

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

LARRY WILLIAMS, LYNELL C.
MCCOLLOUGH, EDDIE E. DRAKE,
JR., HAROLD HUNTER, MELVIN
BAYLOR, and LARRY ROBINSON,
et al.,

PLAINTIFFS,

JAMES CHAMBLEE, ROBERT C. POPE,
OLIVER P. JOHNSON, JERRY GENTRY,
JESSE MCMEANS, RUDOLPH CLANTON,
and THE BROTHERHOOD OF
MAINTENANCE OF WAY EMPLOYES
and THE ALLIED EASTERN
FEDERATION, B.M.W.E.,

PLAINTIFFS-INTERVENORS,

VS.

CSX TRANSPORTATION, INC.,

DEFENDANT.

CIVIL ACTION NO. CV 94-C-0553-S

CONSENT DECREE

**ARTICLE I
INTRODUCTION**

A. This is a class action brought by Plaintiffs Larry Williams, Lynell C. McCollough, Eddie E. Drake, Jr., Harold Hunter, Melvin Baylor, Larry Robinson, James Chamblee, Robert C. Pope,

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N.D. OF ALABAMA

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Oliver P. Johnson, Jerry Gentry, Jesse McMeans, Rudolph Clanton, and The Brotherhood Of Maintenance Of Way Employees ("BMWE") and its Allied Eastern Federation (hereinafter collectively referred to as "the Named Plaintiffs") against CSX Transportation, Inc. ("CSXT"). In their Amended Complaint, the Named Plaintiffs alleged that CSXT had discriminated against the individually Named Plaintiffs and similarly situated African-American employees on the basis of their race pursuant to 42 U.S.C. §2000(e) et seq., as amended by The Civil Rights Act of 1991, 42 U.S.C. §§1981 and 1981A.

B. For purposes of this Consent Decree (hereinafter sometimes "Decree") and Fed. R. Civ. P. 23(b)(2) and (b)(3), the class is defined as follows:

All African-Americans who, from June 7, 1991 to the date of Final Approval of this Consent Decree,¹ have worked, are working, or will work as contract employees in CSXT's Operating Departments².

C. Throughout the negotiations leading to this Consent Decree, the Named Plaintiffs, the putative class, and CSXT have at all times been represented by competent counsel experienced in this type of Title VII class litigation. For purposes of this Decree, Robert F. Childs, Jr. shall serve as the Lead Counsel for the Plaintiffs ("Plaintiffs' Lead Counsel") and Nicole K. Seligman and/or Robert P. Watkins shall serve as Lead Counsel for the defendant ("Defendant's Lead

¹ For purposes of this Consent Decree, "Final Approval" shall occur thirty (30) days after entry of an Order by the District Court finally approving the Consent Decree if no appeal from such final approval is taken, or thirty (30) days after all appeals taken have been resolved in favor of the Decree, whichever is later.

² For purposes of this Consent Decree, the term "Operating Departments" refers to the Transportation, Mechanical and Engineering Departments, the Network Operations, Customer Service, Service Design, Supply and Services Management, and Operations Support Departments, and all similar functions on CSXT's business units.

Counsel").

D. CSXT has denied and continues to deny that it has discriminated against African-Americans, either as individuals or as members of a class, in any way. Notwithstanding this settlement, CSXT continues to deny any liability pursuant to 42 U.S.C. §2000e et seq., 42 U.S.C. §§1981, 1981A or any other statute, constitutional provision or common law principle, and asserts that this Decree is entered into, despite the existence of doubtful and disputed claims, to avoid the burden and expense of protracted litigation and to put to rest all matters in controversy between the parties. This settlement is not and should not be construed as an admission of any violation or wrongdoing by CSXT. Moreover, CSXT's participation in this settlement should not be construed as, and is not, a waiver of any defenses to this or any future action or claim against it of any kind whatsoever.

E. Discovery has been conducted by the parties. The parties are now desirous of implementing a negotiated resolution of the issues raised in this litigation and of entering into a settlement that is final and binding upon the parties without the necessity of further litigation. All the parties and their counsel consent to the entry of this Decree as a final and binding settlement of this action. Pursuant to this Court's Order, notice of this Decree and of this compromise and settlement has been given to the Named Plaintiffs and class members. The Court has considered said notice (attached hereto as Exhibit "A") and finds that it satisfies the requirements of Rule 23(e) of the Federal Rules of Civil Procedure.

F. This Court has considered the settlement and the terms of this Decree and finds that they are fair, reasonable, and just; that the rights of the Named Plaintiffs and the class, and each member thereof, and such other persons as may be affected thereby, are fully protected; that the

due process rights of all plaintiffs (Named Plaintiffs and class members) to adequate representation have been satisfied; that this Decree is in conformity with the Federal Rules of Civil Procedure, and in particular with Rule 23, Fed. R. Civ. P.; and that this Decree is in no way a deprivation of any rights, privileges or terms and conditions of employment of any person. Upon due consideration of the provisions of this Decree, and of all of the records and proceedings in this case, it is hereby ORDERED, ADJUDGED and DECREED as follows:

ARTICLE II INJUNCTIVE RELIEF

A. CSXT and its officers, agents and employees are hereby restrained and enjoined from: (1) engaging in any employment practice pertaining to the Operating Departments encompassed within the above class definition which has the purpose or the effect of violating the terms of the Consent Decree and/or (2) retaliating against any employee, as prohibited by 42 U.S.C. §2000e-3(a), for his/her participation and/or actions in this proceeding. This paragraph is subject to the provisions of Paragraph II.C.1., below.

B. The terms of this Consent Decree shall modify and supersede any inconsistent provisions in any existing collective bargaining agreement between CSXT and the BMW, including National and Federation modifications and letters of clarification and any Memorandum of Understanding. The BMW and the Allied Eastern Federation represent that they have the authority to bind themselves and all constituent parts and members to the terms and conditions of this Decree. Any and all modifications to any collective bargaining agreements between CSXT and the BMW made by this Consent Decree shall terminate on the expiration of this Consent Decree, unless CSXT and the BMW specifically agree otherwise. However, nothing in this

Consent Decree shall modify or supersede any provision of any collective bargaining agreement between CSXT and any labor organizations not a party to this Decree. To the extent anything in this Consent Decree can be construed to conflict with the collective bargaining agreements between CSXT and any labor organization not a party to this Consent Decree, the collective bargaining agreements shall control. Further, nothing in this Decree is intended to create a past practice under The Railway Labor Act.

C. CSXT shall publish, post and enforce, at the locations at which notices to employees currently are posted, across its system, the EEOC notice of rights poster and CSXT policies against racial discrimination and harassment. These notices shall advise employees regarding the law prohibiting racial discrimination and harassment and CSXT's policies against racial harassment, discrimination and retaliation ("CSXT's Racial Anti-discrimination Policy"). These policies are attached hereto as Exhibit "B" in a form acceptable to Plaintiffs' and Defendant's Lead Counsel.

1. Any employee complaining of alleged racial discrimination, including harassment, may utilize any internal complaint procedures of CSXT that may exist or may file charges with the EEOC or with any state or local agencies. Individual complaints and any related individual retaliation claims shall not be considered to raise an issue of compliance or non-compliance with this Decree. Such complaints or claims by class members may give rise, however, to the right to file a grievance pursuant to Article II, Section 10 of this Decree.

D. Within one hundred eighty (180) days of the Final Approval of the Decree (or as otherwise provided herein), CSXT shall promulgate, in writing, and begin implementing the following policies, practices, and procedures in a non-discriminatory manner:

1. **RULES, POLICIES, PRACTICES AND PROCEDURES.**

CSXT shall publish and implement rules, policies, practices, and/or procedures necessary for it to comply fully with all aspects of this Decree. Once published and implemented, CSXT shall immediately notify its supervisory work force regarding any such new rules, policies, practices, and/or procedures and shall thereafter monitor the implementation and/or application of these new rules, policies, practices, and/or procedures by its supervisory work force in order to assure compliance with the new rules, policies, practices, and/or procedures.

2. **GENERAL EDUCATION AND TRAINING PROGRAM.**

a. Active³ contract employees in the Operating Departments shall have the opportunity to acquire and/or enhance their reading, math, and computer skills through courses in basic and/or remedial reading and math, and basic and/or introductory, job-related instruction in the operation of computers, under the conditions set forth below.

b. All active contract employees who have been employed by CSXT for at least one (1) year and are working at the time of their request to participate are eligible to take one such course per year on their own time.

c. These courses will be made available in the form of computer programs, audiotapes, or videotapes, if possible, which participating employees can utilize on their own time for educational purposes. Subject to reasonable availability, CSXT will also make

³ For purposes of this Consent Decree, "active" employees are those contract employees of CSXT who have been paid for services rendered from June 7, 1991 to the date of Final Approval of this Consent Decree and who have performed services for CSXT within three (3) months prior to the date of Final Approval of this Consent Decree.

computers and/or televisions accessible so that interested participating employees can take these courses.

d. If it is not possible for CSXT to make these courses available on computers, audiotapes, or videotapes, or if participating employees can not obtain access to the means by which they can utilize these courses because of their work schedule or work location, or in other situations at CSXT's discretion, then such employees can nevertheless take such courses, on their own time and if available, at local community colleges, vocational schools, or comparable accredited educational entities. CSXT will reimburse the cost of tuition and books for any such course taken after receiving a receipt indicating payment by the employee, provided that the taking of the course is approved in advance by the Employee Relations Department and provided that the employee receives a passing grade or other indication of satisfactory attendance and effort in the course. The approval of no other supervisor is required in order to take these courses. All requests for approval shall reasonably identify the courses and institutions where the courses are to be taken and shall be reviewed and ruled upon within thirty (30) days of their submission to the Employee Relations Department. Upon individual request, CSXT shall take reasonable steps to help identify acceptable courses, if any, that are reasonably available and accessible to the employee. Subject to the other limitations herein, CSXT also agrees that participating employees may repeat such courses, or attend different accredited remedial courses, when, in its sole opinion, such active employee has completed and made a reasonable effort to pass the courses and such additional remedial programs are necessary to learn the skill. No request for such remedial courses will be unreasonably withheld by CSXT. Any class member who feels that CSXT has breached the provisions of this General Education and Training Program shall have

the right to grieve pursuant to the Grievance Procedure set forth in Article II, Paragraph 10 below, and the claim may be pursued only in that forum.

e. CSXT shall provide notice regarding this General Education and Training Program by bulletin, bulletining and/or other normal CSXT notice procedures.

3. **CRAFT, TECHNICAL AND SKILLS TRAINING PROGRAM.**

a. CSXT shall through tuition reimbursement make available to active contract employees in the Operating Departments, to the extent set forth below, vocational or technical skills training in craft fields related to the work performed by CSXT contract employees and technical skills training related to the work performed by contract and entry-level, non-contract employees by taking courses at local community colleges, vocational schools, or comparable educational entities; provided, however, that CSXT shall not be required to provide or make available, or reimburse for, training in areas in which CSXT provides in-house training or for conductor training. CSXT presently provides in-house training in the following areas, among others: engineer training; yardmaster training; train dispatcher training; locomotive maintenance and repair; car maintenance and repair; signal maintenance and repair; welding; and electronics. CSXT reserves the right to modify, alter, add, or eliminate the above listed courses at its discretion at any time.

b. All active contract employees who have been employed by CSXT for at least one (1) year and who are working at the time of their request to participate are eligible to take one such course per year on their own time. CSXT will reimburse the cost of tuition, books, and course materials for any such course taken after receiving a receipt indicating payment by the employee, provided that the taking of the course is approved in advance by the Employee

Relations Department and provided that the employee receives a passing grade or other indication of satisfactory attendance and effort in the course. The determination of whether any such course is sufficiently related to the work performed by CSXT contract and entry-level, non-contract employees rests with CSXT alone; however, no such request shall be unreasonably withheld. The approval of no other supervisor is required in order to take these courses. All employee requests for approval shall reasonably identify the courses and institutions where the courses are to be taken and shall be reviewed and ruled on within thirty (30) days of its submission to Employee Relations. Upon individual request, CSXT shall take reasonable steps to help identify acceptable courses that are reasonably available and accessible to the employee. No requests for such courses shall be unreasonably withheld by CSXT. Any class member who feels that CSXT has breached the provisions of this Craft, Technical and Skills Training section shall have the right to grieve pursuant to the Grievance Procedure set forth in Article II, Paragraph 10 below, and the claim may be pursued only in that forum.

c. CSXT shall provide notice regarding this Craft, Technical and Skills Training Program by bulletin, bulletining and/or other normal CSXT notice procedures.

4. TRAINING OF SUPERVISORS AND MANAGERS.

a. Within the first twelve (12) months following Final Approval of this Decree, non-contract supervisors and managers in CSXT's Operating Departments shall receive training on equal employment opportunity, to include the following topics: (a) compliance with this Decree; (b) equal employment opportunity for African-Americans; (c) racial diversity; (d) federal, state and CSXT prohibitions of work place racial discrimination, including harassment and retaliation; and (e) any other topics that may encourage equal employment in training,

promotion, qualifying and retaining African-American employees. Such training may be delivered in live "discussion" format, video format, written materials, or any combination of these or other formats, provided, however, that any such training shall not be provided to participants solely through written materials. No less than two hours shall be devoted to training on the above topics for each participant. New supervisors and managers will receive such training within twelve (12) months of their entry into a supervisory or management position. Thereafter, at least 2 hours of equal employment opportunity training will be provided every other year during the term of this Decree to non-contract supervisors and managers in CSXT's Operating Departments. Attendance at such training shall be mandatory for non-contract supervisors and managers in CSXT's Operating Departments.

b. At the time they receive their annual safety training or at such other time as CSXT deems appropriate, employees working as contract supervisors on the day training is provided shall receive training on equal employment opportunity. This training shall take place at least every other year during the term of this Decree as long as the contract employee is working as a contract supervisor at the time training is provided. Attendance at such training shall be mandatory for such contract supervisors, unless such required attendance would violate a collective bargaining agreement.

c. At CSXT's discretion, the training described in Subparagraphs 5.a. and b. above may be held in conjunction with other CSXT business and may be organized in such fashion as CSXT deems appropriate.

5. TRAINING OF EMPLOYEE RELATIONS PERSONNEL.

a. Within six (6) months after the Final Approval of this Consent

Decree, CSXT will develop training programs for members of its Employee Relations staff who have substantive responsibilities related to compliance with fair employment practice laws and/or the application of consistency and objectivity in the selection processes of CSXT. Each training program will be implemented within ninety (90) days after it is developed and will be re-administered yearly thereafter during the term of the Consent Decree. Annual training may be in a more abbreviated format than the initial training. New Employee Relations staff members with such responsibilities shall receive such training within ninety (90) days of their date of entry into such position.

b. Training for Employee Relations staff shall include, but not be limited to: (1) Federal and State equal employment opportunity laws; (2) the application of equal employment opportunity laws to typical employment situations; (3) the terms of and compliance with this Decree; (4) the role and responsibility of the Employee Relations Department and staff; (5) diversity of races; and (6) the handling of EEO complaints, including the prohibition against retaliation.

6. SUPERVISORY TRAINING PROGRAMS.

a. CSXT shall provide active contract employees, who have been employed for at least three (3) years and are working at the time they seek the training, with reasonable access to training videotapes and audiotapes designed to enhance the supervisory skills necessary to become contract and/or non-contract supervisors. This training shall be made available in the form of existing audiotapes and/or videotapes, which shall be provided by the joint validation expert, and which contract employees can utilize on their own time for educational purposes.

b. When, in its sole discretion, CSXT decides that it will conduct a Supervisory Development Program, selection procedures for the Program will be validated pursuant to Article II, Paragraph 9 below.

c. Any class member who feels that CSXT has breached the provisions of this Supervisory Training Section of the Decree shall have the right to grieve pursuant to the Grievance Procedure set forth in Article II, Paragraph 10 below, and the claim may be pursued only in that forum.

7. **QUALIFIED EMPLOYEE CERTIFICATION PROGRAM FOR MAINTENANCE OF WAY CRAFT.**

a. As provided herein, CSXT shall provide notice of, access to, and equal opportunity for classification-specific training to Maintenance of Way employees who are interested in becoming qualified in the "preferred classifications" of the Maintenance of Way craft. "Preferred classifications" are Maintenance of Way machine operator positions, excluding any such positions with pay equal to or lower than trackman pay. CSXT may, in its discretion, group different machines into a single "preferred classification" for which employees will be permitted to qualify as set forth herein.

b. CSXT shall determine in good faith the number of qualified Maintenance of Way employees reasonably necessary to staff each preferred classification position (or group of positions) in each seniority district, region⁴, and for all the system gangs in the Maintenance of Way craft (the "target number"). (A list of the preferred classification positions

⁴ The QEC Program shall apply to regional gangs only to the extent that such gangs are established or are permitted pursuant to any collective bargaining agreements that may exist during the term of this Consent Decree.

that may be utilized is attached hereto as Exhibit "C".) This target number, which shall not be less than three individuals per position (or group of positions) per seniority district, region, and for all the system gangs (hereinafter sometimes "seniority districts, etc.") will be reviewed and adjusted by CSXT, if necessary, on an annual basis during the term of this Consent Decree. The method utilized to determine the target number for each preferred classification position (or group of positions) shall be provided to Plaintiffs' Lead Counsel thirty (30) days prior to the implementation of the QEC Program. Should Plaintiffs' Lead Counsel object to the target number or the method utilized to determine the target number for any preferred classification position, counsel for the parties shall meet and attempt in good faith to resolve any such objection.

c. CSXT shall create and publish lists reflecting all Maintenance of Way employees in each seniority district, region and system-wide who are currently qualified on each Maintenance of Way preferred classification position (or group of positions) (the "qualified list"). In developing the initial qualified list, CSXT will inform employees in the Maintenance of Way craft of the need to self-identify as qualified to operate each machine and the procedures CSXT will follow thereafter to develop the qualified list⁵. Employees shall be ranked on the qualified list first according to machine operator seniority and then according to Maintenance of Way seniority⁶ if the employee does not have machine operator seniority. This qualified list will be published by CSXT in the places and manner in which CSXT normally publishes seniority

⁵ No provision of this Consent Decree expands or diminishes employee obligations to exercise seniority pursuant to the BMW/CSXT collective bargaining agreements in order to qualify for employee benefit entitlements pursuant to existing protective arrangements.

⁶ Maintenance of Way seniority refers to an employee's earliest seniority date in the Maintenance of Way craft.

rosters. Each qualified list will be separately compiled, revised, and published annually, starting no later than January 31, 2000 and each year thereafter on January 31st during the term of the Consent Decree. The qualified lists will be open to written protest (to be filed with CSXT's Director-Employee Relations for the Maintenance of Way craft) and correction, upon proper proof of error, for a period of sixty (60) calendar days from the date of posting. CSXT shall make a good faith effort to resolve all written protests to the satisfaction of the parties involved. If any protest is not resolved to the satisfaction of the Maintenance of Way class member(s) involved, or if such Maintenance of Way class member(s) believe that CSXT has breached the provisions of the QEC Program in connection with the qualified list, he/she shall have the right to file a grievance pursuant to the Grievance Procedure set forth in Article II, Paragraph 10 below, and the claim may be pursued only in that forum. CSXT shall maintain the initial and all revised, qualified lists and ensure the accessibility of the current lists to Maintenance of Way employees. Upon certification, employees shall be given a "Certificate of Qualification" reflecting that he/she has been found to be qualified by CSXT pursuant to the QEC Program on a particular preferred classification position (or group of positions).

d. In developing the initial lists or subsequently, if the number of employees listed on the initial or any revised qualified list for any particular preferred classification position (or group of positions) is determined by CSXT to be less than the target number for said preferred classification position, CSXT will, within thirty (30) days after such determination, notify employees of such determination through normal bulletining procedures, and will inform employees in the applicable seniority district, region or system-wide (for all system gangs) where the vacancies on the Qualified List occur about the opening for training

opportunities, pursuant to the QEC Program, until the target number of qualified employees is reached for said preferred classification position (or group of positions). Said notice will inform all employees in the applicable seniority district or region or system-wide (for all system gangs) of the particular preferred classification involved, the number of vacancies on the qualified list in said preferred classification to be filled, the seniority district, region or system-wide, as applicable, and the date by which their desire to participate must be submitted pursuant to CSXT's normal bulletining process. Once the employees' notices of intent to participate are received, the determination of the employees to be allowed to train and attempt to qualify for these vacancies on the list pursuant to the QEC Program shall be made by CSXT based on their Maintenance of Way seniority. This procedure will continue until there are sufficient qualified employees to equal the target number. Any newly qualified employees will be placed on the qualified lists (initial and subsequent) for the applicable preferred classification position (or group of positions) as set forth in Paragraph c., above.

e. All bulletined vacancies or new positions in the preferred classification positions shall be awarded to the highest ranked bidder, from the applicable qualified list.

(1) If there are no bidders at all for a preferred classification position on a system or regional gang, the Maintenance of Way employee ranked highest on the applicable qualified list where the vacancy exists will be assigned the vacant position. If such employee refuses the vacant position, he/she shall be permanently removed from said list and the next highest ranked employee on the applicable qualified list will be assigned the vacant position. This process shall continue until the position is filled or the qualified list has been exhausted. In

no case, however, shall any employee be required to take a preferred classification position which is equal to or less in rate of pay than his/her current position. Employees will have the option of having their names removed from any region or system-wide qualified list each calendar year, provided such option is exercised thirty (30) days prior to January 1 of each calendar year.

(2) If there are no bidders at all for a preferred classification position in a seniority district, the Maintenance of Way employee (active or furloughed) ranked lowest on the applicable qualified list will be assigned the vacant position. If such employee refuses the vacant position, he/she shall be removed from said applicable qualified list and will not be eligible to return to said applicable qualified list for one (1) year. The next lowest ranked employee on the applicable qualified list will then be assigned the vacant position. This process shall continue until the position is filled or the qualified list has been exhausted. In no case, however, shall any employee be required to take a preferred classification position which is equal to or less than the rate of pay on his current position. The employee who accepts a no bid preferred classification position cannot bid off that position for forty-five (45) work days. During those forty-five (45) work days, said employee shall be afforded lodging, meal allowance and weekend travel pay pursuant to the existing BMW Travel Allowance Agreement, if the employee travels more than fifty (50) miles, one-way, from his/her place of residence while protecting the assignment. At the end of the forty-five (45) work day period, the employee will be returned to his/her former position if he/she so desires, or he/she can remain on the preferred classification position with the understanding that he/she will not be afforded lodging, meal allowance or weekend travel pay, except that if he/she is force assigned to a mobile district preferred classification position then he/she shall be afforded lodging, meal allowance and weekend travel

pay pursuant to the appropriate collective bargaining agreements.

f. CSXT shall have the option of providing training for the preferred classification positions by interactive computer program, videotape, live instruction, or other appropriate means at a location of its choosing which is reasonably available and accessible to Maintenance of Way employees selected to obtain such training (pursuant to Paragraph d. above), if and when the machine is utilized in the employee's seniority district. To the extent that On-The-Job Training ("OJT") is utilized, CSXT will use its best efforts to involve qualified African-Americans in the training and qualification process. Maintenance of Way employees may be on more than one qualified list at a time. Training and certification on one (1) preferred classification position per calendar year shall be on company time and at company expense, if the training is in the classroom or OJT. Training on preferred classification positions in excess of one in a calendar year, or if such training is conducted by interactive computer program, videotape or correspondence course, shall be without pay unless the training is provided during work time; however, all certifying will be done on company time and expense. As part of the training process, employees will be advised by CSXT of their training deficiencies so that they may attempt to correct such deficiencies during the training process. If CSXT requires an employee to take training in which the employee incurs costs in connection with taking such training, CSXT will reimburse the employee for all such costs within a reasonable period of time, but no later than sixty (60) days after receipt of verification of the payment of such costs. Any Maintenance of Way class member who feels that CSXT has breached the provisions of the QEC Program training and certification processes shall have the right to grieve pursuant to the Grievance Procedure set forth in Article II, Paragraph 10 below, and the claim may be pursued only in that forum.

g. The certification component of the QEC Program implemented herein shall be validated pursuant to Article II, Paragraph 9 below. Any and all reports of the experts chosen by the parties to conduct the validation studies regarding the process by which employees are certified for preferred classification positions in the QEC Program shall be provided to Defendant's Lead Counsel, to Defendant's CO, and to Plaintiffs' Lead Counsel as soon as prepared by such expert.

h. Any Maintenance of Way class member who is unsuccessful in acquiring certification as a qualified employee on a particular preferred classification position pursuant to the QEC Program shall be advised, in writing and language understandable to him/her, of the basis and/or reason for his/her lack of success. If any Maintenance of Way employee is disqualified from a preferred classification position pursuant to the provisions of any applicable collective bargaining agreement or the terms of this Consent Decree, the Maintenance of Way employee shall likewise be permanently removed from the applicable qualified list. Copies of all such notices and disqualifications for Maintenance of Way class members shall be timely provided to Plaintiffs' Lead Counsel.

i. Notwithstanding the terms of this section of the Consent Decree, emergency work of sixty (60) days or less can be performed by CSXT pursuant to the terms of applicable collective bargaining agreements and without the necessity of creating a new qualified list or manning the work with Maintenance of Way employees from any such list.

8. TRANSFERS ACROSS SUB-DEPARTMENTS, DEPARTMENTS AND/OR CRAFT LINES.

a. Any employee shall have the right to apply to transfer to contract

positions in other sub-departments, departments, or crafts pursuant to CSXT's published Transfer Policy as it may exist from time to time when CSXT is seeking new hires for vacant contract positions. Unless otherwise required by law, any qualified contract employee shall receive a preference over similarly or less qualified applicants for such positions who are not CSXT employees. As between equally qualified employees of CSXT applying for the same position pursuant to CSXT's Transfer Policy (including other Maintenance of Way employees), the senior qualified employee shall be awarded the position. In all cases, CSXT reserves the right to select the best qualified applicant. However, if a qualified Maintenance of Way class member applies for, but is not selected for transfer to a position, CSXT will provide Plaintiffs' Lead Counsel with the objective reason(s) for its decision not to select the Maintenance of Way class member. Notwithstanding the foregoing, CSXT may deny the transfer of any employee if such transfer would be detrimental to CSXT's operations. Any Maintenance of Way class member who feels that CSXT has breached the provisions of this Transfer process shall have the right to grieve pursuant to the Grievance Procedure set forth in Article II, Paragraph 10 below, and the claim may be pursued only in that forum.

b. Any employee who transfers pursuant to Paragraph a. above shall be subject to the terms and conditions of any applicable labor agreements and any requirements, policies, and/or procedures of CSXT applicable to the position to which he/she has transferred.

c. Maintenance of Way employees who transfer to a different department or craft pursuant to paragraph a. above will be entitled to retain and exercise their Maintenance of Way seniority (i.e. transfer back to their former department or craft) at any time within twenty-one (21) days after their transfer. Should any such transferring Maintenance of Way

employee decide to transfer back to their prior department or craft within the aforementioned twenty-one (21) day period, they will be immediately reinstated to the seniority they had at the time they left and to the rights his/her seniority permits. Maintenance of Way employees who transfer to positions that have initial or threshold educational, performance, training, or apprentice requirements and who fail to satisfy those requirements more than twenty-one (21) days after transferring, may nevertheless exercise their Maintenance of Way seniority to return to their prior department and craft with their full seniority and all rights immediately after being notified that they have not met the initial or threshold educational, performance, training, or apprentice requirements of the new position to which they transferred. Maintenance of Way employees transferring to contract positions pursuant to this Paragraph will not be required by the BMW to pay BMW dues in order to preserve their seniority reinstatement rights as a returning employee.

d. Maintenance of Way class members who meet the qualifications for a conductor position will be eligible for reimbursement by CSXT for the cost of tuition and books for conductor training courses in accordance with the provisions of Article II, Paragraph D.2.d. above, unless CSXT offers an in-house conductor training program.

e. The rights contained in Paragraph c. above apply only to the first transfer by a Maintenance of Way employee pursuant to this Consent Decree. Any subsequent transfers by Maintenance of Way employees shall be pursuant to CSXT's published Transfer Policy, as it exists from time to time.

f. The right of Maintenance of Way employees to transfer pursuant to this Paragraph does not create any obligation for said employees to do so.

9. VALIDATION OF TESTS AND PROCEDURES.

a. Within one hundred and eighty (180) days of Final Approval of this Consent Decree, Lead Counsel for the Plaintiffs and Lead Counsel for the Defendants (or their designees) shall meet with the validation expert chosen by the parties and determine the selection and/or promotion tests and procedures to be validated. Thereafter the chosen tests and procedures (including the criteria utilized by CSXT regarding same) shall be validated by the joint validation expert, unless CSXT can demonstrate to the satisfaction of the expert that the test and/or procedure has already been validated or does not have a disparate impact against African-Americans. All costs of validation shall be borne by CSXT.

b. The validation expert chosen by the parties will provide Plaintiffs' and Defendant's Lead Counsel and the Compliance Official appointed pursuant to Article III with sufficient information and documentation to show that the selection criteria and procedures are valid and minimize any adverse impact against African-Americans to the extent practicable.

c. Except as permitted in subparagraph d. below, no written or verbal test shall be given to any member of the class once the joint validation expert determines said test to be invalid.

d. CSXT may continue to use the FRA test, its Operating Rules test, its Safety Rules test, and the tests listed on Exhibit "D", which tests affect public or employee health or safety, without having to validate these tests. If CSXT develops or implements any additional training tests which it feels affect public and employee health and/or safety, Plaintiffs' Lead Counsel shall be provided a copy of such test sixty (60) days prior to its use by CSXT. If Plaintiffs' Lead Counsel believes in good faith that any such test does not legitimately affect public

and employee health and/or safety, he shall notify Defendant's Lead Counsel and the Compliance Official of his beliefs in this regard. Within ten (10) days after giving such notice, Plaintiffs' Lead Counsel and CSXT's designee shall meet and attempt in good faith to resolve any such dispute. If the dispute is not resolved by this process, the parties shall refer the final decision as to whether the test affects public or employee health or safety to the jointly selected validation expert.

e. By October 1, 2000, CSXT shall establish guidelines for the administration of the tests set forth in Paragraph d. above to assure that they are administered to its employees and graded in a fair and impartial manner, with answers and standards of performance being the same, company-wide, for the same positions. Lead Counsel for the Plaintiffs shall be provided said guidelines thirty (30) days prior to their implementation or change. Any class member who feels that CSXT has breached the terms of this subparagraph d. shall have the right to grieve pursuant to the Grievance Procedure set forth in Article II, Paragraph 10 below.

10. GRIEVANCE PROCEDURE.

a. Any and all claims of Named Plaintiffs and class members involving matters of interpretation of or compliance with the terms of this Decree (hereinafter referred to as a "claim" or "claims") shall be conclusively resolved through the following grievance procedure, which shall not be utilized for any other purpose:

(1). Within ninety (90) days of the Final Approval of this Decree, CSXT shall designate an employee(s) as Grievance Officer(s) (hereinafter "GO"). CSXT shall use its best efforts to appoint and maintain in office individuals who will be effective in carrying out the duties and responsibilities of the GO. The GO may be removed or changed from time to

time at the sole discretion of CSXT, provided that there shall be a designated GO for the duration of this Decree. In the event that the GO ceases to function in that role, CSXT shall designate a replacement GO as soon as practicable, but no later than ninety (90) days after the GO ceases to function in that role.

(2). The following procedure shall apply in selecting the GO:

(i) CSXT shall use its best efforts to appoint an individual who will be effective in carrying out the duties and responsibilities of the GO as set forth herein.

(ii) Prior to appointing an individual for the GO position, CSXT shall provide Plaintiffs' Lead Counsel with a resume including the identity, background, experience and qualifications of the individual the company intends to appoint to the position. Within two (2) weeks of receiving the resume, Plaintiffs' Lead Counsel may meet with the designated individual to enable him to provide his views regarding the individual's qualifications and suitability for the GO position to Defendant's Lead Counsel. Counsel for CSXT may be present at such meeting. Notwithstanding this process, the decision of appointing the GO shall be CSXT's.

(3). All claims must initially be submitted to Plaintiffs' Lead Counsel for processing pursuant to this Grievance Procedure. All such claims must be affirmed by the claimant as true and correct to the best of their knowledge. All claims shall in turn be submitted, in writing and sworn to by the claimant, to the GO by Plaintiffs' Lead Counsel within forty-five (45) days of the occurrence or event giving rise to such claim, unless a later date is agreed to by Plaintiffs' Lead Counsel and the GO. All claims shall specify the provision(s) of the Decree allegedly violated and shall set forth the facts and persons involved. Claims shall only be

presented to the GO if Plaintiffs' Lead Counsel in good faith after initial investigation believes that a failure to comply with the terms of the Decree has occurred.

(4). The GO shall receive all claims from Plaintiffs' Lead Counsel and shall, within sixty (60) days of receipt, investigate such claims. To that end, the GO or his designee is empowered to interview witnesses, gather and examine available documents and records, and do all things necessary to fully investigate all such claims; provided, however, that the GO or his designee may only interview the claimant in the presence of Plaintiffs' Lead Counsel or his designee. In the event of such an interview, CSXT may also have a lawyer present. The GO shall have no authority to negotiate or agree to any change in the terms of this Consent Decree.

(5). Within fifteen (15) days after the completion of the investigation, the GO and Plaintiffs' Lead Counsel, or his designee, shall meet or confer by telephone and exercise their best, good faith efforts to resolve the claim. If CSXT chooses, an attorney for CSXT may participate in this meeting. At this meeting, the GO shall provide Plaintiffs' Lead Counsel, or his designee, with a summary report of the investigation. The summary report shall set forth the relevant facts, all witnesses and documents relevant to the facts, and a recommended resolution of the claim. The presentation of evidence at the grievance hearing, if one is necessary, shall be limited to the witnesses and documents set forth in the summary report, unless otherwise agreed to by the parties. Within thirty (30) days of receipt of the summary report, Plaintiffs' Lead Counsel, or his designee, shall have the right to talk with all witnesses and review all documents set forth in the summary report, after giving notice to GO of his/her intent to do so. The GO or his designee may attend any such witness interviews or

document reviews if he/she so desires.

(6). Any agreement resolving a claim shall be reduced to writing, shall be made a part of the complaining employee's personnel record and shall not be subject to further review or proceedings of any kind.

(7). The GO shall have the authority to recommend appropriate relief, including monetary relief, to be awarded to any claimant class member who the GO concludes has been the victim of a violation of the terms of this Decree.

(8). If after good faith efforts to do so, Plaintiffs' Lead Counsel, or his designee, and the GO, or his designee, are unable to reach a mutually satisfactory resolution of a claim, Plaintiffs' Lead Counsel, or his designee, may, but is not required to, refer the matter to a single arbitrator agreed to by the parties and supplied by the American Arbitration Association ("AAA") from its roster of arbitrators and whose primary area of experience is in the field of arbitrating disputes arising under collective bargaining agreements, by serving a "Notice of Intent to Arbitrate" on the GO and the office of AAA. Any such Notice must be postmarked within thirty (30) days of the meeting set forth in Subparagraph a. (4). above. The Notice of Intent to Arbitrate shall have attached to it a copy of these Grievance Procedures and the original claim of non-compliance presented by Plaintiffs' Lead Counsel, or his designee, to the GO. In the event of a decision to refer the matter, Plaintiffs' Lead Counsel, or his designee, shall send the GO a report setting forth the areas of disagreement.

(9). If a single arbitrator cannot be agreed upon, the parties shall request a panel of five arbitrators from AAA by serving a "Notice of Intent To Arbitrate" on the GO and the office of AAA at 2200 Century Parkway, Suite 300, Atlanta, GA 30345. Any such

Notice must be postmarked within thirty (30) days of the meeting set forth in Subparagraph a. (4) . above. The Notice of Intent To Arbitrate shall be attached to a copy of these Grievance Procedures and the original claim presented by Plaintiffs' Lead Counsel to the GO. Upon receipt of the list reflecting the five proposed arbitrators, counsel for CSXT and Plaintiffs' Lead Counsel, or his designee, with CSXT going first, shall strike alternatively until only one arbitrator is left. In subsequent arbitrations involving the same or a different claimant, the parties will alternate having the first strike. The arbitrator selected shall serve as the arbitrator for the claim. The grievance hearing shall be held within forty-five (45) days after the postmarked date of the Notice of Intent to Arbitrate unless otherwise agreed to by the parties.

(10). The submission to the arbitrator will be by written affidavits, exhibits, briefs, and argument, unless an evidentiary hearing is requested by one of the parties. Notice of a request for evidentiary hearing shall be submitted within five (5) days of receipt of the Notice of Intent to Arbitrate. The decision of the arbitrator shall be final and binding on the parties and shall be filed with the Clerk of the United States District Court for the Northern District of Alabama.

(11). Each party shall pay its own costs and expenses, including attorneys' fees. The costs of the arbitrator, the court reporter, if one is required, and the hearing room shall be paid by the losing party. The arbitrator shall determine in each arbitration who is the losing party.

(12). For all claims of Named Plaintiffs and class members arising out of this Decree, this Grievance Procedure shall be the exclusive remedy and shall supersede any other remedies provided by any collective bargaining agreements, the common law, or any

state or federal statute. These procedures are solely for resolving claims covered by this Decree and shall not be used for grievances arising under any applicable collective bargaining agreement.

b. Complaints that CSXT, as a matter of policy, practice or procedure, has not implemented the provisions of this Decree, as required herein, are not included within the types of claims covered by the Grievance Procedure set forth in Article II. D. 10. a. above. Any such claims may only be raised with the Court by Plaintiffs' Lead Counsel.

11. NOTICE TO EMPLOYEES REGARDING CONTRACT POSITIONS.

a. CSXT shall provide one or more locations at each reporting site within each contract seniority district in the Operating Departments at which all bulletins issued for vacant, permanent, Operating Department contract positions in that seniority district pursuant to the applicable collective bargaining agreement will be available for review. These locations must be reasonably accessible to active and furloughed employees. CSXT shall also provide appropriate notice regarding the availability of such information by bulletin, bulletining and/or other normal CSXT notice procedures. Employees will be responsible for checking the job bulletins at each reporting location established by CSXT.

b. CSXT shall also establish an "800" number with roll-over (or "Hunt Group") capacity sufficient to receive projected calls from and convey information to active and furloughed Maintenance of Way contract employees who may call in order to receive taped information regarding vacant, permanent Maintenance of Way contract positions outside of their seniority district. CSXT shall also provide appropriate notice to Maintenance of Way employees regarding the "800" number by bulletin, bulletining and/or other normal CSXT notice procedures. Employees will be responsible for calling the "800" number(s) to learn of existing vacancies.

c. CSXT shall make a good faith effort to assure that all appropriate personnel as set forth in Paragraphs a. and b. above shall have reasonable access to reporting sites and "800" number(s) where vacant, permanent contract positions in the Operating Departments can be reviewed.

12. NOTICE TO EMPLOYEES REGARDING NON-CONTRACT POSITIONS.

a. CSXT shall provide one or more locations at each reporting site within each contract seniority district in the Operating Departments at which notices for vacant, full-time, entry level, non-contract positions in the Operating Departments are posted pursuant to CSXT's job posting policy. These locations shall be reasonably accessible to contract employees. CSXT shall also provide appropriate notice regarding the availability of such information by bulletin, bulletining, and/or other normal CSXT notice procedures. Employees will be responsible for checking the job postings at the locations established by CSXT. Openings for vacant, full-time, entry-level, non-contract positions in the Operating Departments may be published on the computers in accordance with the applicable CSXT posting policy or practice.

b. CSXT shall also establish an "800" number with roll-over (or "Hunt Group") capacity sufficient to receive projected calls from and convey information to active, contract employees in the Operating Departments who may call in order to receive taped information regarding vacant, full-time, entry-level non-contract positions in the Operating Departments that are posted pursuant to CSXT's job posting policy or practice. CSXT shall provide appropriate notice regarding the "800" number by bulletin, bulletining and/or other normal CSXT notice procedures. Employees will be responsible for calling the "800" number(s)

or checking the computers to learn of existing vacancies.

c. CSXT shall make a good faith effort to assure that all appropriate personnel as set forth in Paragraphs a. and b. above shall have reasonable access to reporting sites and "800" number(s) where vacant, full-time, non-contract positions in the Operating Departments can be reviewed.

ARTICLE III ADMINISTRATION OF CONSENT DECREE

A. This Decree shall become effective after Final Approval as defined herein.

B. Within ninety (90) days of Final Approval of the Consent Decree, CSXT shall designate a Compliance Official ("CO") who shall be charged with the overall responsibility for monitoring compliance with the terms of the Decree. The Compliance Official shall report directly to a senior executive of CSXT. At CSXT's sole discretion, one individual may perform the functions of both the GO and the CO.

1. In the event that the Compliance Official ceases to function in that role, CSXT shall designate a replacement Compliance Official as soon as practicable, but no later than ninety (90) days after the Compliance Official ceases to function in that role.

2. The following procedure shall apply in selecting the Compliance Official:

a. CSXT shall use its best efforts to appoint an individual who will be effective in carrying out the duties and responsibilities set forth in Paragraph 3.

b. Prior to appointing an individual for the Compliance Official position, CSXT shall provide Plaintiffs' Lead Counsel with a resume including the identity, background, experience and qualifications of the individual who the Company intends to appoint

to the position. Within two weeks of receiving the resume, Plaintiffs' Lead Counsel may meet with the designated individual and provide his views as to the individuals' qualifications and suitability for the Compliance Official position. Counsel for CSXT may be present at any such meeting. Notwithstanding this process, the decision as to the identity of the Compliance Official shall be solely CSXT's.

3. The Compliance Official shall use his/her best efforts to fairly assure CSXT's implementation of and compliance with the provisions of this Consent Decree.

a. For purposes of this Section, best efforts to fairly assure shall include the following:

(1). Overseeing and monitoring the development, establishment, and/or implementation and revision of the General Education and Training Program pursuant to Article II Section D. 2. of the Decree;

(2). Overseeing and monitoring the development, establishment, and/or implementation, and revision of the Craft, Technical and Skills Training pursuant to Article II Section D.3. of this Decree;

(3). Overseeing and monitoring the development, establishment, and/or implementation, and revision of the Qualified Employee Certification Program pursuant to Article II Section D.7. of this Decree;

(4). Overseeing and monitoring the development, establishment, and/or implementation and revision of the Supervisory Training Programs pursuant to Article II Section D.6. of this Decree;

(5). Overseeing and monitoring the Transfer of class members

pursuant to Article II Section D.8. of this Decree;

(6). Overseeing and monitoring the implementation of validated tests and selection procedures pursuant to Article II Section D.9. of this Decree;

(7). Ensuring the implementation and monitoring of the Grievance Procedure set forth in Article II Section D.10. of this Decree;

(8). Overseeing and monitoring the implementation of Notice Procedures For Contract And Non-Contract Positions at CSXT pursuant to Article II Sections 10. , 11. and 12. of this Decree;

(9). Overseeing and monitoring the development and implementation of any training programs for existing supervisory employees of CSXT, including diversity training, racial discrimination and harassment training, and training regarding the terms of this Decree;

(10). Submitting to Plaintiffs' Lead Counsel progress reports and other monitoring material specified in Article III, Section C. of this Decree.

4. On at least an annual basis, the Compliance Official shall meet with the highest ranking officer in each Operating Department of CSXT to review the performance of the department regarding compliance with this Decree. The highest ranking officer in each Operating Department will in turn take all reasonable steps to ensure compliance with this Decree by all CSXT officials in his/her department.

C. Beginning on January 31, 2000, or such later date as the parties shall agree, and continuing each calendar year thereafter during the term of this Decree, CSXT shall provide the following reports to Lead Counsel for the Plaintiffs, except that in no event shall CSXT have an

obligation to include data in the first report for any period prior to the appointment of the CO:

1. Promotions and transfers:

a. All full-time vacancies for Assistant Foreman and Foreman in the Engineering Department, Contract Foreman in the Mechanical Operations Department, and Assistant Chief Dispatcher, Chief Dispatcher, and Yardmaster in the Transportation Department, filled during the preceding calendar quarter in CSXT's Operating Departments, including the title of the vacant position, the seniority district where the vacancy occurred, the dates the vacancy occurred and was filled, the name, social security number, race, prior seniority district, and prior position title of the individual awarded the vacant position, the date of the bulletining of the vacant position, and the name, social security number, race, present position title, present seniority district, and all applicable seniority dates for each applicant for each such vacancy. If any such vacancy is awarded to a class member, only the title of the vacant position, the seniority district where the vacancy occurred, the dates the vacancy occurred and was filled, the name, social security number, race, prior seniority district, and prior position title of the individual awarded the vacant position need be provided.

b. All contract vacancies in the Operating Departments filled during the preceding calendar quarter pursuant to the Transfer procedures set forth in Article II, Paragraph 8 of this Decree, including the title of the vacant position, the seniority district where the vacancy occurred, the dates the vacancy occurred and was filled, the name, social security number, race, prior seniority district, prior position title, and all applicable seniority dates for the individual awarded the vacant position, the date of the bulletining or posting of the notice regarding the vacant position, and the name, social security number, race, present position title,

present seniority district, and all applicable seniority dates for each individual attempting to transfer to each such position vacancy. If any such transfer is awarded to a class member, only the title of the vacant position, the seniority district where the vacancy existed, the dates the vacancy occurred and was filled, the name, social security number, race, prior seniority district, and prior position title of the individual transferred to the vacant position need be provided.

c. All first and second level non-contract vacancies in the Operating Departments filled during the preceding calendar quarter, including the titles of the vacant positions, the locations of the vacancies, the dates the vacancies occurred and were filled, the date of the bulletining or posting of the notice regarding the vacant positions (if any), and the name, social security number, race, and present position title for each individual applying for each such position vacancy.

d. If an African-American is not selected to fill the vacancy, the reason or reasons for the non-selection of any class member identified in Article III, Paragraphs C.1.a. through c. above shall also be provided in non-conclusory terms.

2. Work Force Analysis:

a. By January 31, 2000, and once each year thereafter during the term of this Decree, CSXT shall provide to Lead Counsel for the Plaintiffs, a summary of the racial composition of the contract positions in the Operating Departments as of November 30th of the preceding year.

b. By January 31, 2000, and once each year thereafter during the term of this Decree, CSXT shall provide to Lead Counsel for the Plaintiffs, a summary of the racial composition of the entry and second level non-contract positions in the Operating Departments

of CSXT as of November 30th of the preceding year.

3. CSXT shall retain for one calendar year all records and documents from which the reports in Article III, Paragraph C. are derived. During the period of their retention, such records and documents will be made available to the Plaintiffs' Lead Counsel at CSXT upon reasonable request for the inspection and/or copying of same. Any such requests shall be submitted to the Compliance Official, who will provide reasonable access to such records and/or documents.

D. The Plaintiffs' Lead Counsel, or his designee, shall be provided access to all information reasonably necessary for them to monitor compliance with the terms of this Decree.

ARTICLE IV CLASS RELIEF

A. Notice of Class Action, Statement of Claim Forms and Opt-Out Forms

1. CSXT will send to each Named Plaintiff and each class member, by bulk mail, the "Notice of Hearing to Consider and Approve Consent Decree"; "Statement of Claim Form" and "Opt-Out Form" (Exhibit "A", "E", and "F", respectively) on which each class member must state all claims of racial discrimination arising between June 7, 1991 and the present which they have against CSXT.

To receive any relief under this Decree, class members must complete and submit a Statement of Claim Form. Said Form must be received by the Clerk of the United States District Court for the Northern District of Alabama, Southern Division by the close of business on December 14, 1998. A class member's failure to completely fill out and timely submit the Statement of Claim Form as set forth above will result in the loss of all class monetary relief due

to said class member under this Decree, unless the class member demonstrates that he/she was prevented from completely filling out or timely filing by circumstances beyond his/her control. The Named Plaintiffs shall not be required to file a Statement of Claim Form. The Statement of Claim Form should be mailed to:

Clerk, United States District Court
Northern District of Alabama, Southern Division
1729 North 5th Avenue
Birmingham, Alabama 35203.

2. Any class member may request to opt-out or be excluded from the settlement embodied in this Decree by filling out an "Opt-Out Form" (attached hereto Exhibit "F"). Said Opt-Out Form must be received by the Clerk of the United States District Court for the Northern District of Alabama, Southern Division by the close of business on December 14, 1998 at the following address:

Clerk, United States District Court
for the Northern District of Alabama
1729 North 5th Avenue
Birmingham, AL 35203

All claims of class members who do not request to opt-out from this Decree will be deemed to be conclusively resolved through the procedures and remedies set forth in this Decree, and such class members will be forever barred from pursuing any claim against CSXT for any race and/or color discrimination covered by the terms of this Decree occurring prior to the date of Final Approval of this Decree.

B. Settlement Fund

1. Ten (10) business days after the Court enters an Order preliminarily approving this Consent Decree, CSXT will deposit the sum of \$25,000,000.00 in an interest-

bearing trust account in the SouthTrust Bank of Alabama, N.A., Birmingham, Alabama, in the name of "Gordon, Silberman, Wiggins & Childs, as counsel and trustees for the Named Plaintiffs and class members". Collectively, these funds, plus accrued interest, shall hereinafter be referred to as the "Settlement Fund." If this Decree is not ultimately approved, or if CSXT elects to withdraw from or to renegotiate this Consent Decree pursuant to Article VII D., CSXT will be entitled to prompt and complete reimbursement of all sums deposited into the Settlement Fund, including all interest earned. No disbursements shall be made from the Settlement Fund until Lead Counsel for both Plaintiffs and CSXT have notified SouthTrust Bank, in writing, of Final Approval of this Decree and the amount to be retained by SouthTrust Bank to reimburse CSXT pursuant to Article VII D. for opt-outs who file EEOC charges or lawsuits against CSXT, unless the parties agree to the contrary in writing. In the interim between deposit and withdrawal, the Settlement Fund will accumulate at the market rate of interest paid for such deposits. CSXT is not and will not be responsible for any interest payment to any Named Plaintiff or class member on any amount of monetary relief except to the extent it is paid from the Settlement Fund. The interest earned by the Settlement Fund from date of deposit until the final conclusion of this matter will be utilized to pay the administrative costs, including legal costs, associated with this Decree as set forth in Article VI. B., below. CSXT's obligation with respect to this Settlement Fund will be met in full upon receipt by SouthTrust Bank of the above-referenced \$25,000,000.00 deposit.

2.(a) Counsel for the Plaintiffs are hereby specifically authorized and directed to pay \$18,580,000.00 from the Settlement Fund as monetary relief to the Named Plaintiffs and class members in this case in accordance with the foregoing (such portion of the Settlement Fund to be known as the "Class Fund"), and are held harmless to any and all persons for the use and

payment of the total sum deposited in accordance with the terms of this Decree. The total monetary relief to be paid to each Named Plaintiff and each class member completely filling out and timely filing a Statement of Claim Form in this case shall be within the sole and exclusive judgment of Plaintiffs' Lead Counsel. All applicable federal, state, and local taxes, payroll and other wage obligations payable by the employee or CSXT shall be paid from this Class Fund, as set forth herein. CSXT and its employees and counsel are held harmless for the payment of any monetary relief hereunder, including the Plaintiffs' attorneys' fees and expenses.

(b) All distributions from the Class Fund to a Named Plaintiff or individual class member, apart from the distributions set forth in Article IV. B. 4. below, shall be allocated as follows: 70% non-wage compensatory and other personal injury damages; 15% back pay; 5% fringe benefits and 10% prejudgment interest. Before each such distribution, and if Plaintiffs' Lead Counsel so chooses, Plaintiffs' Lead Counsel shall advise CSXT of the amount to be distributed pursuant to this formula. CSXT shall then compute for Plaintiffs' Lead Counsel the total amount of taxes payable for federal, state and local payroll and other wage obligations, and CSXT shall provide such information to Plaintiffs' Lead Counsel for each such distribution. Distributions shall then be made to Named Plaintiffs and individual class members, less the amount to be set aside for such tax obligations. Plaintiffs' Lead Counsel is specifically authorized and directed to deduct and/or withhold such tax obligations from each distribution and maintain them in the Settlement Fund until such time as they are to be paid as required by law and then to take all necessary steps to assure payment. If requested by Plaintiffs' Lead Counsel, and based on the information provided, CSXT will perform the administrative task of preparing the

necessary tax forms with respect to withholding and employment taxes for the appropriate government entities. If payment is not made through CSXT, Plaintiffs' Lead Counsel will provide CSXT with notices of such payments.

3. As a condition precedent to the receipt of any monetary relief under the provisions of this Decree, the Named Plaintiffs and all class members must execute a release and waiver exempting CSXT from any liability to the date of Final Approval of this Decree regarding any alleged race discrimination. Said release and waiver shall contain a confidentiality provision prohibiting the claimant from disclosing the amount of recovery and/or the terms of this Decree. Upon payment, each recipient must also execute a "satisfaction of judgment form". Failure to obtain an individual release and waiver from any Named Plaintiff or class member shall, in no respect, undermine the full force and effect of the release of CSXT contained in Article VII.

4. Prior to allocating any portion of the monetary relief from the Class Fund to the Named Plaintiffs and class in this case, the Class Fund shall be reduced by the following amounts:

a. The amount of twenty-five thousand dollars (\$25,000) to each Named Plaintiff in consideration of their leadership throughout the preparation for, filing of, litigation of and settlement of this lawsuit.

b. The amount of fifteen thousand dollars (\$15,000) to each Named Plaintiff and each class member who was deposed in this action for each day or partial day of preparation for and deposition testimony given, regardless of the substance of his testimony.

c. The amount of fifteen thousand dollars (\$15,000) to each Named Plaintiff in consideration for their having assumed the risks and notoriety related to being Named

Plaintiffs in this class action litigation, including the potential liability for CSXT's taxable legal costs had CSXT litigated the action to a favorable conclusion.

d. The amount of ten thousand dollars (\$10,000) to each Named Plaintiff in consideration for their having expended substantial time and effort related to this class action litigation.

e. The amount of ten thousand dollars (\$10,000) to each Named Plaintiff in consideration for their personal involvement in bringing to light the facts culminating in the filing of this class action.

5. It shall be the sole responsibility of each Named Plaintiff and class member who seeks monetary relief in this case to advise Plaintiffs' Lead Counsel promptly of his/her change of address. A class member's failure to keep Plaintiffs' Lead Counsel apprised of his/her address may result in his/her request for monetary relief being denied.

C. Monetary Relief for Named Plaintiffs and Class Members.

1. For all claims of Named Plaintiffs and class members who timely submit a Statement of Claim Form, the following will apply:

a. As set forth above, the Class Fund to be distributed to the Named Plaintiffs and class members who completely fill out and timely submit a Statement of Claim form is \$18,580,000.00.

b. In the event that there is monetary relief for Named Plaintiffs and class members which is not claimed from the Class Fund, each Named Plaintiff and class member entitled to recover a monetary sum pursuant to this Consent Decree shall receive a pro rata share of any such remaining monetary relief. However, if in the sole discretion of Plaintiffs' Lead

Counsel, the remaining monetary relief is so small that pro rata apportionment is inefficient and/or unduly burdensome, Plaintiffs' Lead Counsel will contribute any such remaining monetary relief to the Birmingham Civil Rights Institute.

D. Calculation of Named Plaintiffs' and Class Members' Claims

1. This Decree exclusively addresses claims of class members and Named Plaintiffs related to the following class:

All African-Americans who, from June 7, 1991 to the date of Final Approval of this Consent Decree, have worked, are working, or will work as contract employees in CSXT's Operating Departments.

2. Claims of Named Plaintiffs and class members will be evaluated pursuant to guidelines which take into account consideration of, inter alia:

Monetary sums paid by Named Plaintiffs/class members to obtain training so they can move to higher positions at CSXT; monetary sums paid by Named Plaintiffs/class members for treatment of emotional distress, mental anguish, or pain and suffering; pain and suffering, emotional distress and mental anguish suffered by Named Plaintiffs/class members during their employment at CSXT due to a racially hostile work environment; pain and suffering, emotional distress and mental anguish suffered by Named Plaintiffs/class members during their employment at CSXT due to their assignment to the Maintenance of Way or the Firemen and Oilers craft; pain and suffering, emotional distress and mental anguish suffered by Named Plaintiffs/class members during their employment at CSXT due to their assignment to noticeably unequal and/or deficient tools, equipment and facilities with which to perform their work; pain and suffering, emotional distress and mental anguish suffered by Named Plaintiffs/class members during their employment at CSXT due to their assignment to the lowest, hardest, harshest, dirtiest, and most dangerous work assignments; pain and suffering, emotional distress and mental anguish suffered by Named Plaintiffs/class members during their employment at CSXT due to the denial of an equal chance to acquire better and higher paying positions; pain and suffering, emotional distress and mental anguish suffered by Named Plaintiffs/class members during their employment at CSXT due to

the retaliation by CSXT for their attempts to move to higher and better paying positions or to complain about racially hostile mistreatment by CSXT; length of company service with CSXT; length of departmental service at CSXT; positions held while employed at CSXT; length of time in each position held while employed at CSXT; compensation paid by CSXT from June 7, 1991 to the present; hours worked overall, and by year, from June 7, 1991 to the present; number and length of layoffs from June 7, 1991 to the present; difference in pay between Named Plaintiffs/class members and similarly situated white employees; total earnings from June 7, 1991 to the present; positions for which applied while working at CSXT, if any; positions for which applied while working at CSXT, but which were awarded to lesser qualified white employees; performance problems on positions held at CSXT; training received on positions held at CSXT; total earnings at companies other than CSXT from June 7, 1991 to the present; discipline received while employed at CSXT; and training received outside of CSXT from June 7, 1991 to the present which is relevant to jobs desired at CSXT from June 7, 1991 to the present.

E. Expedited Hearing Procedure for Resolution of Class Members' Claims.

1. All claims of Named Plaintiffs and class members pursuant to Article IV of this Decree shall be conclusively resolved through the following procedure:

a. All Statement of Claim Forms must be received by the Clerk of the United States District Court for the Northern District of Alabama, Southern Division, at the address shown on Page 34 of this Decree by close of business on December 14, 1998, unless excused by circumstances beyond the control of the Named Plaintiff or class member. All Statement of Claim Forms must be timely submitted and must contain all of the required information.

b. Plaintiffs' Lead Counsel shall have the sole responsibility to evaluate each Statement of Claim Form submitted and determine whether a valid claim is stated and, if so, the level of monetary recovery to be received in accordance with Article IV of this Decree.

c. Plaintiffs' Lead Counsel shall mail, with postage and printing at CSXT's expense, to each Named Plaintiff and each class member who submits a timely Statement of Claim Form, a written statement setting forth the extent of any monetary recovery that will be permitted to him/her under this Decree. This written statement will be mailed within one hundred eighty (180) days after the Final Approval of this Decree, unless a longer period of time is necessary to evaluate the claims of the Named Plaintiffs and class members and make a final judgment regarding the extent of monetary recovery due to the Named Plaintiffs and class members.

d. Any dispute regarding whether and to what extent a Named Plaintiff or class member is entitled to recover under this Decree is to be resolved by good faith negotiations between Plaintiffs' Lead Counsel and each Named Plaintiff or class member who submits a timely and complete Statement of Claim Form. Any such dispute must be initiated by a Named Plaintiff or class member within thirty (30) days after the date of the written statement sent by Plaintiffs' Lead Counsel to the Named Plaintiff or class member. All negotiations regarding any dispute must be completed within thirty (30) days after written notice to Plaintiffs' Lead Counsel of such a dispute. For the purposes of this Paragraph, the date on the written notice to Plaintiffs' Lead Counsel shall serve as the starting date for the thirty (30) day period.

e. Claims which cannot be resolved by good faith negotiations between Plaintiffs' Lead Counsel and a Named Plaintiff or class member must be submitted by the Named Plaintiff or class member to the Court for final resolution. Any claims submitted to the Court for resolution must be postmarked by and filed with the Clerk of the Court within forty-five (45) days after the date of the written statement sent to the Named Plaintiffs and class members pursuant to

Article IV, Paragraph B.1. c. above. The payment of the monetary relief to be paid to the Named Plaintiffs and class members pursuant to Article IV, Paragraph C.1. below, shall be made sixty (60) days after the final resolution of all claims submitted by Named Plaintiffs and/or class members pursuant to this paragraph.

**ARTICLE V
INDIVIDUAL RELIEF**

A. In addition to the monetary relief set forth in Article IV above, the Named Plaintiffs shall be provided the following specific, additional relief:

1. Subject to Subparagraph 2. below, they will be offered the following positions, in writing:

<u>Name</u>	<u>Position</u>	<u>Location</u>
Lynell C. McCollough	Ass't. Roadmaster Ass't. Trainmaster Conductor/Loco. Eng. ⁷	Birmingham, AL
Eddie E. Drake, Jr.	Conductor/Loco. Eng.	Birmingham, AL
Melvin Baylor	Conductor/Loco. Eng. Brakeman ⁸ Carman	Pensacola, Flomaton, or Mobile
Larry Robinson	Ass't. Roadmaster	Birmingham, AL
James Chamblee	Foreman	Anywhere in Virginia
Robert C. Pope	Foreman	SPG Gang

⁷ Pursuant to applicable collective bargaining agreements, brakemen and conductors must accept promotion, respectively, to conductor or to locomotive engineer. Nothing in this Decree is intended to change this requirement for the Named Plaintiffs.

⁸ See footnote 7 above.

Jesse McMeans	Conductor/Loco. Eng.	Atlanta or Mobile
Oliver Johnson	Foreman	Anywhere in Virginia
Rudolph Clanton	Ass't Rd. Form. of Eng.	Birmingham

2. The positions listed in Paragraph A.1. above will: (1) be offered only as vacancies occur; (2) be offered only if Named Plaintiffs apply for the position; (3) be offered subject to CSXT's right to hire the best qualified applicant and subject to applicable collective bargaining agreements, if any; (4) be offered, if within the Maintenance of Way craft, consistent with the seniority rules in applicable collective bargaining agreements; (5) be offered, if the position is in a different department or craft, pursuant to the terms of the applicable collective bargaining agreements; (6) be offered at a compensation and benefits level in accordance with any applicable collective bargaining agreements or, if a non-contract position, at a level consistent with peers who have equivalent experience, skills and accomplishments; and (7) be offered if the Named Plaintiffs meet all of the qualifications for the position (subject to (3) above). Assignment to such positions shall be subject to CSXT's policies, including the understanding that CSXT management employees are required to transfer from time to time.

3. The Named Plaintiffs shall have ten (10) days to accept the offer of any such positions. If not accepted within ten (10) days, the offered position will automatically be revoked. If a vacancy occurs in a position designated by one of the Named Plaintiffs and they are offered and refuse the position, the Named Plaintiff shall be deemed to have knowingly rejected the offer of the position and shall no longer be entitled to any further relief pursuant to this Article of the Decree.

ARTICLE VI
ATTORNEYS' FEES, EXPENSES AND COSTS

A. Upon Final Approval of this Decree, or such other time as the parties may agree in writing, the sum of \$5,100,000.00 shall be dispersed to Plaintiffs' Lead Counsel from the Settlement Fund referred to in Article IV, Paragraph E. hereinabove in full and final payment of all attorneys' fees, experts' fees, expenses and costs of the Named Plaintiffs and plaintiff class up to the date of the Final Approval of this Decree.

B. The money remaining in the Settlement Fund, plus all accrued interest, after (1) distribution of the Class Fund pursuant to Article IV B. and C., above, (2) the payment of attorneys' fees, expenses and costs pursuant to Article VI A. above, and (3) the amounts set aside for CSXT pending the filing of lawsuits by class members who opt-out pursuant to Article VII D. hereinafter, shall be disbursed to Plaintiffs' Lead Counsel from the Settlement Fund, at any time after receipt of the notice required by Article IV E.1., in full and final payment of all administrative costs associated with this Decree, including, but not limited to, all attorneys' fees, costs, and expenses incurred in implementing and enforcing the various provisions of this Decree.

ARTICLE VII
LIMITATION OF CLAIMS

A. The negotiation of this settlement and entry of this Decree are in settlement of the claims of the Named Plaintiffs and class members based on alleged race and/or color discrimination. This Decree brings about a final and binding resolution of all race and/or color discrimination claims covered within the scope of the class definition in this case, as set forth hereinabove in Article I B. and in this Article VII. Unless they opt-out of this Consent Decree,

no Named Plaintiffs or class members may independently assert their own claims. Any claims outside the scope of this Decree are not actionable herein, either by opting out, by intervention or otherwise, and must be resolved independently hereof, pursuant to appropriate and requisite administrative and/or legal action, and in the proper forum.

B. All Named Plaintiffs and class members who do not formally opt-out of this Consent Decree pursuant to Article IV. A., both individually and as a class member (hereinafter "Releasors"), hereby release, remise and forever discharge CSXT and its directors, officers, employees, agents and assigns (hereafter "Releasees") from any and all matter of liabilities, claims, demands, causes of action, claims and/or suits at law or in equity, whether known or unknown, including but not limited to any claims for costs, expenses and attorneys' fees incurred by Releasors in connection with this Action, whether known or unknown, that Releasors, individually or as a class member, had, or may have had, against Releasees for any violation or alleged violation of any equal employment opportunity laws, ordinances, regulations or orders based on race or color (including, but not limited to, Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et. seq., the Civil Rights Act of 1866, 42 U.S.C. §§ 1981 and 1981A et seq., and any other applicable federal, state or local constitutional or statutory provisions, orders or regulations), and relating to any event occurring or act done or omitted to be done on or prior to the date of Final Approval of this Decree. The release in this paragraph is intended to be a full, binding, and permanent release of all claims which were or could have been alleged or discovered in this action by the Named Plaintiffs and Plaintiff class as defined in this Decree, and shall be construed broadly to effectuate this purpose. This release, accordingly, shall survive the termination of this Decree.

C. This litigation has not tolled the statute of limitations for any claims that might have been brought individually by class members, but for which class certification was not sought by the Named Plaintiffs. Tolling will not occur for any claims other than: (1) claims of class members who have been employed in the Maintenance of Way craft or the Firemen and Oilers craft during the requisite time period and arising out of their employment in such craft; (2) claims of class members related to promotions to entry-level management positions; and (3) claims of class members related to transfers between crafts within the contract ranks (hereinafter "Tolled Claims"). Claims not encompassed within the Tolled Claims are referred to hereinafter as "New Claims". Class members who have New Claims, but choose to participate in this settlement shall be permitted to seek recovery for race-related employment actions from June 7, 1991 to the date of Final Approval of this Decree. Class members who have New Claims, but choose to opt-out of this Consent Decree, shall only have the right to initiate a legal action with respect to their New Claims as if no lawsuit or EEOC charge involving their New Claims had ever been previously filed.

D. An amount equal to the product of the total number of Named Plaintiffs or class members who opt-out multiplied by \$20,000.00 ("Opt-Out Credit") shall not be disbursed from the Class Fund, but shall be retained to be used to reimburse CSXT for anticipated attorneys' fees and costs, as set forth in D.1. below, should such Named Plaintiffs or class members initiate individual legal actions or file EEOC charges against CSXT. However, said Opt-Out Credit to CSXT for its attorneys' fees and costs shall not exceed \$2,000,000.00.

1. CSXT shall receive a disbursement of \$5,000.00 for each Named Plaintiff or class member who opts out of this Decree and files an EEOC charge, but who has not yet filed

an individual legal action. If, on the other hand, a Named Plaintiff or class member opts out and files a legal action against CSXT, the parties agree that CSXT shall receive a disbursement of \$20,000.00 (less \$5,000.00, if an EEOC charge was previously filed by said Named Plaintiff or class member and the \$5,000.00 has already been paid to CSXT) for each such Named Plaintiff or class member. If a Named Plaintiff or class member who has opted out does not file an individual legal action or a charge with the EEOC against CSXT during the term of this Decree, the \$20,000.00 individual opt-out credit for each such Named Plaintiff or class member shall not be refunded to CSXT. If a Named Plaintiff or class member who has opted out does not file an individual legal action, but does file a charge with the EEOC against CSXT during the term of this Decree, the remaining \$15,000.00 of the \$20,000.00 individual opt-out credit for each such Named Plaintiff or class member shall not be refunded to CSXT.

2. If fifty (50) or more Named Plaintiffs and/or class members choose to opt-out of this Decree to pursue individual legal actions against it, CSXT shall have the right to withdraw from this Decree, reevaluate and/or renegotiate the terms of this Decree, and/or determine whether to go forward with this Decree as currently drafted. CSXT shall make this election by the close of business on December 23, 1998, unless the parties agree otherwise.

3. In the event that there are opt-out credit funds remaining in the Class Fund at the time the Decree is terminated, each Named Plaintiff and class member who has been determined to be entitled to recover a monetary sum pursuant to this Decree shall receive a pro rata share of any such remaining opt-out credit funds. However, if in the sole discretion of Plaintiffs' Lead Counsel, the remaining opt-out credit funds are so small that pro rata apportionment is inefficient and/or unduly burdensome, Plaintiffs' Lead Counsel will contribute any such remaining opt-out credit funds to the Birmingham Civil Rights Institute.

**ARTICLE VIII
MISCELLANEOUS**

A. The parties and their counsel shall not discuss the facts, amounts or terms of this Decree with any media representative, or publish or cause to be published any statement concerning this Decree, or discuss the amount or terms of this Decree with anyone not a party or counsel to a party, except that any inquiries or requests for data of any kind by persons not a party to this litigation will be answered by the following statement: The parties have amicably resolved this case in order to avoid the cost and expense of litigation. This settlement is not a reflection of the merits of any parties' case. All parties have agreed to a Consent Decree providing that the exact terms of the settlement, and any other information related to the settlement, will not be disclosed by them.

B. Upon the expiration of this Decree, the parties shall expeditiously return, to the original provider, all confidential information and records provided during the prosecution of this case.

C. This Consent Decree may be executed in counterparts, and shall be effective upon the execution of a counterpart by all parties. Once each party has executed a copy of the Consent Decree, copies shall be exchanged and a copy of this agreement together with signature pages signed by all parties shall constitute a complete and binding agreement.

D. Article I of this Decree, including the definitions set forth in the footnotes, are incorporated into this Order in their entirety as if set forth herein.

E. The terms of this Decree shall be binding on the named Plaintiffs, on class members who do not opt-out as permitted herein, on CSXT, and on the BMW and all of its constituent parts and members, including but not limited to, the Allied Eastern Federation, and

their respective successors and assigns.

F. This Decree constitutes the complete understanding among the parties, including the Named Plaintiffs and the class members who do not opt-out as permitted herein, with respect to the matters herein. The only obligations that shall be imposed on any party pursuant to this Decree are those expressly set forth herein. No additional obligations are to be imposed or implied.

ARTICLE IX RETENTION OF JURISDICTION

A. This Consent Decree will be effective and binding on the parties for a period of four (4) years immediately following Final Approval of this Decree. During this period, the Court shall retain jurisdiction of this case to assure that the terms and/or requirements of this Decree are properly implemented and maintained. CSXT may move the Court to dissolve this Decree at any earlier time that it feels its obligations hereunder have been met. Plaintiffs' Lead Counsel shall be notified in advance of CSXT's intention to move the Court to dissolve this Decree. If upon consideration of the motion and supporting evidence, Plaintiffs' Lead Counsel is of the opinion that said motion is due to be granted, he shall join in the motion with the Defendant. If, on the other hand, Plaintiffs' Lead Counsel feels that said motion is premature and not due to be granted, he shall notify Defendant's Lead Counsel of his reasons for reaching this conclusion.

ARTICLE X NON-APPLICATION TO CONRAIL TRANSPORTATION

A. The Surface Transportation Board in a decision served July 23, 1998 in a proceeding captioned, Finance Docket No. 33388, CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company - Control and

Operating Lease/Agreements - Conrail, Inc. and Consolidated Rail Corporation, approved the acquisition and control by CSX Corp. and Norfolk Southern Corp. of Conrail, Inc. and Consolidated Rail Corp. (Conrail) and the division of the use and operation of Conrail's assets by CSXT and Norfolk Southern Railway Corp., (hereinafter referred to as the "Conrail Transaction").

B. This Consent Decree shall not apply to any of the former Conrail properties which CSXT will operate as a result of the Conrail Transaction nor shall it apply to any former Conrail position or employees allocated to CSXT, except as provided immediately below.

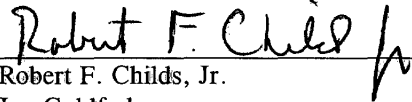
C. If as a result of the Conrail Transaction (or a subsequent agreement between BMWE and CSXT), CSXT and Conrail maintenance of way seniority districts are consolidated or coordinated, or CSXT's system or regional gangs are extended to former Conrail properties, then the Qualified Employee Certification Program for the Maintenance of Way craft of this Consent Decree shall apply to the positions in such coordinated or consolidated districts, regional or system gangs. However, to those Conrail districts, regions or system gangs which are not coordinated or consolidated with or included in CSXT's seniority districts, regions or system gangs, the Qualified Employee Certification Program for Maintenance of Way craft in this Consent Decree shall not be applicable.

ARTICLE XI NO THIRD PARTY BENEFICIARIES

Nothing herein is intended to or shall be construed to have created any standing, causes of action, claims, grievances, or any other rights in or for any person whomsoever, other than as between Named Plaintiffs, plaintiff-intervenors, class members, and CSXT in accordance with this

Consent Decree.

EXECUTED this 18th day of November, 1998.



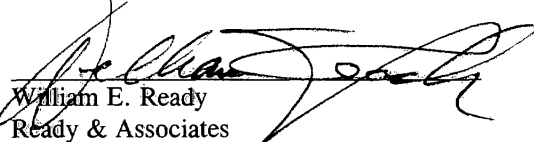
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By:

Robert H. Cocke

Its: Vice-President

THE BROTHERHOOD OF
MAINTENANCE OF WAY EMPLOYEES

By:

Mac A. Fleming

Its: President

It is ORDERED this 17th day of December, 1998, that the above and foregoing Consent Decree as offered and accepted in the above cause is hereby APPROVED.

L. M. Clemon

UNITED STATES DISTRICT JUDGE

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ENTERED

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sub.