

MEMORANDUM OF SETTLEMENT
WITH RESPECT TO THE
COLLECTIVE AGREEMENT

between

Canadian Pacific

and the

Teamsters Canada Rail Conference

on behalf of
Locomotive Engineers and Trainmen

Employed on the

KOOTENAY VALLEY RAILWAY

***“Innovative Customer Rail Service
Through an Involved Workplace”***

Effective January 1st, 2008

Canadian Pacific and the Teamsters Canada Rail Conference have a joint Employee and Family Assistance Program (EFAP) in place to offer employees and their families a wide variety of assistance. Employees, or their family members, may seek information about services offered by contacting an EFAP Referral Agent, a list of whom are contained in the current timetable.

Kootenay Valley Railway Agreement

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PREAMBLE

This agreement is the result of a cooperative restructuring of the labour/management relationship at Canadian Pacific .

CPR, the Teamsters Canada Rail Conference and employees covered by this Collective Agreement recognize the necessity of developing a problem solving relationship between management, employees and their unions, to address their responsibility to innovatively meet the immediate and long term needs of Shortline Stakeholders with an emphasis on improving productivity and customer service, enhancing the quality of work life, and securing the employment relationship.

This agreement applies to the Kootenay Valley Railway (KVR) which encompasses all train operations on the Nelson, Boundary and Rossland Subdivisions from McConnel, West.

The KVR work team is encouraged to make operational changes, which are not inconsistent with the provisions of this agreement. This agreement is supplemental to the core agreement(s) between the TCRC and the Company on behalf of running trades employees working on Canadian Pacific .

DEFINITIONS

- Advisory Board - The KVR Advisory Board is to be chaired by the Assistant Vice President Operations and is to consist of equal numbers of CPR representatives and Senior Union Officers (General Chairs) with not more than two members from the TCRC (engineers/trainmen) and one from each other participating union. The Shortline Advisory Board is to meet a minimum of once per year but is encouraged to meet more frequently if required.
- Work Team - A self-directed work team consisting of the local Manager, an on-property representative as designated by each union, and the regularly assigned employees. Functions of the work team will include preparing and managing budgets, setting production/team goals, working with customers & suppliers, selecting work methods, implementing process improvements, performing routine equipment maintenance, handling administrative duties, etc.
- Manager - Charged with responsibility to facilitate and oversee operation in the context of empowered employees and the team concept of management.
- Trainman - As used in this agreement is understood to include conductor and brakeman.
- Core Agreements - The term core agreements, when used within this document, will refer to the collective agreement(s) that cover the preponderance of CPR employees on the Canadian railway system.
- KVR Utility Employee - The qualifications requirements, role and responsibilities associated with this position are carried in Appendix "B". Selection of successful applicants for this position will be performed by the KVR Work Team or a union/management sub group thereof.
- Auxiliary List - Those employees wishing to cover ad-hoc and temporary vacancies on the KVR.

ARTICLE 1: ADVISORY BOARD & TEAM PROFILE

1.1 An Advisory Board consisting of an equal number of representatives from CPR and representative unions, with not more than two representatives from the TCRC and one from each other participating union will be formed for the purpose of facilitating interaction between the core railway, the KVR and the representative unions. Responsibilities will include, but are not limited to:

- a) Review requests for capital expenditures, significant changes in operating procedures, and business plan proposals that emanate from the KVR. Make recommendations to the Assistant Vice President Operations with respect to approval/implementation.
- b) The Advisory Board will also serve as a step in the resolution of conflicts and disputes, grievances and general problem solving.
- c) The Advisory Board will establish and sponsor Project Teams as determined necessary to ensure the safe, efficient and effective operation of the KVR.
- d) The Advisory Board will serve principally in an advisory and monitoring role, and will have particular concern for long-range goals and the health of the KVR.

1.2 Team Profile

- 21.1 The KVR is to be managed in manner that will foster a highly involved, flexible and safe workplace with full employee participation in the operation by way of empowering well-trained on-site work teams. An on-site Manager will have a specific role and perform many tasks including acting as a facilitator to assist employees to function as a team when problem solving and making reasonable business based day-to-day decisions.
- 21.2 Partnership and the team concept will be a critical element in the management of the Internal Shortline. The Unions are intended to be a full partner in the KVR. Work Teams will be expected to participate in the day-to-day management and to provide input on strategic management issues such as the structuring of assignments and customer service, the acquisition of new equipment, the implementation of marketing initiatives, and the identification of technological and other advancements, which will enhance operation of the KVR.
- 21.3 KVR Work Teams will hold regular meetings at least once a month or more frequently as they decide. The parties agree that the consensus process, as outlined below, is the primary method for making decisions and resolving disagreements on the KVR.
- a) Resolution is achieved through the joint efforts of the KVR employees in discovering the "best" solution, in the context of the philosophy and mission of the KVR while at the same time, satisfying the stakes and equities of all major stakeholders.
 - b) The solution must provide a high level of acceptance by all parties.
 - c) Once agreement is reached, KVR employees must be totally committed to the solution.
 - d) During the meeting when an issue is resolved, any KVR team member(s) may request a postponement in its implementation, to enable a re-examination of the potential decision. Not later than 14 days following such request, the KVR employee(s) doing so, must present a viable alternative to the team's decision, based on the principles set out herein.
 - e) In the event an alternative solution is not reached as outlined herein, the KVR employee(s) requesting a postponement must re-evaluate their position in the context of the philosophy and mission of the KVR.
 - f) Voting or trading is not part of this process.
 - g) In the application of Item (d), postponements for a re- examination of a decision reached by the team will not be allowed in circumstances where, in the opinion of the team and/or KVR Manager, customer service or operations may be jeopardized or such delay will negate the implementation of the decision. In this

event the KVR employee(s) may request a re-examination of the decision and must, at a subsequent meeting of KVR employees, present a viable alternative based on the principles set out in Item (a) herein.

- 1.3 A formal ongoing monitoring program will be developed in a cooperative fashion by the team and the Advisory Board to monitor the health and progress of the KVR. This will include, but not be limited to: employee/customer surveys, economic analyses, review of the incentive share program, team development and interaction, Manager/team relationship, evaluation of team training programs and interaction between the core railway and the KVR (performance contract). In every event the results of any monitoring will be reviewed and evaluated by all the stakeholders.

ARTICLE 2: ANNUAL VACATION

- 2.1 The KVR work team will meet each December and determine the A/V schedule ensuring all operational requirements are met.
- 2.2 Provided an employee renders compensated working service in any calendar year, time off duty account bona fide illness, injury, authorized pregnancy leave, to attend committee meetings, called to court as a witness or for uncompensated jury duty, not exceeding a total of 100 days in any calendar year, shall be included in the computation of service that year for vacation purposes.
- 2.3 An employee who, while on annual vacation, becomes ill or is injured, shall have the right to terminate (temporarily) their vacation and be placed on weekly indemnity. An employee who is again fit for duty shall immediately so inform the KVR Manager and will continue their vacation, if within the scheduled dates. If the remaining vacation falls outside the employee's scheduled dates, such vacation will be rescheduled as may be mutually agreed between the KVR Manager and the authorized Local Union Representative.
- 2.4 An employee who, due to sickness or injury, is unable to take or complete their annual vacation in that year shall, at the option of that employee, have the right to have such vacation carried to the following year.
- 2.5 Annual vacation payment for permanent KVR employees will be based on the following:

Annual Vacation Compensation Rate Chart

MAXIMUM A/V ENTITLEMENT	COMPENSATION RATE
2 weeks	4% of gross wages of the employee during the preceding calendar year
3 weeks	6% of gross wages of the employee during the preceding calendar year
4 weeks	8% of gross wages of the employee during the preceding calendar year
5 weeks	10% of gross wages of the employee during the preceding calendar year
6 weeks	12% of gross wages of the employee during the preceding calendar year

- 2.6 Annual vacation must be scheduled to be completed by December 31st of the year entitled thereto. Carry over caused by illness or injury will be rescheduled to the following year.
- 2.7 In computing Cumulative Compensated Service (CCS) for purposes of this article, time worked in any position on the KVR or core railway covered by similar vacation rules will be accumulated for the purpose of vacation with pay.
- 2.8 An employee who has completed more than 30 days and is retired, leaves the service of their own accord, is dismissed for cause, or whose services are dispensed with, shall be paid for any vacation due them up to the date of termination of service. Vacation allowance for services rendered in the year service is terminated will be calculated on the basis of time worked and/or available for duty in that year.
- 2.9 An individual who leaves the service of their own accord, or who is dismissed for cause and not reinstated in their former standing within two years of date of such dismissal will, if subsequently returned to the service, be required to qualify again for vacation with pay as a new employee.
- 2.10 An employee suspended or who was dismissed but reinstated within two years, and who is not available for service during this period, shall have the time out of service deducted in computing service for vacation with pay purposes.
- 2.11 In the event of death of an employee, vacation pay to which they are entitled up to the time of their death will be paid to the estate of the deceased.
- 2.12 Annual vacation entitlement will be determined using the following table:

Annual Vacation Entitlement Chart

Years Continuous Service January 1, Current Year	Required Months of Compensated Service	Maximum Entitlement	Ratio-Vacation Days to Days Worked and/or available for Service or Major Portion Thereof Previous Year
(a) less than 3	N/A	2 weeks	1 for each 26
(b) 3	30	3 weeks	1 for each 17
(c) 10	100	4 weeks	1 for each 13
(d) 18	180	5 weeks	1 for each 10.5
(e) 28	280	6 weeks	1 for each 8.5

ARTICLE 3: PENSION AND BENEFITS

- 3.1 KVR employees will be provided the same pension and benefit plans as those employees governed by the CP collective agreement. These changes will take effect the first day of the month following ratification.
- 3.2 Also effective the first day of the month following ratification KVR employees will establish a co-pay provision consistent with that included in the CP collective agreement.
- 3.3 All incentive program earnings referred to in this agreement are to be included in their pensionable earnings. These earnings will be subject to employee pension contributions. For the purpose of calculating an individual's pension, these earnings will be included in the calculation of the individual's highest plan earnings to be applied in determining benefit levels in respect of all post January 1st, 2002 pensionable service.

ARTICLE 4: BEREAVEMENT LEAVE

- 4.1 Upon the death of an employee's spouse, child, step child or parent, an employee who has not less than 3 months' cumulative compensated service shall be entitled to 5 consecutive calendar days' bereavement leave with payment of lost earnings. Upon the death of an employee's father-in-law, mother-in-law, brother, sister, step-brother, step-sister, step-parent or grandparents, an employee who has not less than 3 months' cumulative compensated service shall be entitled to 3 consecutive calendar days' bereavement leave with payment of lost earnings. In the application of this Article, an employee's spouse is defined as the person who is legally married to the employee and who is residing with or supported by the employee, provided that if there is no legally married spouse that is eligible, it means the person that qualifies as a spouse under the definition of that word in Section 2(1) of the Canadian Human Rights Benefit Regulations, so long as such person is residing with the employee.

ARTICLE 5: COMPENSATION

- 5.1 Employees governed by this Collective Agreement will be subject to a flat rate method of pay.
- 5.2 General wage increases for 2008 through 2011 will be consistent with those negotiated in the core collective agreements. In addition, the rates will be increased by \$0.50 per hour on the first day of the month following ratification.
- 5.3 The scheduling of assignments will be self-managed by the KVR work team.
- 5.4 In the event that a sustained adjustment of workload takes place, reclassification and/or changes to the assignment will be jointly determined by the work team and KVR Manager. Adjustments will be based on the hourly rate for the position in question.
- 5.5 Regular assigned KVR employees will be credited each January 1st with six (6) cancellation credits. These credits may be used at any time throughout the year when an assignment is cancelled for any reason and when used will be paid at the rate of class of service to which assigned. For the purposes of dealing with cancellation credits as described in this Article, a year will be considered to be a calendar year.
- Employees assuming a permanent vacancy on the KVR after January 1st of each year will receive cancellation credits on a prorated basis of $\frac{1}{2}$ credit for each calendar month left in the year rounded to the next highest number. Unused cancellation credits at the end of the year are not carried over to the next year and cannot be cashed in.
- Employees attending KVR Team Meetings will be provided with $\frac{1}{2}$ credit for each meeting attended, to a maximum of 6 additional credits per year.
- Employees who work shifts or tours of duty in addition to their regular assignment may, at their option, be paid for such shift or tour at the rate of pay applicable, or earn a bankable credit. One bankable credit is earned for each additional shift or tour worked. Bankable credits may be used to supplement Cancellation credits if all Cancellation credits have been exhausted or held for payment in December of each year.
- Bankable credits must be cashed in, in the Month of December of each year, and will be paid out at the rate of class of service in which such credits were earned.
- Cancellation credits cannot be applied if assignment is cancelled for a general holiday.
- 5.6 Spare trainmen will be paid at the flat rate applicable to the position for which they are required. A regular assigned spare trainmen who does not layoff of his own accord will be paid a monthly guarantee as per the table below. This guarantee will be reduced each time an employee is not available for duty by the corresponding amount found in the table. A spare trainman who is subject to more than three reductions in a month will not be entitled to any guarantee for such month.

Spare Board Monthly Guarantee Chart

- 5.7 100% Rate Table: Prorating to an hourly rate is provided for the purpose of payment under Article 19.

KVR Rates of Pay

Please refer to Appendix "C".

- 5.8 Ad hoc work trains will be crewed in accordance with Article 6.3, except in the case where a regularly scheduled crew is not required for a regular assigned through freight. In such case the regular assigned crew will crew the work train.

Note: Work trains will be paid a straight time unless on a general holiday. See Article 8.

Work Train Service En Route

Hourly KVR work train rates are to be paid in addition to flat rates if the regularly assigned crews perform OCS work added to their regular duties en route with the exception of simple lifts or set offs on line which comprise less than an aggregate of 1 hour's work.

- 5.9 Starting rates for new employees will be 85% of the job rate, progressing 5% following each 7 months of cumulative compensated service (CCS) with full rate attained after 21 months of CCS. Service with the core railway will count as CCS for purposes of this provision.
- 5.10 Employees working under this agreement will be subject to an incentive program, which will be determined by the performance of the KVR. An incentive fund representing 10% of the annual average TCRC earnings of employees working on the KVR will be dispersed to its employees. Effective January 1st, 2002, annual targets for the KVR incentive program will be jointly established by the KVR Advisory Board as outlined in Appendix "A" attached to this agreement. Areas of performance tied to this program will include:
- a) Operating Ratio
 - b) Safety
 - c) Earnings before interest, taxes, depreciation, and amortization (EBITDA)

Note: Payouts will be made on an annual or semi-annual basis.

ARTICLE 6: FILLING OF VACANCIES

Ad-Hoc Vacancies

- 6.1 Ad-hoc vacancies for the purpose of this Article will be vacancies of less than the assigned workweek or, in the case of assigned pool service, of seven days or less.
- 6.2 A KVR employee from outside the TCRC may elect to be trained as Brakeman/Conductor. Selection criteria for this purpose will be based on aptitude, personal availability and service with the company. When so

qualified and personally available, such employees may elect to fill ad-hoc vacancies as a KVR Brakeman/Conductor. Such employees will not accumulate nor establish seniority as a Trainman.

6.3 Ad-hoc running trades vacancies and extra work will be filled using the following steps:

- a) The first out available spare employee on the KVR spare board; if none
- b) From available, permanently assigned KVR Running Trades employees based on craft, seniority, qualifications and personal availability. When used in a lower rated position an employee's normal position (Locomotive Engineer, Conductor or Brakeman) will determine the rate for the vacancy or extra work performed. When used in a higher rated position an employee will be paid the rate of the position filled; if none,
- c) A KVR Locomotive Engineer will be given an opportunity to work as a Trainman subject to seniority and personal availability and providing that doing so does not create a shortage of locomotive engineers. When used in a lower rated position the employee's normal position (Locomotive Engineer) will determine the rate for the vacancy or extra work performed; if none,
- d) Subject to personal availability, a KVR Utility Employee may work in any position for which qualified provided that doing so does not create a shortage of KVR Utility Employees. When used in a lower rated position the employee's normal position (KVR Utility Employee) will determine rate for the vacancy or extra work performed; if none,
- e) A qualified KVR employee laid-off; if none,
- f) The senior available employee on the KVR Auxiliary list; if none,
- g) Subject to personal availability, a KVR employee from outside the TCRC bargaining unit, who is qualified as a Trainman. When so used such employees will be paid at the rate applicable to the position filled; if none,
- h) Subject to personal availability, the KVR Manager may work in any position for which qualified.
- i) This calling protocol can be modified by the KVR Work Team.

6.4 KVR ad-hoc vacancies in other than running trades service may be filled by a KVR running trades employee who is personally available, qualified and elects to take such work. The filling of such vacancies should not result in a shortage of running trades employees.

Temporary Vacancy:

6.5 For the purposes of this Agreement a temporary vacancy is defined as a vacancy of one workweek or more, which does not meet the definition of a permanent vacancy.

- a) A temporary vacancy will first be posted for KVR employees, including any KVR employees on lay-off, and awarded to the senior qualified employee applying therefore. If no bids received:
- b) The vacancy will be awarded to the senior laid-off employee; if none,
- c) The vacancy will be awarded to the senior employee on the KVR Auxiliary list desiring same; if none,
- d) The vacancy will be awarded to the junior employee on the KVR Auxiliary list.

Permanent Vacancy:

6.6 A permanent vacancy occurring between general changes of assignments is defined as a vacancy resulting from an employee leaving the service of the Company, the creation of a new assignment, an employee taking an official position with the Company or the Union or an employee leaving the KVR.

- a) A permanent vacancy will be advertised to employees on the master seniority district and awarded to the senior qualified employee applying; if none,

- b) The vacancy will be awarded to the junior employee working at Cranbrook who has been a successful applicant to the auxiliary list and is currently on that auxiliary list, who will be required to remain on the KVR until they are no longer the junior auxiliary list employee.

ARTICLE 7: FINAL SETTLEMENT OF DISPUTES

- 7.1 All differences between the parties to this Agreement concerning its' meaning or violation which cannot be mutually adjusted shall be submitted to the Canadian Railway Office of Arbitration and Dispute Resolution for final settlement without stoppage of work.

ARTICLE 8: GENERAL HOLIDAYS

- 8.1 An employee who is assigned to a KVR position under the provisions of this article will be entitled to such provisions on the following general holidays: New Year's Day, the day after that on which New Year's Day is observed (except when New Year's falls on a Friday, this General Holiday will be observed on the following Monday), Good Friday, Victoria Day, Canada Day, First Monday in August, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day, Boxing Day.
- 8.2 General Holiday payment will be an amount equal to the previous tour of duty.
- 8.3 An employee who is required to work on a general holiday will be paid for such time at one and one-half times the basic hourly rate.
- 8.4 If the general holiday falls on a rest day, the employee may, if not required, have the option of taking the day off immediately before or after his rest days.
- 8.5 If the general holiday falls during annual vacation or on a scheduled day of work the employee may elect one of the following options:
 - a) Payment in lieu of time off.
 - b) Employees may bank a maximum of five general holidays, which must be taken during the year they are entitled thereto. Time off shall be granted subject to manpower requirements.
 - c) Take a day off in lieu thereof following the date that the holiday is celebrated.
- 8.6 Tours of duty commencing between 2400 and 2359 inclusive on a general holiday specified herein shall be considered as work on that holiday.

NOTE: No employees shall as a consequence of transferring between the core railway and KVR be entitled, if qualified, to less or more than a total of 11 general holidays in any year.

ARTICLE 9: HELD OFF ON COMPANY BUSINESS

- 9.1 Employees held off on Company business, or to appear as witnesses in Court for the Company, or before a Coroner's Inquest in a case in which the Company is concerned, will be paid lost wages including reasonable expenses and mileage.
- 9.2 Court witness fees and mileage will be assigned to the Company in cases in which pay is allowed by the Court.

ARTICLE 10: INJURY/ILLNESS

- 10.1 Employees suffering from a bona fide injury or illness will report their prognosis for recovery to the KVR Manager.
- 10.2 Work related injuries and illnesses must be reported to the KVR Manager on the prescribed form.
- 10.3 Lost wages due to a bona fide injury or illness shall be paid to a maximum of three working days if the position is not filled or relief is provided from within the KVR at no additional cost. In the event the employee is otherwise compensated for such time lost, wage payments shall be repaid.
- 10.4 Cancellation and/or bankable credits accumulated under Article 5.5 may be used to offset the WIB three day waiting period, when applicable.

ARTICLE 11: JURY DUTY

- 11.1 An employee summoned for jury duty and who is required to lose time from their assignment as a result thereof shall be paid for actual time lost less the amount allowed him for jury duty for each day on which actual time lost is paid by the Company, excluding allowances paid by the court for meals, lodging or transportation subject to the following requirements and limitations:
 - a) An employee must exercise any right to secure exemption from the summons and/or jury service under Federal, Provincial or Municipal statute and will be excused from duty when necessary without loss of pay to apply for exemption.
 - b) An employee must furnish the Company with a statement from the court of jury allowances paid and the days on which jury duty was performed.
 - c) The number of working days for which jury duty pay shall be paid is limited to a maximum of 60 days in any calendar year.
 - d) Nor jury duty pay will be allowed for any day for which the employee is entitled to vacation or General Holiday pay. An employee who has been allotted vacation dates will not be required to change those dates because of jury duty.
 - e) Notwithstanding the provisions contained in last sentence of Paragraph (d) above, an employee's annual vacation will, if the employee so requests, be rescheduled if it falls during a period of jury duty.
 - f) For the purpose of qualifying for General Holiday pay, a day served on jury duty in respect of which compensation is paid by the Company shall be deemed to be a tour of duty. In the event a day served on jury duty was the last day preceding the General Holiday and for which an employee received compensation by the Company the General Holiday pay shall be an amount equal to the compensation paid for jury duty on that day.

ARTICLE 12: LEAVE OF ABSENCE

- 12.1 If employees require time off they must obtain a leave of absence from the KVR Manager. When requesting such leave of absence, it must be for a specific period, such as one shift or a specified number of days. Reasonable requests of this kind will be granted, conditional upon sufficient personnel being available to meet operating requirements.
- 12.2 Employees may, at their discretion, make arrangements among themselves to offset the need to request leave of absence. Such arrangements must be communicated to the KVR Manager to ensure that service and operational requirements are met.
- 12.3 Employees who are required for Union business will be granted leave of absence when required for such work when the necessities of the service will allow. Notice must be given to the KVR Manager and work team in sufficient time to provide relief. Should a dispute arise with respect to securing time off for union work, it will be advanced to the Advisory Board.

ARTICLE 13: MATERIAL CHANGE

- 13.1 When the Internal Short line work team desires to implement changes that have the potential to impact the core railway and which would typically result in negotiations pursuant to the Material Change provisions in the Core Agreements, the KVR Manager will progress these matters to the Assistant Vice President, Operations and the appropriate General Chair(s) for handling under the Material Change Articles of the Core Agreements.
- 13.2 Sale, abandonment or restructuring of the KVR by the core railway which would typically result in the application of the material change rule shall be negotiated pursuant to the material change provision(s) of the Core Agreement(s). The cost of such changes shall be borne by the core railway.

ARTICLE 14: PERFORMANCE MANAGEMENT

The KVR approach to improving performance will place emphasis on problem identification, prevention and resolution by using communication and problem solving techniques designed to educate and increase the skills of all employees of the KVR.

It is recognized that each employee is responsible for their job related conduct and performance. It is also recognized that the work team is best suited to identify and correct performance, which may be counter-productive to the operation of the KVR.

Work performance can be impacted by many operational, resource or individual problems. The first and most important stage in improving performance is to identify not only the problem, but also the factors that are impacting the problem. Problems related to individual performance are dealt with through Positive Action.

Problem Identification

- 14.1 The first stage in performance management is to identify problems and factors that may be impacting performance. Problem identification is a shared responsibility of all KVR employees. If a work team is unable to arrive at identification of the problem and such problem is identified by the KVR Manager, it will refer same to the work team for resolution. It is not expected that the Manager will direct individual performance problems to the work team.

Problem Resolution (Operational/Team Performance)

- 14.2 Resolution is best achieved within the work team. If the work team requests assistance, the Manager and/or local union representative(s) will serve as a link to outside parties to secure the required assistance/resources.

- 14.3 If a resolution is not achieved using the process outlined in 14.2, the Manager, and/or local union representative may advance the issue to the Advisory Board.

ARTICLE 15: PERFORMANCE CONTRACT

- 15.1 The core railway and the KVR will enter into a Performance Contract wherein the terms and conditions of issues like; car and locomotive availability, interchange times and locations, the provision of wrecking equipment, employees on Company business, relief, etc. shall be specified. The parties shall not unilaterally change any of the terms and conditions agreed upon.
- 15.2 The Performance Contract will include key performance indicators which if not met will result in penalties being assessed to either party.
- 15.3 Initiatives advanced by the core railway/KVR which have an adverse effect on the performance and viability of the core railway/KVR will result in the review/renegotiation of the core railway/KVR Performance Contract. In the event of a dispute between these two parties, the matter will be resolved by the core railway/KVR Advisory Board. If a resolution is not achieved, the issue will be advanced to third party arbitration as mutually agreed between the parties.

ARTICLE 16: POSITIVE ACTION & DISCIPLINE

The KVR approach to individual problems is that discipline should be a last resort. This approach emphasizes positive action directed at education.

- 16.1 Positive Action is not to be undertaken with the intent to punish, but rather to enable employees to learn from their mistakes and improve performance without diminishing the employees' self-esteem.
- 16.2 Positive Action will be handled fairly and consistently. It will be non-discriminatory, reasonable, and appropriate to the specific situation. Positive Action steps do not constitute discipline under the core agreements and shall not be relied on in the event of formal disciplinary action. Positive action will consist of informal and formal counselling.
- Informal Counselling
- 16.3 The Manager will counsel the employee privately on an informal basis. The purpose of informal counselling is to make the employee aware that the performance or behaviour is not meeting generally accepted standards and to ensure that the employee understands how to properly perform the task, and knows what is expected of him/her.
- 16.4 In most situations, a face-to-face discussion between the Manager and the employee will successfully correct unacceptable behaviour or performance. The Manager has the responsibility to properly coach and develop the employee, thereby ensuring the employee understands what is expected of them and knows how to perform their duties satisfactorily. The employee is responsible for making improvement required by changing any unsatisfactory behaviour.
- 16.5 There will be no documentation of informal counselling placed on an employees personal file.

Formal Counselling

- 16.6 If informal counselling does not correct the situation or has been tried previously, the Manager may formally counsel the employee on the performance or behaviour issues. The purpose of this counselling is to thoroughly discuss the nature of the problem and to identify specific steps to be taken by the employee to

correct the situation. Formal counselling will include a written Positive Action Plan (PAP) jointly developed by the supervisor and the employee.

Positive Action Plans (PAP)

- 16.7A PAP is a written understanding between Manager and employee of what is required to achieve and maintain acceptable behaviour and job performance. It will include a description of the area of performance or behaviour requiring improvement, specific steps the employee must take to correct the situation and the date of the discussion. The employee may request to have a union representative present while the positive action plan is being developed.
- 16.8 In the event of a dispute between Manager and employee with respect to the terms and conditions of the PAP, a union representative of the employee's choice will be requested to participate.
- 16.9 The formal discipline process may commence immediately if the employee elects not to participate in PAP.
- 16.10 The PAP will include a clear explanation of the consequences of failure to correct the behaviour or performance problem.
- 16.11 The Manager and the employee will sign the written plan. The plan will be entered into the employee's personnel file. An employee's performance is subject to continual review. The employee will receive a copy of the PAP for reference.
- 16.12 The time frame for behaviour or performance to be corrected is also stated in the PAP. The level of improvement achieved will be confirmed at the time of the follow-up Manager/employee discussion. Established standards covered in the PAP, unless subsequently changed by the KVR, and performance criteria as specified in the PAP will be in effect until changed. Failure to meet this required performance standard may result in activation of the formal discipline process.
- 16.13 An employee who has been covered by a PAP and who continues to have performance or behaviour problems will be placed in the formal discipline process.

Formal Discipline

- 16.14 When an investigation is to be held, each employee whose presence is desired will be notified as to the time, place and subject matter. Reasonable delay or postponement of an investigation will be allowed if an employee requests that a particular representative be present who, at a given time, may not be available. Requests for such postponement should be made in advance of the scheduled time for the investigation.
- 16.15 When technical documents are going to be used as evidence at an investigation the employee will be advised in advance to enable the selection of a representative who is qualified to deal with such evidence.
- 16.16 An employee, if he so desires, may have an accredited representative of the Union assist him. The employee will sign his statement and be given a copy of it.
- 16.17 If the employee is involved with responsibility in a disciplinary offence, they shall be accorded the right for themselves and/or an accredited representative of the Union to be present during the examination of any witness whose evidence may have a bearing on the employee's responsibility, to offer rebuttal thereto and to receive a copy of the statement of such witness.
- 16.18 An employee will not be disciplined or dismissed until after a fair and impartial investigation has been held and until the employee's responsibility is established by assessing the evidence produced and no employee will be required to assume this responsibility in his statement(s). The employee shall be advised in writing of the decision within 20 days of the date the investigation is completed, i.e., the date the last statement in connection with the investigation is taken except as otherwise mutually agreed.
- 16.19 An employee is not to be held off unnecessarily in connection with an investigation, however, it is acceptable to hold an employee off duty for an investigation in circumstances where, in order to expedite the investigation,

this is necessary to ensure the availability of all relevant witnesses to an incident to participate in all the statements during an investigation which could have a bearing on their responsibility. Layover time will be used as far as practicable. An employee who is found blameless or an employee called by the Company as a witness, will be reimbursed for time lost.

- 16.20 Admission of Responsibility and Deferred Discipline as outlined in the Core Agreements are approved for use when assessing formal discipline on the KVR.

ARTICLE 17: GRIEVANCE RESOLUTION

- 17.1 Step 1 - Within 28 days of the cause of the grievance, the employee, the union representative and the KVR Manager, will meet in an attempt to resolve the grievance. This meeting will include the joint development of facts and their respective positions on the issue. If the grievance cannot be resolved it may be progressed to the next Step, within 28 days of the end of the meeting.
- 17.2 Step 2 - The Assistant Vice President, Operations and the General Chair(s) will attempt to resolve the dispute. In the event that a solution is not achieved within 28 days of being advanced to Step 2, the grievance may be directed to the Advisory Board for resolution short of proceeding to arbitration.
- 17.3 Application for arbitration will be made within 28 days of the Assistant Vice President's or the Advisory Board's ruling at Step 2.
- 17.4 Time limits may be extended if mutually agreed by both parties.

ARTICLE 18: PRINTING AND TRANSLATION OF AGREEMENT

- 18.1 The Company will be responsible for printing of this agreement as may be required and will absorb the cost of such printing.
- 18.2 The Company, where necessary, will undertake to translate this Collective Agreement into French.

ARTICLE 19: QUALIFICATION, CERTIFICATION AND TRAINING

Payment for Periodic Medical Examinations

- 19.1 Arrangements will be made to allow employees an opportunity to take their periodic medical examination during a regular tour of duty. If this is not possible, an employee shall be allowed payment of 3 hours' pay at the rate applicable to the position to which assigned.

Rules Qualification Training and Examination

- 19.2 In order to permit KVR employees to qualify in accordance with the Railway Employee Qualification Standards Regulations, the KVR will provide training courses covering all required subjects for the occupational category involved at a home terminal location.
- 19.3 Where the training location is at other than a home terminal location, the KVR will provide the employee with the mileage allowance provided in this Collective Agreement as well as accommodation which may be in hotels, motel or company facilities. Such accommodation will be in clean, single occupancy rooms and, to the extent it is practicable to do so, will include cooking facilities.

- 19.4 Employees covered by paragraph 19.3 will be paid an allowance of \$25.00 per day on each day of the training program for meals when the accommodation provided has cooking facilities and \$35.00 per day where cooking facilities are not available. Effective January 1, 2010, these amounts will be raised to \$27.00 and \$37.00 respectively. The Team may amend these amounts.
- 19.5 Employees attending a training course who fail to qualify in accordance with the regulations for their occupational category will not work or receive payment until they become qualified. It is their responsibility to arrange for qualification at no cost to the Company.
- 19.6 Employees attending a training program in accordance with this Clause will not suffer any loss of income nor will attendance at any such training result in a loss of entitlement to the Incentive Program.
- 19.7 The provisions of this clause will not apply to employees who have failed to qualify in accordance with the regulations on their first attempt or who are required to attend such training for disciplinary reasons.
- 19.8 Should an employee attending a training course be subject to the step rate provisions contained in this Collective Agreement, the appropriate percentage of the above-noted rates will be paid.

Instruction Classes Other Than RQ Training

- 19.9 Employees attending training/team meetings totalling more than eight hours in any calendar month will be compensated on an hourly basis for all time in excess of 8 hours.
- 19.10 The provisions of this clause will not apply to employees who attend training for disciplinary reasons.
- 19.11 Should an employee attending a training course be subject to the step rate provision contained in this Collective Agreement, the appropriate percentage of the above-noted rates will be paid.

Training Program Development

- 19.12 Classroom instruction and on-the-job training (OJT) will be performance based and will not be tied to any obligatory number of working tours of duty prior to being declared qualified. A KVR employee undergoing additional OJT training will be compensated.
- 19.13 Training programs for Rules Qualification and other related subjects will be developed in consultation with the General Chair(s) or their designates.
- 19.14 Within six (6) months of the implementation of a new training program, the Advisory Board may meet to review the course material to determine if changes are appropriate, based on the first six (6) months of training that has been completed. The time period, within which this review will be conducted, may be adjusted as deemed appropriate by the parties.

Entry Level and Promotional Training

- 19.15 Employees who enter the service as Brakeman/Conductor/Locomotive Engineer Trainees will be subject to the stepped rates noted in Clause 5.8.
- 19.16 Trainee Brakemen will work as additional crewmembers while seeking qualification as Brakeman. The duration of training will be in accordance with the Rules Qualification Training and Examination, paragraphs 19.2 to 19.8. Conductor will receive an allowance of \$10.00 per tour of duty when required to train a Brakeman.
- 19.17 The KVR work team will develop a qualification process for certification as Conductor. Paragraphs 19.2 to 19.8 will govern the duration of and payment for such qualification process.
- 19.18 Conductors training as Locomotive Engineer can receive their OJT while performing normal duties as Conductor. Duration of training will be in accordance with paragraphs 19.2 to 19.8. The Locomotive Engineer will receive an allowance of \$20.00 per tour of duty.

ARTICLE 20: REST

20.1 The KVR Work Team may make such provisions with respect to rest as may be deemed necessary and acceptable within the regulatory environment.

ARTICLE 21: SENIORITY

Protection of Seniority for Employees Assigned to the core railway and the KVR.

General Advertisement of Assignments

- 21.1 At the General Advertisement of Assignments, which will be scheduled for December 31, 2007 and will continue in effect until December 31st, 2011, all positions will be considered permanent vacancies. These vacancies will be bulletined for 30 days on the British Columbia seniority territory. Applications must be filed with the Crew Management Centre, with a copy provided to the respective Local Chair.
- 21.2 Positions will be awarded to senior qualified employees pursuant to the provisions of the Core Agreements.
- 21.3 An employee who holds a permanent position on the KVR prior to the general advertisement of assignments and who is not awarded or who does not apply for a position bulletined under paragraph 21.1 above, will exercise seniority within CPR according to the applicable provisions of the Core Agreements.
- 21.4 An employee who is absent for any reason throughout the entire bulletining period specified herein, may exercise their seniority on the KVR immediately upon return to active service in accordance with the provisions of the Core Agreements.
- 21.5 An employee displaced through the application of paragraph 21.3 above will exercise their seniority to a position on the KVR or the core railway pursuant to the terms of the applicable Core Agreements.
- 21.6 An employee awarded a permanent position on the KVR will be obligated to remain in KVR service for the duration of the general advertisement of assignments.
- 21.7 An employee awarded a permanent position on the KVR will be protected against displacement for the general advertisement of assignments pursuant to paragraph 21.1, except as provided for in paragraph 21.4; paragraph 21.9; a material change in working conditions; or a catastrophic event that the KVR Advisory Board believes should trigger a displacement.

Seniority

- 21.8 Employees from the core railway assigned to positions at the KVR under the terms of this Core Agreement shall have their names retained on the core railway seniority list.

Exercise of Seniority

- 21.9 Employees on the core railway may, in lieu of relocation or taking layoff, displace to positions on the KVR, pursuant to the applicable collective agreements. Such employees will have the right of recall on the core railway.
- 21.10 Employees on the KVR may in lieu of relocation or taking layoff, displace to positions on the core railway, pursuant to the applicable Core Agreements. Such employees will have the right of recall to the KVR.
- 21.11 Employees on the core railway covered by the Core Agreement(s) between CP Limited and the TCRC will have the right to apply for positions advertised on the KVR at the General Advertisement of Assignments pursuant to the KVR Collective Agreement.
- 21.12 A qualified Locomotive Engineer who is not regularly assigned as a Locomotive Engineer and is working on the KVR as a Trainman will not be required nor permitted to follow their seniority turn as a Locomotive Engineer on the core railway for the duration of the general change of assignments. This provision will not have an adverse effect upon the seniority standing of Locomotive Engineers.
- 21.13 Core railway Trainmen working on the KVR who are required to train as Locomotive Engineer in accordance with their District seniority will be required to do so in their proper turn. Upon completion of training such employees will be allowed to exercise their seniority back to the KVR.

Auxiliary Board (Cranbrook based employees)

- 21.14 Cranbrook based employees who desire to fill temporary KVR vacancies in accordance with Article 6.5 (c) and/or (d) of this agreement, will be placed on an Auxiliary Board, in seniority order.
- 21.15 Auxiliary Board positions will be advertised at the Spring and Fall General Advertisement of Assignments in Cranbrook. All interested individuals must bid the Auxiliary Board in addition to their regular bid at those General Advertisements.
- 21.16 Successful applicants to the Auxiliary Board will accept the conditions of working on the KVR according to this agreement when required to provide relief on the KVR.
- 21.17 No one can be forced to bid or be placed on the Auxiliary Board.

ARTICLE 22: TRANSPORTATION - PRIVATE AND COMPANY VEHICLE

- 22.1 For the purpose of this agreement, employees required to travel between home terminals (Nelson/Trail considered as one home terminal regardless of place of residence) will be compensated as per article 22.2 when required to use their personal automobile. The distance between Nelson/Trail and Cranbrook will be 240 km. Accommodation at the work location will be provided by the KVR.
- 22.2 Employees authorized to operate their personal vehicle for KVR use under this clause will be reimbursed at a rate of \$0.33 a kilometre effective the first of the month following ratification. That rate will become \$0.35 effective January 1, 2011.
- 22.3 Providing they are properly licensed, employees may be authorized to operate a company vehicle for the purpose of conducting KVR business.
- 22.4 Effective and payable in 2008, employees who performed their previous calendar year of service on the KVR will be eligible for an annual transportation allowance of \$500. This amount to be claimed as a personal expense claim in January of each year. This amount will be adjusted as follows:
- | | |
|------|-------|
| 2009 | \$550 |
| 2010 | \$600 |
| 2011 | \$650 |

ARTICLE 23: UNION DUES DEDUCTIONS

- 24.1 The provisions of the Core Agreements will apply.

ARTICLE 24: DURATION OF AGREEMENT

- 25.1 This Agreement is effective January 1st, 2008 and supersedes all previous Agreements. It will remain in effect until December 31, 2011 and thereafter until revised or superseded. Three months notice will be given by either party of its' desire to revise or supersede this Agreement and may be served at any time subsequent to September 30, 2011.

25.2 The Company agrees to retention of railway operations on the property governed by this agreement until December 31, 2011.

SIGNATURE PAGE

THIS MEMORANDUM OF SETTLEMENT

SIGNED AT CALGARY, ALBERTA THIS 1st DAY OF APRIL 2008

FOR THE COMPANY:

Doug McFarlane
Assistant Vice President
Operations

Rick Wilson
Assistant Vice-President
Industrial Relations

Bill Ross
Manager
Kootenay Valley Railway

Greg Denham
Manager
Kootenay Valley Railway

FOR THE TCRC:

Dave Olson
General Chairman
TCRC

Dave Able
General Chairman
TCRC

Arnie Nesbitt
Sub Local Chairman, Nelson
TCRC

APPENDIX “A”- KVR INCENTIVE PROGRAM

Method of profit share payment:

- Define the maximum profit share as 10% of annual average TCRC, KVR based employee earnings.
- Set profit share criteria for access to the profit share based on financial and safety performance, e.g.:
 - Operating Ratio
 - Earnings before interest, taxes, depreciation & amortization (EBITDA)
 - Safety related KPI (to be decided by Operations)
- At the start of each year, targets and minimum thresholds on the above three criteria will be established by the KVR work team, subject to approval by the KVR Advisory Board.
- Stretch targets, in addition to normal targets, will be used to better recognize employee performance and to increase the probability of payout.
- At year-end, the performance related to the targets will be determined.
- The profit payout will be prorated based on comparison of results with the targets set at the beginning of the year.
 - If the targets are met or exceeded, 100% of the maximum share (10%) will be paid out equally to all covered employees.
 - If the minimum thresholds are not achieved, there will be no payout.

NOTE: If the results fall between the target and the minimum threshold, the payout will be prorated accordingly.

- Targets are met or exceeded when:
 - The operating ratio is achieved or is lower than the target
 - EBITDA is achieved or is higher than the target
 - Safety KPI's are met or exceeded
- Minimum Thresholds will be established as follows:
 - Operating ratio: 4.0% higher than target
 - EBITDA: 10.0% lower than target
 - Safety KPI's: not met
- The weighted value of the three criteria are as follows:
 - 25% of the payout is based on the operating ratio
 - 50% of the payout is based on the EBITDA
 - 25% of the payout is based on the Safety KPI's

APPENDIX “B”- KVR UTILITY EMPLOYEE

The primary role and responsibilities required to be performed by the KVR Utility Employee include but are not necessarily limited to the following:

- Plan and prioritize effective and efficient yard movements in Trail and Warfield yards to maximize safety and customer satisfaction.
- Coordinate yard operations at Trail and yard processes within the area controlled by the KVR.
- Ensure that trains are received and dispatched consistent with marshalling guidelines and established plans and priorities.
- Coordinate yard operations to fulfil customer requests. Provide instruction and guidance to switching crews and inbound and outbound trains.
- Act as a liaison with representatives of the British Columbia Interior Service Area, the CST, NMC, Rail Traffic Control, Marketing & Sales and other departments/employees of the core railway.
- Within the confines of Trail and Warfield yards, arrange for track and equipment protection through local Engineering Services and Mechanical Services.
- Communicate with and coordinate all stakeholders in operations at Trail including running trades, mechanical, track, structures and signal employees to ensure safe operations.
- Provide KVR customers with information regarding their shipments and car supply.
- Initiate phone calls, faxes or personal contact to update customers regarding switching times, car availability, and service disruptions outside the KVR that will impact customer service.
- Manage emergency situations within the Teckcominco operation at Trail and Warfield.
- Capture and submit all switching and weighing charges for invoicing.
- In consultation with the KVR Manager, manage car inventories in Trail Yard to facilitate switching and customer service.
- Maximize tonnage on outbound trains.
- Conduct yard checks to ensure car inventory is correct and update inventory system.
- Assist the KVR manager with administrative responsibilities. Prepare reports and provide information on request.
- Conditional upon having the required qualifications, assist or relieve running trades employees in the performance of their duties.

Qualification Requirements include but are not necessarily limited to the following:

- Thorough understanding of computer applications in general.
- Specific understanding or the ability to learn within a reasonable period of time; the KVR’s yard inventory system, Outlook, Crew Management Application (CMA), Excel, and Microsoft Word .
- Conductors status or the ability to qualify as same.
- Interpersonal skills to interact effectively with customers of the KVR.

LETTER #1 – KVR/CORE BOUNDARY (CONTINUES TO REMAIN IN EFFECT)

April 1, 2008

Mr. D. Able
General Chairman

Mr. D. Olson
General Chairman

Dear Sirs:

This refers to our discussions of this date concerning the Nelson Subdivision.

One of the objectives which has been met in the KVR settlement includes a crewing arrangement whereby Cranbrook based employees are no longer required to operate trains west of McConnel unless they have voluntarily declared for the KVR Auxiliary Board, in which case they may be called upon to work vacancies in the Nelson/Castlegar/Trail area. Further, it is acknowledged that McConnel has been selected as the most logical CORE Railway/KVR boundary. Recognizing that we have no experience on which to base this assessment other than knowledge of current operations at present, it is further understood that should McConnel fail as a change off location, the parties will be receptive to entertaining other locations for that purpose. When temporary operational conditions dictate, it is recognized that Cranbrook based employees may be used to meet trains at Sirdar.

Notwithstanding the location where Nelson and Cranbrook crews ultimately change off to facilitate the Company's commitment to curtail using Cranbrook crews west of Creston, it is agreed that for the sake of calculating any future material change benefits, a material change initiated by the Company which affects Cranbrook based Running Trades Employees' historic ownership of the work between Cranbrook & Nelson will continue to be recognized for the purposes of such material change. This arrangement will not increase those costs that the Company would normally occur in the event of a material change.

Lastly, and with regard to union representation, it is understood that in line with the constituent union constitutions, the KVR Manager will be advised the names of accredited representatives assigned to deal with local union issues on the KVR.

Sincerely,

R.E. Wilson
Assistant Vice President
Industrial Relations

I Concur:

(Originally signed by)
Dave Able
General Chairman
TCRC

I Concur:

(Originally signed by)
Dave Olson
General Chairman
TCRC

LETTER #2 – TRAINING

October 28, 2004
Nelson, B. C.

Mr. M.G. DeGirolamo
Assistant Vice President
Industrial Relations
Canadian Pacific

Dear Sir:

This is in regards to our discussions about the training of employees on the KVR, with respect to the unique operational relationship on this property.

Some time ago there had been training provided, and we agree that there is a necessity to provide additional and/or ongoing training to the employees. We also agree that we will jointly approach HRDC in an effort to secure any available funding to which the KVR operation qualifies, in an effort to achieve the goal of enhanced or expanded training of employees at the KVR.

Yours truly,

D. R Able
TCRC General Chairman
Locomotive Engineers West

D. H. Finnson
TCRC General Chairman
Conductors/Trainmen/Yardmen West

I concur

M.G. DeGirolamo
Assistant Vice President
Industrial Relations

W.A Ross
Manager KVR

LETTER #3 – ISSUES ASSOCIATED WITH TRAIN 563

October 28, 2004

Mr. M.G. DeGirolamo
Assistant Vice President
Industrial Relations
Canadian Pacific

Dear Sir:

This is in regards to our discussions about the amount of switching that takes place on train 563 from time to time.

This is to confirm that a local agreement will be jointly developed by the manager and the local union representatives to establish the parameters and payment of a local claim code in an effort to provide appropriate payment to the employees required to perform enhanced switching on this particular train.

Yours truly,

D. R Able
TCRC General Chairman
Locomotive Engineers West

D. H. Finnson
TCRC General Chairman
Conductors/Trainmen/Yardmen West

I concur

M.G. DeGirolamo
Assistant Vice President
Industrial Relations

W.A Ross
Manager KVR