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January 6, 2023

Via E-Filing

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: Montana Rail Link, Inc.'s Discontinuance of Lease Operations and Trackage Rights Exemption – Yellowstone, Stillwater, Sweet Grass, Park, Gallatin, Broadwater, Jefferson, Lewis and Clark, Powell, Deer Lodge, Granite, Missoula, Lake, Mineral, and Sanders Counties, Montana; Bonner and Kootenai Counties, Idaho; and Spokane County, Washington

Dear Ms. Brown:

Please find attached Montana Rail Link, Inc.'s response to Comments of Members of BLET Division 232. If there are any questions about this matter, please contact me, either by telephone: at 202-663-7831 or by e-mail: at czorbaugh@bakerandmiller.com.

Sincerely,

/s/ *Crystal M. Zorbaugh*

Crystal M. Zorbaugh
Attorney for Montana Rail Link, Inc.

cc: Joe Racicot (Montana Rail Link)

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-575 (SUB-NO. 2X)

MONTANA RAIL LINK, INC.'S DISCONTINUANCE OF LEASE OPERATIONS
AND TRACKAGE RIGHTS EXEMPTION - IN YELLOWSTONE, STILLWATER, SWEET
GRASS, PARK, GALLATIN, BROADWATER, JEFFERSON, LEWIS AND CLARK,
POWELL, DEER LODGE, GRANITE, MISSOULA, LAKE, MINERAL, AND SANDERS
COUNTIES, MONT.; BONNER AND
KOOTENAI COUNTIES, IDAHO; AND SPOKANE COUNTY, WASH.

RESPONSE OF MONTANA RAIL LINK, INC. TO COMMENTS
OF MEMBERS OF BLET DIVISION 232

Montana Rail Link, Inc. ("MRL") is submitting this Response to Comments sent to the Surface Transportation Board ("STB" or "Board") by certain MRL employees, who are members of Division 232 of the Brotherhood of Locomotive Engineers and Trainmen ("BLET") (hereinafter "Division 232 Group" or "Group").¹ The Division 232 Group is apparently requesting that the Board, as a condition of the MRL discontinuance of its operations, order BNSF Railway Company ("BNSF") to continue providing MRL fringe benefits to MRL employees who accept employment with BNSF.² This would, in effect, impose the requirements

¹ While MRL refers to "Division 232 Group" for convenience, MRL does not know for whom the signatories to its Comments speak. As MRL explains, the authorized representative for MRL locomotive engineers is the BLET BNSF/MRL General Committee of Adjustment, not Division 232, which is a subordinate unit of BLET.

² MRL notes that the Division 232 Group Comments are untimely. The Board ordered that replies to MRL's petition were due on December 28, 2022, and the Comments were entered into this proceeding seven days after that deadline, on January 4, 2023, with no accompanying request for leave. If the Board decides to accept the Comments, MRL requests that the Board accept this MRL response. While the Board's rules, 49 C.F.R. § 1104.13(c), do not permit a reply to a reply, the Board often accepts such replies in the interest of compiling a more complete record. To the extent that the Board deems it necessary, MRL hereby seeks leave to file this response to new issues raised by the Division 232 Group.

of Article I, Section 8 of the Oregon Short Line (“OSL”) conditions on BNSF for the benefit of MRL operating craft employees after they become BNSF employees.³

As part of MRL’s decision to terminate its lease with BNSF and cease operations, it was important to MRL and BNSF that MRL railroaders who want to remain railroaders have that opportunity. To achieve that goal, MRL negotiated implementing agreements with MRL’s unions, including BLET, which provide enhanced benefits beyond OSL requirements for MRL employees who accept employment with BNSF. The Division 232 Group’s extraordinary request conflicts with the implementing agreement negotiated by its union leadership and later ratified by an overwhelming majority of participating union members. That implementing agreement, which followed a months-long negotiation, affords MRL employees the option of either (1) the benefits under the standard labor protection conditions expected to be imposed in this proceeding, or (2) substantially more generous benefits, including comparable employment with BNSF. The Division 232 Group’s request for different fringe benefits than those negotiated by its union is not supported by applicable law. The Board should reject the Group’s attempt to redo the bargain reached by the parties and ratified by the union membership.

BACKGROUND

As MRL explained in its Petition for Exemption, MRL entered into voluntary implementing agreements with each of its unions, including BLET, to lessen the impact of the discontinuance of its rail operations on its workforce by providing for benefits beyond those accorded under OSL. Pet. 14. Because MRL intends to cease all rail operations, all of its employees will lose their railroad jobs with MRL. MRL obtained BNSF’s agreement to offer

³ See *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91, 100 (1979).

comparable employment to all MRL employees and to allow them to continue to work at their present work locations.

Upon the announcement of MRL's intent to terminate its lease and discontinue operations, MRL contacted representatives of MRL's ten labor unions to begin early negotiations for implementing agreements that satisfy the requirements of the OSL conditions as allowed by the OSL process.⁴ BNSF began parallel negotiations with its unions for modifications to its collective bargaining agreements to integrate into the BNSF workforce MRL employees who accepted employment with BNSF pursuant to the MRL OSL agreements.⁵ For MRL employees who became BNSF employees, those unions were offered the choice of perpetuating MRL's historic collective bargaining agreements or selecting BNSF's existing collective bargaining agreements as modified to allow the MRL employees to continue working in the same locale and maintain the seniority they had earned on MRL. Five of MRL's ten unions chose to maintain historic MRL collective bargaining agreements, while the BLET (and others) selected the BNSF agreements.

MRL negotiated the implementing agreement with the BLET BNSF/MRL General Committee of Adjustment, which is the representative of MRL operating craft employees for purposes of negotiating OSL agreements. *See* BLET-MRL OSL Agreement attached as Exhibit

⁴ Implementing agreements are required by Article I, Section 4 of the conditions to be reached before a rail carrier can implement an approved abandonment or discontinuance. The Board's predecessor, the Interstate Commerce Commission ("ICC"), when issuing those conditions, anticipated that rail carriers and unions could enter into negotiations for preconsummation implementing agreements required by Article I, Section 4 in advance of the issuance of approval for abandonment or discontinuance. *See, e.g., OSL*, 360 I.C.C. at 95 ("In fact, if a railroad formally notified the employee representatives of its intentions at the same time as it publishes the 'Notice of intent to abandon line or discontinue service' pursuant to 49 CFR 1121.31, the necessary agreement or decision will usually be achieved prior to issuance of the certificate by the Commission which authorizes the abandonment or discontinuance.").

⁵ BNSF's negotiations with the representatives of its employees were pursuant to the Railway Labor Act. Pet. 14 n.16.

1. That agreement (hereinafter “BLET-MRL OSL Agreement”) was ratified by “an overwhelming majority of participating BLET members” and is binding on the members of Division 232. *See* BLET announcement attached as Exhibit 2.

Like MRL’s implementing agreements with its other unions, the BLET-MRL OSL Agreement gives MRL employees two options. One option, set out in Article II of the Agreement, is that an MRL engineer or switchman/conductor resign employment with MRL and accept a comparable locomotive engineer or conductor position with BNSF effective upon consummation of the transaction. Article II makes the BNSF collective bargaining agreements applicable to employees who go to work for BNSF.⁶

In addition, an MRL employee accepting employment with BNSF will receive a \$5000 bonus from MRL pursuant to Article II.D of the BLET-MRL OSL Agreement. MRL also agreed to provide supplemental income protection for employees who go to work for BNSF for six years if their income at BNSF is less than what it was working for MRL prior to MRL’s cessation of operations. *See* BLET-MRL OSL Agreement, Art. II.E and Attachment A, Sec. 2.

If an MRL employee opts not to accept employment with BNSF, that employee remains eligible to pursue the standard OSL benefits and does not receive any of the enhanced benefits under Article II of the BLET-MRL OSL Agreement. *See* BLET-MRL OSL Agreement, Art. III.

⁶ Article II provides that employees who accept employment with BNSF will work on the “MRL Subdivision” of BNSF under BNSF’s collective bargaining agreements with BLET for engineers or with the International Association of Sheet Metal, Air, Rail and Transportation Workers-Transportation Division (“SMART-TD”) for conductors. While BLET represents both crafts on MRL, they are represented by different unions on BNSF. The modifications negotiated by BNSF to BNSF’s existing labor agreements give MRL employees who accept BNSF employment credit for time worked at MRL and “prior rights” to engineer or conductor assignments on lines formerly operated by MRL, the “MRL Subdivision.” The prior rights feature and creation of the “MRL Subdivision” under BNSF’s agreements allow former MRL employees who become BNSF employees to continue to work at essentially the same locations as before MRL ceases operations.

Because MRL intends to cease all rail operations, MRL employees will not have the option of continued employment with MRL. If an employee can show adverse effect as a result of the discontinuance of operations, that employee may be eligible for dismissal allowances under Article I, Section 6 of OSL or a lump sum separation payment under Article I, Section 7. There will be no continuation of MRL fringe benefits under Section 8 because, as explained *infra*, MRL will no longer have any employees.

BLET Divisions are subordinate units below the General Committee of Adjustment level. There are two BLET Divisions with jurisdiction over MRL engineers and conductors, Division 232 and Division 262. The request for MRL fringe benefit continuation was apparently submitted on behalf of certain members of Division 232.⁷ The Group claims that, while compensation at BNSF is better than that at MRL, some fringe benefits at MRL are allegedly superior to those under the BNSF collective bargaining agreements for the operating crafts. *See* Division 232 Group Comments 1. Quoting Article I, Section 8 of the OSL conditions, the Division 232 Group asks “the board to consider imposing a continuation of these benefits as currently written indefinitely to all employees that would be considered ‘prior rights employees’ in the operating craft if the lease termination is approved.” *Id.* The Group further explains that “we [] feel that a continuation of these benefits to all ‘prior rights employees’ in the operating craft would not place an undue financial burden on BNSF as it is a relatively small number of employees when compared to the number they currently have on their system.” *Id.* In effect, the Division 232 Group is asking the Board to redo the agreement reached with BLET to substitute MRL fringe benefits for BNSF fringe benefits for MRL engineers and switchmen/conductors who elect to go to work for BNSF, i.e., “‘prior rights employees’ in the operating craft.” *Id.*

⁷ The Division 232 Group’s Comments are signed by the local union officers of Division 232.

As MRL next explains, there is no basis for the Division 232 Group’s extraordinary request.

ARGUMENT

A. The Oregon Short Line Conditions Will Only Apply to MRL and MRL Employees

The Division 232 Group’s request that the Board require BNSF to continue MRL fringe benefits for those employees who accept employment with BNSF as locomotive engineers or conductors cannot be granted because the plain language of the statute and Board precedent make clear that standard OSL conditions apply only to the rail carrier that is seeking abandonment or discontinuance authority. In this proceeding, that rail carrier is MRL, not BNSF.

49 U.S.C. § 10903(b)(2), which is the statutory basis for the OSL conditions, only applies to the rail carrier that is seeking abandonment or discontinuance authority. Section 10903(a) requires that “[a] rail carrier providing transportation subject to the jurisdiction of the Board . . . who intends to . . . discontinue the operation of all rail transportation over any part of its railroad lines, must file an application relating thereto with the Board.” 49 U.S.C. § 10903(a)(1)(B). Thus, Section 10903 only applies to the carrier seeking authority to abandon or discontinue service.

The OSL conditions themselves are likewise clear that they provide benefits for employees of the rail carrier seeking abandonment or discontinuance authority in their status as employees of that carrier, not after they have become employees of another rail carrier. For example, Article I, Section 1(b) defines “displaced employee” as “an employee of the railroad who, as a result of a transaction is placed in a worse position with respect to his compensation and rules governing his working conditions.” *OSL*, 360 I.C.C. at 98 (emphasis added). “[T]he

railroad” refers to the rail carrier which is abandoning track or discontinuing service and upon whom the conditions have been imposed.

The Board has consistently imposed the standard OSL conditions in similar circumstances where a rail carrier, which operated over tracks leased from another carrier or utilized trackage rights, discontinues service over the leased track or trackage rights and service is resumed by the owning rail carrier. In those cases, the Board and its predecessor have imposed the standard OSL conditions only on the rail carrier seeking authority to discontinue service, not on the owning carrier.⁸ Indeed, MRL is not aware of any instance in the history of the Board (or its predecessor) where labor protection requirements were imposed on a rail carrier that was not the applicant or petitioner in the Section 10903 proceeding.

Finally, to the extent that the Division 232 Group’s request can be construed as one for the Board to modify the standard OSL conditions for this proceeding, the Group has not alleged must less shown the “extraordinary circumstances” the Board requires to modify its standard protective conditions.⁹ Given that all MRL unions have reached implementing agreements and

⁸ See, e.g., *Yellowstone Valley R.R., L.L.C.—Discontinuance of Lease & Trackage Rights Operations Exemption—In Richland, Sheridan, Roosevelt, & Daniels Cntys., Mont. & McKenzie Cnty., ND*, AB 991 (Sub-No. 1X) (STB served May 10, 2013) (discontinuance of operations over track owned by BNSF); *Idaho N. & Pac. R.R. Co.—Discontinuance of Trackage Rights Exemption—In Canyon, Payette & Washington Cntys., Idaho*, AB 433 (Sub-No. 4X) (STB served Jan. 3, 2013) (discontinuance of service over track owned by Union Pacific); *Timber Rock R.R., Inc.—Discontinuance of Service Exemption—In Burlison, Brazos, Grimes, Montgomery, Liberty, Hardin & Jefferson Cntys., TX*, AB 998X (STB served Jan. 25, 2007) (discontinuance of service over track owned by BNSF); *Cent. R.R. Co. of Indianapolis—Discontinuance of Service Exemption—In Grant Cnty., IN*, AB 511 (Sub-No. 3X) (STB served Aug. 1, 2007) (discontinuance of service over track owned by Norfolk Southern); *Cent. R.R. Co. of Indianapolis—Discontinuance of Service Exemption—In Clinton, Howard & Tipton Cntys., IN*, AB 289 (Sub-No. 4X) (STB served Jan. 15, 1999) (discontinuance of service over track owned by Norfolk & Western).

⁹ See, e.g., *Delaware & Hudson Ry.—Lease & Trackage Rights Exemption—Springfield Terminal Ry.*, 4 I.C.C.2d 322 (1988). The Board has stated that it will only in rare circumstances consider enhanced labor protective conditions.

all MRL employees have the option to continue comparable rail employment, there simply are no extraordinary circumstances presented by this proceeding.

B. The Division 232 Group's Request Is Contrary to Section 8 of the Oregon Short Line Conditions

The Division 232 Group's reliance on OSL Article I, Section 8 is also misplaced because Section 8 does not require the continuation of any fringe benefits in this proceeding. Section 8 requires the continuation of fringe benefits "under the same conditions and so long as such benefits continue to [be] accorded to other employees of the railroad." *OSL*, 360 I.C.C. at 100. Section 8's plain terms apply only "so long as" MRL continues to provide fringe benefits to "employees of [MRL]." But MRL will not provide any such benefits post discontinuance. Once MRL implements the lease and trackage rights discontinuance, MRL will no longer have any active operations and no longer have any employees covered by the fringe benefits listed in the Group's comments. Thus, Section 8 does not apply and provides no basis to require BNSF (or MRL) to continue MRL fringe benefits.

C. The Division 232 Group's Requested Fringe Benefit Continuation Conflicts With MRL's OSL Implementing Agreement With BLET

Besides lacking any legal basis, the Division 232 Group's request should be rejected because the Group is trying to use the Board to redo aspects of the OSL implementing agreement negotiated by BLET and MRL and ratified by the BLET-represented membership on MRL.

As discussed, the BLET-MRL OSL Agreement affords MRL employees the option of either (1) the benefits under the standard OSL conditions expected to be imposed in this proceeding, or (2) substantially more generous benefits under Article II of the Agreement, including comparable employment with BNSF. The BLET-MRL OSL Agreement provides that MRL operating craft employees who elect employment with BNSF will work under the terms of

the applicable BNSF labor agreements, including fringe benefits. Having been agreed to and ratified by its union, the BLET-MRL OSL Agreement is binding on the members of Division 232. The Division 232 Group, however, wants the Board to help it reopen the Agreement to allow MRL employees who go to work for BNSF to retain the Group's preferred MRL fringe benefits rather than those under BNSF's labor agreements.

The BLET-MRL OSL Agreement is the product of good faith negotiations between MRL and BLET and reflects give and take and informed choices by both parties. The end product is very beneficial for MRL employees and provides extraordinary benefits far beyond those in the standard OSL conditions. Allowing the Division 232 Group to use the Board to seek different fringe benefits than those negotiated by its union would undermine voluntary efforts to reach negotiated implementing agreements under the Board's protective conditions, which efforts the Board has historically encouraged.

CONCLUSION

The OSL implementing agreement negotiated by MRL and BLET, and ratified by the BLET membership, provides MRL employees the exceptional opportunity to continue rail employment in their same communities, preserves seniority rights, provides a work retention bonus, and provides supplemental income protection for six years. There is no basis in law or equity for the Board to provide the extraordinary relief sought in this proceeding. The Division 232 Group's request should be denied.

Respectfully submitted,

/s/ Joe Racicot

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/s/ Ronald M. Johnson

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Attorneys for Montana Rail Link,
Inc.

VERIFICATION

I, Joseph M. Racicot, Vice President of Administration and General Counsel of Montana Rail Link, Inc., declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verification.



Joseph M. Racicot

Executed on January 6, 2023.

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-575 (SUB-NO. 2X)

MONTANA RAIL LINK, INC.'S DISCONTINUANCE OF LEASE OPERATIONS
AND TRACKAGE RIGHTS EXEMPTION - IN YELLOWSTONE, STILLWATER, SWEET
GRASS, PARK, GALLATIN, BROADWATER, JEFFERSON, LEWIS AND CLARK,
POWELL, DEER LODGE, GRANITE, MISSOULA, LAKE, MINERAL, AND SANDERS
COUNTIES, MONT.; BONNER AND
KOOTENAI COUNTIES, IDAHO; AND SPOKANE COUNTY, WASH.

RESPONSE OF MONTANA RAIL LINK, INC. TO COMMENTS
OF MEMBERS OF BLET DIVISION 232

EXHIBIT 1

BLET-MRL OSL AGREEMENT

OREGON SHORT LINE IMPLEMENTING AGREEMENT
BETWEEN
MONTANA RAIL LINK, INC.
AND
THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
(the "UNION")

WHEREAS Montana Rail Link, Inc. ("MRL") intends to file a Petition for Exemption with the Surface Transportation Board ("STB") to discontinue operations and terminate its lease of rail lines from and trackage rights over BNSF Railway Company (hereinafter "Lease and Trackage Rights Discontinuance").

WHEREAS, MRL and the Union (hereinafter the "Parties") anticipate that the STB will impose Oregon Short Line employee protective conditions on the Lease and Trackage Rights Discontinuance.

WHEREAS, the Parties have voluntarily reached this implementing agreement in satisfaction of the requirements of Article I, Section 4 of the Oregon Short Line conditions and to provide supplemental labor protective benefits for MRL employees who accept comparable employment with BNSF.

THEREFORE, the Parties agree as follows:

ARTICLE I

A. This implementing agreement is made in anticipation and satisfaction of the Oregon Short Line conditions, *Oregon Short Line Railroad and Union Pacific Railroad Co.-Abandonment Portion Goshen Branch Between Firth and Ammon In Bingham and Bonneville Counties, ID*, 360 I.C.C. 91 (1979), which are incorporated by reference.

B. BNSF has agreed with MRL to offer comparable employment to all MRL employees, who elect employment with BNSF and who may be adversely affected by the Lease and Trackage Rights Discontinuance, who held seniority with MRL, including employees who are in active service, furloughed, on an approved leave of absence, or dismissed if later reinstated on the effective date of this Implementing Agreement. MRL employees who qualify for BNSF employment offers have the option of the benefits in Article II. MRL employees who may be

adversely affected and decline such job offer may seek the standard protective benefits imposed by the STB as provided in Article III.

C. For purposes of Article I, Section 3 of the Oregon Short Line conditions, employees must elect from among the benefit options for which they are eligible under this Agreement or under any existing job security or other protective conditions or arrangements within 30 days of the effective date of this Agreement. There shall be no pyramiding of benefits.

ARTICLE II

A. BNSF has agreed to offer employment to all MRL employees who desire to accept employment with BNSF for positions to which an MRL employee was previously entitled, subject to that employee's seniority, and located on what will be established as the "MRL Subdivision" (previous MRL trackage) and subject to those BNSF Operating Agreements executed by and between BNSF and the Union and SMART-TD and BNSF (collectively, the "BNSF Agreements"). MRL and the Union agree that BNSF's offer of employment described herein is considered comparable to the employee's position with MRL.

B. The advertising and posting of available BNSF positions will occur subject to the provisions of the applicable BNSF Agreement. This information will be made available at locations on the MRL Subdivision where employees report to work and through typical electronic means (hereinafter "BNSF Bulletin"). The BNSF Bulletin will describe the positions and their location, pay and benefits as provided for in the BNSF Agreements. MRL employees desiring employment with BNSF shall apply for such bulletined positions through BNSF's online recruiting system within 15 days of such postings and shall submit a bid sheet listing their preferences for positions consistent with the BNSF Agreements. MRL employees desiring employment with BNSF shall be awarded the senior-most position available to such employee and shall be presumed

qualified for BNSF positions that perform the same or substantially similar job tasks as compared to the position such employee held on their last day of employment with MRL. MRL employees who choose to accept employment with BNSF pursuant to the foregoing shall also execute the Acknowledgment of Resignation and Separation Agreement attached hereto as Attachment B.

C. The Parties recognize that in a situation such as this transaction – where BNSF is assuming operations and there is no actual discontinuance of common-carrier operations – the Parties may disagree about whether an employee eligible for benefits under the Oregon Short Line conditions is required to accept comparable employment with BNSF or forfeit labor protection benefits. The Parties agree that MRL employees who voluntarily accept employment with BNSF under this Implementing Agreement will resign their employment and seniority with MRL effective the day before each begins working for BNSF. Without prejudice to their positions in any other proceeding, MRL and the Union further agree that employees who resign from MRL and accept employment with BNSF under this Article II are not dismissed employees for purposes of Oregon Short Line and are not entitled to dismissal allowances or separation allowances under, respectively, Sections 6 and 7 of the Oregon Short Line conditions.

D. In addition to the other benefits in this Implementing Agreement, MRL will pay a work-continuity bonus to each MRL employee who accepts and begins employment with BNSF pursuant to this Agreement of \$ 5,000.00 subject to applicable withholding. Such payment will be made within 14 days after the employee begins his or her employment with BNSF.

E. Although not required by the Oregon Short Line conditions, the Parties further agree that MRL employees who accept and begin employment with BNSF in accordance with this Article II will receive the supplemental labor-protection benefits set out in Attachment A, which is

incorporated into and made part of this Implementing Agreement and the Acknowledgment of Resignation and Separation Agreement.

F. The Parties agree that MRL employees desiring the benefits of this Article II must first sign and return the Acknowledgment of Resignation and Separation Agreement attached hereto as Attachment B.

ARTICLE III

A. MRL employees who are not offered employment by BNSF are subject to the standard labor-protection conditions the STB imposes and are not eligible for any of the benefits in Article II.

B. Without prejudice to the position of the Union or employees, MRL reserves the right to deny claims for benefits on the basis that, if an employee was offered employment with BNSF, the employee forfeited labor protection by refusing comparable employment with BNSF.

ARTICLE IV

A. Claims for displacement allowances, or any other relevant items under the Oregon Short Line conditions must be filed with thirty (30) days of any alleged displacement event or other OSL triggering condition. Claims for moving expenses and housing loss must be supported by the appropriate documentation.

B. Each dismissed employee shall provide MRL with the following information for each month for which he or she claims benefits under the standard Oregon Short Line conditions no later than sixty (60) days from the last day of the month for which a claim is made on a form provided by MRL. (Attachment C).

(1) The day(s) claimed by such employee under any unemployment insurance law.

(2) The day(s) each such employee worked in other employment, the name and address of the employer, and the gross earnings made by the dismissed employee in such other employment.

All claims referenced in either Article IV(A) or (B) shall be sent to OSLClaims@mtrail.com.

C. If an employee referred to in Article III is entitled to unemployment benefits under applicable law, but forfeits such unemployment benefits because of failure to file for such benefits, he or she shall be considered the same as if had filed for and received such unemployment benefits.

D. If the employee has nothing to report under this Article because of not being entitled to benefits under any unemployment insurance law and/or having no earnings from any other employment, such employee shall submit, within sixty (60) days from the month for which benefits are being claimed, the appropriate form stating Nothing to Report (Attachment C).

E. The failure of any employee referred to in this Article to provide the information required by this Article shall result in the withholding of all protective benefits for the month covered by such information pending MRL's receipt of such information from the employee.

F. All claims for benefits under this Agreement denied by MRL will be barred, unless within six months from such denial, proceedings are instituted by the employee or his or her representative pursuant to the dispute resolution procedures in Section 11 of the Oregon Short Line conditions.

ARTICLE V

A. This Agreement becomes effective after MRL gives written notice to the Union that all of the following conditions have been satisfied:

1. MRL files a Petition for Exemption to Discontinue Lease and Trackage Rights;

2. The STB grants MRL's Petition on terms and conditions that are satisfactory to MRL; and

3. MRL consummates the Lease and Trackage Rights Discontinuance.

B. Nothing in this Agreement modifies the requirements or benefits under the labor protective conditions the STB imposes, except as expressly provided herein.

C. Any disagreement over the interpretation, application or enforcement of this Implementing Agreement, including Article II, shall be resolved pursuant to the dispute resolution procedures in Section 11 of the Oregon Short Line conditions.

[Signatures to follow]

Executed this 4th day of October, 2022.

BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN



Signature

Kent Psota

Printed Name

General Chairman

Title

MONTANA RAIL LINK, INC.



Signature

Joseph M. Racicot

Printed Name

Vice President of Administration & General Counsel

Title

ATTACHMENT A

Section 1 – Prior to actual discontinuance of service and prior to any potential adverse impact on any existing MRL employee, MRL will establish, and produce for each employee who holds seniority on the date of the proposed transaction, including those on leave of absence, furlough or in dismissed status if subsequently reinstated, the individual employee’s Test Period Average (“MRL TPA”) consisting of the employee’s average earnings in each of the previous 12 months in which the employee received compensation during at least 50% of the month, including the number of hours worked by the employee (straight time and overtime) corresponding to those earnings in each month. The earnings amount provided in an employee’s MRL TPA will be subject to increase based on subsequent GWI adjustments as described in the collective bargaining agreement applicable to each employee’s craft. Each employee shall be provided a copy of their individual MRL TPA with a copy provided to their respective representative. Each current MRL employee subject to the cessation of service by MRL will be considered a Protected Employee subject to the exceptions below.

Section 2 – Subject to the exceptions set out below (i) if you execute the Acknowledgment of Resignation and Separation Agreement and accept and begin employment with BNSF, you will become a Protected Employee; and (ii) as a Protected Employee, if your monthly average earnings based on hours worked with BNSF is less than your established MRL TPA, you will be entitled to monthly protective benefits; and the period of such protective benefits shall start on the date you accept a position with BNSF and extend for a period of up to six (6) years (or the amount of time you have held seniority with MRL, whichever period is less). In no event will such protective benefits extend beyond six (6) years from the date you accept a position with BNSF. The amount of the monthly benefit will be the difference between the amount that the employee earned as a BNSF employee in a month and the MRL TPA based on the average number of hours worked for each employee as an MRL employee.

Section 3 - A Protected Employee will not have protective benefits under this Attachment A during any time the Employee is waiting to mark up for service when work is otherwise available due to a bid or bump made in the normal exercise of seniority.

Section 4 - A Protected Employee will not have protective benefits under this Attachment if the Employee fails to exercise seniority rights to secure another available comparable BNSF position on the MRL Subdivision. However, if a Protected Employee cannot hold a BNSF position on the MRL Subdivision with the normal exercise of seniority, that employee has the choice of becoming furloughed protected or accepting a position with BNSF outside of the MRL Subdivision; in either case the employee is still eligible for protective benefits under this Attachment A. A furlough protected employee loses labor protective benefits if the employee refuses to return to a position on the MRL Subdivision for which they hold seniority and are qualified when recalled by BNSF subject to applicable recall provisions in such employee’s collective bargaining agreement.

Section 5 – A Protected Employee will not have protective benefits under this Attachment during any period they are absent from BNSF’s service (e.g., disability, discipline, leave of absence, military service, dismissal, resignation, or the like) or during any period when they work for BNSF

but occupy a position not subject to a BNSF schedule agreement (e.g. if the Protected Employee secures an exempt position with BNSF).

Section 6 – If a Protected Employee is entitled to benefits under the Railroad Unemployment Insurance Act (RUIA) or unemployment benefits under other federal or state law, MRL shall offset the amount of any such benefits, to the extent benefits have been paid, or entitlement against any protective benefits owed. The amount of outside earnings from any employment shall also be offset against protective benefits.

Section 7 – A Protected Employee must elect between the benefits under this Attachment or any other protective arrangement. There will be no pyramiding or duplication of benefits.

Section 8 –BNSF will furnish an appropriate form allowing Protected Employees to file for protective benefits (the Claim Form). A Protected Employee must file that form within sixty (60) days from the close of the month for which protective benefits are claimed. Untimely claims will be disallowed.

Section 9 – Any Protected Employee claiming protective benefits under this Attachment must answer all Claim Form questions for each month the employee is claiming these benefits.

ATTACHMENT B

ACKNOWLEDGMENT OF RESIGNATION AND SEPARATION AGREEMENT FOR UNIONIZED MRL EMPLOYEES

Montana Rail Link, Inc. (“MRL”) intends to seek authorization from the Surface Transportation Board (“STB”) to discontinue operations and terminate its leases of rail lines from and trackage rights over BNSF Railway Company, Inc. (“Lease Termination and Trackage Rights Discontinuance”). The discontinuance of operations by MRL over the Leased Lines and Trackage Rights will result in the abolishment of positions by MRL. When MRL discontinues operation over these lines, their operation will be assumed by BNSF Railway Company (“BNSF”).

MRL anticipates that the STB will impose Oregon Short Line conditions on the Lease Termination and Trackage Rights Discontinuance. Under the Implementing Agreement negotiated by your union and MRL in anticipation of and satisfaction of STB labor-protection conditions, you understand that if Oregon Short Line conditions are imposed you will have two options for labor protection benefits.

Option 1: You will voluntarily resign from MRL and accept employment with BNSF within your craft in accordance with Article II of the Implementing Agreement and any applicable provision of those certain “Operating Agreements” executed by and between BNSF and the Brotherhood of Locomotive Engineers and Trainmen and BNSF and SMART-TD. Although not intended to be necessary under the circumstances, you are technically eligible for moving expenses and housing loss benefits similar to those in Article I, Sections 9 and 12 of Oregon Short Line if required to relocate to hold a position with BNSF. You also understand that you will receive a lump sum payment of \$ 5,000, less required withholdings, if you accept and begin employment with BNSF. In addition, you will receive up to six years of supplemental labor protection, as more fully set out in Attachment A.

Option 2: In lieu of resigning from MRL and accepting a job with BNSF and the benefits in Article II of the Implementing Agreement, if you lose your job with MRL or are placed in a worse position with MRL as a result of the Lease Termination and Trackage Rights Discontinuance, you can accept the standard Oregon Short Line protective benefits or other labor protection benefits for which you may be eligible, if any, as explained in Article III of the Implementing Agreement. If Oregon Short Line is imposed, and you are a dismissed employee, you may submit claims for monthly dismissal allowances for up to six years or a lump sum separation allowance under, respectively, Sections 6 and 7 of Oregon Short Line. It has been explained to you that, as required by Oregon Short Line, any monthly dismissal allowances you receive will be offset by unemployment benefits under federal or state law and by outside earnings.

You will not receive the lump sum payment in Article II of the Implementing Agreement. It has also been explained that you may not be eligible for any Oregon Short Line benefits if you reject the benefits offered in Option 1 (a comparable job with BNSF) and those benefits are later found by an arbitrator or the STB to satisfy MRL's obligations under labor protection conditions the STB imposes.

If you are able to retain employment with MRL, but placed in a worse position, you may be eligible for the benefits for displaced employees under Oregon Short Line or any other labor-protection conditions the STB imposes.

You have been given a copy of the Implementing Agreement and the opportunity to discuss the Agreement with your union representative, your counsel, and/or other personal advisors. You were also provided the opportunity to attend meetings where representatives from MRL, BNSF, and your union were present to explain and answer questions about the Implementing Agreement and this Acknowledgment of Resignation and Separation Agreement (the Separation Agreement).

By signing this Separation Agreement, you knowingly elect **Option 1**: the option in Article II of the Implementing Agreement to resign from MRL, receive the cash bonus and labor-protection benefits as set out above and in Attachment A, and accept employment with BNSF. You further agree that a job with BNSF is comparable employment for purposes of Oregon Short Line or any other labor-protection conditions the STB imposes. Therefore, you are not a dismissed employee for purposes of Oregon Short Line or other labor-protection conditions, and are not eligible for dismissal allowances or a separation allowance by virtue of resigning from MRL and accepting a job with BNSF. Your resignation will become effective the day MRL ceases operations pursuant to the Lease Termination and Trackage Rights Discontinuance.

You further understand that the job offer from BNSF and other benefits in the Implementing Agreement are conditional and may be withdrawn if MRL decides not to seek authorization to discontinue the Lease and Trackage Rights or, if it does, decides not to consummate the Lease Termination and Trackage Rights Discontinuance.

I understand that by electing **Option 1**, I receive the benefits set out above and I release, waive, and relinquish, the following claims, whether known or unknown:

- All rights as an MRL employee, effective on the date MRL ceases operations pursuant to the Lease Termination and Trackage Rights Discontinuance. That relinquishment of all employment rights includes, but is not limited to, seniority in any MRL scheduled employee craft or class.
- Any protective benefits – OSL or otherwise – other than those provided under Article II of the Implementing Agreement, any other employee protective benefits the STB has imposed or will impose as a result of the Lease Termination and Trackage Rights Discontinuance,

and/or any such similar protective benefits contained in any collective bargaining agreement.

I, the undersigned, elect **Option 1** and agree to all of the foregoing:

Employee Printed Name

Employee Signature

Employee Number

Date

BEFORE THE
SURFACE TRANSPORTATION BOARD

AB-575 (SUB-NO. 2X)

MONTANA RAIL LINK, INC.'S DISCONTINUANCE OF LEASE OPERATIONS
AND TRACKAGE RIGHTS EXEMPTION - IN YELLOWSTONE, STILLWATER, SWEET
GRASS, PARK, GALLATIN, BROADWATER, JEFFERSON, LEWIS AND CLARK,
POWELL, DEER LODGE, GRANITE, MISSOULA, LAKE, MINERAL, AND SANDERS
COUNTIES, MONT.; BONNER AND
KOOTENAI COUNTIES, IDAHO; AND SPOKANE COUNTY, WASH.

RESPONSE OF MONTANA RAIL LINK, INC. TO COMMENTS
OF MEMBERS OF BLET DIVISION 232

EXHIBIT 2

BLET ANNOUNCEMENT

BLET members ratify BNSF-MRL implementing agreements

OCTOBER 4, 2022 | [BNSF](#), [Contract Agreement](#), [News](#)



INDEPENDENCE, Ohio, October 4 — On September 30, an overwhelming majority of participating BLET members ratified an implementing agreement and Oregon Short Line Protective Agreement with BNSF regarding its resumption of service on the Montana Rail Link.

In January, MRL announced it would terminate its lease with BNSF, with BNSF resuming operations on the line. The implementing agreement, negotiated by the BNSF/MRL General Committee of Adjustment with assistance from the National Division, governs BNSF's hiring of the BLET represented MRL employees, their seniority, work rules, pay, benefits, and integration into the BNSF system. The implementing agreement and Oregon Short Line Protective Agreement govern approximately 500 BLET members currently working for the MRL.

Among other items, the newly-ratified agreement includes the following provisions:

- Current MRL TY&E employees will be offered employment with BNSF;
- Maintain original MRL hire date for prior right seniority (PRME) on the MRL Subdivision;
- Maintain original MRL hire date for the accrual of vacation and personal leave days;
- Employees will not be forced assigned off of the MRL subdivision;
- Maintain current pool runs;
- Maintain the reverse lodging option for pool crew employees;
- Maintain the 12-24-36 rest option for pool employees;
- Maintain 2-hour call times;

- The engineer extra board will have a rest cycle;
- The MRL will offer a \$5,000 bonus for hiring out with the BNSF;
- Health and Welfare coverage on Day 1 with BNSF including Dental and Vision; and
- Maintains a 401K program for employees on Day 1 of their employment with BNSF.

BLET National President Dennis Pierce thanked the membership for their high level of participation and involvement throughout the ratification process.

CERTIFICATE OF SERVICE

I hereby certify that on January 6, 2023, I served copies of this Response by first-class mail or a more expeditious means on all parties of record in this proceeding.

/s/ Crystal M. Zorbaugh

Crystal M. Zorbaugh
Counsel for Montana Rail Link, Inc.