

AGREEMENT

BETWEEN THE NATIONAL RAILROAD PASSENGER CORPORATION

AND

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

PREFACE

This Agreement is intended to satisfy the requirements of Section V of the Consent Decree in *Thornton v. Amtrak*, Civil Action No. 98CV0890 (EGS), by adopting certain work rules set forth in Section IV of the Consent Decree, as those rules have been modified by the parties from time to time since the adoption of the Consent Decree.

TERMS

A. Training

1. Carrier shall not alter the qualifications for any classification without first consulting the Organization. Provided, however, that any classification may be altered without consulting the Organization to comply with governmental law or regulation, in which case Carrier shall notify the Organization of the change and the legal requirement. Absent agreement, the Carrier shall have the ultimate authority to set such qualifications.
2. An advertised position or vacancy shall prominently display the requisite standardized qualifications for the position.
3. All practical competence tests shall be administered by qualified equipment examiners. Carrier shall maintain a list of qualified equipment examiners that enumerates the tests each is qualified to give and provides the phone number(s) and address(es) for each qualified equipment examiner. Carrier shall maintain and update this list promptly when any information becomes outdated. Carrier shall distribute updated lists to the General and Vice Chairmen and shall post such lists in the same location where job vacancies and other announcements or advertisements are posted.

The Carrier shall determine the number of qualified equipment examiners that it will employ, provided that the number must be sufficient to meet the Carrier's obligations hereunder, subject to two restrictions. First, there shall be at least one employee qualified equipment examiner in each testing district (currently there are four districts: Northern District, Metropolitan District, Mid-Atlantic District, and Corridor Production Units). Second, the number of management qualified equipment examiners in the Corridor as a whole shall not exceed the number of employee qualified equipment examiners in the Corridor as a whole by more than one person at

any time.

In order to facilitate both Amtrak's desire to provide necessary training / testing and the participation of qualified BMW employees in that process, it is agreed that BMW employees will be assigned as Equipment Examiners / Instructors as set forth in this section. Nothing in this section shall be deemed to expand or contract the scope of the collective bargaining agreement between the Carrier and the Organization.

The job description and qualifications for the qualified equipment examiners who hold the positions, and any alterations or modifications thereto, shall be established by Carrier, in consultation with the Organization. Absent agreement, Carrier shall have the ultimate authority to set such qualifications.

Carrier shall have sole authority to select the management qualified equipment examiners, provided that all such persons must meet the job qualifications established by Carrier. Carrier and the Organization shall jointly select the employee qualified equipment examiners. If either Carrier or Organization rejects a person proposed by the other as an employee qualified equipment examiner, the rejecting entity shall provide a written explanation to the other.

To the extent that additional training is necessary before an employee qualified equipment examiner is qualified to administer tests for certain pieces of equipment or machinery, Carrier shall make available to the employee qualified equipment examiners the same opportunities for training that it makes available to management qualified equipment examiners. The compensation of employee qualified equipment examiners shall be higher than the rate for the highest rated machine operator positions, and similar to the rate for Technicians under this Agreement.

Each employee qualified equipment examiner shall remain in the position for a term of two years, unless removed from the position for cause, and may serve any additional terms for which he or she is jointly selected by Carrier and the Organization. Any employee qualified equipment examiner shall retain and continue to accumulate seniority in the class or classes in which he or she held seniority under this Agreement prior to selection. Any such employee may exercise seniority in accordance with the provisions of Rule 22 of this Agreement, provided that he or she reports for duty within thirty (30) days after the expiration, or earlier termination, of his or her term as an employee qualified equipment examiner.

4. Qualified equipment examiners shall use the then current versions of standardized forms in administering all practical tests used to determine qualification for any classification or type of equipment or machinery within a classification, regardless of the testing district.

A form may apply to more than one classification or type of equipment or machinery. The forms shall identify all skills and abilities to be tested and shall require examiners

to note the performance of the candidate with respect to each of these skills and abilities.

A committee composed of an equal number of management employees and employee equipment instructors shall be responsible for all subsequent modifications of the forms used for equipment and machine operator positions. Carrier shall select the management employees to serve on the committee. Carrier and the Organization shall jointly select the employee qualified equipment examiners to serve on the committee. The committee members shall attempt to agree on all modifications to the form. Absent agreement, Carrier shall have the ultimate authority to make modifications to the form.

5. Carrier shall administer a practical test to any employee who submits a written request to take such a test, and has not failed the same practical test within six (6) months prior to the request, other than retests as set forth below. If an employee who requests a test has failed three or more tests and retests for the same or different positions outside their current classification without passing a test or retest during the two years prior to the making of the request, Carrier will notify the General Chairman that it is declining to offer the test because it believes that the employee is requesting testing without acquiring the necessary skill for passing the test.

Where an employee makes a request to take a practical test, Carrier shall administer the test within 15 workdays after it receives such a request. If the equipment necessary for the practical test is not located within the testing district where the employee is assigned, this obligation is waived until the equipment is in such district; however, in such event, Carrier shall notify the requesting employee of the location of the equipment, of his or her right to travel to such place on a designated date and take the test, and of the employee's right, if he chooses not to travel to the location of the equipment, to have the test administered within 15 work days after the equipment is located within his or her testing district.

Carrier shall administer the tests in the order that written requests are received within a testing district, except that retests, as described below, shall have priority, and except that tests may be administered out of order if one employee is willing to travel to out-of-district equipment as set forth above and another is not. In addition, Carrier may administer a practical test to any employee who has completed a training program or a one-for-one training opportunity, as described in this Agreement, at any time after the completion of such program or opportunity, whether or not the employee requests the test. Employees shall be compensated for the time spent in taking the test or retest.

Regardless of whether the administration of a practical test is initiated by an employee or by Carrier, Carrier shall provide to the employee reasonable advance notice of the time and place for the test and the identity of the qualified equipment

examiner. The employee may elect that the test not occur until at least seven days from the date of notice. At the conclusion of the test, the qualified equipment examiner may, but need not, inform the employee whether the employee passed the test, and if not, of the skills and abilities that the employee did not adequately exhibit.

Within ten work days after taking the test, Carrier shall notify the employee whether he or she passed the test. The notice shall be in writing and signed by the qualified equipment examiner. If the employee failed the test, the notice shall inform the employee of the skills and abilities that the employee did not adequately exhibit, and shall advise the employee of his or her right to take a retest. The notice shall also include a form on which the employee may elect to waive his or her right to a retest.

If the employee chooses to be retested, the retest shall be monitored by a Carrier manager and the General Chairman, or his designated representative. It shall be the responsibility of the employee who is requesting the retest to notify the General Chairman of the date and time of the retest, and the failure of the General Chairman or his designated representative to be present at the retest shall not be a basis for rescheduling or delaying it. The employee shall select the qualified equipment examiner to administer the retest from the group of qualified equipment examiners. If the retest is for a machine or equipment operator position, the qualified equipment examiner shall be from the testing district in which the employee is located. The retest shall be administered within 15 workdays of the original test. The employee and the General Chairman shall be notified in writing of the results of the retest within ten workdays after the taking of the retest. The notice shall be signed by the qualified equipment examiner, and if the employee failed the retest, the notice shall inform the employee of the skills and abilities that the employee did not adequately exhibit.

If the employee remains dissatisfied, the Organization may file a grievance pursuant to this Agreement commencing at the Director of Labor Relations level. The time period for submitting a grievance shall commence on the day the employee is notified in writing that he or she failed the retest.

6. The procedures set forth in 5 above for requesting practical tests shall apply to written tests also, except as modified herein.

Carrier shall not be required to consult with qualified equipment examiners concerning the content of written tests for determining employees' qualifications for classifications or positions.

Carrier shall make special arrangements with the General Chairman for employees who are not functionally literate to take a written test where the position they seek does not require literacy.

Carrier shall notify an employee whether he or she passed the written test within 10 work days of the date that the test is taken. The notice shall be in writing and signed by the examiner. If the employee failed the test, the notice shall also inform the employee of the skills and abilities that the employee did not adequately exhibit, and shall advise the employee of his right to take a retest. The notice shall also include a form on which the employee may elect to waive his or her right to take a retest. The time for the written retest shall be determined according to division policies, not to exceed 30 days from the original test date.

If the employee chooses to be retested, Carrier shall notify the employee in writing of the results of the retest within 10 work days after the retest is taken, and, if the employee fails the retest, the notice shall inform the employee of the areas in which the employee did not pass. If the employee remains dissatisfied, the Organization may file a grievance pursuant to this Agreement commencing at the Director of Labor Relations level. The time period for submitting a grievance shall commence on the day the employee is notified in writing that the employee failed the retest.

7. With respect to a "one-on-one" training opportunity, if an employee fails a test and then passes the retest, the employee's seniority date shall be considered the date of the original award of the training position. For all other tests, if an employee fails a test and then passes the retest, and if a position for which the employee would otherwise have qualified and been the senior applicant is awarded before the retest, Carrier shall undo the award and place that employee in such position.
8. In addition to the current notice requirements under this Agreement, Carrier shall maintain an "800" telephone number, which shall advise the caller of all vacancies for positions. The recording on the "800" telephone shall be updated weekly. All vacancies announced on the "800 number" shall remain open for application for at least 7 days following their inclusion in the recording. Although Carrier may include an on-line announcement of all such vacancies, in no event shall any on-line database replace the "800" number given the transient nature of corridor track work. In addition, on a weekly basis, Carrier shall mail written notification of all vacancies and awards to the General and Vice Chairmen of the Organization, one designated representative per traveling (corridor) work gang; and one representative per work zone per department. The Organization shall be responsible for providing to Carrier the names and addresses of the employees who are to receive the written notification as described above and for notifying Carrier of any changes in the names or addresses.
9. Carrier shall maintain a computerized system for recording and tracking administration and results of qualifications tests.
10. Carrier shall coordinate and administer on a centralized basis all training activities for employees that qualify an employee on additional equipment or machinery or a position. For purposes of this rule the coordination and administration function shall be referred to as Training Administration. Carrier shall identify a contact person for

Training Administration and shall post the identity, business address, and telephone number (which shall be a toll-free number) of that person. This information shall be posted at all locations where Organization announcements or advertisements are posted. Carrier may change the identity of the contact person at any time, or may designate more than one contact person. If any new or additional contact persons are designated, Carrier shall expeditiously post the identity of the new or additional contact persons and the other information set forth above.

11. Carrier shall not deny any employee an opportunity to attend such training opportunities for which he or she is scheduled based on workload or other demands if such employee gives his manager or supervisor at least seven days written notice that he or she will be attending the program. Provided, however, that in order to meet unforeseeable and indispensable operational demands, Carrier may postpone training opportunities for as many similarly situated employees at a location as are necessary to meet that demand, and shall select the employees who may attend on a seniority basis. Any employee whose training is postponed pursuant to the above exception shall be provided the training in the next scheduled training class or, in the case of one-for-one training, no later than six weeks after the originally scheduled training.
12. When Amtrak offers the initial NORAC training program, it shall advertise the training opportunity and candidates will be selected pursuant to the terms of the collective bargaining agreement's bulletin, assignment and seniority rules
13. Training Administration shall inform employees who contact it of the time and location of NORAC recertification classes and of the telephone number or other means to contact the instructors of the classes. Carrier is not responsible for making arrangements with the instructor to schedule employees into the class.
14. Under certain circumstances set forth below, Carrier shall give employees an opportunity to learn the physical characteristics of a segment of track. The training opportunity shall include:
 - (a) sufficient time off, with pay if under (i) below and with pay if they successfully qualify under (ii) or (iii) below, from the employee's normal responsibilities to learn the physical characteristics;
 - (b) prompt provision from Training Administration to the candidate of copies of the track charts for the segment of track in issue; and
 - (c) the opportunity to ride the trains and/or walk over the segment of track.

The circumstances under which employees shall be offered this opportunity for physical characteristics training are as follows:

- (i) An employee who has been accepted into MW1000 school shall be offered an opportunity for physical characteristics training prior to the commencement of the school;

- (ii) If Carrier posts a Foreman position and no qualified bidder has the requisite physical characteristics qualifications, the senior applicant with all other qualifications shall be given a reasonable period to obtain qualifications on physical characteristics, and Carrier will delay the award of the position for a reasonable period to accommodate such employee.
- (iii) Carrier shall afford a Foreman who bumps a junior foreman within the ten-day window provided under the agreement the opportunity to obtain qualifications on the physical characteristics needed for the position during the same ten-day window. If a rules examiner is unavailable to administer the required examination within the ten-day period, such displacement period will be extended to the date the examination can be scheduled. During this extension period, the employee will be paid at the rate of pay of the position for which the employee is qualifying, even if the employee does not successfully qualify when the examination is finally administered. During this extension period, the employee shall be assigned to one of the following three vacant positions for which the employee is qualified:
 - a. in the same gang as the position for which the employee is qualifying;
 - b. on the same shift at the same headquarters as the position for which the employee is qualifying; or
 - c. on the same shift in the same work zone as the position for which the employee is qualifying.

The employee shall be assigned pursuant to subsection *a* if a vacant position is available; if no such position is available the employee shall be assigned pursuant to subsection *b*; and only if no such vacant position is available then the employee shall be assigned pursuant to subsection *c*.

The period in which the employee shall remain in the position as set forth below shall be calculated from the date the employee passes the examination.

Attachment A contains the required qualifying periods for the identified territories. In the event that standards or track configurations change, the Carrier shall consult with the Organization to attempt to agree on a reasonable period to learn physical characteristics for different areas of the track, but absent agreement, Carrier shall determine the reasonable period consistent with comparable territories, if any, identified in Attachment A. A copy of the qualifying periods for specific territories will be included with job bulletins and individual position advertisements will identify the territory encompassed by the job assignment.

Employees availing themselves of opportunities under paragraphs (ii) and (iii) above, who are unsuccessful in their efforts to qualify, shall not be paid for time spent in that effort, but will be governed by the provisions of Rule 6 of the agreement. Employees who successfully qualify under paragraphs (ii) and (iii) above, shall remain on the position for the period set forth below commencing from the date of successful

qualification unless the employee is displaced, the position is abolished, or the employee is awarded a position paying a higher hourly rate of pay:

<u>Learning Period</u>	<u>Remain on Position</u>
1 to 7 work days	No minimum required
8 to 30 work days	90 calendar days
More than 30 work days	180 calendar days

In all of the circumstances described above, the employee must obtain the physical characteristics qualifications prior to beginning work in the position.

15. Under the following circumstances, Amtrak shall afford an employee paid time off to apply for (to the extent necessary to do so in person) and take a Commercial Drivers License test, shall afford an operator to drive the employee and the vehicle to the test, and shall reimburse the candidate for the cost of any required physical exam and of any test and license fee:

(a) Where Carrier determines that additional drivers with Commercial Drivers License qualifications are required, notice shall be posted at regular bulletin locations indicating the sub-department, zone and number of CDL drivers needed. Candidates shall be selected in seniority order from applications submitted to Training Administration for such positions. An employee obtaining a CDL under the circumstances above will be required to bid for each advertised position requiring a CDL in such sub-department and zone that pays an equal or higher rate as the employee's current position. This bidding obligation shall last for the shorter of:

- (i) 120 days after obtaining the CDL, or
- (ii) Until awarded a CDL position.

After being awarded a CDL position, the employee shall remain on the position for ninety (90) calendar days, unless the employee is displaced, the position is abolished, or the employee is awarded a position paying a higher hourly rate of pay.

(b) If Carrier posts a position requiring a CDL and no qualified applicant has the requisite CDL and there are no employees subject to assignment under the agreement, Carrier shall award the position on a provisional basis, pending acquisition of the CDL, to the senior applicant who has all other qualifications, and that employee shall be granted 45 days following appointment to obtain the CDL qualification. An employee who obtains a CDL pursuant to this paragraph shall remain on the position for ninety (90) calendar days from the date of obtaining the qualification, unless displaced, the position is abolished or the employee is awarded a position paying a higher hourly rate of pay. An employee who fails to obtain the CDL qualification shall be treated in accordance with Rule 6 and the position shall be reposted. Such employee shall not be eligible to apply

for future positions under this paragraph for two years, but may apply under paragraph (a) above.

16. All trainee positions for the Electric Traction Department shall be bulletined in accordance with Rules 3 and 14 of this Agreement before applicants external to the Organization can be considered for the slots. Carrier may uniformly subject all applicants to a pre-screening test prior to awarding such positions. The trainee positions shall be awarded to the successful bidders who pass such test according to the date applicants entered service in a covered position.
17. Positions shall be posted in accordance with Rules 3 and 14 of the Agreement. If no qualified employee bids for a position in the Track Department, and there are no employees subject to assignment under the agreement, the position shall be automatically converted into a one-for-one training opportunity, and shall be awarded to the applicant with first seniority in the class in which the assignment is to be made, and thereafter, in lower classes respectively in the order in which employees appear on the seniority roster. If there is no applicant from the applicable roster, then eligibility shall be determined according to the date applicants entered service in a covered position. Such senior applicant shall be trained for up to twenty (20) work days, unless otherwise specified on the advertisement, and at the end of such training may, where appropriate, be required to take an examination to demonstrate qualifications. Employees who successfully qualify under this paragraph shall remain on the position for the period set forth below commencing from the date of successful qualification unless the employee is displaced, the position is abolished, or the employee is awarded a position paying a higher hourly rate of pay:

Learning Period Remain on Position

1 to 7 workdays	No minimum required
8 to 20 workdays	90 calendar days
More than 20 work days*	180 calendar days

* Positions where the expected learning period exceeds 20 workdays will so indicate on the job posting.

Attachment B contains the minimum training periods for specific equipment. In the event that new equipment is acquired by Carrier that is subject to this provision or current equipment is significantly modified, the Carrier shall consult with the Organization to attempt to agree on a minimum training period for that equipment, but absent agreement, Carrier shall determine the minimum training period consistent with comparable equipment, if any, identified in Attachment B. A copy of the minimum training periods for specific equipment will be included with job bulletins and individual position advertisements will identify the equipment encompassed by the job assignment. Employees may request that they be given the opportunity to demonstrate their qualifications prior to the minimum training period; however, the decision to do so is solely within the Carrier's discretion. If the employee

successfully demonstrates his or her qualifications prior to the learning period outlined in the chart above, then he or she will be required to remain on the position based on the actual workdays spent in training as set forth in the chart above.

If an employee who receives one-for-one training lacks a roster date in such classification and subsequent to the training the employee passes the test (or retest), or if the Carrier has not tested the employee within ten days after the minimum training period, the employee's roster date shall be the date that Carrier awarded the training position. An employee who fails a test (and retest unless such right is waived by the employee) shall be treated in accordance with Rule 6 of the agreement and the position shall be reposted.

Certain positions shall be exempt from one-for-one training. These positions are: Foremen, Welders, MW Repairmen, Electricians, B&B Mechanics, Plumbers, Cranes, and the following general construction equipment positions: Operators of Backhoes, Bulldozers, Front-End Loaders, Bob-Cats, Load Graders, and similar construction equipment.

18. Cross Training shall be permitted only where the Carrier determines there is a need for back up operators for equipment assigned to a gang and there are insufficient qualified operators for a piece of equipment and none of the training procedures described in this Agreement will be sufficient to fill the need in such gang to provide necessary coverage. Prior to implementing any cross training, Carrier will consult with the General Chairman or his or her designated representative regarding the number of additional qualified operators needed for each piece of equipment, the basis for believing that none of the training procedures described in this Agreement would be sufficient and the procedure for selecting employees in the gang to be cross trained. This Paragraph shall supercede Rule 2(d) during the term of this Agreement.
19. Carrier shall make available, upon written request of any employee, written training materials, including but not limited to the track charts, concerning any classification or job for which materials have been prepared. Carrier may revise the training materials regarding any classification or job from time to time as it deems appropriate, provided that the materials shall contain sufficient information to pass any written portions of any test and provided that, if a classification or job is covered by the Training Agreement, the materials shall be the same as, or similar to, the materials provided to persons trained under the Training Agreement for that classification or job. Subject to Carrier's right to revise materials, Carrier shall provide all employees requesting training materials with the same documents.

Training Administration shall be responsible for mailing requested training materials to an employee within 10 work days of receiving a written request for such materials from an employee.

20. Carrier shall maintain a computerized system for recording and tracking the provision of training.

B. Discipline

1. Carrier shall retain one or more persons (“hearing officer”) who shall hear and preside over disciplinary cases involving employees covered by this Agreement. If the hearing officer is not fully occupied by disciplinary cases involving employees, he or she may hear cases involving other bargaining unit employees. Carrier shall retain hearing officers who are knowledgeable of railroad operations but shall not have worked in an Amtrak management position, nor have been an employee of a rail workers’ union, for at least one year preceding appointment as a hearing officer. In the event a designated hearing officer terminates, Carrier may appoint an Amtrak management employee not then assigned to the Engineering Department as an interim hearing officer for a period not to exceed ninety (90) days.

The Carrier shall notify the General Chairman a reasonable period before the qualifications for the hearing officer position are changed. The General Chairman, or his or her designated representative, may submit written comments with respect to the qualifications for the hearing officer position.

2. The hearing officer shall not consider the race, managerial, or union status of any witness in a disciplinary hearing in assessing credibility.
3. Except as noted below, at least five days prior to the date of the disciplinary hearing, the hearing officer shall hold a conference, by telephone or in person, for the purposes of identifying employees who are material witnesses for both Carrier and the affected employee. All material witnesses must be identified at this conference, except that this conference shall not preclude identification of additional material witnesses later, including at the hearing, where knowledge of such witness and/or their materiality was not reasonably available prior to the conference. The hearing officer will determine whether any subsequently identified witnesses are material. After the material witnesses are identified at the conference, the hearing officer shall direct Carrier to summon all material witnesses who are employees of Carrier to the hearing at Carrier’s expense and, if they are employees, to provide them with the requisite paid leave. If at the hearing, the hearing officer determines that Carrier has failed to summon a material witness, the hearing officer shall not close the hearing until such witness is summoned by Carrier.
 - a. Where disciplinary charges filed against an employee allege a violation of Rule G and/or absenteeism, the pre-hearing conference will be scheduled only if requested in writing by the designated BMW representative. The Carrier’s designated Charging Officer must receive such request no more than ten days before the scheduled hearing in order to allow sufficient time to schedule the pre-hearing conference.

4. If Carrier introduces statements or letters from non-employee witnesses who are not available for cross-examination either in person or by telephone, and such evidence is uncorroborated, such evidence shall not be used as the sole basis for a finding of guilt.
5. Carrier shall maintain in a centralized office and make available to the General Chairman, and his or her designated representative, all written decisions of any hearing officer presiding over hearings affecting employees covered by this Agreement.
6. Carrier shall, without request by an employee, purge records of adverse personnel actions consistent with the provisions of the applicable Discipline Expungement Guidelines. A copy of the current guidelines is attached.
7. Carrier shall maintain a computerized system for recording and tracking each step in the disciplinary process.

C. General

1. This agreement supersedes the provisions of the current collective bargaining agreement to the extent of conflicts between them.
2. This agreement is effective on the date the Court dismisses *Thornton v. Amtrak*, and will remain in effect until modified or changed in accordance with the provisions of the Railway Labor Act.

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYES

NATIONAL RAILROAD
PASSENGER CORPORATION

J. Dodd
General Chairperson, Pennsylvania
Federation, BMWE

Date: _____

Date: _____

S. Hurlbert
General Chairperson, Northeastern
System Federation, BMWE

Date: _____

Date: _____