

IMPLEMENTING AGREEMENT NO. 5

between

BURLINGTON NORTHERN INC.

(the "Carrier")

and Its Employees Represented by

UNITED TRANSPORTATION UNION (C and T)

(the "Organization")

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IT IS MUTUALLY AGREED:

1. The scope and purposes of this Agreement are the same as the scope and purposes of the Agreements for Protection of Employees dated December 14, 1965 and January 10, 1968 and further implement said agreements as follows:
 - (a) To provide for an equitable and flexible distribution of work opportunities to protected employees;
 - (b) To allocate work opportunities for protected employees to approximate those available before the final effective date of the Burlington Northern merger;
 - (c) To make available on an equitable basis to protected employees work opportunities which arise due to attrition, new business, rearrangements of service and otherwise; and
 - (d) To correct any inequities which may have arisen out of Implementing Agreement No. 2.

2. Pursuant to Article 1 and Attachment B of Implementing Agreement No. 1, conductors' and trainmen's seniority rosters for each of the Lake Superior, Minnesota, Montana-Dakota, Rocky Mountain and Pacific Districts shall be consolidated effective 12:01 A.M., November 1, 1971. Protected Employees, as defined in the Agreements for Protection of Employees, shall be dovetailed on an interim basis and shown on such rosters per their individual seniority dates as brakemen with their employing carrier and as per their individual seniority dates as conductors as shown on their rosters in effect prior to "M" Day.

They will exercise seniority therefrom on the basis of seniority ranking on such rosters, except as otherwise provided herein. Such rosters shall remain in effect no later than July 1, 1972. (See Section 7 hereof)

(a) On or before November 1, 1971 the Carrier shall furnish, for each new consolidated seniority district, consolidated seniority rosters showing the relative standing on such rosters of each employee holding rights as a conductor and/or brakeman who will establish seniority as a conductor and/or brakeman in such new consolidated seniority district as created by Paragraph (a), Section 1 of Attachment B of Implementing Agreement No. 1. Those employees whose pre-merger seniority districts are included in the new consolidated seniority district shall be shown in the order of their seniority dates as brakeman and conductor. In the event two or more brakemen and/or two or more conductors from different pre-merger seniority districts hold the same seniority date as a brakeman or as a

conductor, they shall be shown as a brakeman or as a conductor in the order of their date of birth.

(b) Conductors and brakemen holding seniority in each pre-merger seniority district or standing to be promoted to conductor in such pre-merger seniority district, shall have the symbol identifying their pre-existing seniority district beside their name on the seniority roster for the new consolidated district in which their pre-merger seniority district is located.

NOTE: It is intended in the application of the above paragraph the words "or standing to be promoted to Conductor in such pre-merger seniority district" mean that a protected brakeman who is promoted to a conductor subsequent to "M" Day will be a protected conductor and one carrying a symbol just as though he had been promoted to conductor prior to the effective date of this agreement.

(c) Except as hereinafter provided, conductors and brakemen having a symbol beside their names shall have preferential rights over men not having the same symbol for work opportunities in road territory (without regard to operating into, out of or through a common terminal) exclusively within the pre-merger seniority district to which the symbol is applicable regardless of standing on the roster for the new consolidated district. As between symbol-men of the same symbol for work on the pre-merger seniority district to which the symbol is applicable, their standing on the roster determines their

preferential rights. However, there will be no preferential rights for road crews to work within station limits of common points.

(d) Where Road Service is operated over trackage of more than one of the pre-merger seniority districts, protected employees over whose pre-merger seniority districts such service is operated will have preferential rights to such work opportunities in order to enable them to follow their work and will be afforded their equitable allocation of such work involved, such as preferential rights to assignments or percentages of assignments in each class of service. Such allocation will be determined initially by the Organization. Subject to Paragraph (g) hereof, any disputes respecting such allocation shall be adjudicated in accordance with the procedures of Attachment E to Implementing Agreement No. 1. Pending such adjudication, the work opportunities involved in each class of service will be filled by employees from the pre-merger seniority districts over which assignments operate on the basis of their ranking on the consolidated seniority rosters as between themselves.

(e) Where work opportunities have or will be transferred from one area of the railroad to another due to rerouting of traffic, protected employees who thereby have lost work opportunities will be given an equitable allocation of preferential rights to work opportunities in the areas where there has been an increase in traffic. Such allocation will be determined initially by the Organization. Subject to Paragraph (g)

hereof, any disputes respecting such allocation shall be adjudicated in accordance with the procedures of Attachment E to Implementing Agreement No. 1.

(f) Upon receipt by the Carrier of the initial allocations prepared by the Organization under Paragraphs (d) and (e) hereof, such allocations will be subject to the following provisions:

(i) Where an assignment is occupied by other than an employee with preferential rights thereto, the present incumbent shall remain on the job until he is displaced by an employee with preferential rights.

(ii) An employee desiring to place on an assignment over which he is given preferential rights under the terms of this agreement must file application in writing not later than ten (10) days from the receipt of the initial allocation advising of his desire to exercise such rights, or ten (10) days from effective date of this agreement, whichever is later.

(iii) Not later than fifteen (15) days from the expiration of the ten (10) days in paragraph (ii) employees desiring to place on jobs on which they have preferential rights and have filed application in writing will be assigned, seniority permitting.

(iv) There will be no additional expense to the Carrier for deadheading or otherwise growing out of initial exercises of seniority in making effective the preferential rights provided by this agreement,

(v) Following the initial exercises of seniority under paragraphs (ii) and (iii) hereof, an employee with preferential rights to work opportunities under this agreement, may exercise seniority thereto in pursuance of rules of applicable schedule agreements.

(vi) The Organization's allocation listing shall not constitute any guarantee of any kind that such assignments shall be operated or that they may not be changed.

(vii) The initial allocations will be subject to change by the Organization and as herein provided.

(g) The preferential allocation of work opportunities which is herein provided shall be changed to whatever extent necessary to carry out the scope and purposes of this Agreement and to accommodate any changes the Carrier makes in its operations. In the event the Organization fails to make an initial allocation as herein provided and/or the Carrier desires an allocation and/or reallocation of preferential work opportunities, the Carrier may make such changes upon giving written notice thereof to the Organization, PROVIDED that if the Organization disagrees with an allocation and/or reallocation made by the Carrier the matter shall be adjudicated by the procedures set forth in Appendix E of Implementing Agreement No. 1.

(h) In the event a protected employee is unable to perform service in his pre-merger seniority district or to follow his work, he may be required by the Carrier to take service in another zone if there are nonprotected yardmen or trainmen working in such zone and exercise his consolidated seniority therein behind protected employees with preferential rights in such zone as set forth in Articles VI and VII of Implementing Agreement No. 1. In the application of merger guarantees, such work opportunities will be held against the surplus protected men involved on a one-for-one basis in reverse order of seniority.

(i) If a protected trainman working as such with conductor seniority moves outside his pre-merger seniority district, he will protect his conductor's seniority in the zone in which he is then working on basis of his seniority subject to preferential rights of conductors in that zone. He will not be required to return to his pre-merger seniority district, except as may be necessary under Section 3(c) of Article VI of Implementing Agreement No. 1.

(j) Where schedule rules require an employee with conductor's seniority to exercise such seniority, such requirement will be applicable only to the subdivided seniority district or zone (if more than one pre-merger seniority district involved) to which currently assigned.

NOTE: For purpose of this agreement, "subdivided seniority district" means where a seniority district is subdivided based on source of supply for protecting service on a portion of a seniority district.

(k) Protected trainmen who have not been promoted to conductor prior to "M" Day will stand for promotion based on their

pre-merger seniority district and will be given the opportunity to qualify for promotion under rules in effect on their former railroad. Promotions will be made in accordance with service requirements on the pre-merger seniority districts and not necessarily in sequence of the standing of protected employees on the consolidated roster. However, all such protected employees who are promoted to conductor subsequent to March 3, 1970 will be given a conductor date on the consolidated roster, and symbol will be shown representing their pre-merger seniority district, in relative standing to their hiring date as brakeman thereon, with the exception of those particular trainmen who have previously stood for promotion but for whatever reason were not promoted or have subsequently relinquished their conductor rights. Those particular employees, if they are subsequently promoted to conductor will be given a conductor's seniority date and will be placed on the conductors' seniority roster as the senior conductor of the group in which they were promoted.

3. Employees on an extra list at a common point will be called in turn for service for which list is designated by the Carrier to protect, regardless of former seniority district on which service is to be performed. Consolidated seniority rosters will govern in the filling of extra lists at common points, subject to preferential rights allocation in accordance with Paragraphs (d), (e) and (g) of Section 2 of this Agreement. Employees called from such extra lists will work under rules applicable to territory included in pursuance of Article VIII of Implementing Agreement No. 1. If such extra list becomes exhausted,

former existing practice of supplementing an exhausted extra list will be followed, dependent upon which of the former railroad rules apply to the service to be protected. The provision of this Section 3 shall apply until a consolidated common schedule is agreed to.

4. It is recognized that the preferential rights provisions provided by and incorporated into the terms of this agreement make it incumbent upon the employees to protect service on their pre-merger seniority district in accordance with the schedule rules and agreements in effect on that district in the same manner and under the same conditions as existed prior to March 3, 1970. However, it is also recognized that the possibility exists that a move resulting in a change of residence by an employee with preferential rights could occur as a result of merger and which move would not otherwise have become necessary. The employee who changes his place of residence under the above circumstances will do so on a temporary basis until and unless this Agreement becomes permanent in accordance with Sections 5 and 6 of this Agreement. In that event, if such employee is qualified for Section 6 benefits of Merger Protective Agreements, he may thereafter make election to make a permanent transfer, move his residence and receive such Section 6 benefits.

Section 6 benefits provided in Merger Protective Agreements will not be applicable to voluntary movements made by an employee where he follows his work in connection with allocation provided herein even though such movement may be off his pre-merger seniority district.

Employees, working in other than their pre-merger seniority district on the effective date of this Agreement, who made a permanent move and received Section 6 benefits therefor, will be given preference in the allocation of work opportunities due employees from their pre-merger seniority district out of the terminal to which transferred in pursuance of the allocation

of work opportunities, over other employees from the same pre-merger seniority district for a period of six months, subject to further negotiations thereafter.

5. At any time prior to May 1, 1972 the Carrier may serve written notice upon the Organization for the cancellation of this Agreement. If no agreement is reached with the Organization on this matter within thirty (30) days thereafter, the matter thereupon will be submitted to the Special Board established by Appendix E of Implementing Agreement No. 1. The Board then shall determine:
 - (a) If Implementing Agreement No. 2 should be reinstated with or without modifications, or
 - (b) If this Agreement shall continue in effect with or without modifications, or
 - (c) If some other arrangement should be made.

In making this determination the Board shall be governed by the stated scope and purposes (Section 2 (a),) and Section 8 of the Agreements for Protection of Employees dated December 14, 1965 and January 10, 1968, and by the scope and purposes set forth in Section 1 of this Agreement.

6. Should the Carrier serve no written notice upon the Organization for the cancellation of this Agreement prior to May 1, 1972, this Agreement shall remain in effect subject to the following provisions hereof.
7. In the event this Agreement continues to apply pursuant either to Section 5 or Section 6 of this Agreement, the seniority rosters provided by Section 2 of this Agreement shall be reissued on or before July 1, 1972 and the protected employees on such rosters shall be dovetailed and shown on such rosters per their hiring dates as brakemen with their employing carrier and as per their promotion dates as conductors as shown on their rosters prior to "M" Day. Except for Sections 5 and 6 hereof, this Agreement thereafter shall apply in its

8. (a) Consolidated rosters showing conductors' and trainmen's seniority ranking with symbols beside their names designating the pre-merger seniority district will be posted within such seniority district. Rosters will be revised as of January 1st and July 1st of each year and posted no later than April 1st and October 1st of each year at convenient locations and will also be furnished to the local chairmen and general chairmen.
- (b) Seniority rosters as established hereunder shall be subject to protest and correction for a 90-day period from the date posted or date returned to service for employees returning from furlough or leave of absence, for errors or omissions.
9. Nothing in this Agreement in any way modifies or affects the provisions of Article VI, titled "Zones", of Implementing Agreement No. 1.
10. This Agreement will become effective on November 1, 1971, at which time Implementing Agreement No. 2 dated April 8, 1970 will be considered suspended in its entirety, subject to Sections 5 and 6 hereof; provided, however, that this agreement shall be null, void and of no further force and effect if this agreement is determined judicially or otherwise to be contrary to Law.

Dated at St. Paul, Minnesota, this 15th day of October, 1971.

AGREED TO:

TC DeButts

Vice President-Labor Relations
Burlington Northern Inc.

AGREED TO:

Christianson and Tuffley

International Vice President
United Transportation Union