



**Brotherhood of Maintenance of Way Employees Division
of the International Brotherhood of Teamsters**

NORTHEASTERN SYSTEM FEDERATION

Renato G. Rufo
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Dale E. Bogart Jr.
General Chairman

April 16, 2021

Mr. Myron Becker – Chief Labor Officer
Attention: Justin Dittrich-Bigley – Manager, Labor Relations
120 S. 6th Street, Suite 800
Minneapolis, MN 55402

Mr. Becker,

This letter serves as the parties' mutual recognition that the Carrier has contracted out certain work listed below because of specific operational requirements, but only after the Carrier has met its contractual obligations of providing written advance notification and by exerting efforts in good faith to reach understandings with the Organization at conference.

The main purpose of this letter is to afford the Carrier relief on its requirement under the Scope Rule and Appendix "H" of providing written advanced notification and opportunity for conference for certain scope covered work. The Organization agrees to waive advance written notification and conference requirements for only the work outlined below based on Carrier's commitments that are also outlined below. This understanding is consistent with almost annual handling of these scope-covered work items that the Carrier has sought, and through mutual agreements has been allowed, to subcontract. The terms are as follows:

i. Production and Spot Rail Grinders

The parties agree when the Carrier intends to utilize a Production and/or Spot Rail Grinder, it will bulletin and assign, one (1) BMWED position for purposes of providing Track Protection when no fire risk is created by the grinding process, Fire Mitigation and other associated duties incidental to the operation of rail grinding consistent with BMWED's historical assignments made for this work. The Bulletins and Assignments will be made pursuant to Rule 3 regardless of the duration of the work¹. The Contractors' role will be limited to grinding the track and/or any maintenance and repair required on the contractors' grinding equipment.

ii. On-track and off-track production weed sprayer

The parties agree when the Carrier intends to utilize On-Track and/or Off-Track Weed sprayer, it will assign a BMWED Track Foreman (Inspector, Maintenance, or other qualified Foreman) to pilot the subcontractor at all times while assigned on D&H property consistent with BMWED's historical assignments made for this work. Further consistent with practice, the Carrier will provide access to Safety Data Sheets for availability at HQ points and on Mobile Gangs for employees to review. The Carrier further commits it will not require

¹ Senior qualified persons must have preference given the associated overtime that generally comes with this assignment.

employees to work in locations previously sprayed without following the Manufacturer Safety Guidelines with regard to mitigating exposure. The Contractors' role will be limited to weed spraying (not weed or brush cutting) the track and/or surrounding area and/or any maintenance and repair required on the contractors' equipment.

iii. **Shoulder Ballast Cleaner**

The parties agree that when the Carrier intends to utilize a Shoulder/Ballast Cleaner, it will assign one (1) BMWED position for purposes of providing Track Protection. The Contractors role will be limited to cleaning the shoulder of track and/or any maintenance and repair required on the contractors' Shoulder/Ballast Cleaning equipment.

iv. **GPS Ballast Train**

The parties agree that the Carrier, intends to utilize the GPS Ballast Train. The Contractors' role will be limited to Ballast work and/or any maintenance and repair required on the contractors' Ballast equipment. Track inspection will be completed as it has typically been in the past.

The establishment of this agreement is not intended to waive either parties' respective positions on the scope rule, subcontracting and work reservation for the BMWED with respect to the above identified work practices. Further, this Agreement is made without prejudice to either party's position in connection with other scope covered work not identified herein.

Its intent is to offer relief to the Carrier on the notification and conference requirements of these scope covered work items that have become an almost annual occurrence, as well as provide, if not, maintain the previous and/or current work opportunities created for BMWED employees covered under the D&H (CP)-BMWED Collective Agreement that these transactions have provided through staffing arrangements that the parties have mutually agreed upon in the past for these types of work items and related transactions.

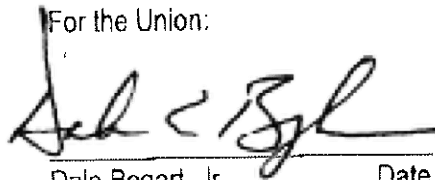
If this meets your approval, please indicate your concurrence by signing below.

For the Company:



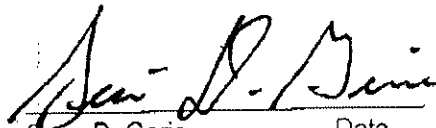
Myron Becker Date
Chief Labor Officer

For the Union:



Dale Bogart, Jr Date
General Chairman

May 17, 2021



Sean D. Gerie Date
BMWED Vice President - NE Region



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Mr. Dale E. Bogart, Jr.
General Chairman BMWED
3321 B Vestal Parkway East
Vestal, NY 13850

RE: D&H BMWED employees working Off District as a Contractor on CP's Central Main & Quebec Railway-Canada

Dear Mr. Bogart,

This is further to the discussions between the Company and the Union concerning the utilizations of employees from the D&H to perform work off district on CP's Central Main & Quebec Railway (CMQ-US). The Parties have expressed the desire for BMWED represented employees of the D&H to perform work on CMQ-US, subject to the conditions set forth herein.

It is anticipated this work will commence on or about July 1, 2021 and will be completed on or about October 1, 2021. Either Party may cancel or extend this Agreement by providing fourteen (14) days' advance notice to the other Party.

The Parties agree, on a without prejudice or precedent basis, to allow for temporary utilization of D&H BMWED employees on a voluntary basis in system seniority order to perform off district work on the CMQ-US. The Company and Union will canvass employees to establish the list of volunteers.

The Company will establish the number of positions and qualifications required, and bulletin these positions to D&H BMWED employees. The positions will be filled based on qualifications and system seniority.

While employees are performing work off District on the CMQ-US, these employees' work shift schedules will be set to one or more of the schedules below:



1. Other than when alternate work cycles are in place, employees will work eight (8) consecutive hours per day, five (5) days per week, with two (2) consecutive rest days, with the understanding that non-consecutive rest days may be assigned when the Company has a specific operational need.

2. Alternate Work Cycles
 - Notwithstanding the above, D&H may assign alternate work cycles which provide for work cycles of the following, but not limited to:
 - Eight (8) consecutive ten (10) hour work days followed by six (6) consecutive rest days; or
 - Four (4) consecutive ten (10) hour work days followed by three (3) consecutive rest days; or
 - Seven (7) consecutive work days consisting of eleven hours and 25 minutes (11.4166 hours) followed by seven (7) consecutive rest days.
 - If the work cycle is changed, the affected employee(s) will be notified no later than the start of the work shift on the last workday of the previous work cycle. There is no requirement to post this notification.
 - The parties reserve the right to discuss additional work schedules and implement upon mutual agreement.

3. For such jobs, overtime shall be paid after the employee has worked the number of hours in the scheduled work shift. All overtime will be calculated in the same manner it is calculated under the BMWED-D&H CBA .

4. All positions will have a start time(s) or assigned hours that will be stated on the bulletin.
 - There will be no restriction to a start time for these positions.
 - If the work shift start time(s) is changed, the affected employee(s) will be so advised no later than the start of the meal period of the previous work shift. When change is made under this paragraph, employee(s) will be provided rest equivalent to the hours worked up to a maximum of ten (10) hours. Those working in excess of ten (10)



hours will receive ten (10) hours rest. There is no requirement to post this notification.

5. The positions working on the CMQ-US will be considered non-headquartered crews and be paid the same travel expenses that they would receive as non-headquartered crews under the BMWED-D&H CBA.
6. The positions working on the CMQ-US will be paid D&H hourly rates based on the position listed on the bulletin.
7. Employees making placement to these positions will remain on these positions until the positions are abolished at the end of the work season.
 - In the event a DH BMWED employee is displaced and they have no seniority to hold a position on the DH, the employee may exercise seniority to the CMQ, if a position is available on an Off-District Crew.
8. When the positions are abolished, or an employee is displaced by an exercise of seniority, the affected employee(s) will have to immediately exercise their seniority on the D&H or forfeit their bonus prescribed in Appendix T. In the event an employee chooses not to immediately place and forfeit their bonus, the employee will have seventy-two (72) hours to make placement to another position on the D&H. The seventy-two (72) hours will not include assigned rest days or holidays. If the employee is working an alternate work cycle the seventy-two (72) hours and assigned rest days/holidays cannot exceed ten (10) days to place.

The Union agrees that no grievance shall be filed with respect to the provisions and/or application of this Agreement. If any disagreement arises with respect to the application of the terms of this agreement, the parties agree to meet and discuss those disagreements and attempt to find resolution.

If you are in agreement with the foregoing terms and conditions, please signify your concurrence by signing in the space provided below and return one signed copy of this letter to me for the Company's records.



For the Company:

Myron Becker
Chief Labor Officer

Date

For the Union:

Dale Bogart, Jr
General Chairman

Date

May 17, 2021

Sean D. Gerie
BMWED Vice President - NE Region



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Mr. Dale E. Bogart, Jr.
General Chairman BMWED
3321 B Vestal Parkway East
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RE: Ability to fill Open Positions on the D&H

Dear Mr. Bogart,

This is further to the discussions between the Company and the Union concerning unfilled open positions on the D&H. The Parties has discussed in great detail how positions are filled on the D&H and have agreed to the below changes:

From Section 2 (g) of the April 15, 2015 D&H/CPR-BMWED Implementing Agreement (Revisions in Bold for CMQ Work Agreement for D&H BMWED Employees)

(g) Rights to Maintenance of Way positions on the D&H system shall be based on the relative ranking on the D&H System Seniority Roster, subject to application of prior rights.

A furloughed employee who is recalled or actively working employee who voluntarily exercises seniority (through bid or displacement) to a fixed headquartered position on other than the employee's prior right district and which is in excess of one hundred (100) miles from the employee's residence shall be paid such expenses as are payable to mobile production gang employees pursuant to BMWED-D&H CBA Rules 21 and 22. This language does not serve to deny preference to employees with prior rights designation where the position is assigned to such fixed headquartered positions ahead of otherwise senior employees with a different prior rights designation or junior system employees hired after September 18, 2015.

The Parties further agree that there may be times when positions remain unfilled even after adopting the language above. In the event that a position remains unfilled after all regular fill provisions are exhausted the Company may:



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General Chairman BMWED
3321 B Vestal Parkway East
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RE: Overtime call out acceptance accountability

Dear Mr. Bogart,

This is further to the discussions between the Company and the Union concerning overtime call out and acceptance accountability while employees from the D&H are performing work off district on CP's Central Main & Quebec Railway (CMQ-US). The Parties agree that while employees are working off district there will be a greater need for overtime callout acceptance on the D&H.

After Hours and Weekend Response

The Company and the D&H BMWED will review opportunities where four (4) qualified employees from North Seniority District and four (4) qualified employees from the South Seniority District will be placed on-call on the following basis:

- A. Positions will be awarded on a senior "may accept" basis. If the event that no bids are received, the junior qualified employee will be required to protect for a period of up to three (3) weeks in the event of no bidders during that three (3) week period. After three (3) weeks, the next junior qualified employee ahead of the person holding the position will be assigned to the position.
- B. In this application, the employee on call will be the first called for any after-hours callouts during the on-call period on their home section limits. In situations for



callouts that are off employee's home section limits, regular calling procedures will apply prior to using employees from a different seniority district call list.

- C. On-call employees will cover work for the entire subdivision or terminal.
- D. Company has the ability to implement/cancel "on-call" with seven (7) days' notice depending on seasonal and/or operational requirements.
- E. Employees who are on-call to receive eight (8) hours pay at straight time rates, for each seven (7) day period on-call.
- F. Employees who are on-call must carry a Company supplied cellular phone while protecting the service.
- G. Employees who are on-call must be fit for duty and will be required to respond to callouts during the on-call period.
- H. If an employee fails to respond to a call during their seven (7) day period, they will forfeit the eight (8) hours pay at straight time rate outline in paragraph (E).
- I. If an employee elects to bid these positions and does not report as required, the employee will be restricted from bidding, any of the positions they had bid, for a period of thirty (30) days. This provision does not restrict the Company from forcing a junior employee to protect the position.

If you are in agreement with the foregoing terms and conditions, please signify your concurrence by signing in the space provided below and return one signed copy of this letter to me for the Company's records.

This agreement will be in affect anytime there are D&H employees working on the CMQ-US.

