

**LABOR AGREEMENT**

**BETWEEN**

**APPALACHIAN AND OHIO RAILWAY, INC.**

**AND ITS**

**EMPLOYEES REPRESENTED BY THE**

**BROTHERHOOD OF MAINTENANCE**  
**OF WAY EMPLOYEES DIVISION**

**OF THE**

**INTERNATIONAL BROTHERHOOD**  
**OF TEAMSTERS**

## TABLE OF CONTENTS

PREAMBLE – CUSTOMER SERVICE .....	1
RULE 1 – SCOPE .....	1
RULE 2 – RATES OF PAY .....	1
RULE 3 – 401(K) PLAN .....	2
RULE 4 – RATES OF POSITIONS.....	2
RULE 5 – ENTRY RATES .....	3
RULE 6 – DAY’S WORK – WORK WEEK – NON-OPERATING EMPLOYEES .....	3
RULE 7 – MEAL PERIOD .....	4
RULE 8 – STARTING TIME.....	5
RULE 9 – OVERTIME.....	5
RULE 10 – APPLICATIONS .....	5
RULE 11 – SENIORITY DATUM .....	6
RULE 12 – SENIORITY DISTRICTS.....	7
RULE 13 – SENIORITY ROSTER.....	7
RULE 14 – PROMOTIONS, ASSIGNMENTS, AND DISPLACEMENTS .....	7
RULE 15 – WORK ASSIGNMENTS.....	7
RULE 16 – BULLETINS.....	8
RULE 17 – QUALIFYING.....	8
RULE 18 – VACATION AND RELIEF ASSIGNMENTS .....	9
RULE 19 – SERVICE OUTSIDE OF REGULAR ASSINGMENTS .....	9
RULE 20 – REDUCING FORCES .....	9
RULE 21 – EXPENSES .....	11
RULE 22 – LEAVE OF ABSENCE.....	11
RULE 23 – LEAVE OF ABSENCE – EMPLOYEE REPRESENTATIVES .....	12
RULE 24 – RETURNING FROM LEAVE .....	12
RULE 25 – ATTENDING COURT .....	12
RULE 26 – JURY DUTY .....	13
RULE 27 – HOLIDAYS .....	13
RULE 28 – VACATION .....	14
RULE 29 – HEALTH AND WELFARE .....	16
RULE 30 – DISCIPLINARY PROCEDURE .....	16
RULE 31 – TIME LIMIT ON CLAIMS .....	17
RULE 32 – DULY ACCREDITED REPRESENTATIVE .....	18
RULE 33 – PERSONAL LEAVE DAYS .....	18
RULE 34 – COPY OF AGREEMENT .....	19
RULE 35 – BEREAVEMENT LEAVE .....	19
RULE 36 – WAGE INCREASE.....	19
RULE 37 – DRINKING WATER .....	20
EFFECT OF AGREEMENT .....	21
APPENDIX 1 – PROJECTED AGREEMENT POSITIONS – MAINTENANCE OF WAY AND SIGNAL .....	23
APPENDIX 2 – UNION SHOP AGREEMENT .....	24
APPENDIX 3 – UNION DUES DEDUCTION AGREEMENTS .....	30
APPENDIX 4 – PHYSICAL DISQUALIFICATION .....	33

APPENDIX 5 – WAIVER OF HEARING ..... 35

APPENDIX 6 – QUESTIONS & ANSWERS REGARDING BEREAVEMENT LEAVE ..... 36

APPENDIX 7 ..... 38

APPENDIX 8 – VOLUNTARY PAYROLL DEDUCTION OF POLITICAL  
CONTRIBUTIONS ..... 39

ATTACHMENT A TO APPENDIX 8 ..... 40

LETTER NO. 1 ..... 41

LETTER NO. 2 ..... 42

LETTER NO. 3 ..... 43

ATTACHMENT A ..... 44

ATTACHMENT B ..... 46

**PREAMBLE  
CUSTOMER SERVICE**

The parties to this Agreement agree that the fundamental objective of the railroad, its management and employees, is to provide service to its customers in the most efficient manner. Accordingly, the parties agree that in interpreting and implementing this Agreement, paramount emphasis shall be placed on providing efficient service to customers.

**RULE 1  
SCOPE**

- (a) These rules govern the hours of service, rates of pay, and working conditions of employees in the Maintenance of Way, Structures and Signal Department performing work described in Appendix 1, and other employees who may subsequently be employed to do such work, represented by the Brotherhood of Maintenance of Way Employees.
- (b) This Agreement does not apply to supervisory forces above the rank of Foreman, nor to employees engaged in work of a character properly belonging to classes of employees covered by any other collective bargaining agreements.

*NOTE: Any new positions created after the effective date of this Agreement to perform the work covered hereby shall be covered by the provisions of this Agreement.*

- (c) When a position covered by this Agreement is abolished, the work assigned to such position which remains to be performed will be reassigned to other positions covered by this Agreement.
- (d) Work covered by this Agreement shall not be removed from the application of the rules of this Agreement except by mutual agreement between the parties signatory hereto.
- (e) Other than cases of emergency or to expedite completion of work when a covered employee is not available, an officer or an employee not covered by this Agreement shall not be permitted to perform any work covered by this Agreement.
- (f) The use of such words as “he”, “his”, and “him”, as they appear in this Agreement are not intended to restrict the application of the Agreement or a particular rule to a particular sex but are used solely for the purpose of grammatical convenience and clarity.

**RULE 2  
RATES OF PAY**

Rates of pay for all positions shall be set out in Appendix 1.

**RULE 3**  
**401(k) PLAN**

- (a) Appalachian and Ohio Railway, Inc. shall provide a 401(K) Plan for all employees covered under this Agreement.
- (b) Appalachian and Ohio Railway, Inc. will be responsible for all costs of establishing the Plan. Appalachian and Ohio Railway, Inc. will also be responsible for Plan administration, including the making of payroll deductions, the semi-monthly payments to the designated trustee and all other in-house services normally provided by an employer in connection with the operation of a 401(K) Plan.
- (c) Trustee and investment fees will be covered by Trust Fund earnings. In the event trust earnings are not sufficient to cover costs, Appalachian and Ohio Railway, Inc. will cover these costs. All other costs will be paid by Appalachian and Ohio Railway, Inc.
- (d) It is understood that the Carrier's basic annual contribution will be \$200 to each employee's personal account only if the employee contributes to the 401 (K) plan the entire year. Employees who do not contribute due to medical reasons will be entitled to the payment, but employees off for discipline or because of a withdrawal of funds from the plan will not be entitled to the Carrier contribution. In addition, the Carrier will contribute 50 cents for every \$1.00 contribution made by the employee to the Plan for an additional maximum Carrier contribution of \$500. All contributions will be pre-tax, and the Carrier will match the employee's contribution on a payday-by-payday basis.
- (e) Details concerning eligibility, contributions, investment options, modification periods, and other provisions shall be outlined in the A&OR, Inc. 401(K) document.

**RULE 4**  
**RATES OF POSITIONS**

- (a) Positions (not employees) shall be rated and the transfer of rates from one position to another shall not be permitted.
- (b) Employees temporarily assigned to higher rated positions shall receive the higher rates for the entire day. Employees temporarily assigned to lower rated positions shall not have their rates reduced.
- (c) The wages for new positions shall be in conformity with the wages for positions of similar kind or class. When there are no positions of a similar kind or class, rates of pay fixed by the Company shall be subject to protest by the General Chairman as a minor dispute.

**RULE 5  
ENTRY RATES**

Employees entering service on or after the effective date of this agreement shall be paid as follows:

- (a) For the first twelve (12) calendar months of employment, new employees shall be paid 80% of the applicable rates of pay for the class and craft in which service is rendered.
- (b) For the second twelve (12) calendar months of employment, new employees shall be paid 90% of the applicable rates of pay for the class and craft in which service is rendered. Thereafter, employees will be paid full rates.
- (c) Any calendar month in which an employee does not render at least ten (10) days compensated service shall not count toward completion of the twelve (12) month period.
- (d) Entry rate will not apply if employee is promoted and qualified by management.

**RULE 6  
DAY'S WORK – WORK WEEK – NON-OPERATING EMPLOYEES**

- (a) The work week for all employees subject to this Agreement will be forty (40) hours, consisting of either five (5) days or four (4) days with two (2) or three (3) consecutive days off in each seven (7). So far as practicable the days off shall be Saturday and Sunday or include either Saturday or Sunday. However, rest days may be changed when operational requirements dictate. This action will not be taken to avoid overtime. Subject to Rule 9, assignments will not consist of less than forty (40) hours per week.
- (b) Regular Relief Assignments –
  - (1) To the extent reasonably possible, regular relief assignments with five (5) days of work and two (2) consecutive rest days or four (4) days of work and three (3) consecutive rest days will be established to do the work necessary on rest days of regular assignments, or to perform relief work on certain days and such types of other work on other days as may be assigned under this Agreement. A bulletin shall designate the new job relieved.
  - (2) Assignments for regular relief positions may on different days include different starting times, duties and work locations for employees of the same class, provided they take the starting time, duties and work locations of the employee or employees whom they are relieving.

(c) Nonconsecutive Rest Days –

The typical workweek is to be one with two (2) or three (3) consecutive days off. However, when customer service so requires, work weeks which may affect the consecutiveness of the rest days of positions or assignments may be adopted pursuant to the provisions of Rule 18. The Company shall generally consider the following factors in determining nonconsecutive rest days:

- (1) Regular relief positions established pursuant to Paragraph (b) of this rule.
- (2) Possible use of rest days other than Saturday and Sunday, in accordance with the other provisions of this Agreement.
- (3) Other suitable or practicable plans which may be suggested.

(d) Beginning of Workweek –

The term “workweek” for regularly assigned employees shall mean a week beginning on the first day on which the assignment is bulletined to work, and for unassigned employees, shall mean a period of seven (7) consecutive days starting with a Monday.

*NOTE: The expressions “positions” and “work” used in this rule refer to service, duties or operations necessary to be performed the specified number of days per week, and not to be workweek of individual employees.*

**RULE 7  
MEAL PERIOD**

- (a) Unless otherwise agreed to by the proper officer and General Chairman, the meal period shall not be less than twenty (20) minutes nor more than one (1) hour.
- (b) For operations determined to require continuous hours, eight (8) consecutive hours without meal period shall be assigned as constituting a day’s work, in which case, not less than twenty (20) minutes shall be allowed in which to eat, without deduction in pay, between the ending of the fourth hour and the beginning of the seventh hour after starting work.
- (c) When a meal period is allowed, it shall be regularly assigned between the ending of the fourth hour and the beginning of the seventh hour after starting work, unless otherwise agreed to between the management and the duly accredited representative. If the meal period is not afforded within the assigned period and is worked, the meal period shall be paid for at the overtime rate and twenty (20) minutes with pay in which to eat shall be afforded at the first opportunity.

- (d) Except when otherwise agreed to by employees directly affected, an employee shall not be required to work more than six (6) continuous hours without being permitted twenty (20) minutes to eat without deduction in pay. Time taken for meals shall not break the continuity of service.
- (e) The second meal and subsequent meals (if any) shall be furnished by the Company.
- (f) The Company will furnish all meals for employees called out on their rest days or holidays to perform emergency work.

### **RULE 8 STARTING TIME**

- (a) Where work is performed covering the twenty-four hour period, the starting time of each shift will be between the hours of six and eight A.M., two and four P.M., and ten P.M. and midnight.
- (b) Starting time of work period for regular assigned day service will not begin earlier than 5:00 a.m. and not later than 10:00 am.
- (c) Assigned starting time will not be changed without 36 hours notice, except in emergencies.

### **RULE 9 OVERTIME**

- (a) Overtime at 1.5 times the hourly rate will be paid for any hours in excess of 40 hours actually worked during a seven-day period ("Work Week"), such period to begin on the starting day of an employee's assignment. Holidays will be considered time worked in the computation of overtime under this rule, but all other paid absences will be excluded in such computation.
- (b) There shall be no overtime on overtime.
- (c) Overtime on a territory shall go to the regular assigned employees of such territory on a seniority basis. When the regular assigned employees are not available, then the closest adjoining employee will be called on a seniority basis.

### **RULE 10 APPLICATIONS**

- (a) Applications for newly hired employees shall be approved or disapproved within ninety (90) calendar days worked after the applicant begins work. If application is not disapproved in writing within a period of ninety (90) days, the application will be considered as having been approved.

- (b) An employee who has been accepted for employment in accordance with Paragraph (a) will not be terminated or disciplined for furnishing incorrect information or withholding information unless management determines that the information was of such a nature that the employee would not have been hired if the Company had had timely knowledge of it.

**RULE 11**  
**SENIORITY DATUM**

- (a) Seniority begins at the time the employee starts compensated service in a position covered by this Agreement. The existing employee list will become the seniority list on the effective date of this agreement.
- (b) When two or more employees have the same seniority date, the numerical position on the roster will govern. In arranging the numerical standing of each employee, preference will be given in the order of the one having (1) the most seniority in the next successive lower rank within the seniority group, (2) the earliest continuous seniority date in the subdepartment in which the seniority group is included, (3) the earliest continuous seniority date in the Maintenance of Way Department, (4) by the highest number comprised of the last four digits of their social security number, or, (5) by the date of birth.

Employees shall retain and continue to accumulate seniority in lower ranks while serving in a higher rank. In case they have not previously established seniority in lower ranks, they will establish seniority in all lower ranks, customarily associated with that position from the date they start in higher rank.

- (c) Employees now filling or hereafter promoted to excepted or official positions shall retain all their seniority rights and shall continue to accumulate seniority, but shall be required to pay an appropriate monthly fee, not to exceed monthly union dues. The General Chairman will notify the employing officer of failure to pay the fee. If payment is not received within thirty (30) days of receipt of such notification, the employee will forfeit his seniority.
- (d) Seniority rights of employees to vacancies or new positions or to perform work covered by this Agreement shall be governed by these rules.
- (e) Employees voluntarily leaving service will forfeit all seniority and if they re-enter the service, will be considered as new employees. Employees dismissed from the service due to their failure to comply with the terms of the union shop agreement shall not be permitted to re-enter the service until after two (2) years have elapsed from the date of dismissal and providing the individual becomes in good standing with the union.
- (f) Except as otherwise provided in this Agreement, seniority rights of employees covered by these rules may be exercised only in case of vacancies, new positions, reduction of forces or memorandum of agreement between the parties signatory hereto covering special circumstances which, in their judgment, require such action.

**RULE 12**  
**SENIORITY DISTRICTS**

For the employees covered by this Agreement, the entire railroad shall constitute a single seniority district over which employees may exercise their seniority.

**RULE 13**  
**SENIORITY ROSTER**

- (a) A seniority roster showing name, occupation, location, and seniority dates of all employees within the seniority district will be posted within thirty (30) days following the effective date of this Agreement in places accessible to all employees affected. A copy of the roster will be provided to the Local and General Chairman at the time they are posted.
- (b) The rosters will be revised and posted in January of each year and will be open to protest (for errors associated with the new roster only) for a period of thirty (30) days from date of posting and upon presentation of proof of error by an employee, or his representative, such error shall be corrected.
- (c) The provision for annual revision and posting of seniority rosters shall not be construed to mean that the duly accredited representatives of the employees will be denied the right to request and receive a revised roster when reductions in forces are contemplated or when, due to turn-over in forces, the annual roster does not furnish the information necessary to properly apply the provisions of this Agreement.
- (d) An employee returning from leave will have thirty (30) days to protest an error in his seniority which would have the direct effect on his seniority rights.

**RULE 14**  
**PROMOTIONS, ASSIGNMENTS, AND DISPLACEMENTS**

- (a) Employees covered by these rules shall be in line for promotion. Promotion, assignments, and displacements (except for promotion or assignment to except or management positions) shall be based on management's determination of fitness and ability and seniority; fitness and ability being sufficient, seniority shall prevail.
- (b) Disqualified employees may make request in writing for a hearing within fifteen (15) days of the date of written disqualification, with copy to General Chairman.

**RULE 15**  
**WORK ASSIGNMENTS**

- (a) The Company shall designate a headquarters point such as a depot, tool house, shop, etc., for each regular position and each regular assigned relief position and for employees not occupying such positions. Seven (7) day's written notice will be given when designations

are changed. The Company may not modify such headquarters points more than once every six (6) months.

- (b) Except as otherwise provided herein, the Company shall have sole discretion to establish, change from time to time, and abolish work assignments.

### **RULE 16 BULLETINS**

- (a) All new positions and vacancies (except those of less than thirty (30) days' duration) shall be promptly bulletined in places accessible to all employees affected for a period of five (5) working days. Such bulletin will show location, title and description of position, rate of pay, assigned hours of service, assigned meal period, assigned rest days.
- (b) Employees desiring such position shall, within five (5) working days of posting of the bulletin, file their applications with the officer, whose name is signed to the bulletin, sending copy to the General Chairman. A bulletin of assignment, designating the successful applicant, shall be issued within ten (10) days of close of bidding.
- (c) When more than one vacancy or new position exists at the same time, qualified employees shall have the right to bid on any or all, stating preference.
- (d) Except in case of illness or physical disability, employees assigned to positions on bulletin must take positions assigned within five (5) days, unless agreed to by Company officer making the assignment and the General Chairman. The Carrier may require an employee to remain beyond the five (5) days for a maximum of thirty (30) days if a qualified replacement is not readily available. An employee so held will be entitled to lost earnings and will qualify under Rule 21 (Expense) herein.
- (e) When an employee bids for and is awarded a position, his former position, if not abolished, shall be declared vacant and bulletined immediately.
- (f) Bulletined positions may be filled temporarily pending an assignment. In the event no applications are received, the position may be filled by management by appointment of the junior qualified employee. The former job of the appointed employee shall remain available to such appointed employee unless such job is abolished pursuant to the provisions of this Agreement.

### **RULE 17 QUALIFYING**

- (a) An employee who acquires a position through bidding or displacement rights and fails to qualify within thirty (30) days will be allowed twenty-four hours in which to exercise displacement rights.

- (b) Employees who acquire a position will be given full cooperation by supervisors and other employees in their efforts to qualify.

**RULE 18**  
**VACATION AND RELIEF ASSIGNMENTS**

- (a) The Company may establish regular assigned vacation relief positions and/or provide extra employees as necessary for vacation relief or other relief work.
- (b) Bulletins in accordance with Rule 16 for regular assigned relief positions shall show territory included in the assignment and type of positions to be relieved. Starting time and rest days will be those of the position relieved.
- (c) The headquarters point of an employee assigned to a relief assignment shall be his permanently assigned headquarters point unless he is not permanently assigned, then the station on the Carrier's line nearest his place of residence shall be his headquarters point.

**RULE 19**  
**SERVICE OUTSIDE OF REGULAR ASSIGNMENTS**

Employees called for duty and reporting outside of regular working hours and not continuous therewith, either in advance of or following, will be paid a minimum of three (3) hours at time and one-half rate for three (3) hours work or less, and if held on duty in excess of three (3) hours, time and one-half will be allowed on minute basis.

**RULE 20**  
**REDUCING FORCES**

- (a) In reducing forces, seniority rights shall govern. Except as provided in Paragraph (e) and (f) of this Rule, at least five (5) working days' written advance notice, including the date of notice, shall be given employees affected in reduction of forces or in abolishing positions. A copy of such notice shall also be posted on bulletin boards. Employees whose positions are abolished may exercise their seniority over junior employees; other employees affected may exercise their seniority rights in the same manner. Employees whose positions are abolished or who are displaced, and whose seniority rights entitle them to a regular position, shall assert such rights within ten (10) working days from the date actually affected. An employee who fails to exercise seniority within the ten (10) day period must then either displace the junior employee on the seniority roster or bid the bulletined vacancy where such employees hold seniority. During this ten (10) day period, such employee will perform work as assigned. Employees having insufficient seniority to displace other employees will be considered furloughed. If an employee's exercise of seniority rights would require a change in his residence, he may assume a voluntary furloughed status by complying with Paragraph (b), if agreed to by management and the General Chairman.
- (b) Employees desiring to protect their seniority rights and to avail themselves of this rule must, within ten (10) calendar days from the date actually reduced to the furloughed list, file their

names and addresses in writing, both with the proper officer (the officer authorized to bulletin and award positions) and the General Chairman, and advise promptly of any change in address.

- (c) When forces are increased or vacancies occur, furloughed employees shall be returned and required to return to service in the order of their seniority rights, except as otherwise provided in this rule. Such employees, when available, shall be given preference on a seniority basis to all extra work, short vacancies and/or vacancies occasioned by the filling of positions pending assignment by bulletin, which are not filled by rearrangement of regular forces. When a bulletined new position or vacancy is not filled by an employee in service senior to a furloughed employee, the senior furloughed employee will be called to fill the position. Furloughed employees failing to return to service within seven (7) calendar days after being notified (by certified mail or telegram sent to the last address given) or give reason satisfactory to management for not doing so will be considered out of the service and will forfeit seniority.
- (d) Furloughed employees desiring to waive their right to return to service on positions or vacancies or less than thirty (30) calendar days' duration may do so by filing written notice with the proper officer as defined above and the General Chairman; such waiver notice may be cancelled or terminated in the same manner. If a furloughed employee's recall to service would require a change in residence, he may assume a voluntary furloughed status as outlined in Paragraph (a) herein.
- (e) Advance notice to employees shall not be required before abolishing positions under emergency conditions, such as flood, snow storm, hurricane, derailment or train wreck, tornado, earthquake, fire or labor dispute other than as covered by Paragraph (f), provided such conditions affect Company's operation in whole or in part. Such abolishments will be confined solely to those work locations directly affected by any suspension of operations. If an employee works any portion of the day, he will be paid in accordance with existing rules. When the emergency ceases, all positions abolished must be re-established, with former occupants returned to their respective positions and said position need not be rebulletined. If the emergency conditions described herein terminate within seven (7) days, employees will be entitled to return to their former positions at their next usual starting time not less than six (6) hours after the emergency terminates; if the emergency conditions extend longer than seven (7) days, employees would be entitled to exercise their seniority or return to their former positions at their usual starting time within forty-eight (48) hours after the emergency terminates.
- (f) Advance notice to employees before positions are abolished shall not be required where any suspension of the Company's operations in whole or in part is due to a labor dispute between the Company and any of its employees.

**RULE 21  
EXPENSES**

- (a) Employees required to remain overnight at other than their regular headquarters will be allowed actual reasonable cost of meals and lodging.
- (b) An employee required by management to use his automobile on Company business shall be paid the current IRS mileage rate per actual highway mile.

**RULE 22  
LEAVE OF ABSENCE**

- (a) An employee desiring to remain away from service must obtain permission from his immediate supervisor. In case of injury or illness, leave of absence will be granted upon presentation of acceptable medical evidence.
- (b) When the requirements of the service permit, employees, on request, will be granted leave of absence not to exceed thirty (30) days. The Carrier may, at its discretion, extend the leave period up to an additional sixty (60) days. Leave of absence in excess of one hundred eighty (180) days in any twelve month period shall not be granted unless by Agreement between the management and the duly accredited representatives of the employees.
- (c) Except for employees in service for four (4) years or less with the U. S. Armed Forces, an employee who is absent on leave and who engages in other employment shall forfeit his seniority and be considered out of service, unless special arrangements have been made between the management and the General Chairman.
- (d) An employee who fails to report for duty at the expiration of leave of absence shall forfeit his seniority rights, except when failure to report on time is the result of unavoidable delay, in which case the leave will be extended to include such delay.
- (e) Employees desiring to return from leave of absence before the expiration thereof shall be permitted to do so upon forty-eight (48) hours' written advance notice to his immediate supervisor with copy to the Local Chairman.
- (f) An employee retired under the disability provisions of the Railroad Retirement Act shall retain seniority until he attains the age of sixty-five years, but the position vacated by him upon his retirement will be bulletined for permanent appointment, unless abolished. Should he recover sufficiently to resume service prior to attaining the age of sixty-five years, he shall be permitted to exercise seniority over junior employees.

**RULE 23**  
**LEAVE OF ABSENCE – EMPLOYEE REPRESENTATIVES**

- (a) Duly accredited representatives employed exclusively by the Organization shall be granted leave of absence and may return to their former positions or exercise seniority rights within thirty (30) days after release from such employment.
- (b) Other duly accredited representatives of employees shall be granted necessary time off (without pay from the Carrier) for leave of absence (without pay from the Carrier) for investigations, consideration and adjustment of grievances, negotiations, to attend meetings of employees or other matters connected with the interests of the employees.

**RULE 24**  
**RETURNING FROM LEAVE**

An employee returning after leave of absence shall return to his former position provided it has not been abolished or a senior employee has not exercised displacement rights thereon. Upon return or within ten (10) days thereafter, such employee may exercise seniority rights on any position bulletined during such absence. In the event the employee's former position has been abolished or a senior employee has exercised displacement rights thereon, the returning employee will be governed by the provision of Rule 20 and may displace a junior employee if such rights are asserted within ten (10) days after his return. Employees displaced by his return shall have the privilege of exercising seniority rights over junior employees in the same manner.

*NOTE: This rule also applies to an employee reporting for duty after vacation, sickness, disability, suspension or after an absence for any other legitimate cause.*

**RULE 25**  
**ATTENDING COURT**

- (a) Employees taken away from their regularly assigned duties at the request of management to attend court or to appear as witnesses for the Carrier at investigations or hearings will be allowed compensation equal to what would have been earned had such interruption not taken place, and, in addition, actual necessary expenses while away from their headquarters.
- (b) Employees attending court or acting as witnesses for the Carrier at investigations or hearings outside their assigned hours shall be paid for the time devoted to such attendance a minimum of four (4) hours pay for two (2) hours and forty (40) minutes or less, and at the time and one-half rate on a minute basis thereafter.
- (c) Furloughed employees will be allowed a day's pay for each day used as witnesses with a minimum of one day, based on the minimum rate of pay, and, in addition, necessary actual expenses while away from headquarters.
- (d) In the event an employee is held away from home station on rest days or holidays, he shall be allowed a minimum of one day's pay at pro-rata rates for each day so held.

- (e) Any fee or mileage allowance received by the employee from the court or other tribunal accruing shall be assigned to the Company or such amounts shall be deducted as provided under this rule.
- (f) Active employees failing to attend court or to appear as witnesses for the Carrier at investigations or hearings if requested to do so may be subject to discipline.

**RULE 26  
JURY DUTY**

When a regularly assigned employee is summoned for jury duty and is required to lose time from his assignment as a result thereof, he shall be paid for actual time lost with a maximum of a basic day's pay at the straight time rate of his position for each day lost less the amount paid by the court for meals, lodging or transportation, subject to the following qualification requirements and limitations:

- (1) An employee must furnish the Carrier with a statement from the court of jury allowances paid and the days on which jury duty was performed.
- (2) The number of days for which jury duty pay shall be paid is limited to a maximum of sixty (60) days in any calendar year.
- (3) No jury duty pay will be allowed for any day as to which the employee is entitled to vacation or holiday pay.
- (4) Except as provided in Paragraph (6), an employee will not be required to work his assignment the days on which jury duty:
  - (a) Ends within four (4) hours of the start of his assignment; or
  - (b) Is scheduled to begin during the hours of his assignment or within four (4) hours of the beginning or ending of his assignment.
- (5) On any day that an employee is released from jury duty and four (4) or more hours of his work assignment remain, he will immediately inform his supervisor and report for work if advised to do so.

**RULE 27  
HOLIDAYS**

- (a) Subject to the qualifying requirements provided herein, each employee shall receive eight (8) hours' pay at the pro rata rate for each of the following enumerated holidays:

New Year's Day  
Memorial Day

Thanksgiving Day  
Friday after Thanksgiving Day

Fourth of July  
Labor Day

Christmas Eve  
Christmas Day

- (b) A regularly assigned employee shall qualify for the holiday pay if the employee performs at least six (6) hours of compensated service on the workdays immediately preceding and following such holiday or if the employee is not assigned to work but is available for service on such days. If the holiday falls on the last day of a regularly assigned employee's workweek, the first workday following his rest days shall be considered the workday immediately following. If the holiday falls on the first workday of his workweek, the last workday of the preceding workweek shall be considered the workday immediately preceding the holiday. These qualifications shall also apply to employees relieving regularly assigned employees. If a holiday occurs during an employee's vacation and the employee performs at least six (6) hours service on the work days immediately preceding and following the vacation, the employee will receive pay for the holiday.

All others for whom holiday pay is provided shall qualify for such pay if on the day preceding and the day following the holiday they satisfy one or the other of the following conditions:

- (i) Compensation for at least six (6) hours of service paid by the Carrier is credited; or
- (ii) Such employee is available for service. An employee is considered available unless he lays off of his own accord or does not respond to a call for service pursuant to the rules of this Agreement.
- (iii) Furloughed employees who performed at least eleven (11) days compensated service during the thirty (30) days preceding the holiday.

*NOTE: When any of the above holidays falls on Sunday, the day observed by the Nation shall be considered the holiday.*

## **RULE 28 VACATION**

- (a) Qualifying employees will be entitled to vacation in accordance with the following schedule:

After one year's service -----5 consecutive days  
After two year's service----- 10 consecutive days  
After eight year's service ----- 15 consecutive days  
After seventeen year's service----- 20 consecutive days  
After twenty-five year's service----- 25 consecutive days

Year's service shall be counted by the year in which an Employee's anniversary date of hire falls. An employee's vacation will not be extended by reason of any of the recognized holidays enumerated in Rule 27.

- (b) Employees will be required to submit vacation requests before December 1 of each year. When vacations are taken due regard consistent with requirements of the service shall be given to the desires and preferences of the employees in seniority order when fixing dates for their vacations. Vacations may be split in segments of not less than five (5) days. Representatives of the Company and the Organization will cooperate in assigning vacation days.

If an assigned vacation is to be advanced or deferred by management, the employee will be given as much advance notice as possible; not less than ten (10) days' notice shall be given except when management determines that emergency conditions prevent such notice.

- (c) Without permission of management, employees may not accumulate vacation from calendar year to calendar year.
- (d) Vacation payment to regularly assigned employees will be calculated at the daily rate of such assignment. Other than regularly assigned employees will be paid on the basis of the average daily rate paid in the last pay period preceding the vacation in which service was performed.

If an employee cannot be released for vacation, he shall be paid the time and one-half rate for work performed during his vacation period in addition to his regular vacation pay.

- (e) Employees must perform one hundred twenty (120) days of compensated service in any year to qualify for vacation provided under Paragraph (a) above. Calendar days on which an employee is on vacation or is available for service and on which days he performs no service, not exceeding sixty (60) such days, will be included in the determination of qualification for vacation. Also, calendar days, not in excess of thirty (30), on which an employee is absent from or unable to perform service because of injury received on duty will be included. Days on which employees are absent due to voluntary furlough or leave of absence for reasons other than medical reasons, will not be included as qualifying days.
- (f) Employees must perform one hundred twenty (120) days of compensated service in any calendar year to qualify for benefits provided in Paragraph (a) above. Employees not performing one hundred twenty (120) days' service will be granted vacation pro-rated in proportion to days of compensated service. (Example: Two years accumulated service, 60 days of service in preceding year. Eligible for 5 days vacation. Less than full days are dropped in the calculation.)
- (g) In the application of Paragraph (d) days on which an employee is absent due to his own illness or injury shall be counted as follows:

10 days maximum - under 3 years' service  
20 days maximum - 3 to 14 years' service  
30 days maximum - 15 or more years' service

- (h) Absences due to vacation shall not be considered as vacancies in applying the rules of this Agreement.
- (i) The vacation provided for in this Agreement shall be considered to have been earned when the employee has qualified under Paragraph (a) and (e) or (f) hereof. If an employee's employment status is terminated for any reason whatsoever, including but not limited to retirement, resignation, non-compliance with a union shop agreement, or failure to return after furlough he shall at the time of such termination be granted full vacation pay earned up to the time he leaves the service and the vacation for the succeeding year if the employee has qualified therefore under Paragraph (a). If an employee thus entitled to vacation or vacation pay shall die, the vacation pay earned and not received shall be paid to such beneficiary as may have been designated or in the absence of such designation, the surviving spouse or children or his estate, in that order of preference.
- (j) Former employees of the CSX who entered service of Appalachian and Ohio Railway, Inc. on start of operations shall be given credit for CSX service in applying all provisions under this Rule.

**RULE 29  
HEALTH AND WELFARE**

Effective May 15, 2006, the Carrier shall provide employees and their eligible dependents a level of hospital, surgical, medical, prescription, life, and dental benefits, as provided by the Carrier's summary plan description subject to the levels listed on Attachment A.

**RULE 30  
DISCIPLINARY PROCEDURE**

- (a) Employees in service more than ninety (90) calendar days shall not be disciplined or dismissed until after a fair and impartial investigation, unless they shall accept discipline to be assessed (other than dismissal) in writing and waive formal investigation. Employees may, however, in cases management determines to be serious (such as use of intoxicants, misappropriation of Company property, insubordination or vicious conduct, etc.) be held out of service pending such investigation.
- (b) An employee charged with an offense shall be furnished with a letter stating the precise charge or charges against him. No charge shall be made that involves any matter of which the employing officer has had knowledge fifteen (15) days or more, except that in cases where an employee is subject to trial in the courts, the employing officer may, if he elects, withhold making a charge on the offense for which the employee is tried until not more than fifteen (15) days after the Carrier's knowledge of the employee's innocence or guilt.
- (c) The investigation shall be held within ten (10) days from the date of the notice of the alleged offense, unless additional time is requested by the Company, employee or his representative. A decision will be rendered within ten (10) days after completion of the investigation.

- (d) Investigations shall be held when possible at home terminal of the employee involved, unless otherwise agreed between representatives of the parties. Employees shall have reasonable opportunity to secure the presence of representatives and/or necessary witnesses.
- (e) Employees may be accompanied by one or more duly accredited representatives of the Organization, who shall be permitted to be present during the entire investigation.
- (f) If disciplinary action is taken, a record of the evidence taken at the investigation will be furnished to the employee and his duly accredited representative. Appeals from the decision may be made in accordance with the provisions of Rule 31, except that four (4) months shall apply instead of the nine-month period.
- (g) If charges against the employee are not sustained, they shall be stricken from the records. If withheld from service, suspended or discharged, the employee shall be returned to service and paid for all time lost, less any amount earned in other employment.

**RULE 31**  
**TIME LIMIT ON CLAIMS**

- (a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the carrier authorized to receive same, within sixty (60) days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Company shall, within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employee or his duly accredited representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Company as to other similar claims or grievances.
- (b) If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within sixty (60) days from receipt of notice of disallowance, and the representative of the Company shall be notified in writing within that time of the rejection of his decision. Failing to comply with this provision, the matter shall be considered closed, but this shall not be considered as a precedent or waiver of the contentions of the employee as to other similar claims or grievances. It is understood, however, that the parties may, by agreement, at any stage of the handling of a claim or grievance on the property, extend the sixty-day period for either a decision or appeal up to and including the highest officer of the Company designated for that purpose.
- (c) The requirements outlined in Paragraphs (a) and (b), pertaining to appeal by the employee and decision by the Carrier, shall govern in appeals taken to each succeeding officer, except in cases of appeal from the decision of the highest officer designated by the Company to handle such disputes. All claims or grievances involved in a decision by the highest designated officer shall be barred unless within nine (9) months from the date of said officer's decision, proceedings are instituted by the employee or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or system, group or regional board of adjustment that has been agreed to by the parties hereto

as provided in Section 3 Second of the Railway Labor Act. It is understood, however, that the parties may by agreement in any particular case extend the nine (9) month period herein referred to.

- (d) A claim may be filed at any time for an alleged continuing violation of any Agreement and all rights of the claimant or claimants involved thereby shall, under this rule, be fully protected by the filing of one claim or grievance based thereon as long as such alleged violation, if found to be such, continues. However, no monetary claim shall be allowed retroactively for more than sixty (60) days prior to the filing thereof. With respect to claims or grievances involving an employee held out of service in disciplinary cases, the original notice of request for reinstatement with pay for time lost shall be sufficient.
- (e) This rule recognizes the right of representatives of the Brotherhood to file and prosecute claims or grievances for and on behalf of the employees it represents.
- (f) This Agreement is not intended to deny the right of the employees to use any other lawful action for the settlement of claims or grievances provided such action is instituted within nine (9) months of the date of the decision of the highest designated officer of the Company.
- (g) Discipline imposed and agreed to in accordance with Rule 30(a) of this rule shall be final with no right of appeal.
- (h) This rule shall not apply to requests for leniency.
- (i) The time limit provision specified in this rule may be extended by agreement between the parties.

### **RULE 32 DULY ACCREDITED REPRESENTATIVE**

Where the term “duly accredited representative” appears in this Agreement, it shall be understood to mean the regularly constituted committee and/or the officers of the Brotherhood of Maintenance of Way Employees of which such committee or officers are a part.

### **RULE 33 PERSONAL LEAVE DAYS**

- (a) The Carrier shall provide each employee four (4) paid personal leave days in each calendar year at the daily pro rata rate of the last service performed.
- (b) Personal leave day or days may be taken upon forty-eight (48) hours advance notice to the designated officer of the Carrier, subject to availability of extra employees. If employees are not permitted to take one or more personal leave days during the calendar year, each such day shall be paid at the daily pro rata rate within the month of January of the following year.

- (c) Personal leave days granted herein must be taken within the calendar year such day or days are earned. Newly hired employees will not be entitled to personal leave days in the calendar year in which hired.
- (d) Employees taking personal leave days will not thereby be disqualified for holiday pay.
- (e) It is understood that the Company may blank positions when incumbents take personal leave days.

**RULE 34  
COPY OF AGREEMENT**

The Carrier shall provide employees with a copy of this Agreement and amendments thereto without cost, and employees will acknowledge receipt in writing.

**RULE 35  
BEREAVEMENT LEAVE**

Bereavement leave, not in excess of three (3) calendar days, following the date of death will be allowed in case of death of an employee's brother, sister, parent, step-parent, child, stepchild, spouse, grandparent or spouse's parent. In such cases a minimum basic day's pay at the rate of the last service rendered will be allowed for the number of working days lost during bereavement leave. Employees involved will make provision for taking leave with their supervising officials in the usual manner. Questions and answers applicable to this rule are attached as Appendix 6.

**RULE 36  
WAGE INCREASE**

- (a) The basic hourly rates of pay on the effective date of this agreement as reflected in Appendix 1 shall be increased as follows:

July 1, 2007	2.0 %
July 1, 2008	2.5 %
July 1, 2009	2.5 %
July 1, 2010	3.0 %
July 1, 2011	3.0 %

- (b) The hourly or minute rates of pay provided for herein shall be adjusted to reflect the wage increase under Paragraph (a) hereof.
- (c) In determining new hourly or minute rates, fractions of .5 cent or higher shall be rounded to the next full cent and fractions of less than .5 cent shall be dropped.

**RULE 37**  
**DRINKING WATER**

The Railroad will see to it that a reasonable adequate supply of ice and drinking water is made available to employees.

## **EFFECT OF AGREEMENT**

- (a) This Agreement shall become effective on ratification and shall remain in effect until and unless changed under the provisions of the Railway Labor Act, as amended, or by mutual consent of parties signatory hereto.
- (b) The parties signatory hereto shall not serve nor progress prior to January 1, 2012 (not to become effective prior to July 1, 2012) any notice or proposal for changing any provision contained herein.
- (c) The provisions under Paragraph (b) above shall not bar the Carrier and Organization from agreeing upon any subject of mutual interest.

\* \* \* \* \*

This Agreement is entered into this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**FOR THE ORGANIZATION:**

**FOR THE CARRIER:**

\_\_\_\_\_  
Randall Brassell, General Chairman

\_\_\_\_\_  
J. P. Harr, General Manager

**APPROVED:**

\_\_\_\_\_  
J. R. Cook, Vice President

**APPENDIX 1**

**PROJECTED AGREEMENT POSITIONS – MAINTENANCE OF WAY AND SIGNAL**

<u>POSITION</u>	<u>RATE PER HOUR</u>
Track Foreman/Signal Maintainer .....	\$ 19.08
Track Inspector .....	\$ 18.02
Welder.....	\$ 16.96
Machine Operator/Grease Operator .....	\$ 15.90
Welder Helper/Trackman.....	\$ 14.84

Employees included within the scope of this Agreement shall perform all work in connection with the construction, maintenance, repair, and dismantling of track, road beds, structure facilities, and appurtenances related thereto, as well as signal systems, signals and signal appliances located on the right of way and used in the operation of the Carrier in the performance of common carrier service.

## APPENDIX 2

### UNION SHOP AGREEMENT

#### Section 1.

In accordance with and subject to the terms and conditions hereinafter set forth, all employees of the Carrier now or hereafter subject to the Rules and Working Conditions Agreements between the parties hereto, except as hereinafter provided, shall, as a condition of their continued employment subject to such agreements, become members of the Organization party to this Agreement within sixty (60) calendar days of the date they first perform compensated service as such employees after the effective date of this Agreement, and thereafter shall maintain membership in such Organization; except that such membership shall not be required of any individual until he has performed compensated service on thirty (30) days within a period of twelve (12) consecutive calendar months. Nothing in this Agreement shall alter, enlarge or otherwise change the coverage of the present or future rules and working conditions agreements.

#### Section 2. (Not Applicable)

#### Section 3.

- (a) Employees who retain seniority under the Rules and Working Conditions Agreements governing their class or craft and who are regularly assigned or transferred to full time employment not covered by such agreements, or who, for a period of thirty (30) days or more, are (1) furloughed on account of force reduction, or (2) on leave of absence, or (3) absent on account of sickness or disability, will not be required to maintain membership as provided in Section 1 of this Agreement so long as they remain in such other employment or furloughed or absent as herein provided, but they may do so at their option. Should such employees return to any service covered by the said Rules and Working Conditions Agreements and continue therein thirty (30) calendar days or more, irrespective of the number of days actually worked during that period, they shall, as a condition of their continued employment subject to such agreements, be required to become and remain members of the Organization representing their class or craft within thirty-five (35) calendar days from date of their return to such service.
- (b) The seniority status and rights of employees furloughed to serve in the Armed Forces or granted leaves of absence to engage in studies under an educational aid program sponsored by the federal government or a state government for the benefit of ex-servicemen shall not be terminated by reason of any of the provisions of this Agreement but such employees shall, upon resumption of employment, be considered as new employees for the purposes of applying this Agreement.
- (c) Employees who retain seniority under the Rules and Working Conditions Agreements governing their class or craft and who, for reasons other than those specified in Subsections (a) and (b) of this section are not in service covered by such agreements, or leave such service, will not be required to maintain membership as provided in Section 1 of this

Agreement so long as they are not in service covered by such agreements, but they may do so at their option. Should such employees return to any service covered by the said Rules and Working Conditions Agreements they shall, as a condition of their continued employment, be required, from the date of return to such service, to become and remain members in the Organization representing their class or craft.

- (d) Employees who retain seniority under the Rules and Working Conditions Agreements of their class or craft, who are members of an Organization signatory hereto representing Working Conditions Agreement of that class or craft temporarily perform work in another class of service shall not be required to be members of another Organization party hereto whose agreement covers the other class of service until the date the employees hold regularly assigned positions within the scope of the Agreement covering such other class of service.

#### Section 4.

Nothing in this Agreement shall require an employee to become or to remain a member of the Organization if such membership is not available to such employee upon the same terms and conditions as are generally applicable to any other member, or if the membership of such employee is denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership. For purposes of this Agreement, dues, fees, and assessments, shall be deemed to be "uniformly required" if they are required of all employees in the same status at the same time in the same organizational unit.

#### Section 5.

- (a) Each employee covered by the provisions of this Agreement shall be considered by a Carrier to have met the requirements of the Agreement unless and until the Carrier is advised to the contrary in writing by the Organization. The Organization will notify the Carrier in writing by Registered or Certified Mail, Return Receipt Requested, or by personal delivery evidenced by receipt, of any employee who it is alleged has failed to comply with the terms of this Agreement and who the Organization therefore claims is not entitled to continue in employment subject to the rules and working conditions Agreement. The form of notice to be used shall be agreed upon by the Carrier and the organizations involved and the form shall make provision for specifying the reasons for the allegation of non-compliance. Upon receipt of such notice, the Carrier will within ten (10) calendar days of such receipt, so notify the employee concerned in writing by Registered or Certified Mail, Return Receipt Requested, or by personal delivery evidenced by receipt. Copy of such notice to the employee shall be given the Organization. An employee so notified who disputes the fact that he has failed to comply with the terms of this Agreement, shall within a period of ten (10) calendar days from the date of receipt of such notice, request the Carrier in writing by Registered or Certified Mail, Return Receipt Requested, or by personal delivery evidenced by receipt, to accord him a hearing. Upon receipt of such request, the Carrier shall set a date for hearing, which shall be held within ten (10) calendar days of the date of receipt of request therefore. Notice of the date set for hearing shall be promptly given the employee in

writing with copy to the Organization, by Registered or Certified Mail, Return Receipt Requested, or by personal delivery evidenced by receipt. A representative of the Organization shall attend and participate in the hearing. The receipt by the Carrier of the request for a hearing shall operate to stay action on the termination of employment until the hearing is held and the decision of the Carrier is rendered.

In the event the employee concerned does not request a hearing as provided herein, the Carrier shall proceed to terminate his seniority and employment under the Rules and Working Conditions Agreement not later than thirty (30) calendar days from receipt of the above described notice from the Organization, unless the Carrier and the Organization agree otherwise in writing.

- (b) The Carrier shall determine on the basis of the evidence produced at the hearing whether or not the employee has complied with the terms of this Agreement and shall render a decision within twenty (20) calendar days from the date that the hearing is closed, and the employee and the Organization shall be promptly advised thereof in writing by Registered or Certified Mail, Return Receipt Requested.

If the decision is that the employee has not complied with the terms of this Agreement, his seniority and employment under the Rules and Working conditions Agreement shall be terminated within twenty (20) calendar days of the date of said decision except as hereinafter provided or unless the Carrier and the Organization agree otherwise in writing.

If the decision is not satisfactory to the employee or to the Organization it may be appealed in writing, by Registered or Certified Mail, Return Receipt Requested, directly to the highest officer of the Carrier designated to handle appeals under this Agreement. Such appeals must be received by such officer within ten (10) calendar days of the date of the decision appealed from and shall operate to stay action on the termination of seniority and employment, until the decision on appeal is rendered, the Carrier shall promptly notify the other party in writing of any such appeal by Registered or Certified Mail, Return Receipt Requested. The decision on such appeal shall be rendered within twenty (20) calendar days of the date the notice to appeal is received, and the employee and the Organization shall be promptly advised thereof in writing by Registered or Certified Mail, Return Receipt Requested.

If the decision on such appeal is that the employee has not complied with the terms of this Agreement, his seniority and employment under the Rules and Working Conditions Agreement shall be terminated within twenty (20) calendar days of the date of said decision unless selection of a neutral is requested as provided below, or unless the Carrier and the Organization agree otherwise in writing. The decision on appeal shall be final and binding unless within ten (10) calendar days from the date of the decision the Organization or the employee involved requests the selection of a neutral person to decide the dispute as provided in Section 5(c) below. Any request for selection of a neutral person as provided in Section 5(c) below shall operate to stay action on the termination of seniority and employment until not more than ten (10) calendar days from the date decision is rendered by the neutral person.

- (c) If within ten (10) calendar days after the date of a decision on appeal by the highest officer of the Carrier designated to handle appeals under this Agreement the Organization or the employee involved requests such highest officer in writing by Registered or Certified Mail, Return Receipt Requested, that a neutral be appointed to decide the dispute, a neutral person to act as sole arbitrator to decide the dispute shall be selected by the highest officer of the Carrier designated to handle appeals under this Agreement or his designated representative, the Chief Executive of the Organization or his designated representative, and the employee involved or his representative. If they are unable to agree upon the selection of a neutral person any one of them may request the Chairman of the National Mediation Board in writing to appoint such neutral. The Carrier, the Organization and the employee involved shall have the right to appear and present evidence at a hearing before such neutral arbitrator. Any decision by such neutral arbitrator shall be made within thirty (30) calendar days from the date of receipt of the request for his appointment and shall be final and binding upon the parties. The Carrier, the employee, and the Organization shall be promptly advised thereof in writing by Registered or Certified Mail, Return Receipt Requested. If the position of the employee is sustained, the fees, salary and expenses of the neutral arbitrator shall be borne in equal shares by the Carrier and the Organization; if the employee's position is not sustained, such fees, salary and expenses shall be borne in equal shares by the Carrier, the Organization and the employee.
- (d) The time periods specified in this section may be extended in individual cases by written agreement between the Carrier and Organization.
- (e) Provisions of investigation and discipline rules contained in the Rules and Working Conditions Agreement between the Carrier and the Organization will not apply to cases arising under this Agreement.
- (f) The General Chairman of the Organization shall notify the Carrier in writing of the title(s) and address(es) of its representatives who are authorized to serve and receive the notices described in this Agreement. The Carrier shall notify the General Chairman of the Organization in writing of the title(s) and address(es) of its representatives who are authorized to receive and serve the notices described in this Agreement.
- (g) In computing the time periods specified in this Agreement, the date on which a notice is received or decision rendered shall not be counted.

## Section 6.

Other provisions of this Agreement to the contrary notwithstanding, the Carrier shall not be required to terminate the employment of an employee until such time as a qualified replacement is available. The Carrier may not, however, retain such employee in service under the provisions of this section for a period in excess of sixty (60) calendar days from the date of the last decision rendered under the provisions of Section 5, or ninety (90) calendar days from date of receipt of notice from the Organization in cases where the employee does not request a hearing. The employee whose employment is extended under the provisions of this section shall not, during such extension, retain or acquire any seniority rights. The position will be advertised as vacant under the bulletining rules

of the respective agreements but the employee may remain on the position he held at the time of the last decision, or at the date of receipt of notice where no hearing is requested pending the assignment of the successful applicant, unless displaced or unless the position is abolished. The above periods may be extended by agreement between the Carrier and the Organization involved.

#### Section 7.

An employee whose seniority and employment under the Rules and Working Conditions Agreement is terminated pursuant to the provisions of this Agreement or whose employment is extended under Section 6 shall not have time or money claims by reason thereof.

If the final determination under Section 5 of this Agreement is that an employee's seniority and employment in a craft or class shall be terminated, no liability against the Carrier in favor of the Organization or other employees based upon an alleged violation, mis-application of non-compliance with any part of this Agreement shall arise or accrue during the period up to the expiration of the sixty (60) or ninety (90) day periods specified in Section 6, or while such determination may be stayed by a court, or while a discharged employee may be restored to service pursuant to judicial determination. During such periods, no provision or any other agreement between the parties hereto shall be used as the basis for a grievance or time or money claim by or on behalf of any employee against the Carrier predicated upon any action taken by the Carrier in applying or complying with this Agreement or upon an alleged violation, mis-application or non-compliance with any provision of this Agreement. If the final determination under Section 5 of this Agreement is that an employee's employment and seniority shall not be terminated, his continuance in service shall give rise to no liability against the Carrier in favor of the Organization or other employees based upon an alleged violation, mis-application or non-compliance with any part of this Agreement.

#### Section 8.

In the event that seniority and employment under the Rules and Working Conditions Agreement is terminated by the Carrier under the provisions of this Agreement, and such termination of seniority and employment is subsequently determined to be improper, unlawful, or unenforceable, the Organization shall indemnify and save harmless the Carrier against any and all liability arising as the result of such improper, unlawful, or unenforceable termination of seniority and employment: Provided further, that the aforementioned liability shall not extend to the expense to the Carrier in defending suits by employees whose seniority and employment are terminated by the Carrier under the provisions of this Agreement.

#### Section 9.

An employee whose employment is terminated as a result of non-compliance with the provisions of this Agreement shall be regarded as having terminated his employee relationship for vacation purposes.

Section 10.

The Carrier shall periodically deduct from the wages of employees subject to this Agreement periodic dues, and initiation fees, uniformly required as a condition of acquiring or retaining membership in such Organization, and shall pay the amount so deducted to such officer of the Organization as the Organization shall designate: Provided, however, that the requirements of this Subsection (a) shall not be effective with respect to any individual employee until he shall have furnished the Carrier with a written assignment to the Organization of such membership dues, initiation fees and assessments, which assignment shall be revocable in writing after the expiration of one year or upon the termination of this Agreement which ever occurs sooner.

## APPENDIX 3

### UNION DUES DEDUCTION AGREEMENTS

#### Section 1.

- (a) The Company shall, subject to the terms and conditions of this Agreement, periodically withhold and deduct sums for monthly membership dues and assessments (not including fines and penalties) uniformly required as a condition of retaining union membership, due the Brotherhood from the wages due and payable to employees working under agreements between the Company and the Brotherhood, who are members of the Brotherhood, and who have so authorized the Company by signed authorizations.
- (b) The Brotherhood shall assume the full responsibility for the procurement and proper execution of said authorization forms, and for delivery of said forms to the Company no later than the first day of the second payroll period of the month from which the deductions are to be made. Likewise, revocation of authorization forms shall be delivered by the Brotherhood to the Company not later than the first day of the second payroll period of the month in which termination of deductions is to take place.

#### Section 2.

- (a) Deductions, as provided herein, shall be made by the Company in accordance with a master deduction list prepared by the General Secretary-Treasurer of the Brotherhood, listing each affected employee in employee number order. Such list, together with authorization forms, shall be furnished to the Company on or before the first day of the month proceeding the month in which deductions are to take effect under the provisions of this Agreement.
- (b) Thereafter, any deletions or additions to the master deduction list, or any changes in the amounts to be deducted from the wages of employees, shall be furnished to the Company not later than the first day of the second payroll period of the month in which such changes are to be made, such information to be accompanied by the proper authorization or revocation forms. Any changes shall be given to the Company not later than the first day of the second payroll period of the month on a copy of the list the Company will furnish the General Secretary-Treasurer, which is referred to in Section 4 of this Agreement.

#### Section 3.

- (a) Deductions will be made from the wages earned in the second payroll period of the month in which the aforementioned certified statements are furnished to the Company.
- (b) The following payroll deductions will have priority over deductions in favor of the Brotherhood as covered by this Agreement:
  - 1) Federal, state and municipal taxes.

- 2) Deductions required by law and court orders, including garnishments, liens and other wage assignments which the Company must respect.
  - 3) Amounts due the Company.
  - 4) Group insurance premiums.
- (c) If the earnings of any employee, after all deductions having priority have been made, are insufficient to remit the full amount of deductions authorized by the employee, no deduction for union dues or assessments shall be made by the Company from the wages of the employee and the Company shall not be responsible for such collection. In cases where no deduction is made from the wages of an employee due to insufficient earnings, or for other reasons, the amounts not deducted shall not be added to the deduction lists nor will that deduction be made for the employee in any subsequent payroll period.
- (d) Responsibility of the Company under this Agreement shall be limited to remitting to the Brotherhood amounts actually deducted from the wages of employees pursuant to this Agreement. The Company shall not be responsible financially or otherwise for failure to make deductions or for making improper or inaccurate deductions. Any questions arising as to the correctness of the amounts deducted shall be handled between the employee involved and the General Chairman, and any complaints against the Company in connection therewith shall be handled with the Company by the General Chairman. Nothing herein shall be construed as obligating the Company to collect any dues or assessments from employees who leave its service, or who give up membership in the Brotherhood for any reason, or whose wages shall be involved in any claim or litigation of any nature whatsoever.

#### Section 4.

The Company will remit to the union official designated by the General Chairman the amounts due the Brotherhood deducted from the wages of members, making such remittance not later than the last day of the month following the month from which the deductions are made. The Company will, at the time of such remission, furnish the designated union officer a list of the employees, in employee number order, from whom deductions were made, showing the amount of such deductions.

#### Section 5.

Except for remitting to the Brotherhood monies deducted from the wages of employees, as described in Section 4 hereof, the Brotherhood shall indemnify, defend and save harmless the Company from and against any and all claims, demands, liability, loss or damage resulting from the entering into this Agreement or arising or growing out of any dispute or litigation from any deductions made by the Company from the wages of its employees for or on behalf of the Brotherhood.

## Section 6.

- (a) This Agreement is subject to the provisions of the applicable federal and state laws now in existence or enacted in the future.
- (b) This Agreement is subject to immediate cancellation by written notice to the General Chairman of the Brotherhood if the Company is required by federal law or the law of any state in which it operates, to change its pay date or payroll procedures in such a manner as to make dues deduction an unreasonable burden.
- (c) This Agreement shall be automatically terminated as of the date official notification is received from the National Mediation Board of a change in the representation of employees now represented by the Brotherhood signatory to this Agreement, or upon termination of the rules and working conditions agreement between the parties.

## Section 7.

No part of this Agreement shall be used in any manner whatsoever, directly or indirectly, as a basis for a grievance (except as provided in Section 3(d)) or time claim by or on behalf of an employee.

## APPENDIX 4

### PHYSICAL DISQUALIFICATION

For those employees who are physically disqualified by the Chief Medical Officer and who disagree with the findings, the following procedure is established:

- 1) When an employee is found by the Chief Medical Officer to be physically disqualified, he shall be notified in writing by the Chief Medical Officer the specific Medical reasons for the findings. If the employee questions the findings he or his representative shall, within thirty (30) days of his notification of physical disqualification, notify the highest officer of the Company designated to handle claims and grievances in writing of an appeal and submit to the Chief Medical Officer a statement of medical evidence from the physician of the employee's choice attesting to his meeting the Company's physical standards with respect to those matters on which he was found disqualified. Should the Chief Medical Officer continue of the opinion that the employee does not meet the Company's physical standards, he shall notify the employee in writing within fifteen (15) days. If the Chief Medical Officer agrees that the employee met the Company's physical standards at the time of disqualification, the employee will be made whole for wages lost.
- 2) Should the employee disagree with the Chief Medical Officer's decision following the latter's review of the medical evidence presented, he or his representative may, provided he does so within fifteen days after receipt of the decision, request a three-doctor panel, which shall be established as promptly as possible after receipt of his request. The panel shall be composed of a doctor of the employee's choice, a doctor of the Company's choice and a third doctor selected by the other two. The partisan doctors may present to the third doctor any evidence bearing on the dispute they consider pertinent. The panel shall determine within thirty days of its establishment whether the employee's physical condition meets the Company's standards. A majority decision shall govern.
- 3) Expenses involved in the application of the rule will be handled by the Company paying its doctor, the employee paying the doctor of his choice, and the expenses of the their doctor including such x-rays, laboratory examinations, as he may require being divided equally between the Company and the employee involved.
- 4) An employee returned to service on the basis of the decision of the three-doctor panel will be made whole as to wages lost due to disqualification in the event the three-doctor panel concludes his condition did not warrant disqualification at the time of disqualification.
- 5) Should the three-doctor panel find the employee physically disqualified, the employee may, when he considers his physical condition warrants, invoke again the procedures outlined hereinbefore except that he shall not do so earlier than one

hundred (120) days after the decision of the three-doctor panel. If the employee's physical condition has improved to the extent he is found to meet the Company's standards, he will be physically qualified to return to work but will not be made whole for loss of earnings incurred during the period of disability.

- 6) In the event the employee or his representative does not appeal the Chief Medical Officer's decision within the time limit specified herein, he shall be considered as having accepted the decision until the time he again presents himself for examination by the Company doctor, in which event the procedure described hereinabove shall be followed.

*NOTE: If the Company does not appoint a Chief Medical Officer, the doctor designated by the Company shall function under this supplement.*

**APPENDIX 5**

**WAIVER OF HEARING**

The undersigned employee waives hearing on the charges contained in the notice of hearing dated \_\_\_\_\_ and agrees to accept the following discipline.

*NOTE: This form is not to be used when an employee is dismissed. The discipline to be assessed shall be stated in full in the space provided above prior to acceptance by the employee.*

\_\_\_\_\_  
Employee Name

Approved By:

\_\_\_\_\_  
Company Representative

Witness:

\_\_\_\_\_  
Authorized Representative

## APPENDIX 6

### QUESTIONS & ANSWERS REGARDING BEREAVEMENT LEAVE

- Q-1: How are the three (3) calendar days to be determined?
- A-1: **An employee will have the following options in deciding when to take bereavement leave:**
- (a) **Three (3) consecutive calendars days, commencing with the day of death, when the death occurs prior to the time an employee is scheduled to report for duty;**
  - (b) **Three (3) consecutive calendar days, ending the day of the funeral service; or**
  - (c) **Three (3) consecutive calendar days, ending the day following the funeral service.**
- Q-2: Does the three (3) calendar days allowance pertain to each separate instance, or do the three (3) calendar days refer to a total of all instances?
- A-2: **Three (3) days for each separate death; however, there is no pyramiding where a second death occurs within the three-day period covered by the first death.**  
**EXAMPLE: Employee has a workweek of Monday to Friday - off days of Saturday and Sunday. His mother dies on Monday and his father dies on Tuesday. At the maximum, the employee would be eligible for bereavement leave on Tuesday, Wednesday, Thursday and Friday.**
- Q-3: An employee working from an extra board is granted bereavement leave on Wednesday, Thursday and Friday. Had he not taken bereavement leave he would have been available on the extra board, but would not have performed service on one of the days on which leave was taken. Is he eligible for two days or three days of bereavement pay?
- A-3: **A maximum of two (2) days.**
- Q-4: Shall a day on which a basic day's pay is allowed account bereavement leave serve as a qualifying day for holiday pay purposes?
- A-4: **No; however, the parties are in accord that bereavement leave non-availability should be considered the same as vacation non-availability and that the first work day preceding or following the employee's bereavement leave, as the case may be, should be considered as the qualifying day for holiday purposes.**
- Q-5: Shall an employee be entitled to bereavement leave in connection with the death of a half-brother or half-sister, step-brother or step-sister, step-parents or step-children?
- A-5: **Yes, as to half-brother or half-sister, stepparents or stepchildren, No, as to step-brother or stepsister. However, the rule is applicable to a family relationship covered by the rule through the legal adoption process.**

Q-6: Shall bereavement leave payment be applicable when an employee is entitled to vacation period?

**A-6: No.**

Q-7: An employee qualifies for holiday pay on a holiday which occurs on a day the employee also qualifies for bereavement leave pay. Under these circumstances, is the employee entitled to be paid both the holiday and bereavement leave allowance?

**A-7: No. The employee would be entitled to only one basic day's pay.**

## APPENDIX 7

It is the intent of the Agreement for the A&OR to utilize maintenance of way employees under rules of the Agreement to perform the work included within the scope of the Agreement; however, it is recognized that in certain specific instances the contracting out of such work may be necessary provided one or more of the following conditions are shown to exist:

- 1.) Special skills necessary to perform the work are not possessed by its Maintenance of Way Employees.
- 2.) Special equipment necessary to perform the work is not owned by the Carrier or is not available to the Carrier for its use and operation thereof by its Maintenance of Way Employees.
- 3.) Time requirements exist which present undertakings not contemplated by the Agreement that are beyond the capacity of its Maintenance of Way Employees.

In the event the A&OR plans to contract out work because of one or more of the criteria described above, it shall notify the General Chairman in writing as far in advance of the date of the contracting transaction as is practicable and in any event, not less than fifteen (15) days prior thereto. Such notification shall clearly set forth a description of the work to be performed and the basis on which the A&OR has determined it is necessary to contract out such work according to the criteria set forth above.

If the General Chairman, or his representative, requests a meeting to discuss matters relating to the said contracting transaction, the designated representative of the A&OR shall promptly meet with him for that purpose and the parties shall make a good faith effort to reach an agreement setting forth the manner in which the work will be performed. It is understood that when condition 3 is cited as criteria for contracting work, A&OR, to the extent possible under the particular circumstances, shall engage its Maintenance of Way Employees to perform all maintenance work in the Maintenance of Way and Structures Department and construction work in the Track Subdepartment, with due consideration given to the contracting out of construction work in the Bridge and Building Subdepartment to the extent necessary. If not agreement is reached, A&OR may nevertheless proceed with said contracting and the Organization may file and progress claims in connection therewith.

Nothing herein contained shall be construed as restricting the right of A&OR to have work customarily performed by employees included within the Scope of the Agreement from being performed by contract in emergencies that prevent the movement of traffic when additional force or equipment is required to clear up such emergency condition in the shortest time possible. In such instances, A&OR shall promptly notify the General Chairman of the work to be contracted and the reasons therefore, same to be confirmed in writing within fifteen (15) days of the date of such work commences.

## APPENDIX 8

### VOLUNTARY PAYROLL DEDUCTION OF POLITICAL CONTRIBUTIONS

- (a) Subject the terms and conditions hereinafter set forth, the Carrier will deduct from the wages of employees voluntary political contributions upon their written authorization in the form (individual authorization form) agreed upon by the parties hereto, copy of which is attached, designated "Attachment A" and made a part thereof.
- (b) Voluntary political contributions will be made monthly from the compensation of employees who have executed a written authorization providing for such deductions. The first such deduction will be made in the month following the month in which the authorization is received. Such authorization will remain in effect thereafter until canceled by the employee upon written notice to the Brotherhood and the Carrier by Registered or Certified Mail on or before the last day of the month in which such deductions are to be taken. Changes in the amount to be deducted will be limited to one change in each 12-month period and any change will coincide with a date on which dues deduction amounts may be changed under the Dues Deduction Agreement.
- (c) The General Chairman or his designated representative shall furnish the Carrier, with copy of appropriate units of the Brotherhood, an initial statement by lodges, in alphabetical order and certified by him, showing the amounts of deductions to be made from each employee, such statement to be furnished together with individual authorization forms to cover, and payroll deductions of such amounts will commence in the month immediately following. Subsequent monthly deductions will be based on the initial statement plus a monthly statement showing additions and/or deletions furnished in the same manner as the initial statement required hereinabove.
- (d) Monthly voluntary political contribution deductions will be made from wages at the same time that membership dues are deducted from the employees' paycheck. No deduction shall be made from wages at the same time that membership dues are deducted from the employees' paycheck. No deduction shall be made in any month that the amount of the deduction is not fully covered by an equal amount due the employee in net compensation. Only one monthly contribution shall be deducted in any given month. Deductions will only be made in whole dollar increments.
- (e) Concurrent with making remittance to the Brotherhood of monthly membership dues, the Carrier will make separate remittance of the voluntary political contributions to the Treasurer, DRIVE, together with a list prepared in accordance with the requirements of the Dues Deduction Agreement pertaining to the remittance of monthly membership dues with a copy to the General Chairman.
- (f) The requirements of this Article shall not be effected with respect to any individual employee until the employer has been furnished with a written authorization of assignment of wages of such monthly voluntary political contribution.



August 21, 2006

Mr. Randall Brassell, General Chairman  
Allied Eastern Federation  
Brotherhood of Maintenance of Way Employees  
114 Canfield Place, Unit A-8  
Hendersonville, TN 37075

Dear Mr.Brassell:

This is to confirm the understanding we reached during our recent labor negotiations related to Rule 29, Health & Welfare.

A&OR will not arbitrarily increase benefit levels of employees covered by other collective bargaining agreements without affording the BMWWE such benefits on an equal basis.

Sincerely,

J. P. Harr, General Manager

AGREED:

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Randall Brassell, General Chairman  
Brotherhood of Maintenance of Way Employees

August 21, 2006

Mr. Randall Brassell, General Chairman  
Allied Eastern Federation  
Brotherhood of Maintenance of Way Employees  
114 Canfield Place, Unit A-8  
Hendersonville, TN 37075

Dear Mr. Brassell:

In reference to the agreement dated September 1, 2006, between the Brotherhood of Maintenance of Way and A&OR it is understood that in case of a change in the territory covered by the A&OR, the seniority rights of affected employees will be subject to adjustment by agreement between the carrier and the General Chairman.

Sincerely,

J. P. Harr, General Manager

AGREED:

---

Randall Brassell, General Chairman  
Brotherhood of Maintenance of Way Employees

August 21, 2006

Mr. Randall Brassell, General Chairman  
Allied Eastern Federation  
Brotherhood of Maintenance of Way Employees  
114 Canfield Place, Unit A-8  
Hendersonville, TN 37075

Dear Mr. Brassell:

This is to set forth the understanding between Appalachian and Ohio Railway, Inc. and the Brotherhood of Maintenance of Way Employees concerning the application of Rule 28.

Years of service shall be counted from the year in which an employee's anniversary date of hire falls or the calendar year in which he initially performs one hundred twenty (120) days of compensated service, whichever occurs first.

The pro-rated vacation provided in paragraph (f) shall apply only after the accumulation of at least one (1) year of service.

If this reflects your understanding, please sign on the line indicated below.

Very truly yours,

J. P. Harr, General Manager

AGREED:

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Randall Brassell, General Chairman  
Brotherhood of Maintenance of Way Employees

## ATTACHMENT A

The benefit levels of the current health and welfare agreement will remain in full force and effect subject to the following changes and/or amendments provided for in this ATTACHMENT "A".

- (a) The employee's monthly pre-tax contribution rate of \$50.00 per month shall be increased as follows:

January 1, 2007	\$100.00 per month
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- (b) The Carrier shall establish a Preferred Provider Plan (PPO) within ninety (90) days after the effective date of this agreement. The PPO Plan shall require employees to utilize providers within the network of the Plan. If an employee chooses to utilize a provider outside of the network, such employee will be subject to penalties requiring the employee to pay 40% of the covered charges and the Plan shall pay 60%. Employees utilizing network providers will pay twenty (20%) percent of the covered charges and the Plan shall pay eighty (80%) percent.

- (c) Employees shall be required to meet an annual deductible as follows:

	05/15/06	01/01/07	01/01/08
<b>IN NETWORK:</b>			
1. Individual	\$300.00	\$400.00	\$ 500.00
2. Family	\$600.00	\$800.00	\$1,000.00
<b>OUT OF NETWORK</b>			
1. Individual	\$ 600.00	\$ 800.00	\$1,000.00
2. Family	\$1,200.00	\$1,600.00	\$2,000.00

- (d) Prescription Drugs: An employee shall be required to utilize the prescription drug plan provided in the agreement. The new co-payment for the drugs is as follows:

	05/15/06
<b>RETAIL (LESS THAN 30 DAYS SUPPLY)</b>	
1. Generic (formulary)	\$15.00
2. Brand Name (formulary)	\$25.00
3. Brand Name (non-formulary)	\$35.00

MAIL ORDER (90 DAY SUPPLY)

05/15/06

1. Generic	\$30.00
2. Brand Name Formulary	\$50.00
3. Brand Name Non-Formulary	\$70.00

OUT OF POCKET LIMITS:

IN NETWORK	05/15/06	01/01/07
Individual	\$1,000.00	\$1,500.00
Family	\$2,000.00	\$3,000.00
OUT OF NETWORK		
Individual	\$1,500.00	\$3,000.00
Family	\$3,000.00	\$6,000.00

## **ATTACHMENT B**

Effective January 1, 2007 for off-duty illness or injury occurring on or after January 1, 2007, the Carrier shall provide Supplemental Sickness Benefits in conjunction with the Railroad Retirement Sickness Benefits of \$43.00 per day, up to a maximum of 52 weeks for each disability.