss the appeals.

It is ordered:

1. The appeals of BMW and IAM are dismissed and this proceeding is discontinued.
2. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams

Secretary

30232  
CO

SERVICE DATE - LATE RELEASE MAY 5, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33388 (Sub-No. 88)

CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK SOUTHERN CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY  
— CONTROL AND OPERATING LEASES/AGREEMENTS—  
CONRAIL, INC. AND CONSOLIDATED RAIL CORPORATION

(ARBITRATION REVIEW)

Decided: May 5, 1999

In an arbitration award issued on January 14, 1999 (the Award), an implementing arrangement was established to carry out certain changes affecting employees in this proceeding. The Award would affect employees in crafts performing maintenance-of-way functions in the field and in shops. The Award was appealed by the Brotherhood of Maintenance of Way Employes (BMWE) and the International Association of Machinists and Aerospace Workers (IAM). Both unions requested stays while their appeals were heard. BMWE subsequently reached a settlement with the carriers, subject to ratification by its members, as to the issues raised by that union on appeal. On April 29, 1999, IAM filed a request for expedited action on its request for stay. The carriers filed a reply to this request on April 30, 1999.

In its appeal and request for stay filed on February 12, 1999, IAM asserts that it was afforded the opportunity to conduct only limited negotiations with the carriers prior to the carriers' invocation of the arbitration process. The arbitrator, in his Award, at 19, attributes the limited negotiations to the time constraints associated with the implementing agreement process, and, at least in part, to the union's position that, before it should negotiate with the carriers for an implementing agreement, the carriers should reach a master implementing agreement with BMWE.

The Board has just been advised that BMWE membership has ratified the agreements reached by BMWE and the carriers. With the BMWE agreements in place, IAM is the only organization with which the carriers have not arrived at a resolution of issues raised by the implementing process. In the hope that a settlement of all issues with BMWE might facilitate an agreement with IAM, the Board will provide IAM and the carriers a 2-week period to conduct further negotiations to reach a settlement regarding an implementing agreement for the affected IAM employees. During this 2-week period, implementation of the Award will be stayed to the extent the Award covers the rights of IAM employees that are the subject of IAM's appeal.

The stay to permit these negotiations reflects the Board's strong preference for resolution of differences by negotiation. The Board expects the parties to negotiate accordingly.

It is ordered:

1. The effect of the arbitration decision is stayed to the extent described above until May 20, 1999.
2. This decision is effective on its date of service.

By the Board, Linda J. Morgan, Chairman.

Vernon A. Williams  
Secretary

30043  
SEC

SERVICE DATE - LATE RELEASE MAY 18, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33388 (Sub-No. 88)

CSX CORPORATION AND CSC TRANSPORTATION, INC., NORFOLK SOUTHERN  
CORPORATION AND NORFOLK SOUTHERN RY. COMPANY  
— CONTROL AND OPERATING LEASES/AGREEMENTS —  
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

(ARBITRATION REVIEW)

Decided: May 18, 1999

By letter-motion filed on May 14, 1999, the International Association of Machinists and Aerospace Workers (IAM) advised this agency that "the Board's May 5 decision granting a stay in the above-referenced proceeding enabled the parties to reach agreement on the issues presented by the IAM's pending Petition to Review" and that IAM was withdrawing its appeal and request for stay in this proceeding. On May 17, 1999, the Brotherhood of Maintenance of Way Employees (BMWE) filed a notice withdrawing its appeal and request for stay, stating that BMWE and the applicants have reached final settlement agreements. Because both appellants have withdrawn their appeals and all disputes have been settled, we will discontinue this proceeding and dismiss the appeals.

It is ordered:

1. The appeals of BMWE and IAM are dismissed and this proceeding is discontinued.
2. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary