

APPENDIX "L" – NERSA §1165 Agreement

AGREEMENT ENTERED INTO THIS 20th DAY OF OCTOBER 1982 BETWEEN THE EMPLOYEES REPRESENTED BY THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS, AMTRAK AND CONSOLIDATED RAIL CORPORATION (CONRAIL) PURSUANT TO SECTION 1165 OF THE NORTHEAST RAIL SERVICE ACT OF 1981 (NRSA)

WHEREAS the Congress enacted the Northeast Rail Service act of 1981 providing in Section 1165 thereof that Conrail shall be relieved of the responsibility to provide crews to Amtrak for intercity passenger service on the Northeast Corridor effective January 1, 1981; and

WHEREAS Section 1165 also provides that the employees of Conrail with seniority in both freight and passenger service shall have the right to move from one service to the other once each six (6) month period; and

WHEREAS Section 1165 also mandates that Conrail, Amtrak, and the representatives of Conrail's employees with seniority in both freight and passenger service agree to the terms and conditions by which said employees of Conrail who become employees of Amtrak shall retain their seniority with Conrail flowback rights, by December 8, 1982, or submit the matter to binding arbitration;

NOW, THEREFORE, it is agreed that the following terms and conditions are in conformity with and do implement the provisions of Section 1165 of NRSA with respect to the craft of locomotive engineers represented by the Brotherhood of Locomotive Engineers.

I. SENIORITY

- A. All Conrail employees holding seniority rights within the craft of locomotive engineers as of December 31, 1982, shall have the opportunity to exercise those rights to passenger service on Amtrak effective January 1, 1983, and on each and every April 1st and October 1st thereafter, in accordance with the provisions of this Agreement.
- B. The standing of Conrail employees on the Amtrak Passenger Engineers Seniority Roster during each six (6) month period commencing on April 1, 1983, as described in Article I.A. above, shall be in accordance with the Order Selection List provided for in Article III.B.
- C. Any employees hired by Amtrak subsequent to January 1, 1983, in the craft or class of Passenger Engineers represented by BLE, other than those Conrail employees identified in Article I.A. of this Agreement, will establish seniority in accordance with the applicable Amtrak agreement governing rates of pay and working conditions.

II. NUMBER OF EMPLOYEES TO BE TRANSFERRED

- A. The number of positions to be set forth on the Order Selection List for Amtrak Passenger Engineers will be equal to 125% of the number of positions, regular and extra, required

for the operations of intercity passenger trains and other yard service assignments supporting such operations within the NEC as of August 1, 1982.

- B. The number of Amtrak Passenger Engineers positions advertised for bid and award will be equal to the number of positions, regular and extra, required in the operation of intercity passenger trains and yard service supporting operations within the NEC as of January 1, 1983.

III. TRANSFER OF EMPLOYEES

- A. A special advertising bulletin will be posted on Conrail advising qualified employees under Article I.A. of their right to indicate interest in obtaining employment as Passenger Engineers on the NEC region of Amtrak. Such bulletin will be posted from October 25, 1982, to November 4, 1982.
- B. Conrail employees qualified under Article I.A. equal to the number of positions referred to in Article II.A., who indicate a desire to transfer to Amtrak NEC in writing to the official designated in the bulletin described in Article III.A., will be placed on the Order Selection List, which will become the Passenger Engineers Seniority Roster for Amtrak NEC, and will be eligible to bid for positions advertised under Article IV.A. of this agreement. Placement of employees according to seniority on the Order Selection List will be in accordance with Appendix "A" of this Agreement.

Note: Effective June 2, 1988, Passenger Engineers with prior, prior rights who have been inactive, or where it is known they will be inactive for more than thirty (30) days, due to disability, sickness, illness, suspension or leave of absence will be removed from the working roster and the other active prior, prior right Passenger Engineers will be moved up to fill in their equity slots. Knowledge that a Passenger Engineer will be off for thirty (30) or more days for disability, sickness, or illness will be satisfied upon receipt of written notification to Transportation Superintendent by a duly accredited representative or the Passenger Engineer, stating the reason and anticipated duration. Adjustments to the working roster will be made Monday at 12:01 AM following receipt of notification. (Adopted from Item 2 of Appendix "A" to the June 2, 1988 Agreement.)

- C. Employees who are on suspension, discharge pending appeal, disability, leave of absence, or are full-time Union Representatives during the period specified in Article III.A. who would otherwise have been entitled to transfer to Amtrak NEC under the provisions of this Agreement, may within five working days following their return to service with Conrail, exercise seniority against a junior employee on Amtrak NEC.

IV. OFFERS OF EMPLOYMENT AND ACCEPTANCE OF EMPLOYEES

- A. The Amtrak NEC Passenger Engineer positions referred to in Article II.B. will be advertised by special bulletin to the employees on the Seniority Roster established pursuant to Article III.B. from November 15, 1982, through November 26, 1982. Awards of positions shall be posted on December 17, 1982, and the jobs will be effective January 1, 1983.

- B. Any employee who is on the Order Selection List, who either fails to bid or withdraws the bid and would have otherwise been awarded a position shall be removed from the Order Selection List (Seniority Roster) and will be permitted displacement rights to Conrail on January 1, 1983.
- C. The advertising bulletin will include the following statement:

“This will serve as notice that these positions will be established on the NEC Region of Amtrak effective January 1, 1983. The successful applicants for positions with the NEC Region of Amtrak will be considered as having applied for and been accepted for employment by Amtrak. The bid and award will also be considered as the employee’s release to transfer copies of the employee’s service and personnel records to Amtrak.”
- D. The successful applicants will become employees of Amtrak effective January 1, 1983.
- E. Unsuccessful applicants will retain their place on the Order Selection List as provided for in Article II.B. and will be permitted displacement rights on Conrail on January 1, 1983. Unsuccessful applicants regularly assigned to Conrail yard or freight assignments will remain on such assignments.
- F. Vacancies on Amtrak positions which occur after the awards are made under Article IV.A. (and before January 1, 1983) shall be advertised to Conrail employees on the Order Selection List, who were unsuccessful applicants, and if vacancies still remain, in accordance with the applicable Conrail collective bargaining agreement. All such advertisements shall contain the statement contained in Article IV.C.

V. RETENTION OF CONRAIL SENIORITY

- A. Employees transferred to Amtrak pursuant to Article IV. of this Agreement shall retain and continue to accumulate seniority on Conrail and shall be entitled to exercise such seniority under the following circumstances:
 - 1. If deprived of employment as a Passenger Engineer on Amtrak. “Deprived of Employment,” as used herein, means the inability of an employee covered by this Agreement to obtain a position in the normal exercise of his seniority rights as a Passenger Engineer with Amtrak. It shall not, however, include a deprivation of employment by reason of retirement, separation allowance, resignation, dismissal or disciplinary suspension for cause, work stoppage, or failure to work due to illness or disability. Employees who are deprived of employment as Passenger Engineers must exercise Conrail seniority rights and will be considered furloughed Amtrak Passenger Engineers with rights to recall in accordance with the appropriate Amtrak agreement.
 - 2. On April 1 and October 1 of each year, by written notice by the employees to Conrail, Amtrak, and the BLE General Chairman at least thirty (30) days in advance thereof.
- B. Employees returning to Conrail pursuant to Articles V.A.1. and 2. above shall exercise their Conrail seniority in accordance with the applicable Conrail Displacement Rule.

- C. Employees returning to Conrail pursuant to Articles V.A.1. and 2. above will retain and continue to accumulate Amtrak seniority in accordance with the applicable Amtrak agreement.
- D. Employees returning to Conrail pursuant to Articles V.A.1. and 2. will be permitted to exercise their Passenger Engineer seniority rights on Amtrak on April 1 and October 1 of each year.

VI.EMPLOYEES EXERCISING CONRAIL AND/OR AMTRAK RIGHTS

As required by Section 1165 of NRSA, Conrail and Amtrak shall have the right to furlough one employee in applicable service for each employee who returns through the exercise of seniority.

VII.EMPLOYMENT OPPORTUNITIES—UNSUCCESSFUL INITIAL BIDDERS ON THE AMTRAK NEC ROSTER—SUBSEQUENT EMPLOYMENT OPPORTUNITIES ON AMTRAK

- A. Any Passenger Engineer position advertised after January 1, 1983, and not filled by then current Amtrak Passenger Engineers in accordance with the Amtrak collective bargaining agreement, will be offered first to Conrail employees on the Amtrak NEC Seniority Roster established pursuant to Article III.B. who were not successful bidders under Article IV.A. If any such positions remain vacant, or there becomes a need for new Passenger Engineers, Amtrak will offer such positions to Conrail employees with seniority dates as locomotive engineers prior to January 1, 1983, in seniority order who have indicated, in writing to Amtrak and Conrail, their desire for employment by Amtrak.
- B. On April 1, 1983, and on each April 1st and October 1st thereafter, any Conrail employee covered by this Agreement shall be entitled to exercise the right to move to service as a Passenger Engineer on Amtrak by notifying both Conrail and Amtrak in writing by the preceding March 1st or September 1st of the desire to exercise that right. The determination as to which employees may exercise such rights will be made on the basis of Conrail seniority. An eligible employee will be placed on the Order Selection List (Seniority Roster) in accordance with Appendix “A,” and will be assigned the position held by the Passenger Engineer which he displaces on the Order Selection List until all positions are advertised incident to the change of timetable. Employees displaced and unable to obtain a position as a Passenger Engineer on Amtrak must exercise Conrail seniority rights and will be considered furloughed Amtrak Passenger Engineers with rights to recall in accordance with the appropriate Amtrak agreement.
- C. On April 1, 1983, and on each April 1st and October 1st thereafter, any Amtrak employee covered by this Agreement shall be entitled to exercise the right to move to Conrail by notifying Amtrak, Conrail and the BLE General Chairman in writing by the preceding March 1st or September 1st of the desire to exercise that right. Employees returning to Conrail pursuant to this Article VII.B. shall exercise their Conrail seniority in accordance with the applicable Conrail Displacement Rule.
- D. In the event that the number of employees who move from Conrail to Amtrak is insufficient to fill the required Passenger Engineer positions those positions shall be filled

by recalling furloughed Conrail employees in seniority order. When the number of such unfilled positions exceeds 10 percent of the total number of Passenger Engineers in Amtrak service, junior incumbent Passenger Engineers exceeding 10 percent shall remain on their positions until they are replaced by employees recalled from furlough.

- E. Employees entering the employ of Amtrak under this Article VI. will obtain Amtrak seniority in accordance with Article I.B. and exercise same under the applicable Amtrak collective bargaining agreement.
- F. Conrail employees accepted for employment by Amtrak under this Article VII. will retain and accumulate seniority on Conrail. Said employees returning to Conrail shall retain their rights on Amtrak as set forth in Article V.D.

VIII. VACATION ELIGIBILITY, ETC.

- A. Subject to the provisions of the applicable Amtrak collective bargaining agreement, compensated days and years of service recognized by Conrail shall be used in determining eligibility for benefits such as vacation for employees transferred under Articles III, IV, or VII. Conversely, compensated days and years of service with Amtrak shall be used in determining eligibility for benefits such as vacation of employees returning to Conrail under Articles V or VII.
- B. In the calendar year 1983, Conrail employees transferred to Amtrak in accordance with this Agreement shall be granted not less than the number of vacation days with pay they would have received under the applicable Conrail agreement.
- C. Service performed for Conrail prior to January 1, 1983, shall be considered in determining eligibility for holiday pay for New Year's Day that may be provided in the applicable Amtrak collective bargaining agreement.
- D. There shall be no pyramiding or duplication of any benefit in the application of any portion of this Agreement.

IX. DISPUTES

Any dispute or controversy with respect to the interpretation, application, or enforcement of the provisions of this Agreement which has not been resolved within 60 days, may be submitted by any of the parties to an Adjustment Board for a final and binding decision thereon as provided for the Section 3, Second of the Railway Labor Act. This time limit may be waived by mutual agreement.

X. COUNTERPARTS

This Agreement may be signed in any number of counterparts, each of which shall be deemed an original.

Signed at Washington, DC, this 20th day of October 1982.

FOR CONSOLIDATED RAIL
CORPORATION:

(original signed by)
R. E. Swert
Vice President - Labor Relations

FOR NATIONAL RAILROAD
PASSENGER CORPORATION:

(original signed by)
G. F. Daniels
Vice President - Labor Relations

FOR THE BROTHERHOOD OF
LOCOMOTIVE ENGINEERS:

(original signed by)
W. J. Wanke
First Vice President

(original signed by)
J. P. Carberry
Vice President

(original signed by)
T. J. Cavan
General Chairman

(original signed by)
Harold A. Ross General Counsel

The following procedures will be instituted to establish the Order Selection List and Amtrak's Passenger Engineers Seniority Roster provided for in Article III of the implementing agreement governing the transfer of engine service employees to Amtrak in accordance with Section 1165 of the Northeast Rail Service Act of 1981 (codified at 45 USC 1113).

- I. The number of engine service employees by prior right seniority district that were employed in the service, including assignments supporting such service as of August 1, 1982, are:

Conrail Seniority District "G":

New York Division	84.10
Maryland Division	63.85
Harrisburg Division	18.40
Philadelphia Terminal	8.00

Conrail Seniority District "F":

Shore Line Division	56.50
Providence Division	<u>+ 16.00</u>
	246.85

- II. On the basis of the above figures, the percentage allocations to be used in placing employees on the Order Selection List are:

Conrail Seniority District "G":

New York Division	34.07%
Maryland Division	25.87%
Harrisburg Division	7.45%
Philadelphia Terminal	3.24%

Conrail Seniority District "F":

Shore Line Division	22.89%
Providence Division	<u>+ 6.48%</u>
	100.00%

The specific Order Selection List is as indicated in Appendix "B."

- III. Engineers will be placed on the Order Selection List on the basis of their prior or prior right seniority.

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In the event there are insufficient applications from employees with prior rights to fill the allocated numbers for any of the Penn Central prior right districts, the remaining employees below the last prior right employee of that district will be drawn from prior right Penn Central employees and placed on the Order Selection List on the basis of their prior right Penn Central roster standing.

In the event there are insufficient applications from employees with prior rights to fill the allocated numbers for any of the New Haven prior right districts, the remaining employees below the last prior right employee of that district will be drawn from the prior right New Haven Employees Combined Roster, dated 10-31-68, and placed on the Order Selection List on the basis of their prior right New Haven Combined Roster standing.

Vacancies remaining on the Order Selection List, following the exercise of prior and prior rights will be filled with applicants from the appropriate Conrail roster on the basis of their Conrail seniority.

IV. As long as there are prior right employees on the Order Selection List, the standing of the employees will reflect the determined allocation as set forth in Article II of this Appendix

**PASSENGER ENGINEERS ORDER SELECTION LIST
(NEC Region of Amtrak)**

Seniority Districts

(Conrail Seniority District "G" & "F")

Engineers

					Percentage
New York Division	84.10	= G-NY	=		34.07%
Maryland Division	63.85	= G-MD	=		25.87%
Harrisburg Division	18.40	= G-HB	=		7.45%
Philadelphia Terminal	8.00	= G-PT	=		3.24%
Shore Line Division	56.50	= F-SL	=		22.89%
Providence Division	+ 16.00	= F-PV	=		+ 6.48%
	<u>246.85</u>				<u>100.00%</u>

OSN	Seniority District	OSN	Seniority District	OSN	Seniority District
1	G-NY	27	G-MD	53	G-MD
2	G-MD	28	G-NY	54	F-PV
3	F-SL	29	G-MD	55	G-NY
4	G-NY	30	F-SL	56	F-SL
5	G-MD	31	G-NY	57	G-MD
6	G-NY	32	G-MD	58	G-NY
7	F-SL	33	F-SL	59	F-SL
8	G-HB	34	G-HB	60	G-MD
9	F-PV	35	G-NY	61	G-HB
10	G-MD	36	G-MD	62	G-NY
11	G-NY	37	F-SL	63	G-MD
12	F-SL	38	G-NY	64	F-SL
13	G-NY	39	F-PV	65	G-NY
14	G-MD	40	G-NY	66	G-MD
15	F-SL	41	G-MD	67	F-SL
16	G-PT	42	F-SL	68	G-NY
17	G-NY	43	G-NY	69	F-PV
18	G-MD	44	G-MD	70	G-MD
19	G-NY	45	G-NY	71	F-SL
20	F-SL	46	F-SL	72	G-NY
21	G-HB	47	G-HB	73	G-HB
22	G-MD	48	G-PT	74	G-NY
23	G-NY	49	G-NY	75	G-MD
24	F-PV	50	G-MD	76	G-PT
25	F-SL	51	F-SL	77	F-SL
26	G-NY	52	G-NY	78	G-NY

Appendix “B”
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OSN	Seniority District	OSN	Seniority District	OSN	Seniority District
79	G-MD	87	G-MD	95	G-NY
80	F-SL	88	G-HB	96	G-HB
81	G-NY	89	F-SL	97	G-NY
82	G-MD	90	G-NY	98	G-MD
83	G-NY	91	G-MD	99	F-SL
84	F-SL	92	G-NY	100	G-NY
85	F-PV	93	F-SL		
86	G-NY	94	G-MD		

Employees on the Order Selection List who possess seniority on Conrail Seniority District F--Northeastern will have prior rights to assignments in NEC Working Zone 1. Employees on the Order Selection List who possess seniority on Conrail Seniority District G--Southeastern will have prior rights to assignments in NEC Working Zone 2.

Q & A's - SECTION 1165 AGREEMENT

- Q1. May a Passenger Engineer working on Amtrak remain in such capacity if for any reason his employment relationship with Conrail is severed?
- A1. Yes, however, his position on the Order Selection List/Seniority Roster would be behind *all* Passenger Engineers possessing seniority on Conrail prior to January 1, 1983, inasmuch as the standing on the Order Selection List is based on Conrail seniority. **Agreed: 4/6/83**
- Q2. Article II, (a) of the October 20th Agreement states that “the number of positions to be set forth on the Order Selection List will be equal to 125% of the number of positions as of August 1, 1982.” Must Amtrak retain 125% for three (3) years—life of the contract? (BLE 3/22/83)
- A2. The 125% only refers to positions on the Order Selection List; it does not establish a minimum number of Passenger Engineer positions which the Corporation is required to maintain. The number of positions on the Order Selection List in the application of 125% provision will remain in effect until the Section 1165 Agreement is modified in accordance with the Railway Labor Act, as amended. **Agreed: 4/6/83**
- Q3. What impact does the Conrail/CSX/Norfolk Southern merger have on the Section 1165 Agreement?

- A3. Amtrak will not reject “flow back” applications from employees formerly on Conrail who were covered by Section 1165 based solely upon their present employment with either the Norfolk Southern Railroad or CSXT. This agreement is not intended to modify in any other way the October 20, 1982 Section 1165 Agreement or the existing manner in which that agreement is administered by Amtrak. **Adopted from Letter of Understanding dated January 7, 2000.**