

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

BNSF RAILWAY COMPANY,

Plaintiff,

v.

INTERNATIONAL ASSOCIATION OF
SHEET METAL, AIR, RAIL AND
TRANSPORTATION WORKERS –
TRANSPORTATION DIVISION,

Defendant.

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Civil Action No. 4:22-cv-0052-P

**APPENDIX TO DEFENDANT SMART-TD’S RESPONSE AND BRIEF
IN OPPOSITION TO PLAINTIFFS’ MOTION
FOR A PRELIMINARY INJUNCTION**

Defendant, the International Association of Sheet Metal, Air, Rail and Transportation Workers, Transportation Division (“SMART-TD” or “the Union”), by and through counsel, respectfully submits the following appendix in support of its Response in Opposition to Plaintiff’s Motion for Preliminary Injunction.

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1	Second Declaration of Jeremy Ferguson (“Sec. Ferguson Decl.”)	App. 1-2
2	Sec. Ferguson Decl. Exhibit J	App. 3-4
3	Declaration of Scott Swiatek (Swiatek Decl.”)	App. 5-9
4	Swiatek Decl. Exhibit K	App. 10-30
5	Swiatek Decl. Exhibit L	App. 31
6	Swiatek Decl. Exhibit M	App. 32
7	Declaration of Larry Miller (Miller Decl.”)	App. 33-35

Dated: February 7, 2022

Respectfully Submitted:

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*Counsel for Defendant International
Association of Sheet Metal, Air, Rail and
Transportation Workers – Transportation
Division (“SMART-TD”)*

* Admitted *Pro Hac Vice*

CERTIFICATE OF SERVICE

I certify that on this 7th day of February, 2022, a true and correct copy of the foregoing document was served on counsel for all parties of record listed below by a means permitted by Rule 5(b)(2) of the Federal Rules of Civil Procedure (“F.R.C.P.”).

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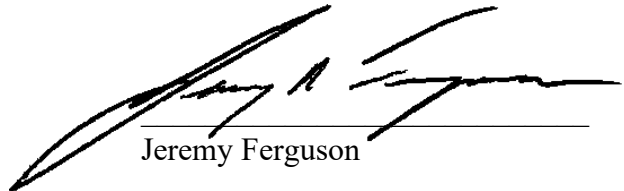
/s/ Sanford R. Denison

SANFORD R. DENISON

3. There are 1,184 members with seniority on BNSF who additionally hold an officer position at some level with SMART-TD. Of those officers, 220 are Local Chairpersons, and of those 220, they are spread throughout the western United States.

I declare under penalty of perjury that the following is true and correct to the best of my knowledge.

Executed this 7th day of February, 2022.



Jeremy Ferguson



NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

(202) 692-5000

February 2, 2022

Sent via E-MAIL

Jeremy R. Ferguson, President
International Association of Sheet Metal, Air, Rail and Transportation
Workers-Transportation Division
24950 Country Club Blvd, Ste. 340
North Olmsted, OH 44070

Brendan M. Branon, Chairman
National Carriers Conference Committee
251 18th Street, South, Ste 750
Arlington, VA 22202

RE: NMB Case Number: A-14005 NCCC & SMART-TD

Mr. Ferguson and Mr. Branon:

The National Mediation Board (Board or NMB) is in receipt of an application filed on behalf of the International Association of Sheet Metal, Air, Rail and Transportation Workers-Transportation Division (SMART-TD) (Organization) for the services of the Board under the provisions of Section 5 of the Railway Labor Act (RLA). A copy of the application and any cover letter or position statement is enclosed. The applicants allege a dispute involving the following employees of the National Carriers Conference Committee (NCCC) (Carrier).

Craft (s) or Class (es): Conductors, Engineers, Yardmasters, Brakemen, and Yardmen

The applicants describes the issues in the dispute as follows:

"Rates of Pay, Rules, and Working Conditions"

This application has been docketed as **Case No. A-14005** and will hereafter be referred to by that number. Mediator Eva Durham will be assigned to this case and will contact you to schedule meetings.

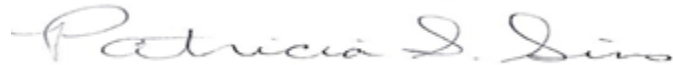
Ex. J
SMART-TD P. 000 App. 003

All future correspondence related to this case must be addressed to the assigned Mediator, with a copy to the Director of Mediation Services. Any correspondence that does not comply with this requirement may not be considered.

As part of our customer service program, we have developed a form to facilitate communications. Please complete the enclosed "Notice of Contact" form and return to the NMB (preferably by email) within three (3) business days. The individual(s) named should be the person(s) primarily responsible for handling the negotiations in the above-referenced case.

The parties are reminded of the status quo provisions of the Railway Labor Act.

Sincerely,

A handwritten signature in cursive script, appearing to read "Patricia S. Sims".

Patricia Sims Director of Mediation Services, NMB

CC: John Livingood, Senior Mediator, NMB
Eva Durham, Mediator, NMB

2022. While this raw percentage is offered, Macedonio fails to provide the full context of the situation and is misleading at best. GCA GO-009's crew availability in the Kansas City Yard on January 22, 2022 (snapshot at 0001 hours) indicates there were 334 "active" employees. Of these active employees, BNSF counts 122 as unavailable, leaving 212 available or 63%. However, of the 122 employees who BNSF contends were unavailable, only 12 (9%) were off per the attendance guidelines, meaning they laid off sick, laid off personal ("LOP"), etc. All other employees were laid off for various other reasons including rest days if on an "assigned" service assignment, personal leave days ("PLD")/vacation ("VAC"), or over their hours of service under the Rail Safety Improvement Act ("RSIA"). It appears BNSF is deceitfully manipulating this data. Using the KC Yard, there were 48 employees on rest days on January 22, 2022. While BNSF shows availability at 63%, excluding rest day employees would increase the availability to 74%. Upon review of all the terminals, instead of the 60% availability claimed by BNSF, the actual crew availability 77% as opposed to the Carrier's claim of 60% availability. A true and correct copy of BNSF's Terminal Availability Snapshots is attached as Exhibit K.

3. In Paragraph 7 of Macedonio's Second Declaration, he explains the need for pool service based on impossible scheduling due to service demands. The employees who work the "unassigned" pool service do not have a set schedule, and are required to be available 24/7, and the majority of these employees do not have access to regular time off. Although Macedonio asserts that employees at the top of the list are called to work and the rest of the employees move up one slot, BNSF has started utilizing many pools with rest days, up until February 1, 2022, they were considered "unassigned" service. BNSF now classifies them as "assigned" service under Hi-Viz penalizing higher for lay-offs. Employees are at the mercy of BNSF to approve

layoff requests, even for contractually-required leave. As such, accessing any time off is virtually impossible, including contractual leave days.

4. In Paragraph 10, Macedonio's asserts that there are an average of 174 "starts" for assigned service. This number is skewed at best, as it does not take into consideration that half of those starts happened at the away-from-home terminal, equating to 87 days away-from-home.

5. In Paragraph 11, Macedonio alleges, without evidence, that employees "abuse the lay off process in order to avoid working on weekends, holidays, or at any other time that the employee may find it inconvenient to work." He attacks those "worst offenders" who he claims "would prefer to treat railroad work as a *de facto* part-time job." To the extent there were such employees, BNSF could have charged them for violating the former attendance policy.

6. In Paragraph 12, Macedonio laments over issues stemming from crew shortages. However, this is not a laziness or "absenteeism" problem, but stems from BNSF's manpower shortage and crew mismanagement neglecting and understaffing boards. In January 2015, BNSF reported to the STB that it had 21,157 Train and Engine Service employees. *See BNSF Employment Data January 2015*, STB, available at <https://www.stb.gov/reports-data/economic-data/employment-data/>. A true and correct copy of that report is attached as Exhibit L. By December 2021, BNSF had reduced its Train and Engine Service down to 14,637. *BNSF Employment Data January 2015*, STB, available at <https://www.stb.gov/reports-data/economic-data/employment-data/>. A true and correct copy of that report is attached as Exhibit M. Meanwhile, thousands of furloughed employees wait to be called back to work.

7. BNSF attempts to allege that the Hi Viz policy is necessary in order to compete in the industry. However, it has had the same core attendance guidelines for over 20 years, the same policy in effect when Section 6 Notices were served and bargaining began on the subject, and

has somehow managed to service customers and compete with other railroads. BNSF's new Hi Viz policy technically requires 95% availability each week in order to avoid losing points and risking discipline. Working fourteen days straight to earn back 4 points is simply unsustainable. The majority of ones' "time off" is spent wondering when the phone will ring.

8. In Paragraph 18, Macedonio carefully limits his contention that employees are not assessed points or FMLA or union business layoffs. However, he neglects to mention that an employee utilizing union or FMLA time is excluded from earning good attendance credit, and are assessed additional penalties if they lay off the day preceding or following such leave.

9. In Paragraph 19, Macedonio asserts that Hi Viz does not assess points when employees take leave in order to recover from COVID-19. However, this appears to be absent from the Hi-Viz availability policy. Even if points were not deducted for the days off for a COVID-19 infection, the employees will lose their "Good Attendance credit" for simply following government's CDC guidelines. This will only encourage employees underreport potential sickness or exposure.

10. In Paragraph 22, Macedonio attempts to thread the needle by asserting that "availability" does not equate to working. He then asserts that it is impossible for an employee to work 14 days in a row. This is completely false. BNSF regularly deadheads employees, sidestepping Federal law, which results in working 14 days, or more, in a row.

11. In Paragraph 30, Macedonio attempts to downplay the role that Local Chairpersons ("LC") play and the vital services they provide. Local Officers are on the front lines when it comes to discipline and handling of agreement violations. Local Officers must, in some cases, file claims locally or review claims from the membership, appeal, conference with local management, and then forward to our office for additional handling if they cannot resolve

them at their level. My office receives thousands of agreement violations every month in addition to discipline cases that LCs handle for our members. Once an investigation is scheduled on a member, the LCs communicate with local management to resolve. Most cases result in an investigation that can require hours of research and preparations for the hearing. Once the hearing is held, there could be follow up conversations and appeals to local management. If that does not result in resolution, then it must be forwarded to the GC office for further handling. My office receives several hundred discipline cases every year. The Hi Viz Policy may not take points away for that layoff, it most certainly makes it about impossible to ever gain points back while representing our members in investigations, claims conferences, hearings, etc.

12. In Paragraph 32, Macedonio claims that Union officers who are ineligible to achieve good attendance credit is not a penalty. The carrier sets the dates for all investigations. While employees who mark off on union business are free to request that BNSF adjust deadlines, it is rare to get a postponement for an investigation. Some terminals have an excess of over 500 employees with an average of 10 to 15 investigations per week. The LC is at the mercy of the Carrier's schedule and will never accumulate "good attendance credits." Importantly, Local Officers were never charged or penalized under the previous attendance policy for marking on union business.

I declare under penalty of perjury that the following is true and correct to the best of my knowledge.

Executed this 7th day of February, 2022.

Scott Swiatek
Scott J. Swiatek

CIQNAVHS ***** BNSF Crew Management ***** 02/04/22
 BNSF KANCMO -TYE Availability - 14:50:23CT

Station : KANCMO ** Summary history for 01/22/22 at Midnight **
 Total Employees : 423

Assigned Unavailable : 89
 Asgn Furlough : 58 Asgn Familiarization : 5
 Asgn Reserve : 0 Asgn Training : 0
 Asgn Work Retention : 0 Asgn Detached : 2
 Asgn Long Leave : 24

Active Employee : 334

Occupation	TOTAL	%-UNV	ENG	CON	BRK	HOS	SWI	YDM
ACTIVE EMP by craft	334	-						
Unavailable								
Agreement	11	9%	5	2	1	0	3	0
Rest Agreements	0	0%	0	0	0	0	0	0
Attendance Guidelines	12	9%	3	2	0	1	6	0
Company	1	0%	0	0	0	0	1	0
FMLA	9	7%	4	0	0	0	5	0
Medical (Layoff)	6	4%	0	3	0	0	3	0
Miscellaneous	1	0%	0	1	0	0	0	0
RSIA	5	4%	3	1	0	0	1	0
Training (Layoff)	0	0%	0	0	0	0	0	0
Vacation / PLD	29	23%	11	5	1	0	12	0
Asgn Rest Days	48	39%	14	1	0	1	32	0
Total Unavailable	122	100%	40	15	2	2	63	0
% Availability	63	-						
Booked Rest	0	0%	0	0	0	0	0	0
Effective % Avail	63	-						

***** End Of Report *****

***** End Of Report *****

CIQNAVHS
BNSF GALEIL

***** BNSF Crew Management *****
-TYE Availability -

02/04/22
14:49:47CT

Station : GALEIL ** Summary history for 01/22/22 at Midnight **
Total Employees : 636

Assigned Unavailable : 63
Asgn Furlough : 0 Asgn Familiarization : 10
Asgn Reserve : 0 Asgn Training : 17
Asgn Work Retention : 0 Asgn Detached : 4
Asgn Long Leave : 32

Active Employee : 573

Occupation	TOTAL	%-UNV	ENG	CON	BRK	HOS	SWI	YDM
ACTIVE EMP by craft	573	-						
Unavailable								
Agreement	29	16%	8	20	0	1	0	0
Rest Agreements	0	0%	0	0	0	0	0	0
Attendance Guidelines	49	28%	19	30	0	0	0	0
Company	1	0%	0	1	0	0	0	0
FMLA	5	2%	3	2	0	0	0	0
Medical (Layoff)	6	3%	0	2	0	1	3	0
Miscellaneous	1	0%	0	1	0	0	0	0
RSIA	21	12%	14	5	0	0	2	0
Training (Layoff)	0	0%	0	0	0	0	0	0
Vacation / PLD	31	17%	17	9	1	0	4	0
Asgn Rest Days	30	17%	2	2	2	5	19	0
Total Unavailable	173	100%	63	72	3	7	28	0
% Availability	69	-						
Booked Rest	14	8%	5	9	0	0	0	0
Effective % Avail	67	-						

***** End Of Report *****

***** End Of Report *****

CIQNAVHS ***** BNSF Crew Management ***** 02/04/22
 BNSF KANCKS -TYE Availability - 14:49:04CT

Station : KANCKS ** Summary history for 01/22/22 at Midnight **
 Total Employees : 386

Assigned Unavailable : 55
 Asgn Furlough : 31 Asgn Familiarization : 2
 Asgn Reserve : 0 Asgn Training : 0
 Asgn Work Retention : 0 Asgn Detached : 0
 Asgn Long Leave : 22
 Active Employee : 331

Occupation	TOTAL	%-UNV	ENG	CON	BRK	HOS	SWI	YDM
ACTIVE EMP by craft	331	-						
Unavailable								
Agreement	11	11%	5	5	0	0	1	0
Rest Agreements	0	0%	0	0	0	0	0	0
Attendance Guidelines	19	20%	7	12	0	0	0	0
Company	0	0%	0	0	0	0	0	0
FMLA	5	5%	4	1	0	0	0	0
Medical (Layoff)	1	1%	1	0	0	0	0	0
Miscellaneous	0	0%	0	0	0	0	0	0
RSIA	19	20%	13	6	0	0	0	0
Training (Layoff)	1	1%	1	0	0	0	0	0
Vacation / PLD	25	26%	11	12	2	0	0	0
Asgn Rest Days	12	12%	4	3	2	0	3	0
Total Unavailable	93	100%	46	39	4	0	4	0
% Availability	71	-						
Booked Rest	0	0%	0	0	0	0	0	0
Effective % Avail	71	-						

***** End Of Report *****

***** End Of Report *****

CIQNAVHS ***** BNSF Crew Management ***** 02/04/22
 BNSF FTMADI -TYE Availability - 14:48:26CT

Station : FTMADI ** Summary history for 01/22/22 at Midnight **
 Total Employees : 318

Assigned Unavailable : 29
 Asgn Furlough : 15 Asgn Familiarization : 0
 Asgn Reserve : 0 Asgn Training : 0
 Asgn Work Retention : 0 Asgn Detached : 0
 Asgn Long Leave : 14
 Active Employee : 289

Occupation	TOTAL	%-UNV	ENG	CON	BRK	HOS	SWI	YDM
ACTIVE EMP by craft	289	-						
Unavailable								
Agreement	17	24%	8	8	0	0	1	0
Rest Agreements	0	0%	0	0	0	0	0	0
Attendance Guidelines	22	31%	8	14	0	0	0	0
Company	0	0%	0	0	0	0	0	0
FMLA	1	1%	0	1	0	0	0	0
Medical (Layoff)	0	0%	0	0	0	0	0	0
Miscellaneous	0	0%	0	0	0	0	0	0
RSIA	4	5%	0	4	0	0	0	0
Training (Layoff)	0	0%	0	0	0	0	0	0
Vacation / PLD	23	32%	11	10	0	0	2	0
Asgn Rest Days	3	4%	1	0	0	0	2	0
Total Unavailable	70	100%	28	37	0	0	5	0
% Availability	75	-						
Booked Rest	0	0%	0	0	0	0	0	0
Effective % Avail	75	-						

***** End Of Report *****

***** End Of Report *****

CIQNAVHS ***** BNSF Crew Management ***** 02/04/22
 BNSF WELLKS -TYE Availability - 14:46:36CT

Station : WELLKS ** Summary history for 01/22/22 at Midnight **
 Total Employees : 150

Assigned Unavailable : 34
 Asgn Furlough : 14 Asgn Familiarization : 0
 Asgn Reserve : 0 Asgn Training : 6
 Asgn Work Retention : 0 Asgn Detached : 0
 Asgn Long Leave : 14
 Active Employee : 116

Occupation	TOTAL	%-UNV	ENG	CON	BRK	HOS	SWI	YDM
ACTIVE EMP by craft	116	-						
Unavailable								
Agreement	6	20%	2	3	0	0	1	0
Rest Agreements	0	0%	0	0	0	0	0	0
Attendance Guidelines	6	20%	0	6	0	0	0	0
Company	0	0%	0	0	0	0	0	0
FMLA	0	0%	0	0	0	0	0	0
Medical (Layoff)	0	0%	0	0	0	0	0	0
Miscellaneous	0	0%	0	0	0	0	0	0
RSIA	1	3%	0	1	0	0	0	0
Training (Layoff)	0	0%	0	0	0	0	0	0
Vacation / PLD	10	33%	6	4	0	0	0	0
Asgn Rest Days	7	23%	2	1	1	0	3	0
Total Unavailable	30	100%	10	15	1	0	4	0
% Availability	74	-						
Booked Rest	0	0%	0	0	0	0	0	0
Effective % Avail	74	-						

***** End Of Report *****

***** End Of Report *****

CIQNAVHS ***** BNSF Crew Management ***** 02/04/22
 BNSF AMARIL -TYE Availability - 14:45:18CT

Station : AMARIL ** Summary history for 01/22/22 at Midnight **
 Total Employees : 792

Assigned Unavailable : 161
 Asgn Furlough : 114 Asgn Familiarization : 3
 Asgn Reserve : 0 Asgn Training : 0
 Asgn Work Retention : 0 Asgn Detached : 1
 Asgn Long Leave : 42

Active Employee : 631

Occupation	TOTAL	%-UNV	ENG	CON	BRK	HOS	SWI	YDM
ACTIVE EMP by craft	631	-						
Unavailable								
Agreement	17	10%	3	11	1	0	2	0
Rest Agreements	0	0%	0	0	0	0	0	0
Attendance Guidelines	30	18%	14	16	0	0	0	0
Company	0	0%	0	0	0	0	0	0
FMLA	3	1%	1	1	0	0	1	0
Medical (Layoff)	0	0%	0	0	0	0	0	0
Miscellaneous	0	0%	0	0	0	0	0	0
RSIA	16	10%	6	10	0	0	0	0
Training (Layoff)	0	0%	0	0	0	0	0	0
Vacation / PLD	64	40%	35	26	0	0	3	0
Asgn Rest Days	30	18%	7	4	6	0	13	0
Total Unavailable	160	100%	66	68	7	0	19	0
% Availability	74	-						
Booked Rest	0	0%	0	0	0	0	0	0
Effective % Avail	74	-						

***** End Of Report *****

***** End Of Report *****

CIQNAVHS ***** BNSF Crew Management ***** 02/04/22
 BNSF JOLIIL -TYE Availability - 14:43:38CT

Station : JOLIIL ** Summary history for 01/22/22 at Midnight **
 Total Employees : 9

Assigned Unavailable :	0		
Asgn Furlough :	0	Asgn Familiarization :	0
Asgn Reserve :	0	Asgn Training :	0
Asgn Work Retention :	0	Asgn Detached :	0
		Asgn Long Leave :	0

Active Employee : 9

Occupation	TOTAL	%-UNV	ENG	CON	BRK	HOS	SWI	YDM
-----	-----	-----	-----	-----	-----	-----	-----	-----
ACTIVE EMP by craft	9	-						
Unavailable -----								
Agreement	0	0%	0	0	0	0	0	0
Rest Agreements	0	0%	0	0	0	0	0	0
Attendance Guidelines	0	0%	0	0	0	0	0	0
Company	0	0%	0	0	0	0	0	0
FMLA	0	0%	0	0	0	0	0	0
Medical (Layoff)	0	0%	0	0	0	0	0	0
Miscellaneous	0	0%	0	0	0	0	0	0
RSIA	1	11%	1	0	0	0	0	0
Training (Layoff)	0	0%	0	0	0	0	0	0
Vacation / PLD	0	0%	0	0	0	0	0	0
Asgn Rest Days	8	88%	2	0	0	0	6	0
-----	-----	-----	-----	-----	-----	-----	-----	-----
Total Unavailable	9	100%	3	0	0	0	6	0
-----	-----	-----	-----	-----	-----	-----	-----	-----
% Availability	0	-						
-----	-----	-----	-----	-----	-----	-----	-----	-----
Booked Rest	0	0%	0	0	0	0	0	0
-----	-----	-----	-----	-----	-----	-----	-----	-----
Effective % Avail	0	-						

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***** End Of Report *****

CIQNAVHS ***** BNSF Crew Management ***** 02/04/22
 BNSF WILSIL -TYE Availability - 14:42:24CT

Station : WILSIL ** Summary history for 01/22/22 at Midnight **
 Total Employees : 44

Assigned Unavailable : 7
 Asgn Furlough : 0 Asgn Familiarization : 0
 Asgn Reserve : 0 Asgn Training : 0
 Asgn Work Retention : 0 Asgn Detached : 0
 Asgn Long Leave : 7
 Active Employee : 37

Occupation	TOTAL	%-UNV	ENG	CON	BRK	HOS	SWI	YDM
-----	-----	-----	-----	-----	-----	-----	-----	-----
ACTIVE EMP by craft	37	-						
Unavailable -----								
Agreement	7	35%	0	0	0	0	7	0
Rest Agreements	0	0%	0	0	0	0	0	0
Attendance Guidelines	0	0%	0	0	0	0	0	0
Company	0	0%	0	0	0	0	0	0
FMLA	0	0%	0	0	0	0	0	0
Medical (Layoff)	0	0%	0	0	0	0	0	0
Miscellaneous	0	0%	0	0	0	0	0	0
RSIA	0	0%	0	0	0	0	0	0
Training (Layoff)	0	0%	0	0	0	0	0	0
Vacation / PLD	1	5%	1	0	0	0	0	0
Asgn Rest Days	12	60%	3	0	0	0	9	0
-----	-----	-----	-----	-----	-----	-----	-----	-----
Total Unavailable	20	100%	4	0	0	0	16	0
-----	-----	-----	-----	-----	-----	-----	-----	-----
% Availability	45	-						
-----	-----	-----	-----	-----	-----	-----	-----	-----
Booked Rest	0	0%	0	0	0	0	0	0
-----	-----	-----	-----	-----	-----	-----	-----	-----
Effective % Avail	45	-						

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***** End Of Report *****

CIQNAVHS ***** BNSF Crew Management ***** 02/04/22
 BNSF LPCHI -TYE Availability - 14:41:08CT

Station : LPCHI ** Summary history for 01/22/22 at Midnight **
 Total Employees : 68

Assigned Unavailable : 3
 Asgn Furlough : 0 Asgn Familiarization : 0
 Asgn Reserve : 0 Asgn Training : 0
 Asgn Work Retention : 0 Asgn Detached : 0
 Asgn Long Leave : 3
 Active Employee : 65

Occupation	TOTAL	%-UNV	ENG	CON	BRK	HOS	SWI	YDM
ACTIVE EMP by craft	65	-						
Unavailable								
Agreement	5	26%	1	1	0	0	3	0
Rest Agreements	0	0%	0	0	0	0	0	0
Attendance Guidelines	1	5%	0	0	0	0	1	0
Company	0	0%	0	0	0	0	0	0
FMLA	1	5%	0	0	0	0	1	0
Medical (Layoff)	0	0%	0	0	0	0	0	0
Miscellaneous	0	0%	0	0	0	0	0	0
RSIA	0	0%	0	0	0	0	0	0
Training (Layoff)	0	0%	0	0	0	0	0	0
Vacation / PLD	3	15%	1	0	0	0	2	0
Asgn Rest Days	9	47%	3	0	0	0	6	0
Total Unavailable	19	100%	5	1	0	0	13	0
% Availability	70	-						
Booked Rest	0	0%	0	0	0	0	0	0
Effective % Avail	70	-						

***** End Of Report *****

***** End Of Report *****

CIQNAVHS ***** BNSF Crew Management ***** 02/04/22
 BNSF CHICAG -TYE Availability - 14:39:00CT

Station : CHICAG ** Summary history for 01/22/22 at Midnight **
 Total Employees : 95

Assigned Unavailable : 41
 Asgn Furlough : 2 Asgn Familiarization : 0
 Asgn Reserve : 0 Asgn Training : 34
 Asgn Work Retention : 0 Asgn Detached : 2
 Asgn Long Leave : 3

Active Employee : 54

Occupation	TOTAL	%-UNV	ENG	CON	BRK	HOS	SWI	YDM
-----	-----	-----	-----	-----	-----	-----	-----	-----
ACTIVE EMP by craft	54	-						
Unavailable -----								
Agreement	2	9%	1	0	0	0	1	0
Rest Agreements	0	0%	0	0	0	0	0	0
Attendance Guidelines	0	0%	0	0	0	0	0	0
Company	0	0%	0	0	0	0	0	0
FMLA	2	9%	1	0	0	0	1	0
Medical (Layoff)	0	0%	0	0	0	0	0	0
Miscellaneous	1	4%	0	0	0	0	1	0
RSIA	1	4%	1	0	0	0	0	0
Training (Layoff)	0	0%	0	0	0	0	0	0
Vacation / PLD	3	14%	1	0	0	0	2	0
Asgn Rest Days	12	57%	3	0	0	0	9	0
-----	-----	-----	-----	-----	-----	-----	-----	-----
Total Unavailable	21	100%	7	0	0	0	14	0
-----	-----	-----	-----	-----	-----	-----	-----	-----
% Availability	61	-						
-----	-----	-----	-----	-----	-----	-----	-----	-----
Booked Rest	0	0%	0	0	0	0	0	0
-----	-----	-----	-----	-----	-----	-----	-----	-----
Effective % Avail	61	-						

***** End Of Report *****

***** End Of Report *****

CIQNAVHS ***** BNSF Crew Management ***** 02/04/22
 BNSF LAJUNT -TYE Availability - 14:36:49CT

Station : LAJUNT ** Summary history for 01/22/22 at Midnight **
 Total Employees : 90

Assigned Unavailable : 9
 Asgn Furlough : 0 Asgn Familiarization : 0
 Asgn Reserve : 0 Asgn Training : 0
 Asgn Work Retention : 0 Asgn Detached : 0
 Asgn Long Leave : 9
 Active Employee : 81

Occupation	TOTAL	%-UNV	ENG	CON	BRK	HOS	SWI	YDM
ACTIVE EMP by craft	81	-						
Unavailable								
Agreement	4	19%	2	2	0	0	0	0
Rest Agreements	0	0%	0	0	0	0	0	0
Attendance Guidelines	5	23%	1	4	0	0	0	0
Company	0	0%	0	0	0	0	0	0
FMLA	0	0%	0	0	0	0	0	0
Medical (Layoff)	2	9%	1	1	0	0	0	0
Miscellaneous	0	0%	0	0	0	0	0	0
RSIA	0	0%	0	0	0	0	0	0
Training (Layoff)	0	0%	0	0	0	0	0	0
Vacation / PLD	4	19%	3	1	0	0	0	0
Asgn Rest Days	6	28%	2	2	2	0	0	0
Total Unavailable	21	100%	9	10	2	0	0	0
% Availability	74	-						
Booked Rest	0	0%	0	0	0	0	0	0
Effective % Avail	74	-						

***** End Of Report *****

***** End Of Report *****

CIQNAVHS ***** BNSF Crew Management ***** 02/04/22
 BNSF CLOVIS -TYE Availability - 14:36:04CT

Station : CLOVIS ** Summary history for 01/22/22 at Midnight **
 Total Employees : 232

Assigned Unavailable : 61
 Asgn Furlough : 47 Asgn Familiarization : 0
 Asgn Reserve : 0 Asgn Training : 0
 Asgn Work Retention : 0 Asgn Detached : 2
 Asgn Long Leave : 12

Active Employee : 171

Occupation	TOTAL	%-UNV	ENG	CON	BRK	HOS	SWI	YDM
ACTIVE EMP by craft	171	-						
Unavailable								
Agreement	8	16%	2	2	0	0	4	0
Rest Agreements	0	0%	0	0	0	0	0	0
Attendance Guidelines	9	18%	2	6	0	0	1	0
Company	0	0%	0	0	0	0	0	0
FMLA	0	0%	0	0	0	0	0	0
Medical (Layoff)	0	0%	0	0	0	0	0	0
Miscellaneous	0	0%	0	0	0	0	0	0
RSIA	6	12%	4	2	0	0	0	0
Training (Layoff)	0	0%	0	0	0	0	0	0
Vacation / PLD	14	28%	8	4	1	0	1	0
Asgn Rest Days	12	24%	4	1	1	0	6	0
Total Unavailable	49	100%	20	15	2	0	12	0
% Availability	71	-						
Booked Rest	0	0%	0	0	0	0	0	0
Effective % Avail	71	-						

***** End Of Report *****

***** End Of Report *****

CIQNAVHS ***** BNSF Crew Management ***** 02/04/22
 BNSF ARKCIT -TYE Availability - 14:35:31CT

Station : ARKCIT ** Summary history for 01/22/22 at Midnight **
 Total Employees : 103

Assigned Unavailable : 28
 Asgn Furlough : 24 Asgn Familiarization : 0
 Asgn Reserve : 0 Asgn Training : 0
 Asgn Work Retention : 0 Asgn Detached : 0
 Asgn Long Leave : 4
 Active Employee : 75

Occupation	TOTAL	%-UNV	ENG	CON	BRK	HOS	SWI	YDM
ACTIVE EMP by craft	75	-						
Unavailable								
Agreement	6	20%	1	5	0	0	0	0
Rest Agreements	0	0%	0	0	0	0	0	0
Attendance Guidelines	7	23%	4	3	0	0	0	0
Company	0	0%	0	0	0	0	0	0
FMLA	0	0%	0	0	0	0	0	0
Medical (Layoff)	0	0%	0	0	0	0	0	0
Miscellaneous	0	0%	0	0	0	0	0	0
RSIA	2	6%	2	0	0	0	0	0
Training (Layoff)	0	0%	0	0	0	0	0	0
Vacation / PLD	9	30%	4	5	0	0	0	0
Asgn Rest Days	6	20%	2	2	2	0	0	0
Total Unavailable	30	100%	13	15	2	0	0	0
% Availability	60							
Booked Rest	0	0%	0	0	0	0	0	0
Effective % Avail	60							

***** End Of Report *****

***** End Of Report *****

CIQNAVHS ***** BNSF Crew Management ***** 02/04/22
 BNSF ELPASO -TYE Availability - 14:34:59CT

Station : ELPASO ** Summary history for 01/22/22 at Midnight **
 Total Employees : 81

Assigned Unavailable : 12
 Asgn Furlough : 2 Asgn Familiarization : 3
 Asgn Reserve : 0 Asgn Training : 0
 Asgn Work Retention : 0 Asgn Detached : 0
 Asgn Long Leave : 7
 Active Employee : 69

Occupation	TOTAL	%-UNV	ENG	CON	BRK	HOS	SWI	YDM
ACTIVE EMP by craft	69	-						
Unavailable								
Agreement	5	22%	1	1	1	0	2	0
Rest Agreements	0	0%	0	0	0	0	0	0
Attendance Guidelines	2	9%	1	1	0	0	0	0
Company	0	0%	0	0	0	0	0	0
FMLA	0	0%	0	0	0	0	0	0
Medical (Layoff)	0	0%	0	0	0	0	0	0
Miscellaneous	0	0%	0	0	0	0	0	0
RSIA	0	0%	0	0	0	0	0	0
Training (Layoff)	0	0%	0	0	0	0	0	0
Vacation / PLD	2	9%	1	1	0	0	0	0
Asgn Rest Days	13	59%	4	3	3	0	3	0
Total Unavailable	22	100%	7	6	4	0	5	0
% Availability	68	-						
Booked Rest	0	0%	0	0	0	0	0	0
Effective % Avail	68	-						

***** End Of Report *****

***** End Of Report *****

CIQNAVHS ***** BNSF Crew Management ***** 02/04/22
 BNSF DENVER -TYE Availability - 14:33:13CT

Station : DENVER ** Summary history for 01/22/22 at Midnight **
 Total Employees : 241

Assigned Unavailable : 37
 Asgn Furlough : 1 Asgn Familiarization : 2
 Asgn Reserve : 0 Asgn Training : 12
 Asgn Work Retention : 0 Asgn Detached : 2
 Asgn Long Leave : 20
 Active Employee : 204

Occupation	TOTAL	%-UNV	ENG	CON	BRK	HOS	SWI	YDM
ACTIVE EMP by craft	204	-						
Unavailable								
Agreement	7	7%	1	3	0	0	3	0
Rest Agreements	0	0%	0	0	0	0	0	0
Attendance Guidelines	12	12%	2	9	0	0	1	0
Company	0	0%	0	0	0	0	0	0
FMLA	7	7%	4	0	0	0	3	0
Medical (Layoff)	2	2%	0	0	1	0	1	0
Miscellaneous	0	0%	0	0	0	0	0	0
RSIA	11	11%	5	5	0	0	1	0
Training (Layoff)	0	0%	0	0	0	0	0	0
Vacation / PLD	15	16%	9	3	0	0	3	0
Asgn Rest Days	39	41%	12	7	6	1	13	0
Total Unavailable	93	100%	33	27	7	1	25	0
% Availability	54	-						
Booked Rest	6	6%	3	3	0	0	0	0
Effective % Avail	51	-						

***** End Of Report *****

***** End Of Report *****

CIQNAVHS ***** BNSF Crew Management ***** 02/04/22
 BNSF BELEN -TYE Availability - 14:31:01CT

Station : BELEN ** Summary history for 01/22/22 at Midnight **
 Total Employees : 153

Assigned Unavailable : 19
 Asgn Furlough : 4 Asgn Familiarization : 0
 Asgn Reserve : 0 Asgn Training : 0
 Asgn Work Retention : 0 Asgn Detached : 1
 Asgn Long Leave : 14
 Active Employee : 134

Occupation	TOTAL	%-UNV	ENG	CON	BRK	HOS	SWI	YDM
ACTIVE EMP by craft	134	-						
Unavailable								
Agreement	7	18%	4	0	0	0	3	0
Rest Agreements	0	0%	0	0	0	0	0	0
Attendance Guidelines	8	21%	5	3	0	0	0	0
Company	0	0%	0	0	0	0	0	0
FMLA	0	0%	0	0	0	0	0	0
Medical (Layoff)	0	0%	0	0	0	0	0	0
Miscellaneous	1	2%	0	0	0	0	1	0
RSIA	1	2%	1	0	0	0	0	0
Training (Layoff)	0	0%	0	0	0	0	0	0
Vacation / PLD	13	34%	10	1	0	0	2	0
Asgn Rest Days	8	21%	2	0	0	0	6	0
Total Unavailable	38	100%	22	4	0	0	12	0
% Availability	71	-						
Booked Rest	0	0%	0	0	0	0	0	0
Effective % Avail	71	-						

***** End Of Report *****

***** End Of Report *****

CIQNAVHS ***** BNSF Crew Management ***** 02/04/22
 BNSF OKLCIT -TYE Availability - 14:29:57CT

Station : OKLCIT ** Summary history for 01/22/22 at Midnight **
 Total Employees : 34

Assigned Unavailable : 8
 Asgn Furlough : 7 Asgn Familiarization : 0
 Asgn Reserve : 0 Asgn Training : 0
 Asgn Work Retention : 0 Asgn Detached : 0
 Asgn Long Leave : 1
 Active Employee : 26

Occupation	TOTAL	%-UNV	ENG	CON	BRK	HOS	SWI	YDM
ACTIVE EMP by craft	26	-						
Unavailable								
Agreement	1	6%	0	0	0	0	1	0
Rest Agreements	0	0%	0	0	0	0	0	0
Attendance Guidelines	1	6%	0	0	0	0	1	0
Company	0	0%	0	0	0	0	0	0
FMLA	0	0%	0	0	0	0	0	0
Medical (Layoff)	0	0%	0	0	0	0	0	0
Miscellaneous	0	0%	0	0	0	0	0	0
RSIA	0	0%	0	0	0	0	0	0
Training (Layoff)	0	0%	0	0	0	0	0	0
Vacation / PLD	3	20%	1	1	1	0	0	0
Asgn Rest Days	10	66%	3	0	1	0	6	0
Total Unavailable	15	100%	4	1	2	0	8	0
% Availability	42	-						
Booked Rest	0	0%	0	0	0	0	0	0
Effective % Avail	42	-						

***** End Of Report *****

***** End Of Report *****

CIQNAVHS ***** BNSF Crew Management ***** 02/04/22
 BNSF PUEBCO -TYE Availability - 14:28:57CT

Station : PUEBCO ** Summary history for 01/22/22 at Midnight **
 Total Employees : 65

Assigned Unavailable : 26
 Asgn Furlough : 12 Asgn Familiarization : 0
 Asgn Reserve : 0 Asgn Training : 0
 Asgn Work Retention : 0 Asgn Detached : 0
 Asgn Long Leave : 12
 Active Employee : 39

Occupation	TOTAL	%-UNV	ENG	CON	BRK	HOS	SWI	YDM
ACTIVE EMP by craft	39	-						
Unavailable								
Agreement	1	6%	0	0	0	0	1	0
Rest Agreements	0	0%	0	0	0	0	0	0
Attendance Guidelines	1	6%	0	1	0	0	0	0
Company	0	0%	0	0	0	0	0	0
FMLA	1	6%	1	0	0	0	0	0
Medical (Layoff)	0	0%	0	0	0	0	0	0
Miscellaneous	2	12%	0	0	2	0	0	0
RSIA	1	6%	0	1	0	0	0	0
Training (Layoff)	0	0%	0	0	0	0	0	0
Vacation / PLD	3	18%	1	1	0	0	1	0
Asgn Rest Days	7	43%	2	1	1	0	3	0
Total Unavailable	16	100%	4	4	3	0	5	0
% Availability	58	-						
Booked Rest	0	0%	0	0	0	0	0	0
Effective % Avail	58	-						

 ***** End Of Report *****
 ***** End Of Report *****

CIQNAVHS ***** BNSF Crew Management ***** 02/04/22
 BNSF SLATTX -TYE Availability - 14:28:19CT

Station : SLATTX ** Summary history for 01/22/22 at Midnight **
 Total Employees : 137

Assigned Unavailable : 42
 Asgn Furlough : 28
 Asgn Reserve : 0
 Asgn Work Retention : 0
 Active Employee : 95
 Asgn Familiarization : 2
 Asgn Training : 0
 Asgn Detached : 0
 Asgn Long Leave : 12

Occupation	TOTAL	%-UNV	ENG	CON	BRK	HOS	SWI	YDM
ACTIVE EMP by craft	95	-						
Unavailable								
Agreement	3	8%	0	2	0	0	1	0
Rest Agreements	0	0%	0	0	0	0	0	0
Attendance Guidelines	7	19%	4	2	0	0	1	0
Company	0	0%	0	0	0	0	0	0
FMLA	0	0%	0	0	0	0	0	0
Medical (Layoff)	0	0%	0	0	0	0	0	0
Miscellaneous	0	0%	0	0	0	0	0	0
RSIA	5	13%	3	2	0	0	0	0
Training (Layoff)	0	0%	0	0	0	0	0	0
Vacation / PLD	7	19%	5	1	0	0	1	0
Asgn Rest Days	14	38%	1	1	2	0	10	0
Total Unavailable	36	100%	13	8	2	0	13	0
% Availability	62							
Booked Rest	2	5%	0	2	0	0	0	0
Effective % Avail	60							

***** End Of Report *****

***** End Of Report *****

CIQNAVHS ***** BNSF Crew Management ***** 02/04/22
 BNSF GRAJUP -TYE Availability - 14:27:49CT

Station : GRAJUP ** Summary history for 01/22/22 at Midnight **
 Total Employees : 52

Assigned Unavailable : 18
 Asgn Furlough : 11 Asgn Familiarization : 0
 Asgn Reserve : 0 Asgn Training : 0
 Asgn Work Retention : 0 Asgn Detached : 0
 Asgn Long Leave : 7
 Active Employee : 34

Occupation	TOTAL	%-UNV	ENG	CON	BRK	HOS	SWI	YDM
ACTIVE EMP by craft	34	-						
Unavailable								
Agreement	1	11%	0	0	1	0	0	0
Rest Agreements	0	0%	0	0	0	0	0	0
Attendance Guidelines	1	11%	0	1	0	0	0	0
Company	0	0%	0	0	0	0	0	0
FMLA	0	0%	0	0	0	0	0	0
Medical (Layoff)	0	0%	0	0	0	0	0	0
Miscellaneous	0	0%	0	0	0	0	0	0
RSIA	0	0%	0	0	0	0	0	0
Training (Layoff)	0	0%	0	0	0	0	0	0
Vacation / PLD	5	55%	3	2	0	0	0	0
Asgn Rest Days	2	22%	1	1	0	0	0	0
Total Unavailable	9	100%	4	4	1	0	0	0
% Availability	73	-						
Booked Rest	0	0%	0	0	0	0	0	0
Effective % Avail	73	-						

***** End Of Report *****

***** End Of Report *****

CIQNAVHS ***** BNSF Crew Management ***** 02/04/22
BNSF ALBUQU -TYE Availability - 14:26:46CT

Station : ALBUQU ** Summary history for 01/22/22 at Midnight **
Total Employees : 37

Assigned Unavailable : 6
Asgn Furlough : 1 Asgn Familiarization : 0
Asgn Reserve : 0 Asgn Training : 0
Asgn Work Retention : 0 Asgn Detached : 0
Asgn Long Leave : 5
Active Employee : 31

Occupation	TOTAL	%-UNV	ENG	CON	BRK	HOS	SWI	YDM
ACTIVE EMP by craft	31	-						
Unavailable								
Agreement	0	0%	0	0	0	0	0	0
Rest Agreements	0	0%	0	0	0	0	0	0
Attendance Guidelines	0	0%	0	0	0	0	0	0
Company	0	0%	0	0	0	0	0	0
FMLA	0	0%	0	0	0	0	0	0
Medical (Layoff)	0	0%	0	0	0	0	0	0
Miscellaneous	0	0%	0	0	0	0	0	0
RSIA	0	0%	0	0	0	0	0	0
Training (Layoff)	0	0%	0	0	0	0	0	0
Vacation / PLD	1	4%	0	0	0	0	1	0
Asgn Rest Days	20	95%	7	0	0	0	13	0
Total Unavailable	21	100%	7	0	0	0	14	0
% Availability	32	-						
Booked Rest	0	0%	0	0	0	0	0	0
Effective % Avail	32	-						

***** End Of Report *****
***** End Of Report *****

It is estimated that an average of 14 burden hours per response are required to complete this collection of information. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Comments concerning the accuracy of this burden estimate or suggestions for reducing this burden should be directed to both the Interstate Commerce Commission, Information Resource Management Unit, ATTN: FORMS - Room 4136, Washington, DC 20423, and to the Office of Management and Budget, Office of Information and Regulatory Affairs. (OMB No. 3120-0133), Washington, DC 20503.

INTERSTATE COMMERCE COMMISSION OFFICE OF ECONOMICS / SECTION OF AUDIT & ACCOUNTING Washington, DC 20423		ICC FORM C APPROVED BY OMB (NO. 3120-0133) EXPIRES 6/30/96
MONTHLY REPORT OF NUMBER OF EMPLOYEES OF CLASS I RAILROADS		REPORT FOR THE MONTH OF <div style="background-color: #e0ffff; padding: 2px;">January</div> 2015
NAME OF CARRIER BNSF Railway		
INSTRUCTIONS Mail completed for to the Interstate Commerce Commission, Office of Economics / Section of Audit & Accounting, Washington, DC 20423, on or before the last day of the month to which the count relates.		
Group No.	Reporting Description	Number of employees mid-month (a)
100	Executives, Officials and Staff Assistants	1,832
200	Executives, Officials and Staff Assistants	4,306
300	Maintenance of Way and Structures	9,622
400	Maintenance of Equipment and Stores	8,364
500	Transportation (other than Train and Engine)	1,960
600	Transportation (Train & Engine)	21,157
700	* TOTAL	47,241
REMARKS 		
NAME & ADDRESS (Street, City State, Zip Code) OF REPORTING CARRIER <div style="text-align: center;"> BNSF Railway 2500 Lou Menk Drive Fort Worth, TX 76131-2830 </div>		TELEPHONE NO. (Area Code) <div style="text-align: center;">817-352-3475</div>
SIGNATURE <div style="text-align: center;">/s/ Beth Patrick</div>		DATE <div style="text-align: center;">2/7/2022</div>

Ex. L

<p align="center">SURFACE TRANSPORTATION BOARD <i>Office of Economics, Environmental Analysis, and Administration</i> Washington, DC 20423 MONTHLY REPORT OF NUMBER OF EMPLOYEES OF CLASS I RAILROADS</p>		<p>STB FORM C OMB Clearance No. 2140-0007 Expiration Date: 10-31-2021 REPORT FOR THE MONTH OF: December, 2021</p>
NAME OF CARRIER: BNSF Railway		
INSTRUCTIONS Mail completed form to the Surface Transportation Board , Office of Economics, Environmental Analysis, and Administration, 395 E Street, S.W., Suite 1100, Washington, DC 20423.		
Group No.	Reporting Description	Number of Employees Mid-Month
100	Executives, Officials, and Staff Assistants	1,264
200	Professional and Administrative	3,398
300	Maintenance of Way and Structures	7,565
400	Maintenance of Equipment and Stores	6,352
500	Transportation (Other than Train and Engine)	1,835
600	Transportation (Train and Engine)	14,637
700	TOTAL	35,051
REMARKS:		
NAME & ADDRESS OF REPORTING CARRIER (Street, City, State, Zip Code) BNSF Railway 2301 Lou Menk Drive Fort Worth, TX 76131-2830		TELEPHONE NO. 817-352-4869
SIGNATURE /s/ Ashley Hansen		DATE 01/12/2022

Ex. M

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

BNSF RAILWAY COMPANY,

Plaintiff,

v.

INTERNATIONAL ASSOCIATION OF
SHEET METAL, AIR, RAIL AND
TRANSPORTATION WORKERS –
TRANSPORTATION DIVISION,

Defendant.

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Civil Action No. 4:22-cv-0052-P

DECLARATION OF LARRY R. MILLER JR.

I, Larry R. Miller Jr., pursuant to 28 U.S.C. § 1746, declare that the following facts are true and correct:

1. I am the General Chairperson (“GC”) of the Transportation Division of the International Association of Sheet Metal, Air, Rail and Transportation Workers (“SMART-TD”) General Committee of Adjustment (“GCA”) GO-386. I have served as a full-time employee of GO-386 as General Chairperson (“GC”) since October 17, 2015. Prior to being GC, I served as Assistant Chairperson of GCA GO-386 from February 8, 2011, until October 16, 2015. I understand this Declaration is being offered in support of SMART-TD’s Memorandum in Opposition to Burlington Northern Santa Fe Railroad Company’s (“the Carrier” or “BNSF”) Motion for Preliminary Injunction. This Declaration is based on personal knowledge, and I am competent to testify to the matter set forth herein.

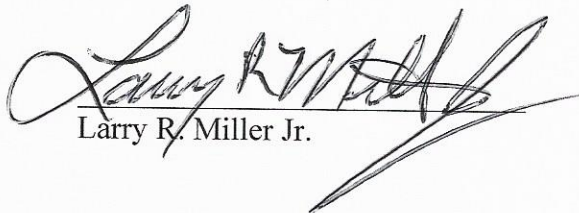
2. Despite these topics being included and discussed at the bargaining table, BNSF issued its Hi Viz policy effective February 1, 2022. This new Hi Viz policy demands an employee be available to work fourteen days straight to earn four points back. In preparation for the Union's Motion, I solicited input from members to the real-world impact of how BNSF's Hi Viz policy affects them. I received an overwhelming response highlighting the devastating impact of this policy. This design is impossible to achieve with even minimal life events, including, but not limited to, doctor and veterinarian appointments, caring for sick children or those on remote learning, attending child's soccer game, and visiting with family; let alone the catastrophic situations described by my membership. One such account was a heartbreaking story of a member who exhausted all his FMLA, vacation, and personal leave days during his wife's ten-month battle against brain cancer. If this Hi Viz policy had been in effect while his wife was sick, he would have lost his job while his wife was fighting for her life. Tragically, his wife died. In addition to losing his job and his wife, he would have also lost his home due to lack of income. After his wife's death, the member attempted to go to much needed counseling. However, because he spent much of last year caring for his wife, he does not yet have enough "hours worked" to qualify for FMLA. To make an incredibly difficult situation even worse, his daughter is now battling thyroid cancer, and because of the Hi Viz policy, he is unable to assist her.

3. I have read the declaration of BNSF's Assistant Vice President Labor Relations Salvatore Macedonio, and find it to contain inaccuracies, misleading statements, and omissions. For example, in Paragraph 9 of his Declaration, he neglects to mention that train service employees working under SMART-TD agreements earn vacation and personal leave days based on their years of service, *i.e.* it takes 25 years of service to earn the maximum five weeks of

vacation, and twenty years of service to earn the maximum ten personal leave days. In addition, not all locations have the "Foot of Board" that he mentions in paragraph 25, where an employee can remain available and go to the bottom of the board. In Paragraph 10, he fails to take hours worked per trip into account. For example, an employee who works a long pool of 200 miles would usually work 10-12 hours one way, rest for a minimum of 8 hours, and then work 10-12 hours home. In paragraph 18, he omits mention of the Conjunction penalty when an employee lays off the day preceding or the day following a union business or FMLA leave day.

I declare under penalty of perjury that the following is true and correct to the best of my knowledge.

Executed this 7th day of February, 2022.


Larry R. Miller Jr.