

**MEMORANDUM OF AGREEMENT**

**BETWEEN THE**

**DELAWARE AND HUDSON RAILWAY COMPANY, INC.**

**AND THE**

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION (BMWED)**

**ARTICLE I – WAGES**

**Section 1 - First General Wage Increase**

Effective January 1, 2016, basic hourly, daily, weekly and monthly rates of pay in effect on the preceding day for employees covered by this Agreement shall be increased in the amount of two (2%) percent representing a general wage increase.

**Section 2 - Second General Wage Increase**

Effective October 1, 2017, basic hourly and monthly rates of pay in effect on the preceding day for employees covered by this Agreement shall be increased in the amount of two (2%) percent representing a general wage increase.

**Section 3 - Third General Wage Increase**

Effective October 1, 2018, basic hourly and monthly rates of pay in effect on the preceding day for employees covered by this Agreement shall be increased in the amount of two (2%) percent representing a general wage increase.

**Section 4 - Fourth General Wage Increase**

Effective October 1, 2019, basic hourly and monthly rates of pay in effect on the preceding day for employees covered by this Agreement shall be increased in the amount of two (2%) percent representing a general wage increase.

**Section 5 - Fifth General Wage Increase**

Effective September 1, 2020, basic hourly and monthly rates of pay in effect on the preceding day for employees covered by this Agreement shall be increased in the amount of two (2%) percent representing a general wage increase.

**Section 6 - Sixth General Wage Increase**

Effective September 1, 2021, basic hourly and monthly rates of pay in effect on the preceding day for employees covered by this Agreement shall be increased in the amount of two (2%) percent representing a general wage increase.

In determining new hourly rates, fractions of a cent will be disposed of by applying the next higher quarter of a cent.

## **ARTICLE II – HEALTH AND WELFARE**

### **Continuation of Health and Welfare Plan**

The Railroad Employees National Health and Welfare Plan ("the Plan"), the Railroad Employees National Dental Plan ("the Dental Plan"), the Railroad Employees National Early Retirement Major Medical Benefit Plan ("ERMA"), and the Railroad Employees National Vision Plan ("the Vision Plan"), modified as provided in this Article with respect to employees represented by the organization and their eligible dependents, will be continued subject to the provisions of the Railway Labor Act. All amendments to the aforementioned plans and amendments governing Employee cost sharing as in effect between the BMWED and the NCCC on or subsequent to the effective date of this agreement shall be incorporated herein by reference and adopted by the parties to this agreement.

It is understood that the above continuation of the Health and Welfare Plan will include the provisions set forth in Article III, paragraph (c) of the March 15, 2010 Memorandum of Agreement between the parties.

## **ARTICLE III – GENERAL PROVISIONS**

### **Modify Rule 21.3 Away From Home Expenses:**

Non-headquartered employees covered by this Rule required to travel more than 50 miles one way will be furnished lodging by the Carrier. Meals will be provided by the Carrier; or employees may be compensated for actual and reasonable meal expenses they necessarily incur and reimbursed for actual working days.

- The reasonable meal expense maximum in the rule will be modified as follows on the first day of the month following the effective date of this agreement.
  - \$28.00 per day
- Effective January 1, 2020 the meal expense maximum in this rule will be modified to:
  - \$30.00 per day

Effective January 1, 2021, the daily rate will be adjusted up or down, annually, based on the same percentage change of the previous year's CPI-W adjustment.

### **Amend Rule 24 to reflect the following changes:**

- (a) All claims, grievances and appeals must be presented electronically via the electronic system(s) as designated by the Company, 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 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 representative) electronically 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 presented electronically and must be taken within sixty (60) days from notice of disallowance. 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 employees 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 (60) day period for either a decision or appeal, up to and including the highest officer of the Company designated for that purpose.
- (c) In the event the designated Claims system is inoperable or otherwise unavailable, the Organization shall immediately notify the designated Carrier representative, and may submit the claim/appeal via e-mail.

**Amend Rule 30 to reflect the following changes:**

- (a) Rules 30.2 and 30.3 – Replace the word "voucher" with the words "check or electronic transfer"

**Add Appendix "T"**

**System Production Gang(s) Stay Incentive Compensation**

In order to address the parties' concerns related to the stability of maintaining continuous service in System Production Gangs covered under Rule 19, and the Carrier's continued rights pursuant to Rule 12.2 and the other applicable terms of the agreement to modify the work schedule of such crews, the Parties mutually agree to the following:

- (a) Rates of Pay on positions established pursuant to Rule 19 (*Production Gang Work*) will be set at 1% above the otherwise applicable hourly rate.
- (b) Each employee so assigned to such System Production Gangs established under Rule 19, and pursuant to the terms of this agreement, who does not voluntarily leave such established Production Positions for the entirety of the Production Season (*i.e. working on those gangs established under Rule 19 that may be subsequently established for the entire Production Year*) shall be entitled to a lump sum payment equal to five percent (5%) of his or her compensation earned during the calendar year while working and remaining on System Production Gangs. Such compensation will not exceed \$1500.00, and shall be paid within thirty (30) days of the completion of the employee's service on such gang(s).

**NOTE:** *Employees who are involuntarily removed from such production positions through no fault of their own (i.e., through the normal exercise of seniority and seniority does not allow for holding in such positions) shall be prorated for their service time on the crew.*

*This provision will apply reciprocally for employees from Basic Maintenance Headquartered Crews who enter Production positions during work season/calendar year through exercise of seniority who would be required to remain in such positions for the remainder of the Calendar Year/Production Season.*

- (c) The Provisions provided for in Rule 4.4 c (*Exercise of Seniority: Time Change greater than 2 hours*) will not be applicable to such positions established under Rule 19.
- (d) All Bulletining and Assignment provisions of the Collective Agreement will be applicable at the time of transition between System Production Gangs from One Type of such System Production Gang to another (i.e. Rail to Tie to Utility, etc.); however, in order to maintain eligibility for the incentive rates and bonuses provided for in this agreement, employees will be required to meet the following:
  - i. Employees are to apply, with preference, to newly created/advertised positions on the newly established System Production Gang(s) and during transitions from one production unit to another (i.e. Rail to Tie to Utility, etc.).

OR

- ii. If seeking to exercise seniority through displacement of junior awarded employees to positions for which qualified, Employee must notify their supervisor or designee of their intention to make such displacement no later than 48 hours prior to the bulletined/assigned start time (*if the start time of such crews had been changed from what was initially bulletined*) of the position to be displaced.
- (e) Employees retain the right to the provisions provided for in Rule 4.5 (*up to 10 days to exercise seniority*) of this Collective Agreement; however, by doing so, such employees will forfeit their eligibility for the compensation provided for under the terms of this Appendix.
- (f) Appendix T does not apply to employees during their probationary period as outlined in Rule 2.1.

#### **ARTICLE IV – Effect of this Agreement**

- A. The purpose of this Agreement is to fix the general level of compensation and rules covering working conditions through December 31, 2021 and thereafter until changed or modified in accordance with the provisions of the Railway Labor Act, as amended.
- B. Neither party to this Agreement shall serve prior to November 1, 2021, not to become effective prior to January 1, 2022, any notice or proposal for the purpose of modifying, adding to, or deleting from the provisions of this Agreement.  
The above provisions do not prohibit the parties from reaching agreements on any subject that may be mutually beneficial and agreeable.

C. The parties exchanged various proposals and drafts antecedent to adoption of the various Articles that appear in this Agreement. It is our mutual understanding that none of such antecedent proposals and drafts will be used by any party for any purpose and that the provisions of this Agreement will be interpreted and applied as though such proposals and drafts had not been used or exchanged in the negotiation.

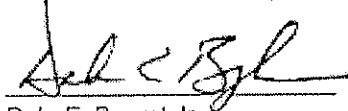
D. In the event any Article of this Agreement is determined to be illegal, invalid, or unenforceable under any present or future law by a court of competent jurisdiction, the remainder of this Agreement will not be affected thereby. It is the intention of the parties that, if any such provision is held to be illegal or unenforceable, there will be added in lieu thereof a provision that is similar in terms to such provision as is possible to be legal, valid and enforceable.

E. Except to the extent specifically modified in this Memorandum of Agreement, all other terms and conditions contained in the D&H BMWED Schedule of Agreement, remain unchanged.

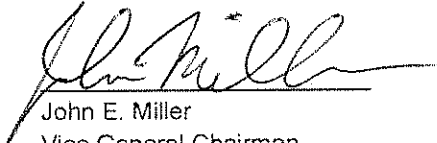
F. This Agreement is effective on, October 1, 2018.

For the:

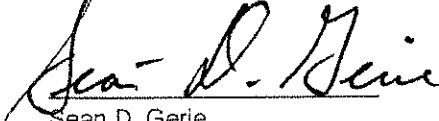
BROTHERHOOD OF MAINTENANCE  
OF WAY EMPLOYEES (BMWED)



Dale E. Bogart Jr.  
General Chairman

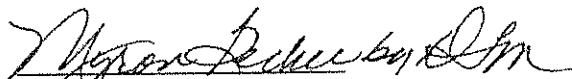


John E. Miller  
Vice General Chairman

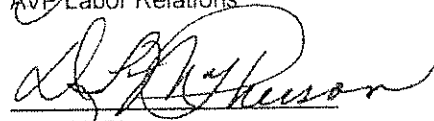


Sean D. Gerie  
Vice President - BMWED  
Northeast Region

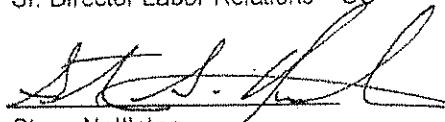
DELAWARE AND HUDSON RAILROAD  
(d/b/a Canadian Pacific)



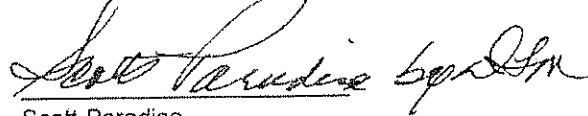
Myron Becker  
AVP Labor Relations



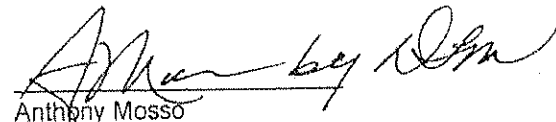
Dale McPherson  
Sr. Director Labor Relations - US



Steve Nettleton  
Director Labor Relations



Scott Paradise  
Regional Chief Engineer East



Anthony Mosso  
Assistant Director Labor Relations

Side Letter No. 1

**Application of General Wage Increase for the Term of Agreement**

July 31, 2018

Mr. Dale E. Bogart Jr.  
General Chairman / BMWED  
3321 B Vestal Parkway East  
Vestal, NY 00001-3850

Dear Sir,

This refers to our discussions regarding a General Wage Increase over the 6 year term of the Collective Agreement covering January 1, 2016 through and including December 31, 2021.

During bargaining the Parties' expressed a desire for a six (6) year settlement. However, due to global economic instability and uncertainty reflected by economic downturns in 2008-2009 and as recent as 2015-2016, the Company was reluctant to extend wage settlement terms six (6) years into the future.

However, in recognizing labour stability that a long term settlement provides the parties, the Company is prepared to offer a six (6) year wage settlement term, subject to the general wage increases in years 2020 and 2021 being tied to the operating realities of the Company at that time.

The parties have agreed that the General Wage Increases applied in each of the years 2020 and 2021 will be two percent (2%) each year.

However, there will be the opportunity for these General Wage Increases to escalate based on year-over-year percentage increases to the Company's Revenue Tonne Mileage (RTM) metric. RTMs are available for review externally on the Investor Relations website: [investor.cpr.ca](http://investor.cpr.ca)

This option will be triggered based on the two criteria outlined below:

1. Base for future years cannot be less than the base performance for the period of December 1, 2015 – November 30, 2016 (2016 year).
2. If RTMs increase year-over-year and have satisfied Item 1 above, the following potential General Wage Increases will replace the currently agreed to two percent (2%):

Increase to year-over-year RTMs	< 3%	≥3-<4%	≥4%
Associated General Wage Increase	2%	2.5%	3%


For the purposes of determining the year-over year increases to RTMs the parties agree that the following twelve (12) month periods will be used in this calculation:

Wage Increase Effective September 1	Performance Year Period	Base Year Period
2020	December 1, 2018- November 30, 2019	December 1, 2017 - November 30, 2018
2021	December 1, 2019- November 30, 2020	December 1, 2018- November 30, 2019

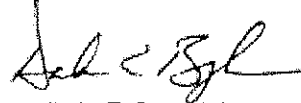
The parties agree that both criteria outlined above are based on freight service only. Additionally, should the Company enter into any sale or acquisition of business during these periods, the effect of these transactions' impact will be removed from the RTM snapshots for the all the periods outlined above.

If you concur this reflects our understanding during negotiations leading to the tentative agreement between the parties, please sign in the space provided.

Yours Truly,

  
 Myron Becker  
 Assistant Vice President  
 Labour Relations

For BMWED,

  
 Dale E. Bogart Jr.  
 General Chairman  
 BMWED

Side Letter No. 2

July 31, 2018

Mr. Dale E. Bogart Jr.  
General Chairman / BMWED  
3321 B Vestal Parkway East  
Vestal, NY 00001-3850

Dear Sir,

This refers to our discussions regarding a General Wage Increase over the six (6) year term of the Collective Agreement covering January 1, 2016 through and including December 31, 2021.

During bargaining the parties discussed the mutual value of a provision that would provide the option to extend the agreement term beyond six (6) years.


The parties have therefore agreed that upon receipt of written notice from either Party to the other between October 1, 2021 and November 1, 2021, of its desire to adopt the terms of this side letter and upon the concurrence of the Parties, the General Wage Increases applied on August 1 in each of the years 2022 and 2023 will be two percent (2%) each year and further, that the escalator formula set forth in Side Letter No. 1 would be used to determine that escalator percentage, if any, that would be applied to the base two (2) % GWI to be applied on August 1 of each of the years, 2022 and 2023.

In the event the wage increases specified herein are adopted by the Parties, it is understood that should any dispute resolution applicable to the notice(s) served by either party on or after November 1, 2021 to amend the Agreement, this letter is intended to appraise any third party that the issue of wage increases for the years 2022 and 2023 have been concluded and are not subject to adjustment or consideration by such third party.

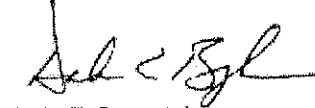
Conversely, either party may elect to forego and not accept the terms and applications of the wage increases set forth herein and, instead, serve formal notice pursuant to Section 6 of the RLA bargain over any and all aspects of a successor agreement in the usual and customary manner.

If you concur this reflects our understanding during negotiations leading to the tentative agreement between the parties, please sign in the space provided.

Yours Truly,

  
Myron Becker  
Assistant Vice President  
Labour Relations

For BMWED,

  
Dale E. Bogart Jr.  
General Chairman  
BMWED



Side letter No 3 - Retroactivity and Eligibility

July 31, 2018

Mr. Dale E. Bogart Jr.  
General Chairman / BMWED  
3321 B Vestal Parkway East  
Vestal, NY 00001-3850

Dear Sir,

This refers to our discussions regarding payment of the retroactive portion of the General Wage Increase effective January 1, 2016.

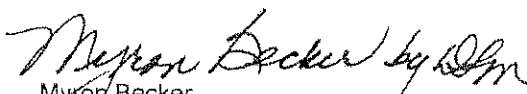
The Company shall endeavor to make the retroactive payments applicable to the period dating from January 1, 2016 up to the effective date of this agreement, within sixty (60) days from the effective date of this agreement, subject to all applicable taxes and deductions.

To be eligible to receive the retroactive payments provided herein, an employee must have a current employment relationship with the Company on the effective date of this Memorandum of Agreement. Employees who retired or died between January 1, 2016 and the effective date of this Memorandum of Agreement will be considered to have satisfied the eligibility requirements of this Side Letter No. 3.

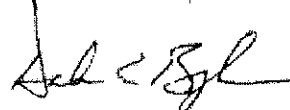
In the event the Company is unable to make such payments within sixty (60) days, it shall notify the General Chairman of the reasons for the delay and the date on which such payments shall be made.

If you concur this reflects our understanding during negotiations leading to the tentative agreement between the parties, please sign in the space provided.

Yours Truly,

  
Myron Becker  
Assistant Vice President  
Labour Relations

For BMWED,

  
Dale E. Bogart Jr.  
General Chairman  
BMWED

Side Letter No. 4

July 31, 2018

Mr. Dale E. Bogart Jr.  
General Chairman / BMWED  
3321 B Vestal Parkway East  
Vestal, NY 00001-3850


Dear Sir,

This confirms our understanding related to the resolution of any dispute between the parties health plan true-up, and the timing of the implementation of the plan design changes on or before October 1, 2018, in accordance with the Benefit Plan changes as agreed upon nationally between the BMWED and the NCCC.

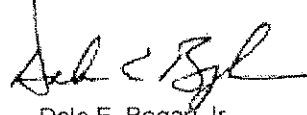
Subject to the understanding in this Side Letter No. 4 the issue of true-up and timing of implementation of plan design changes is resolved.

If you concur this reflects our understanding during negotiations leading to the agreement between the parties, please sign in the space provided.

Yours Truly,

  
Myron Becker  
Assistant Vice President  
Labour Relations

For BMWED,

  
Dale E. Bogart Jr.  
General Chairman  
BMWED

Side Letter No. 5

July 31, 2018

Mr. Dale E. Bogart Jr.  
General Chairman / BMWED  
3321 B Vestal Parkway East  
Vestal, NY 00001-3850

Dear Sir,

The parties agree to the below questions and answers in reference to the addition of appendix T.

***Agreed upon Q's & A's regarding the application of Appendix T***

**Q1:** Does the 1% above the applicable rate apply when I am working on a production position during the year?

**A1:** Yes

**Q2:** Is the 1% on my hourly rate part of or included the 5% (or \$1500.00) incentive?

**A2:** No, the 1% additional incentive on the hourly rate is paid weekly in addition to the 5% (or \$1500.00) at the end of the Calendar Year/Production Season.

**Q3:** If I am bumped/displaced/outbid for a Production Position, and am unable to hold a position due to my seniority not allowing me to remain in a Production Position, will I completely forfeit the incentive(s)?

**A3:** No, if your seniority does not allow for you to remain in a Production Position for the Calendar Year/Production Season, your incentive and bonus compensation will be prorated based on a percentage of your service participation in such positions versus the duration of the Production Crew(s) in the Calendar Year/Production Season.

**Q4:** If the Company changes my time more than 2 hours on these Production positions, do I still have the ability to exercise seniority to another position?

**A4:** No, Rule 4.4 (c), as a result of this Appendix "T", will not be applicable to Production Crews

**Q5:** Do I have to actually bid to a Production Crew to be eligible for the incentive and bonus compensation?

**A5:** No, however, it is strongly encouraged to ensure that you have secured a position on such crew to remain eligible for such incentive/bonus. By making application and being successful applicant to such positions it removes the possibility of errors being made in determining such eligibility for incentive/bonus.

Q6: Can I still exercise seniority to positions covered under this agreement when crews are transitioning from one to another?

A6: Yes, but in opting to exercise seniority (i.e. bump) positions during transition periods between crews, you must notify supervision no later than 48 hours prior to the start time of the position for which you are looking to displace (i.e. bump).

Q7: If I am on a Production Gang that is getting abolished, and there are other Production Gangs to start up after the abolishment of my crew, may I still use ten (10) days to make a bump to that newly established Production Gang?

A7: Yes, however by opting to utilize your ten (10) days provided for in Rule 4.5, you will forfeit eligibility for incentive/bonus compensation provided in this agreement.

Q8: If I am automatically bid to a production position working on my former "prior rights" seniority territory pursuant to current rules, do I still have the ability to vacate the position at the time that the crew leaves my former "prior rights" seniority territory?

A8: Yes, however, by doing so you will forfeit eligibility for incentive/bonus compensation provided in this agreement.

Q9: If I am dismissed from service, am I entitled to a prorated payment referenced in Article B, Appendix "T" ?

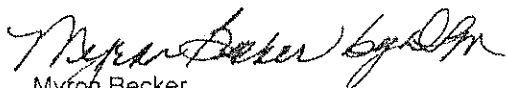
A9: No

A10: Do new hires under their probationary period qualify for provisions under Appendix T?

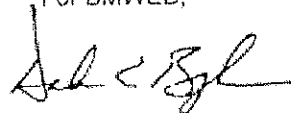
A11: No

If you concur this reflects our understanding during negotiations leading to the agreement between the parties, please sign in the space provided.

Yours Truly,

  
Myron Becker  
Assistant Vice President  
Labour Relations

For BMWED,

  
Dale E. Bogart Jr.  
General Chairman  
BMWED