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Carol C. Moore vs. Norfolk Southern Corporation

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Carol C. Moore vs. Norfolk Southern Corporation

Keywords

Carol C. Moore, Joseph Burnett, Kenneth Sheffield, Willie Gude, William Carr, Clarence Mines, Larry Taylor, Bobby Bland, Betty Webb, Thomas Franklin Madden, Larry Morrow, Norfolk Southern Corporation, 93-C-0133-S, Consent Decree, Race, African American, Promotion, Disparate Treatment, Transportation, Employment Law, Title VII

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

FILED

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U.S. DISTRICT COURT
N.D. OF ALABAMA

ENTERED

MAR 2 2001

Sub

CAROL C. MOORE,

Plaintiff,

and

**JOSEPH BURNETT, KENNETH SHEFFIELD,
WILLIE GUDE, WILLIAM CARR, CLARENCE
MINES, LARRY TAYLOR, BOBBY BLAND,
BETTY WEBB, THOMAS FRANKLIN MADDEN,
and LARRY MORROW,**

Plaintiff-Intervenors,

vs.

NORFOLK SOUTHERN CORPORATION

Defendant

Civil Action Number

93-C-0133-S

CONSENT DECREE

**ARTICLE I
INTRODUCTION**

A. This is a Class Action brought by Plaintiff Carol C. Moore and Plaintiffs-Intervenors Joseph Burnett, Kenneth Sheffield, Willie Gude, William Carr, Clarence Mines, Larry Taylor, Bobby Bland, Betty Webb, Thomas Franklin Madden, and Larry Morrow (hereinafter collectively referred to as "the Named Plaintiffs") against Norfolk Southern Corporation ("NS"). In their Amended Complaint, the Named Plaintiffs allege that NS has discriminated against the Named Plaintiffs individually and similarly situated African-American

employees (class members) on the basis of their race in violation of 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 Black non-agreement¹ employees of NS who, at any time since December 16, 1989, to the date of final approval of this Consent Decree by the District Court, have applied, or in the absence of discrimination would have applied for promotions at NS, and all Black agreement² employees of NS who, at any time since December 16, 1989, to the date of final approval of this Consent Decree by the District Court, have applied, or in the absence of discrimination would have applied, for promotions to non-agreement positions.

C. Throughout the negotiations leading to this Consent Decree, the Named Plaintiffs, the class members, and NS 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. and/or Robert L. Wiggins, Jr. shall serve as the Lead Counsel for the Plaintiffs (“Plaintiffs’ Lead Counsel”) and Jeffrey S. Berlin and/or James S. Whitehead shall serve as Lead Counsel for the defendant (“Defendant’s Lead Counsel”).

D. NS 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, in violation of 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

¹ For purposes of this Consent Decree, “non-agreement” positions are defined as positions that are wholly exempt from the provisions of any collective bargaining agreement.

² For purposes of this Consent Decree, “agreement” positions are defined as positions that are not wholly exempt from the provisions of a collective bargaining agreement.

construed as an admission of any violation or wrongdoing by NS. Moreover, NS'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. Extensive discovery has been conducted by the parties regarding the liability claims of the Named Plaintiffs and the class members. The Court conducted a trial on the liability claims of the Named Plaintiffs and the class members in May and June, 1997. 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, the class members, 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. NS and its officers, agents and employees are hereby restrained and enjoined from: (1) engaging in any employment practice pertaining to the employees encompassed within the above class definition that has the purpose or the effect of violating the terms of this 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.

B. NS shall publish, post, maintain, and enforce, at the locations at which notices to employees currently are posted across its system, the EEOC notice of rights poster and NS policies against racial discrimination and harassment. These notices shall advise employees regarding the law prohibiting racial discrimination and harassment and NS's policies against racial harassment, discrimination and retaliation.

C. Any employee complaining of alleged racial discrimination with respect to any act or omission occurring after the final approval of the Decree by the District Court, including racial harassment, may utilize any internal complaint procedures of NS 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 noncompliance with this Decree. Such complaints or claims by class members may in some cases give rise, however, to the right to file a grievance pursuant to Article II, Section D 6. of this Decree.

D. NS shall begin implementing the following policies, practices, and procedures in a non-discriminatory manner:

1. TRAINING FOR NON-AGREEMENT POSITIONS.

a. NS will ensure that access to company-provided and company-sponsored training for all non-agreement positions is provided on a nondiscriminatory basis. Within six (6) months of the Final Approval of the Decree,³ NS will make available electronically its then-current Training Catalog to all employees in agreement and non-agreement positions, together with instructions on how employees may make their interest in training known to NS. NS will provide a hard-copy of the Training Catalog to any employee upon request.

b. Within twelve (12) months of the Final Approval of the Decree, NS will develop and make available a video program for all agreement employees who express an interest in being promoted to non-agreement positions. The video will describe the process for expressing interest in and/or being considered for promotion to non-agreement positions.

c. Within twelve (12) months of the Final Approval of the Decree, NS will make available self-study materials on subjects that will enable an agreement employee to enhance his/her abilities and qualifications for non-agreement positions.

d. NS will maintain its current Tuition Assistance Policy during the term of the Consent Decree.

2. TRAINING OF HUMAN RESOURCES PERSONNEL.

a. Within six (6) months after the Final Approval of this Consent Decree, NS will develop and present training programs for members of its Human Resources

³ "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.

Department 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 NS. Each training program will be readministered yearly thereafter during the term of the Consent Decree. Annual training may be in a more abbreviated format than the initial training. New Human Resources staff members with such responsibilities shall receive such non-abbreviated training within ninety (90) days of their date of entry into such position.

b. Training for Human Resources staff shall include, but not be limited to: (i) Federal and State equal employment opportunity laws; (ii) the application of equal employment opportunity laws to typical employment situations; (iii) compliance with this Decree; (iv) the role and responsibility of the Human Resources Department and staff; (v) diversity; and (vi) the handling of EEO complaints, including the prohibition against retaliation.

3. TRAINING OF SUPERVISORS AND MANAGERS.

a. Starting within six (6) months following Final Approval of this Decree, non-agreement supervisors and managers shall receive training on equal employment opportunity, to include the following topics: (i) compliance with this Decree; (ii) equal employment opportunity; (iii) diversity; (iv) federal, state and NS prohibitions of work place racial discrimination, including harassment and retaliation; and (v) 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. New supervisors and managers will receive such training within nine (9) months of their entry into a supervisory or management position. Thereafter, equal employment opportunity training will be provided

every year during the term of this Decree to non-agreement supervisors and managers. Attendance at such training shall be mandatory.

b. At NS's discretion, the training described in Paragraph 2.a. may be held in conjunction with other NS business and may be organized in such fashion as NS deems appropriate.

4. TRAINING OF ALL EMPLOYEES

a. Starting within six (6) months following Final Approval of this Decree, all NS employees not otherwise covered by Paragraph 3., above, shall receive training on equal employment opportunity, to include the following topics: (i) equal employment opportunity; (ii) diversity; (iii) federal, state and NS prohibitions of work place racial discrimination, including harassment and retaliation; and (iv) 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. New employees will receive such training within nine (9) months of their dates of hire. Thereafter, equal employment opportunity training will be provided every other year during the term of this Decree to NS employees. Attendance at such training shall be mandatory.

b. At NS's discretion, the training described in Paragraph 4.a. may be held in conjunction with other NS business and may be organized in such fashion as NS deems appropriate.

5. PROMOTION ASSESSMENT PROCESS.

Within eighteen (18) months following Final Approval of this Consent Decree or earlier to coincide with the implementation of the Interest Survey (see Paragraph 7, below), NS will implement the following process for the assessment and selection of candidates for promotions to non-agreement positions:⁴

a. The NS department in which a non-agreement vacancy has occurred or is anticipated will notify the NS Human Resources Department (“HR”) of such vacancy and of the specific requirements (location, job qualifications, education, etc.) for such position.

b. HR will develop a list of potential candidates for the vacancy based on information obtained from the Interest Survey (see Paragraph 7, below), candidates⁴ known by HR to possess the requisite skills and/or abilities, candidate referrals from the department in which the vacancy has occurred or is anticipated, candidates from the Management Trainee program, rehabilitation candidates, employees available as a result of reorganization or demotion, employees returning from leaves of absence, employees identified through earlier development activities, and, if applicable, job postings (see Paragraph 8, below).

c. HR will assess the potential candidates that it has identified using the following criteria as relevant for the particular job in question:

i. The results of the NS Promotion Assessment Battery, if applicable (see below);

ii. The candidates’ job histories;

⁴ NS will provide written reports to Plaintiffs’ Lead Counsel on the status of its development and implementation of the promotion assessment process every six months until the process has been implemented.

- iii. The candidates' geographic preferences;
- iv. The candidates' education;
- v. The candidates' specific skills;
- vi. The candidates' training;
- vii. The candidates' job performance on current and prior positions; and

- viii. Interviews of candidates, consistent with job-related interview guidelines developed by HR.

d. HR will refer a final list of the best-qualified candidates to the department in which the vacancy exists or is anticipated for consideration and interviews, where appropriate, by the department, consistent with job-related interview guidelines developed by HR.

e. HR will confer and reach a consensus with the department in which the vacancy exists or is anticipated concerning the final selection.

f. In developing the list of potential candidates, in recommending a list of qualified candidates to the department in which the vacancy has occurred or is anticipated, and in reaching a consensus with that department concerning the final selection, HR will take into consideration the goals established under this Consent Decree (see Paragraph 12, below).

g. The NS Promotion Assessment Battery. NS will utilize the PDI-developed NS Promotion Assessment Battery in connection with the assessment of candidates for promotions to non-agreement positions through salary level P as follows:

- i. An employee will be tested no more than once every twelve (12) months. Following such 12-month period, an employee may request to be retested.

ii. NS will consider the scores received by candidates on the NS Promotion Assessment Battery in connection with the following promotions:

(A) Promotion of an employee from an agreement position to a non-agreement position;

(B) Promotion of an employee from a non-agreement position to a non-agreement position in a different job family; and

(C) Promotion of an employee from a non-agreement position to a non-agreement position in a higher bonus group.

iii. NS will utilize a three-tiered scoring approach in assessing candidates' scores on the NS Promotion Assessment Battery based on norms prepared by PDI:

(A) A candidate who scores at or above the 50th percentile will not be eliminated based on the test score;

(B) A candidate who scores between the 30th and 49th percentiles, inclusive, will be eliminated from consideration based on the score unless (1) the candidate has specific job-relevant skills that higher scoring candidates do not have; (2) the candidate has proven performance on a job similar to the job for which the candidate is being considered; or (3) NS is unable to fill the vacancy with a candidate who has scored above the cut-off;

(C) A candidate who scores below the 30th percentile will be eliminated from further consideration.

iv. In the event NS decides to change the contents or utilization of the NS Promotion Assessment Battery during the term of this Decree, it will give thirty (30) days advance notice of such change to Plaintiffs' Lead Counsel.

6. 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:

i. Within ninety (90) days of the Final Approval of this Decree, NS shall designate an employee(s) as Grievance Officer(s) (hereinafter “GO”). NS 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 NS, 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, NS 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.

ii. The following procedure shall apply in selecting the GO:

A. NS 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.

B. Prior to appointing an individual for the GO position, NS 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 NS

may be present at such meeting. Notwithstanding this provision, the decision of appointing the GO shall be NS's.

iii. 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 his/her 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.

iv. 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/her 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/her designee may only interview the claimant in the presence of Plaintiffs' Lead Counsel or his designee. In the event of such an interview, NS 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.

v. Within thirty (30) 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 NS chooses, an attorney for NS 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 to the arbitrator, if arbitration 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 intent to do so. The GO or his/her designee may attend any such witness interviews or document reviews if he/she so desires, along with NS counsel.

vi. Any agreement resolving a claim shall be reduced to writing, shall be made a part of the GO's files, and shall not be subject to further review or proceedings of any kind.

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

viii. If after good faith efforts to do so, Plaintiffs' Lead Counsel, or his designee, and the GO, or his/her 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 by serving a "Notice of Intent to Arbitrate" on the GO. Any such Notice must be postmarked within forty-five (45) days of the meeting set forth in Subparagraph a.v. 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 to arbitration, Plaintiffs' Lead Counsel, or his designee, shall send the GO a report setting forth the areas of disagreement.

ix. If a single arbitrator cannot be agreed upon, the parties jointly shall request a panel of five arbitrators from the American Arbitration Association ("AAA") from its roster of arbitrators whose primary area of experience is in the field of arbitrating employment disputes by serving a copy of the "Notice of Intent To Arbitrate" on the AAA at 2200 Century Parkway, Suite 300, Atlanta, GA 30345. Upon receipt of the list reflecting the five proposed arbitrators, counsel for NS and Plaintiffs' Lead counsel, or his designee, with NS 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.

x. 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. The decision of the arbitrator shall be final and binding on the parties.

xi. Each party shall pay its/his/her own costs and expenses, including attorneys' fees. In the event a claimant elects to use the services of Plaintiffs' Lead Counsel, the employee's attorneys fees will be paid out of the Settlement Fund established in Article IV, Section B., below. 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.

xii. 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 NS, 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 this Grievance Procedure. Any such claims may only be raised with the Court by Plaintiffs' Lead Counsel.

7. INTEREST SURVEY

a. Within eighteen (18) months of the Final Approval of the Decree, NS will develop a process to be used in soliciting information from both agreement and non-agreement employees concerning their interest in being considered for non-agreement positions that may become vacant.⁵ The survey will solicit information concerning the job(s) or types of jobs for which the employee wishes to be considered, the employee's geographic preferences and willingness to relocate, education, skills, and experience, among other things.

b. NS will distribute the Interest Survey to agreement and non-agreement employees within eighteen (18) months of the Final Approval of the Consent Decree. The survey will be updated periodically during the period covered by the Consent Decree. Employees will be allowed to update their preferences for other jobs or types of jobs at least annually.

c. NS will use the results of the Interest Survey to develop lists of interested candidates that will be used when a non-agreement position becomes vacant. NS will

⁵ NS will provide written reports to Plaintiffs' Lead Counsel on the status of its development and implementation of the interest survey every six months until the survey has been implemented.

determine, based on the information submitted by the employees on the Interest Survey, which candidates possess the experience, skills, and other qualifications required for the vacant position.

8. POSTING OF VACANT NON-AGREEMENT POSITIONS.

a. Within twelve (12) months of the Final Approval of the Decree, NS shall establish a procedure for the posting of vacant non-agreement positions through Salary Level P. Such procedure will provide for the posting of vacant non-agreement positions through Salary Level P that NS initially has determined may not be filled by:

- i. A Management Trainee;
- ii. A participant in NS's rehabilitation program;
- iii. A person demoted from a higher-level non-agreement position;
- iv. A person reassigned as part of a corporate reorganization or downsizing;
- v. A person returning from long-term disability, salary continuance, military service, or leave of absence;
- vi. A person who has previously expressed interest in such position through the Interest Survey; or
- vii. When earlier employee development activities have produced an acceptable candidate.

b. NS shall provide appropriate notice of posted positions by use of the NS intranet/internet site, an "800" number, the current NAPO system, or a new posting

system. Employees will be responsible for calling the “800” number(s) or checking the computers to learn of existing vacancies.

9. Diversity Council

Within thirty (30) days after the Final Approval of this Decree, NS will establish a Diversity Council, consisting of NS employees including one (1) or more of the Named Plaintiffs and representatives of NS senior management. The Diversity Council will meet with NS’s Chairman shortly after its creation to discuss its role and will thereafter report to the Chairman quarterly during the first year of the Consent Decree and semi-annually thereafter concerning NS’s efforts to achieve a diverse, non-discriminatory workforce. Among the duties to be performed by the Diversity Council shall be:

a. Developing criteria to be used in making special Chairman’s Awards to NS employees who have furthered the cause of diversity/non-discrimination and identifying candidates for such awards.

b. Interfacing with community groups and referral sources to spread the message that NS is committed to a diverse, non-discriminatory workforce.

c. Making recommendations to NS management of ways in which the company can further diversity within the organization.

d. Reporting on its efforts and activities to all employees, at least annually.

NS will retain an experienced consultant who has helped establish a comparable diversity council at a Fortune 500 company to advise in the establishment of the Diversity Council and the implementation of a diversity process. Plaintiffs’ Lead Counsel will be

allowed to interview NS's choice and to offer suggestions to NS, but NS shall have the final decision on the identity of the consultant.

10. African-American Railroader Month

NS will celebrate the first February following the Final Approval of this Decree and each February thereafter during the term of the Consent Decree as "African-American Railroader Month," during which the contributions of African-Americans to the history of the railroad industry and NS will be highlighted through articles in NS publications, special presentations on NS's web site, and in celebratory meetings with local employee groups. Members of the Diversity Council established under Article II, Section D.9. of the Consent Decree will participate in the planning for African-American Railroader Month.

11. The Dr. Martin Luther King, Jr. Facility.

Within six (6) months following the Final Approval of this Decree, NS will name a major facility in honor of Dr. Martin Luther King, Jr., subject to approval by the King family/estate. In the event such approval is not forthcoming, NS and Named Plaintiffs' Lead Counsel will agree on the name of another prominent African-American involved in the civil rights movement and/or the rail industry after whom the facility will be named.

12. Goals for Promotions of African-Americans to Non-Agreement Positions

a. General Principles:

i. NS shall make good faith efforts to meet the promotion goals to non-agreement positions set forth in this subparagraph. These goals do not establish

quotas for the selection of African-Americans; rather, these goals establish promotion rates that NS shall use its good faith efforts to achieve.

ii. In attempting to meet these goals, NS shall not be required to promote lesser-qualified or unqualified persons or to displace any employee from his or her position. These goals are not quotas; they are goals designed to afford guidance as to whether NS is making selection decisions in such a way as to afford equal employment opportunity.

iii. Failure to achieve a goal by a fraction of a promotion shall not be deemed to constitute a failure to achieve a goal under the Consent Decree.

iv. NS's failure to achieve a goal for a particular period will not be considered a violation of this Consent Decree unless NS has failed to use its good faith efforts to meet the goal. If NS can demonstrate that (A) the proportion of good faith promotion offers made to African-Americans as compared to non-African-Americans was at least as high as the goal percentage, or (B) differences in the relative length of experience or qualifications of African-Americans and non-African-Americans in the pool explain the failure to achieve the goal, such evidence will conclusively establish that good faith efforts were used. Nothing in this subparagraph shall be interpreted to imply that good faith efforts could not also be shown by other appropriate evidence.

b. Promotions from Agreement to Non-Agreement Positions

NS will establish annual good faith goals during the term of this Decree for the promotion of African-American employees from agreement positions to non-agreement positions. The goals will equal the representation of African-American employees in agreement positions. The initial goal for promotions from agreement to non-agreement positions

will be thirteen percent (13%). The goals for the succeeding calendar years during the term of this Decree shall go into effect on January 1 of each year.

c. Promotions from Non-Agreement Positions to Non-Agreement Positions below Salary Grade Q.

NS will establish annual good faith goals during the term of this Decree for the promotion of African-American employees from non-agreement positions to other non-agreement positions. Such goals will be based on the bonus groups (5%, 10%, and 15% bonus groups) through salary level P.⁶ The goal for promotions from non-agreement positions to other non-agreement positions within the 5% bonus group will equal the representation of African-American employees within that bonus group (excluding the top salary level in that group). The goal for promotions to non-agreement positions in the 10% bonus group and from non-agreement positions within the 10% bonus group to other non-agreement positions within that bonus group will equal the representation of African-American employees within the top two salary groups in the 5% bonus group and within the 10% bonus group (excluding the top salary level in that group). The goal for promotions to non-agreement positions in the 15% bonus group and from non-agreement positions within the 15% bonus group to other non-agreement positions within that bonus group will equal the representation of African-American employees within the top two salary groups in the 10% bonus group and within the 15% bonus group (excluding the top salary level in that group). The initial goals for promotions from non-agreement positions to other non-agreement positions will be twenty-five percent (25%) for promotions within the 5% bonus group, twelve percent (12%) for promotions to positions in the

⁶ In the event NS changes its compensation structure during the term of this Consent Decree, NS will establish promotion goals that are comparable to those set forth herein for the current bonus groups based on its new compensation structure.

10% bonus group and within the 10% bonus group, and nine percent (9%) for promotions to positions in the 15% bonus group and within the 15% bonus group. The goals for the succeeding calendar years during the term of this Decree shall go into effect on January 1 of each year.

d. Promotions to Non-Agreement Positions in Salary Grade Q and Above

During the term of this Consent Decree, NS will use its good faith efforts to promote qualified African-Americans into positions in Salary Grade Q and above, consistent with its commitment to promotion from within.

13. Mentoring Program

Starting within six (6) months and concluding within twelve (12) months following Final Approval of the Decree, NS shall establish, and thereafter maintain during the term of the Decree, a Mentoring Program under which a mentor will be appointed, upon request, for each African-American who is promoted or hired into that employee's initial non-agreement position to assist the employee in enhancing his/her success in the new position and to advise the employee with respect to career development matters. NS will develop training for all mentors and will ensure that all mentors are selected on the basis of their ability to contribute to the development of the newly appointed non-agreement employee. Named Plaintiffs and Testifying Witnesses (as defined in Article V, Section B., below) will be provided with mentoring services as part of the Development Plan program described in Article V, Section B., below.

14. Personnel File Review

Within six (6) months following the Final Approval of this Decree, NS will permit interested Named Plaintiffs and Testifying Witnesses (as defined in Article V,

Section A., below) who are still actively employed by the company to review their personnel files and insert additional explanatory and/or rebutting materials relating to disciplinary actions.

**ARTICLE III
ADMINISTRATION OF CONSENT DECREE**

A. This Decree shall become effective on the date of Final Approval of this Decree.

B. Within ninety (90) days following Final Approval of the Consent Decree, NS 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 concerning NS’s compliance with the terms of the Decree directly to NS’s Chairman. At NS’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, NS 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. NS 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, NS 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 NS may be present at any such

meeting. Notwithstanding this process, the decision as to the identity of the Compliance Official shall be solely NS's.

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

a. Overseeing and monitoring the development, establishment, and/or implementation of the Training for Non-Agreement Positions provisions in Article II, Section D.1. of the Decree;

b. Overseeing and monitoring the development, establishment, and/or implementation of the Training of Human Resources Personnel provisions in Article II, Section D.2. of this Decree;

c. Overseeing and monitoring the development, establishment, and/or implementation of the Training of Supervisors and Managers provisions in Article II, Section D.3. of this Decree;

d. Overseeing and monitoring the development, establishment, and/or implementation of the Training of All Employees provisions in Article II, Section D.4. of this Decree;

e. Overseeing and monitoring the development, establishment, and/or implementation of the Promotion Assessment Process provisions in Article II, Section D.5. of this Decree;

f. Ensuring the implementation and monitoring of the Grievance Procedure set forth in Article II, Section D.6. of this Decree;

g. Overseeing and monitoring the development, establishment, and/or implementation of the Interest Survey provisions in Article II, Section D.7. of this Decree;

h. Overseeing and monitoring the development, establishment, and/or implementation of the Posting of Non-Agreement Vacant Positions provisions in Article II, Section D.8. of this Decree;

i. Overseeing and monitoring the development, establishment, and/or implementation of the Diversity Council provisions in Article II, Section D.9. of this Decree;

j. Overseeing and monitoring the development, establishment, and/or implementation of African-American Railroader Month provisions in Article II, Section D.10. of this Decree;

k. Overseeing and monitoring the implementation of the Dr. Martin Luther King, Jr. Facility provisions in Article II, Section D.11 of this Decree;

l. Overseeing and monitoring the development and implementation of the Goals for Promotions of African-Americans to Non-Agreement Positions provisions in Article II, Section D.12. of this Decree;

m. Overseeing and monitoring the development and implementation of the Mentoring Program provisions in Article II, Section D.13. of this Decree;

n. Overseeing and monitoring the Personnel File Review provisions in Article II, Section D.14. of this Decree; and

o. 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 department of NS to review the performance of the department regarding compliance with this Decree. The highest ranking officer in each department will in

turn take all reasonable steps to ensure compliance with this Decree by all NS officials in his/her department.

C. Beginning on the first January 31 following the Final Approval of this Decree, or such later date as the parties shall agree, and continuing each calendar year thereafter during the term of this Decree, NS shall provide the following report to Lead Counsel for the Plaintiffs, except that in no event shall NS have an obligation to include data in the first report for any period prior to the appointment of the CO:

1. Promotions: All non-agreement positions filled by promotion during the preceding calendar year, including the titles of the filled positions, the locations of the filled positions, the dates the positions were filled, and the name, race, and prior position title for each individual awarded each such promotion. NS shall identify any employee who received a promotion to a non-agreement position under circumstances where NS was to consider the employee's score on the NS Promotion Assessment Battery in making that promotion, in accordance with Article II, Section D.5.g.ii. of this Decree, and whose score was below the 50th percentile but who was not eliminated from consideration based on such score because of the provisions of Article II, Section D.5.g.iii.(B).

2. Demotions: The names and races of all employees demoted from a non-agreement position during the preceding calendar year, including the title and location of the non-agreement position from which the employee was demoted and the title and location of the position into which the demoted employee was placed.

3. Discharges: The names and races of all employees discharged from a non-agreement position during the preceding calendar year, including the title and location of the non-agreement position from which the employee was discharged.

4. Test Scores: The scores during the preceding calendar year on the NS Promotion Assessment Battery, annotated to show race.

5. NS shall retain for two calendar year the records from which the reports in Article III, Section C. are derived. During the period of their retention, such records will be made available to the Plaintiffs' Lead Counsel at NS upon reasonable request for the inspection of same. Any such requests shall be submitted to the Compliance Official, who will provide reasonable access to such records.

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. NS will send to each Named Plaintiff and each class member, by first-class mail, the "Notice of Hearing to Consider and Approve Consent Decree," "Statement of Claim Form," and "Opt-Out Form" (Exhibits "A", "B", and "C", respectively) on which each class member must state all claims of racial discrimination in promotions to non-agreement positions that they may have against NS arising between December 16, 1989, and the date on which the District Court finally approves the Consent Decree.

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 February 23, 2001. 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 money 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 and Testifying Witnesses (as defined in Article V, Section A., below) shall also 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 "C"). 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 February 23, 2001, 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 promotion discrimination to non-agreement positions 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 NS for any race discrimination covered by the terms of this Decree occurring prior to the date of final approval of this Decree by the District Court.

B. Settlement Fund

1. Ten (10) business days after the Court enters an Order preliminarily approving this Consent Decree, NS will deposit the sum of Twenty-Eight Million and 00/00

dollars (\$28,000,000.00) 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 NS elects to withdraw from or to renegotiate this Consent Decree pursuant to Article VII, Section F., NS 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 NS have notified SouthTrust Bank, in writing, of the Final Approval of this Decree and the amount to be retained by SouthTrust Bank to reimburse NS pursuant to Article VII, Sections D. and E. for opt-outs who file EEOC charges or lawsuits against NS, 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. NS 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., Section B., below. NS’s obligation with respect to this Settlement Fund will be met in full upon receipt by SouthTrust Bank of the above-referenced \$28,000,000.00 deposit.

2. a. Lead Counsel for the Plaintiffs are hereby specifically authorized and directed to pay Twenty-One Million and 00/00 dollars (\$21,000,000.00), less the amount set aside for NS pending the filing of lawsuits by class members who opt-out pursuant to Article VII, Section D., 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 NS shall be paid from this Class Fund, as set forth herein. NS 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., Section B.4. and B.5., below, shall be allocated as follows: 70% non-wage damages, 15% back pay, 5% fringe benefits, and 10% prejudgment interest. Before each such distribution, Plaintiffs' Lead Counsel shall advise NS of the amount to be distributed pursuant to this formula. NS shall then compute for Plaintiffs' Lead Counsel the total amount of taxes payable for federal, state and local payroll and other wage obligations, and NS 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. NS will perform the administrative task of preparing the necessary tax forms with respect to withholding and employment taxes for the appropriate government entities.

3. As a condition precedent to the receipt of any money under the provisions of this Decree, the Named Plaintiffs and class members must execute a release and waiver (in a form acceptable to NS) exempting NS from any liability to the date of final approval of this Decree by the District Court regarding any alleged race discrimination in promotions to non-agreement positions. 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" (in a form acceptable to NS). 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 NS contained in Article VII.

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

a. Twenty-Five Thousand and 00/00 Dollars (\$25,000.00) for their leadership throughout the preparation for and filing, litigation, and settlement of this lawsuit;

b. Ten Thousand and 00/00 Dollars (\$10,000.00) for their participation in preparations for and providing deposition testimony and other discovery in this action;

c. Three Thousand and 00/00 Dollars (\$3,000.00) for each day expended in the preparation and testimony and assistance at the class certification hearing and at trial;

d. One Thousand Five Hundred and 00/00 Dollars (\$1,500.00) for each day expended in the preparation for and participation and assistance in mediation;

e. Twenty Thousand and 00/00 Dollars (\$20,000.00) for their having assumed the risks and notoriety related to being Named Plaintiffs in this class action litigation, including the potential liability for NS's taxable legal costs had NS litigated the action to a favorable conclusion;

f. Ten Thousand and 00/00 Dollars (\$10,000.00) for their having expended substantial time and effort related to this class action litigation; and

g. Ten Thousand and 00/00 Dollars (\$10,000.00) for their personal involvement in bringing to light the facts culminating in the filing of this class action.

5. Prior to allocating any portion of the monetary relief from the Class Fund to the Named Plaintiffs and class members in this case, the Class Fund shall be reduced by the following amounts paid to the witnesses whose names are set forth in Exhibit D: Three Thousand and 00/00 Dollars (\$3,000.00) for each day expended in the preparation and testimony and assistance at the trial.

6. It shall be the sole responsibility of each Named Plaintiff and class member who seeks money 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 money being denied.

C. Money for Named Plaintiffs and Class Members

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

1. 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 Twenty-One Million and 00/00 dollars (\$21,000,000.00), less the amount set aside for

NS pending the filing of lawsuits by class members who opt-out pursuant to Article VII, Section D.

2. In the event that there is monetary relief for Named Plaintiffs and class members that 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 Black non-agreement employees of NS who, at any time since December 16, 1989, to the date of final approval of this Consent Decree by the District Court, have applied, or in the absence of discrimination would have applied for promotions at NS, and all Black agreement employees of NS who, at any time since December 16, 1989, to the date of final approval of this Consent Decree by the District Court, have applied, or in the absence of discrimination would have applied, for promotions to non-agreement positions.

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

Money paid by Named Plaintiffs/class members to obtain training so they can move to higher positions at NS; money 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 NS due to alleged discrimination in promotions to non-agreement positions; pain and suffering, emotional distress and mental anguish suffered by Named Plaintiffs/class members during their employment at NS due to the retaliation by NS for their attempts to move to higher and better paying non-agreement positions; length of

company service with NS; length of departmental service at NS; positions held while employed at NS; length of time in each position held while employed at NS; compensation paid by NS from December 16, 1989, to the date of final approval of the Consent Decree by the District Court; hours worked overall, and by year, from December 16, 1989, to the date of final approval of the Consent Decree by the District Court; number and length of layoffs from December 16, 1989, to the date of final approval of the Consent Decree by the District Court; total earnings from December 16, 1989, to the date of final approval of the Consent Decree by the District Court; non-agreement positions for which applied while working at NS, if any; non-agreement positions for which applied while working at NS, but which were awarded to lesser qualified white employees; performance problems on positions held at NS; training received on positions held at NS; total earnings at companies other than NS from December 16, 1989, to the date of final approval of the Consent Decree by the District Court; and training received outside of NS from December 16, 1989, to the date of final approval of the Consent Decree by the District Court that is relevant to non-agreement jobs desired at NS from December 16, 1989, to the date of final approval of the Consent Decree by the District Court.

3. Each Named Plaintiff shall also receive such additional amount, as determined by Plaintiff's Lead Counsel, necessary to compensate him/her for individual claims of discrimination other than in connection with promotion(s) to non-agreement positions, the delay in the receipt of the offers of promotions promised in Article V, Section A.1., or for not having received an offer of a promotion prior to the effective date of his/her voluntary resignation from employment with NS.

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

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

1. 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 in Article IV, Section A.1. of this Decree by close of business on February 23, 2001, 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.

2. 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.

3. Plaintiffs' Lead Counsel shall mail 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 decision regarding the extent of monetary recovery due to the Named Plaintiffs and class members.

ARTICLE V INDIVIDUAL RELIEF

A. Certain Named Plaintiffs and Testifying Witnesses

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

1. Subject to Paragraph 2. below, they will be offered the following positions, in writing. The time period during which NS shall make these offers shall commence to run on the date on which all parties have signed the Consent Decree; provided, however, that NS shall not be obligated to promote any of the employees under this provision until the Final Approval of this Decree.

<u>Name</u>	<u>Position</u>	<u>Date</u>
Joseph Burnett	Level Q	Within one (1) year of Signing of Decree
	AVP ⁷	Prior to Expiration of Decree
Tom Madden	Level Q	Within one (1) year of Signing of Decree
	AVP ⁸	Prior to Expiration of Decree
William Carr	Level K	Within six (6) months of Signing of Decree
Larry Morrow	Level N	Within two (2) years of Signing of Decree
Bobby Bland	Supervisory Special Agent (Level L)	Within two (2) years of Signing of Decree
Dan Greer	Road Foreman of Engines (Level M)	Within six (6) months of Signing of Decree
Eugene Williams	Supervisor (Level J)	Within six (6) months of Signing of Decree
Odessa Hunter	Supervisor (Level J)	Within six (6) months of Signing of Decree
Gary Clemons	Supervisor (Level J)	Within six (6) months of Signing of Decree
Howard Gillespie	Senior General Foreman (Level M)	Within one (1) year of Signing of Decree

⁷ The job level for the AVP position will be determined by the duties and responsibilities of the particular position offered, as determined by NS's normal job evaluation process; the AVP position will fall within Job Levels R through U.

⁸ The job level for the AVP position will be determined by the duties and responsibilities of the particular position offered, as determined by NS's normal job evaluation process; the AVP position will fall within Job Levels R through U.

2. NS retains the discretion to determine which position will be offered to each individual and when such offer will be extended, consistent with the provisions of Article V, Section A.1., above.

3. The Named Plaintiffs and Testifying Witnesses shall have ten (10) days to accept the offer of a position extended under this Article. If not accepted within ten (10) days, the offered position will automatically be deemed to have been rejected. If a Named Plaintiff or Testifying Witness is offered a position under this Article and refuses the offer for any reason, the Named Plaintiff or Testifying Witness shall no longer be entitled to any further relief pursuant to this Article of the Decree.

B. Named Plaintiffs and Testifying Witnesses Who Are Employed by NS as of the Final Approval of the Consent Decree.

Each Named Plaintiff and Testifying Witness⁹ who is actively employed by NS as of the date of the Final Approval of the Consent Decree (collectively the “Eligible Employees”) is entitled to the preparation of a Personal Development Plan, in accordance with this Section.

1. Within six (6) months of the Final Approval of the Consent Decree, NS will establish a team(s) of employees that will prepare for each interested Eligible Employee a Personal Development Plan. The team(s) will include at least one of the Named Plaintiffs. The team(s) will assess the Eligible Employee’s development needs through various sources, which may include interviews with supervisors, co-workers, and the Eligible Employee himself/herself, testing, and review of the Eligible Employee’s performance appraisals. The team(s) will prepare

⁹ “Testifying Witness” means, for the purposes of this Subsection, an individual who actually testified at the trial in this proceeding concerning his/her claims of racial discrimination in promotions to non-agreement positions. A list of the Named Plaintiffs and Testifying Witnesses who are entitled to the benefits of Article V, Section B. is attached hereto as Exhibit “E”.

a written Development Plan that will identify target non-agreement position(s) to which that Eligible Employee aspires and for which the team(s) believes the Eligible Employee may become qualified by a specified target date. The Development Plan will specify the Eligible Employee's development needs with reference to the target position(s) and target date(s) and will establish an action plan relevant to each such development need together with target dates for the completion of each action plan step.

2. Within six (6) months of the Final Approval of the Consent Decree, NS will establish a Review Panel(s) of NS employees that will assess the Eligible Employee's readiness for promotion to the target position at the completion of the Development Plan. The Review Panel(s) will have at least one African-American participant. In the event the Review Panel(s) concludes that the Eligible Employee is ready for promotion to the target position, NS will promote the Eligible Employee to the next-available target position. The Eligible Employee shall have ten (10) days to accept the offer of a position extended under this Article. If not accepted within ten (10) days, the offered position will automatically be deemed to have been rejected. If an Eligible Employee is offered a position under this Article and refuses the offer for any reason, the Eligible Employee shall no longer be entitled to any further relief pursuant to this Article of the Decree.

3. In the event the Review Panel(s) concludes that the Eligible Employee is not ready for promotion to the target position, the Eligible Employee may appeal the Review Panel(s)'s determination through the grievance procedure established in Article II, Section D.6.

**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 Six Million and 00/00 dollars (\$6,000,000.00) shall be disbursed to Plaintiffs' Lead Counsel from the Settlement Fund referred to in Article IV, Section B., 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 (\$1,000,000.00), plus all accrued interest, after (1) distribution of the Class Fund pursuant to Article IV, Sections B. and C., above, and (2) the payment of attorneys' fees, expenses and costs pursuant to Article VI., Section A., above, shall be disbursed at any time after Final Approval to Plaintiffs' Lead Counsel from the Settlement Fund 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 discrimination in connection with promotions to non-agreement positions at NS and all other race discrimination claims of the Named Plaintiffs based on acts or omissions by NS from December 16, 1989, to the date of final approval of this Decree by the District Court. This Decree brings about a final and binding resolution of all race discrimination claims covered within the scope of the class definition in this case, as set forth hereinabove in Article I., Section B. Unless he/she opts out of this Consent Decree, a class member may not independently assert his/her own claims of alleged

racial discrimination in promotions to non-agreement positions at NS based on any acts or omissions occurring from December 16, 1989, to the date of the final approval of the Decree by the District Court. 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 those class members who do not formally opt-out of this Consent Decree pursuant to Article IV, Section 2.A. (hereinafter "Releasors") hereby release, remise and forever discharge NS and its affiliated and subsidiary companies and the current and former directors, officers, employees, agents and assigns of any of them (hereinafter "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 (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) relating to promotions from agreement to non-agreement positions at NS and/or promotions from non-agreement to other non-agreement positions at NS (and, with respect to the Named Plaintiffs, all acts or omissions by NS) arising out of any event occurring or act done or omitted to be done from December 16, 1989, to the date of final approval of this Decree by the District Court. The release in this Section 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 the 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 obtained by the Named Plaintiffs. Tolling will not occur for any claims other than claims of class members for racial discrimination by NS in promotions from agreement to non-agreement positions or from non-agreement to other non-agreement positions (hereinafter "Tolled Claims").

D. An amount equal to the product of the total number of class members who opt-out multiplied by Twenty Thousand and 00/00 dollars (\$20,000.00) ("Opt-Out Credit") shall not be disbursed from the Class Fund, but shall be retained to be used to reimburse NS for anticipated attorneys' fees and costs, as set forth in Section E., below, should such class members initiate individual legal actions or file EEOC charges against NS.

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

against NS during the term of this Decree, the remaining \$15,000.00 of the \$20,000.00 individual opt-out credit for each such class member shall not be refunded to NS.

F. If fifty (50) or more class members choose to opt-out of this Decree, NS 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. NS shall make this election by the close of business on March 1, 2001, unless the parties agree otherwise.

G. 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. Except as expressly agreed by Plaintiffs' Lead Counsel and Defendant's Lead Counsel, 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, or discuss the amount or terms of, this Decree with anyone not a party or counsel to, or an employee of, 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, and on NS 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

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. NS 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 NS'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
NO THIRD PARTY BENEFICIARIES**

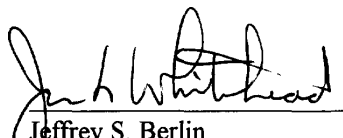
Nothing herein is intended to or shall be construed to have created any standing, causes of action, claims, grievances, or any other rights in or for any person whomsoever, other than as between Named Plaintiffs, class members, and NS in accordance with this Consent Decree.

EXECUTED this 22nd day of December, 2000.



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Robert F. Childs, Jr.
Ann K. Wiggins
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The provisions of the foregoing Consent Decree are fair, reasonable and adequate. All objections to it are without merit and accordingly OVERRULED. The Decree is hereby APPROVED.

The Consent Decree is binding, for a period of four years hereafter, on all parties and all Class Members who have not timely excluded themselves from the defined Class.

By separate Order, this case shall be dismissed.

Done this 24 day of March, 2001.



Chief United States District Judge
U.W. Clemon

EXHIBIT D

(Consent Decree Article IV, Section B.5.)

Hersey Steptoe

John Pullen

Eugene Williams

Abraham Good

John Riley

Dan Smith

Walter Hill

Jacob Hunter

Marion Albert

Daniel Greer

James Johnson

Myra Carmichael

Brenda McDowell-Holmes

Odessa Hunter

Gary Clemons

Howard Gillespie

Keith Sanders

EXHIBIT E

(Consent Decree Article V, Section B.)

Hersey Steptoe

John Pullen

Eugene Williams

Abraham Good

John Riley

Dan Smith

Walter Hill

Jacob Hunter

Marion Albert

Daniel Greer

James Johnson

Myra Carmichael

Brenda McDowell-Holmes

Odessa Hunter

Gary Clemons

Howard Gillespie