

# MEMORANDUM OF AGREEMENT

Between

UNION PACIFIC RAILROAD COMPANY

And the

S. M. A. R. T. – TRANSPORTATION DIVISION

(C&NW Territory)

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## DISCIPLINE AGREEMENT

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### Section 1 - APPLICABILITY

This agreement will supersede Article IV – Discipline Agreement effective November 1, 2003, and Article IV – Discipline Agreement effective May 16, 2005. This Agreement will apply to Trainmen, Yardmen and Firemen working on the C&NW Territory.

This agreement is not intended to modify or replace Carrier policies pertaining to discipline, except that to the extent a Carrier policy may conflict with this agreement, this agreement shall govern.

**Note:** This agreement is not intended to modify or replace "By-Pass" or "Companion" Agreements.

### Section 2 – GENERAL

Employees will not be disciplined without just and sufficient cause as determined by a fair and impartial investigation. Employees may, however, be held out of service pending investigation if subject to potential dismissal.

### Section 3 – NOTICE OF INVESTIGATION

- A. Within ten (10) days of the time the appropriate officer knew or should have known of the alleged offense, the employee will be given written notice of the specific charges against him or her. The notice will state the date, time and place of the investigation, employees charged, witnesses expected to be called, the proposed discipline to be assessed and allow the employee the opportunity to arrange for witnesses and representation, if desired, by the SMART TD local representative or their designee. The notice will also designate a carrier officer who may be contacted for the purpose of arranging for an informal conference.

- B. A copy of the notice of investigation (NOI) will be furnished to the SMART/TD local representative via electronic means (i.e., email) at the last known email address on file with the Carrier, no later than the date the notice of investigation is sent to the employee. The same methods of delivery enumerated herein will apply to any postponements of the investigation and/or amendments to the NOI.

**Note:** The term "*the SMART/TD local representative or their designee*" as used throughout this agreement refers to and shall be interpreted to mean a person who holds seniority on the Union Pacific Railroad and who is elected to a position with the SMART/TD.

#### **Section 4 – INFORMAL CONFERENCES**

The employee and the SMART local chairman (or designee) may contact the designated Carrier officer prior to the investigation and arrange for an informal conference to discuss the alleged offense and proposed discipline. Such informal conference may be either in person or by telephone.

1. If such informal conference results in the proposed discipline being dropped, no further action will be taken.
2. If such informal conference results in the charges being resolved by the employee and/or their representative and the investigation being waived, the employee's record will be updated accordingly. It is understood an employee may not waive an investigation where permanent dismissal may be assessed.
3. If such informal conference does not result in either (1) or (2) above, the discipline imposed as a result of a hearing may not exceed that proposed in the notice of investigation.

#### **Section 5 - INVESTIGATION**

- A. Unless postponed for good cause, the investigation will be held no later than ten (10) days after the date of the NOI. Except in extreme cases, investigations shall not be postponed beyond thirty (30) days from the date originally scheduled.

**Note:** In the application of this Paragraph A, it is understood that the parties will exercise reasonable judgement in the postponement of investigations.

- B. When practicable, the investigation will be held at the employee's home terminal. When it is not practicable, the investigation will be held at a location that will minimize the travel, inconvenience and loss of time for all employees involved. When an employee is required to travel to an investigation at other than his or her home terminal, the employee will be reimbursed for actual, reasonable and necessary expenses incurred.

- C. For employees who have been properly notified in writing but fail to appear for the investigatory hearing on their own accord, the charges listed in the notice of investigation will be upheld. Investigatory hearings will be held in absentia for employees who are charged with permanent dismissal but fail to appear at the investigatory hearing.

**Note 1:** Crew Management Services will be notified in advance of the hearing so as to allow the charged employee adequate time to be rested and available for the investigatory hearing in accordance with hours-of-service regulations.

**Note 2:** If a charged employee has a family/personal emergency beyond their control which prevents them from attending the investigatory hearing, they must contact Carrier immediately. Consideration may be given if the employee provides sufficient information/documentation validating the emergency. The parties may agree to postpone and reschedule the investigatory hearing.

- D. The charged employee and/or representative will be allowed to examine evidence to be presented as far in advance of the date of the investigation as reasonably practicable to provide the employee and/or representative adequate time to prepare.
- E. At the investigation, the employee and/or representative will be afforded the opportunity to examine or cross-examine all witnesses. Such examination will extend to all matters under investigation. At the investigation the hearing officer or the employee or the representative may request that the witnesses be sequestered.
- F. The investigation will be recorded and transcribed. If the accuracy of the transcript is questioned the media used shall be examined by both parties and, if necessary, the transcript will be corrected.

**Note:** The use of the term "media" recognizes the future possibilities of improved electronic methods of recording and transcription.

## **Section 6 – DECISION**

- A. A written decision regarding discipline and copy of the transcript will be issued no later than ten (10) days after completion of the hearing. The notice will be sent by US Mail (e.g., certified mail, or similar, third-party method providing receipt of delivery) to the last known address of the employee. An electronic copy will be sent to the SMART/TD General Chairperson and Local Chairperson via email.
- B. If discipline is not upheld, employees will be compensated for all lost time.

## **Section 7 – APPEALS AND CONFERENCING**

- A. Within thirty-five (35) days from the postmark date of the notice of discipline, the General Chairperson (or designee) and the highest designated Labor Relations Officer (or designee) will conference the discipline decision. Conferences will be regularly scheduled during the first ten (10) days of each month but may be postponed up to ten (10) days from the date scheduled by mutual agreement between the parties. If either party fails to comply with this time limit, the discipline shall be removed (if the carrier's failure) or withdrawn (if the organization's failure). Cases so disposed of shall not be considered as a precedent or a waiver of the contentions of either party as to other similar cases.

**Note:** During the thirty-five (35) day time frame provided in this Section A, it is contemplated that the General Manager (or designee) and the SMART-TD local chairperson (or designee) may confer to determine if a resolution can be reached locally. The resolution may involve, but is not limited to, further training, education or other remedial action.

- B. Within ninety (90) days of the parties' conference date, or no later than the time limit listed in the NRAB Uniform Rules of Procedure, the parties will exchange written responses of their respective positions for each case denied in conference. The highest union officer designated to handle such claims must list the claim before a tribunal having jurisdiction pursuant to the law or agreement.

**Note:** The parties' written responses will act as the submissions to the selected tribunal. Any arguments raised by either party in this exchange or correspondence may be addressed during oral arguments at the tribunal.

## **Section 8 – CALCULATION OF LOST WAGES**

- A. If by operation of this agreement or as the result of an arbitration decision the Carrier is required to pay an employee who has been disciplined for "time lost," the amount due shall be based on the average daily earnings of the employee for the twelve (12) month period (beginning with the first full month prior to removal from service). The sum of the employee's earnings during such period shall be divided by 365 to arrive at the average daily earnings to be applied in determining the amount of lost wages, based on the number of days of discipline.

**Note:** The twelve (12) month period utilized in determining the employee's average daily earnings will not include any month(s) in which the employee experienced unusually low earnings due to circumstances beyond his/her control, such as furlough, personal injury, documented major illness, of the employee or a family member, etc. It is not the intent of this Note to exclude those months in which the employee lays off on his/her own accord; however, it is intended the twelve (12) month period utilized will reflect the employee's normal work habits and history.

**Example:** An employee was dismissed in October for an alleged rule violation. Pursuant to an arbitration award, the employee is reinstated and awarded time lost

(back pay). Six (6) months prior to his/her dismissal, said employee was off-duty (medical leave) for two (2) months (March and April) due to a documented major illness, such as a heart attack.

Calculation of the employee's average daily earnings for the preceding twelve (12) months will commence with September and will incorporate the prior fourteen (14) months, including September (March and April are excluded due to the employee having no earnings in those months due to the medical condition).

- B. The Carrier's current practice of adjusting pay for time lost by general wage increases (GWI), cost-of-living adjustments (COLA) and/or entry-rate progression, occurring during the time out of service is recognized and will continue under this Agreement. Pay for time lost will also include retroactive wage payments pursuant to National Agreement and productivity fund payments, if applicable.
- C. In the calculation of "time lost," outside earnings will not be deducted for one (1) year from the date of the original notice of investigation. Additionally, if as a result of an arbitration award a portion of an employee's time out of service is converted to a suspension, said suspension will begin at/on the date the employee was first withheld from service.

**Note:** The Carrier will notify the employee in writing, instructing the employee to furnish a copy of his/her tax forms, or a last earnings statement for the period that he/she is to be paid.

**Example 1:** An employee was issued a notice of investigation on January 10, 2021, for an alleged rules violation. Carrier held an investigatory hearing and dismissed the employee. The case was progressed to arbitration by the Organization and pursuant to an arbitration award, the employee was reinstated and awarded all time lost (back pay). The employee was returned to service on March 10, 2022. The employee would receive pay for time lost for all time out of service and without deduction of outside earnings from the date removed from service to January 10, 2022. From January 11, 2022, through March 9, 2022, backpay would be offset by the employee's outside earnings during that period of time.

**Example 2:** An employee was issued a notice of investigation on January 10, 2021, for an alleged rules violation. Carrier held an investigatory hearing and dismissed the employee. The case was progressed to arbitration by the Organization and pursuant to an arbitration award, the employee was reinstated and awarded time lost (back pay), minus a sixty (60) day suspension. The employee was returned to service on March 10, 2022. The sixty (60) day suspension would commence on the date the employee was removed from service and end sixty (60) days later. The employee would receive pay for time lost without deduction of outside earnings for the remaining days through January 10, 2022. From January 11, 2022, through March 9, 2022, backpay would be offset by the employee's outside earnings during that period of time.

- D. When an employee is compensated for time lost in accordance with an arbitration award the compensation for time lost is to be considered as time worked in the calculation of the employee's subsequent vacation.

- E. Appropriate offsets from pay for time lost will be made as specifically required by law or agreement, i.e., Railroad Retirement Board unemployment compensation and/or health and welfare premiums.

**Section 9 - MISCELLANEOUS**

- A. If a dispute arises as to the timeliness of the notice of investigation or notice of decision, the postmark on the envelope containing such document or the dated receipt of the on-property delivery to the employee shall be deemed to be the date of such notice or decision. If a dispute arises as to the timeliness of any other correspondence, the parties need only demonstrate that an e-mail or electronic transmission was sent in a timely manner to the correct email address of record for the other party.

**Note:** It is understood the parties may agree to an electronic means of communication as a preferred method of notices and/or decisions in the future, in which case a verifiable electronic date stamp will be used.

- B. Employees attending an investigation as witnesses at the direction of the Carrier will be compensated for all time lost and, in addition, will be reimbursed for actual, reasonable and necessary expenses incurred. When no time is lost, witnesses will be paid for actual time attending the investigation with a minimum of two (2) hours, to be paid at the rate of the last service performed.
- C. The charged employee or his/her representative may request the Carrier to direct a witness to attend an investigation, provided sufficient advance notice is given as well as a description of the testimony the witness would be expected to provide. If the Carrier declines to call the witness and the witness attends at the request of the employee or representative and provides relevant testimony which would not otherwise have been in the record, the Carrier will compensate the witness as if it had directed the witness to attend.
- D. No change in this agreement will be made unless mutually agreed upon by both parties. If either party wishes to modify this Agreement, the parties will meet within 60 days from written notification by either party upon the other that a modification is desired.

This Agreement will take effect on 1-1-22.

Signed on the 21<sup>st</sup> day of November, 2021.

For the SMART-TD:



Luke Edington  
General Chairman – SMART TD 953

For the Union Pacific Railroad:



Beth Wilderman  
Director Labor Relations

Side Letter # 1

Date: 11-29-71

Mr. Luke Edington  
General Chairman – SMART TD  
5990 SW 28<sup>th</sup> Street #F  
Topeka, KS 66614

RE: Discipline Agreement – Outside Earnings Deductions

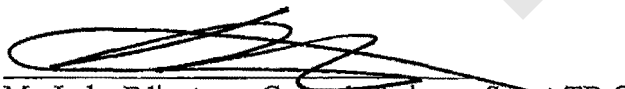
This parties mutually agree in cases where sustaining awards are rendered, the Carrier will not deduct potential or estimated earnings in instances when an employee has no reportable outside wages while out of service.

Sincerely,



Beth Wilderman  
Director – Labor Relations

Agreed:



Mr. Luke Edington – General Chairman Smart TD GO953

Date: 11.29.21

Mr. Luke Edington  
General Chairman – SMART TD  
5990 SW 28<sup>th</sup> Street #F  
Topeka, KS 66614

RE: Discipline Agreement – Transition to New Agreement

In our recent conversation concerning the January 1, 2022 Discipline Modification Agreement, the parties discussed the conversion process for handling discipline under the "old" discipline agreements presently in effect and the "new" discipline agreement which will take effect January 1, 2022.

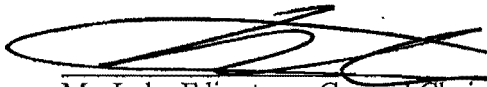
It was agreed that the date of the notice of investigation would be the controlling factor in determining whether a discipline case would be handled under the "old" or the "new" agreement. A notice of investigation issued by the Carrier on or before December 31, 2021 would be handled under the "old" discipline agreement. Notices of investigation issued on or after January 1, 2022, would be handled under the discipline agreement effective January 1, 2022.

Sincerely,



Beth Wilderman  
Director – Labor Relations

Agreed:



Mr. Luke Edington – General Chairman Smart-TD GO953