

AGREEMENT

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Between

KANSAS CITY SOUTHERN

And

THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

(including the Kansas City Southern, Louisiana and Arkansas Railway,
Joint Agency, MidSouth Rail Corporation, SouthRail, Gateway
Western Railway, and Texas Mexican Railway Company)

Kansas City Southern and its affiliated rail carriers (collectively, "Carrier") is continually upgrading its heavy track maintenance capability and equipment and desires to operate this equipment with employees capable of safely obtaining maximum performance, production, and utility. One such piece of equipment is the Auto-Tamper, the operation of which is complex and calls for specialized training and, accordingly, a separate system operator classification. The Parties recognize this need, and therefore

IT IS AGREED:

- 1) The Carrier will develop and establish a program for training employees to test for, qualify on, and become assigned as Auto-Tamper Operators. Employees wanting to test for, qualify on, or become assigned as Auto-Tamper Operator must first satisfactorily complete the training program. No employee may be tested, qualified, or assigned as Auto-Tamper Operator without first having satisfactorily completed the training program. Carrier may waive testing and qualification requirements where appropriate.
- 2) Initially, and subject to KCS/L&A Rule 10--Promotions, the Carrier may bulletin Auto-Tamper Operator positions for system-wide seniority choice of employees holding machine operator seniority. The bulletin will identify qualifications, the number of positions available, the date, time, and place for training, and the expected duration of the training period. Successful applicants will be timely released from their assignments so as not to interfere with the training schedule.
- 3) From the general pool of applicants the Carrier will develop a list of those meeting the qualification criteria, including the successful applicants. The list shall be referred to as the "Auto-Tamper Operator System Bid and Displacement List." Employees populating the list will be ranked in machine operator seniority order, except that dated Auto-Tamper Operators will be placed in seniority order above all others (see Section 7). Thereafter, as the need for additional Auto-Tamper Operator training arises, untrained employees on the list will be canvassed in seniority order for placement in training. Employees declining training will be removed from the list. Untrained employees may elect to remove themselves from the list after a one (1) year period. Once trained, the junior-most employee(s) on the list may be forced. From time

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to time the Carrier may advertise for placement on the list. The successful applicant(s) for such placement shall be placed in seniority order and entailed to the list.

4) Training sessions may be held on or off-property, for a duration to be determined by the Carrier, with the trainees' actual and necessary expenses borne by the Carrier. During the training period, trainees will not be subject to schedule agreement rules governing starting times, basic day, basic work weeks, meal periods, overtime, etc.

5) The trainees' rate of pay shall be at the hourly rate of the last position assigned. When multiple trainees are assigned to the same training session, each shall be paid the same, i.e., at the highest of the hourly rates of the last positions assigned.

6) Following satisfactory completion of the training program, if for any reason a trainee is not immediately assigned as Auto-Tamper Operator, at the Carrier's discretion, the employee may be required to complete a refresher course of instruction (or in-house briefing) prior to testing, qualification, and assignment as Auto-Tamper Operator.

7) A new, system-wide seniority classification designated "Auto-Tamper Operator" shall be established. Auto-Tamper Operator seniority shall be established on the first day an employee renders service as Auto-Tamper Operator. Seniority for purposes of assignment as Auto-Tamper Operator shall be determined on the basis of each employee's relative standing on the "Auto-Tamper Operator System Bid and Displacement List," with dated Auto-Tamper operators placed in seniority order before all others. Only a qualified senior employee who has been displaced or whose position has been abolished may displace an employee assigned as Auto-Tamper Operator.

8) Auto-Tamper Operators may operate throughout the Carrier's consolidated system. All such positions shall be governed by the collective bargaining agreement between the Kansas City Southern Railway Company ("KCS") and the Union revised July 1, 1979, as amended, except as otherwise provided herein.

9) Employees assigned to Auto-Tamper Operator positions will be required to remain in their positions for no less than a nine (9) month period. An employee bidding away from such position after the completion of the nine (9) month period will be released within thirty (30) calendar days subject to the availability of a qualified employee off the System Bid and Displacement List. An employee assigned as Auto-Tamper Operator may bid to other positions while in his/her nine (9) month period as long as the effective date of such position is subsequent to the end of the employees' nine (9) month period.

10) Release from the position prior to the completion of the nine (9) month will be allowed for documented hardship reasons that involve the personal health of the employee, the personal health of an immediate family member, or other extenuating reasons. The employee's Director or his designee and the employee's general chairman will have to agree to such a release. An employee granted a hardship release will be released within thirty (30) days subject to the availability of a qualified employee off the System Bid and Displacement List. The released employee will be allowed to exercise seniority rights pursuant to the terms of the collective bargaining agreement.

- 11) The Auto-Tamper Operator's rate of pay shall be \$19.89 per hour subject to general wage increases and cost of living adjustments.
- 12) Each employee assigned as Auto-Tamper Operator who does not vacate the assignment voluntarily for a period of at least nine (9) months shall be entitled to a lump sum payment annually not exceeding \$2,000.00 and, it shall be paid within 30 days after completion of the nine (9) month period. If the carrier abolishes the position in less than nine (9) months, the carrier will be responsible for payment of the prorated production incentive earned as of that date.
- 13) The work week of a Auto-Tamper Operator may be established to coincide with the work week of the gang to which assigned, or generally, under a five-eights arrangement, a four-tens arrangement, an accumulated rest day arrangement, or a compressed half arrangement, or other such arrangements as deemed satisfactory between the Carrier and the operator, with advice of such to the general chairmen. Changes in the work week cannot be made without four (4) working days notice to the operator.
- 14) In regard to the Auto-Tamper Operator classification, the terms and conditions set forth in this Agreement shall supersede conflicting positions in the collective bargaining agreement.
- 15) In regard to the Auto-Tamper Operator classification, no provision of the Mediation Agreement dated February 7, 1965, as amended, (Feb. 7th) shall operate to divest an employee of his or her Feb. 7th protection. While employees may secure Feb. 7th protected status while employed in this classification, no employee shall be required to exercise seniority to, or otherwise accept employment in, the Auto-Tamper Operator Classification in order to retain Feb. 7th protected status.
- 16) Counterparts. This agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement. Each counterpart may be faxed to the Carrier, with faxed signature sufficient to evidence execution, and original to follow in U.S. mail.
- 17) This Agreement may be cancelled effective on December 31st of each calendar year provided that notice is received by the other party no later than September 1st. Faxed service of notice will be sufficient to trigger the notice period, with original to follow in U.S. mail. Prior to service of notice, the serving party shall advise the other of the condition or circumstance giving rise to the notice, and, when practicable, the parties shall meet in an effort to resolve the condition or circumstance. Following service of notice, the parties shall meet within thirty (30) days in an effort to resolve the condition or circumstance giving rise to the notice.
- 18) This Agreement will become effective October 9, 2006. It is without prejudice to the respective positions of either party and will not be referred to in any other forum except as necessary to resolve issues arising out of this Agreement.

FOR THE EMPLOYEES:

FOR THE CARRIER:

Hayward J. Granier
General Chairman BMW

J. G. Albano
Director of Labor Relations

Date

Date

Bill R. Palmer
General Chairman BMW

Date

Jeffrey T. Finch
General Chairman BMW

Date

APPROVED:

Roger D. Sanchez
Vice President BMW

Date