Memorandum of Agreement

between

BNSF Railway

and

Brotherhood of Maintenance of Way Employees Division

Following the implementation of Presidential Emergency Board (PEB) 219, disputes arose between the parties regarding the interpretation and application of the meal period established by PEB 219 as further clarified by the Contract Interpretation Committee in Issues 12 and 20 (currently Rule 28 of the BN/BMWED Agreement (updated December, 2002). The parties wish to resolve these and other related longstanding disputes pursuant to the terms of the agreement outlined herein.

Section I. Changes to Existing and Future Positions

A. All mobile positions existing on the effective date of this Agreement, and those bulletined hereafter, will be governed by Rule 28 as amended below. Such positions will work 8 consecutive hours, and 20-minute meal periods will be observed without deduction in pay. Existing positions need not be abolished and re-bulletined.

B. The terms of Rule 28 Paragraphs (A)(1) and (A)(2), as amended below, may be extended to any other gang or assignment by mutual agreement between the Carrier and the General Chairman using the following process:

1. A proposal to observe the meal period set forth by Rule 28(A)(1) and (A)(2), below, by a headquarter gang may be initiated by either the Engineering Department official responsible for the gang or by a majority of the employees assigned to the gang.

2. The immediate supervisor responsible for the gang will issue written notification to the gang of the proposal to observe the meal period set forth by Rule 28(A)(1) and (A)(2), and a copy shall be provided to the General Chairman. The proposal must be agreed to in writing by a majority of the gang's assigned employees.

3. A majority of a gang may make a written proposal to observe the meal period as stated in Rule 28(A)(1) and (A)(2), below, to the designated Engineering official, who will approve or disprove the request in writing. It is understood that a decision disapproving the request shall not be grounds for any claim or grievance, including any claim of unjust treatment.
4. If the company and the majority of employees agree to observe the meal period as stated in Rule 28(A)(1) and (A)(2), all gang members will be subject to these same rules. Either the designated Engineering official or a majority of the gang employees may change the meal period back to the provisions set forth in Rule 28(B)(1) and (B)(2) with a full seven (7) days advance written notice of such change.

C. The application of Paragraphs (A) and (B), above, is without prejudice to the positions of the parties regarding the application of Rule 25(a) and (b) of the BN/BMWED Agreement (updated December, 2002).

Section II. Amendments to the Collective Bargaining Agreement

Rule 28 will be amended to read as follows:

Rule 28. Meal Period

A. (1) Mobile Employees: Meal periods shall be observed at the work site or other convenient location between the beginning of the third hour and the end of the seventh hour, computed from the assigned starting time. Meal periods shall be 20 minutes without deduction in pay. Employees shall be responsible for observing this 20-minute meal period unless directed otherwise. Wash room facilities shall be provided where the job location requires the meal period to be observed at the work site. [7/29/91 Imposed Agreement, 1/9/17 MOA]

(2) Mobile Employees: It is not the intent of this rule to allow the carrier to require employees to miss a meal period. Whenever the meal period cannot be observed within the the window set forth in Paragraph A(1) at the direction of the Company, then the affected employee shall receive 20 minutes pay at the overtime rate, and 20 minutes in which to eat shall be granted at the first opportunity without deduction in pay. [7/29/91 Imposed Agreement, 1/9/17 MOA]

B. (1) Headquartered Employees: Regular, unpaid meal periods shall be observed at the work site or other convenient location between the beginning of the fourth hour and the beginning of the seventh hour computed from the assigned starting time, unless otherwise agreed upon by the carrier and the affected employees. The meal period shall not be less than thirty (30) minutes nor more than one (1) hour. Wash room facilities shall be provided where the job location requires a meal period to be observed at the work site. [7/29/91 Imposed Agreement; 1/9/17 MOA]
(2) Headquarted Employees: It is not the intent of this rule to allow the carrier to require employees to miss a meal period. Whenever the meal period cannot be observed within the prescribed time period described in Paragraph (B)(1) because of unusual circumstances and is worked, affected employees shall receive 30 minutes pay at the overtime rate, and 20 minutes in which to eat shall be granted at the first opportunity without deduction in pay. [7/29/91 Imposed Agreement, 1/9/17 MOA]

C. The Company shall arrange to feed men assigned to work at wrecks, washouts or other emergencies once each six (6) hours, computed from the end of the last meal period, without expense to employees or deduction in pay, it being understood that this shall not apply in cases where employees regularly assigned to outfits equipped not only for lodging but for meals may be moved with such outfits to work under such emergency conditions. [7/29/91 Imposed Agreement]

Current Rule 28(D) shall be replaced with the following:

D. Employees working four 10-hour days in lieu of five 8-hour days as described in Appendix HH, will work 10 consecutive hours and a 20 minute meal period without deduction in pay will be observed in accordance with Paragraph A(1) and A(2) of this rule. Appendix HH will otherwise govern employees working a four 10 hour work week. [1/9/17 MOA]

Rule 29(F) will be amended to read as follows:

Rule 29. Overtime

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F. Employees required to render more than three (3) hours overtime service continuous with their regular assignment shall be accorded an additional meal period, the meal to be provided by the Carrier. Subsequent meal periods, with meals provided by the carrier, shall be allowed at intervals of not more than six (6) hours computed from the end of the last meal period. [From Art. VI, Sec. 3 2/06/92 Imposed Agreement]

NOTE: The provisions of paragraph (F) may be satisfied pursuant to the following scenarios:

1 The length of the meal period will be determined by whether the gang is governed by Rule 28(A)(1) or Rule 28(B)(1), as set forth above.
Instances where employees return to work following the meal period: The provisions of paragraph (f) may be satisfied by the following:

(1) providing a meal on-site and 20 minutes to eat (for mobile employees)\(^3\) without deduction in pay, or

(2) paid time traveled at the overtime rate to the location where the meal is to be provided by the Carrier and back to the work site, and a minimum of 20 minutes (for mobile employees)\(^5\) without deduction in pay to obtain their meal and eat.\(^4\)

Instances where employees are ending their day and not returning to work following the meal period: The provisions of paragraph (f) may be satisfied by the following:

(1) providing a meal on-site and 20 minutes to eat (for mobile employees)\(^5\) without deduction in pay.

Or

(2) paid time traveled at the overtime rate to the location where the meal is to be provided by the Carrier, a maximum of 20 minutes without deduction in pay (for mobile employees)\(^6\) to obtain their meal and eat,\(^7\) and paid time traveled at the overtime rate to the lodging facility (mobile employees and headquartered employees not returning to their headquarters at the direction of the company) or headquarters (headquartered employees returning to their headquarter location).

Or

(3) If all employees agree, they may elect to receive one hour compensation at the overtime rate in lieu of the additional meal period due and meal provided in Rule 29(f). The election of this alternative is

\(^3\) 30 minutes to eat will be provided for headquartered employees governed by Rule 28(B)(1).
\(^5\) A minimum of 30 minutes to obtain their meal and eat will be provided for headquartered employees governed by Rule 28(B)(1).
\(^4\) Any additional time it takes beyond 20 minutes (mobile) or 30 minutes (headquartered) will be compensated at the overtime rate.
\(^5\) 30 minutes to eat will be provided for HQ employees governed by Rule 28(B)(1).
\(^6\) A maximum of 30 minutes to obtain their meal and eat will be provided for headquartered employees governed by Rule 28(B)(1).
\(^7\) Any additional time it takes beyond 20 minutes (mobile) or 30 minutes (headquartered) will be uncompensated.
conditional upon all employees in the gang accepting this payment in lieu of the meal period and meal. In other words, the Carrier is under no obligation to provide that additional meal period and meal when employees of a gang elect to be compensated one additional hour at the overtime rate. [1/9/17 MOA]

Section III. Existing Claims

Within 60 days of the effective date of this agreement, the parties shall promptly meet and negotiate the compromise of existing claims.

Section IV. Cancellation

This Agreement will remain in effect for one year and thereafter unless cancelled by written notification as described herein. After one year following the effective date of this agreement, either party may serve a written 90-day cancellation notice upon the other party. If cancelled, the rules set forth above will return to the original language as they existed on December 1, 2015. If cancelled by either party, this Agreement (and its application) will not be referred to in any other proceeding or forum whatsoever—whether arbitral, judicial, or other forum (including, but not limited to, Presidential Emergency Boards, fact-finding proceedings, and labor claims handling). And it is further agreed that the non-precedent and non-referable provision of this Agreement should be given the broadest possible interpretation; however, nothing in this Agreement should be read as prohibiting use of his Agreement in a proceeding to enforce its terms.

Agreed to this 9th day of January, 2017, to be effective January 9, 2017.

for BNSF Railway Company:

David F. Isom,  
Assistant Vice President Labor Relations

Joe R. Heenan,  
General Director, Labor Relations

for the BMWED:

Dennis Albers, General Chairman  
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David L. Carroll, General Chairman  
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