

**STATEMENT OF THE BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES DIVISION/IBT REGARDING IMPROVEMENTS
TO EXPENSES AWAY FROM HOME**

SUMMARY STATEMENT

BMWED's proposal with respect to expenses away from home concerns expenses that fall into three categories: (1) lodging expense; (2) meal expense; and (3) transportation expense.^{1/} The present national rule governing expenses of this character had its genesis in the Award of Arbitration Board No. 298 dated September 30, 1967.^{2/} The decision of the Board commonly referred to as "Award 298", established provisions covering Maintenance of Way ("MofW") employees in two types of service: (1) traveling employees, "who are employed in a type of service, the nature of which regularly requires them throughout their work week to live away from home in camp cars, camps, highway trailers, hotels or motels"; and (2) headquartered employees who are "unable to return to their headquarters on any day". Specifically, Award 298 is structured so as to require railroads to provide lodging and meals or the reimbursement of such expenses of employees up to specified dollar maximums. Likewise, the railroads must provide transportation from one work location to another or reimburse employees for automobile mileage expense.

^{1/} BMWED's Expenses Away From Home proposal is attached as Exhibit 1 to this Statement.

^{2/} The Award of Arbitration Board No. 298 is attached as Exhibit 2 to this Statement.

While the fundamental structure of Award 298 has remained unchanged since 1967, the lodging and meal allowances have been adjusted at the bargaining table in six (6) national agreements. The most recent adjustments, as required by Article VI of the May 31, 2001 National Agreement,^{3/} became effective January 1, 2005 and provided for the following dollar maximums:

- (1) If lodging is not furnished by the railroad company the employee shall be reimbursed for the actual reasonable expense thereof not in excess of \$32.00 per day.
- (2) If the employees are required to obtain their meals in restaurants or commissaries, each employee shall be paid a meal allowance of \$25.00 per day. (Article VI of the May 31, 2001 National Agreement at PP.19-20).

The lodging and meal allowances expressed above were objectively insufficient to reimburse employees for the actual cost of lodging and meals when they were implemented in 2005 and they are woefully insufficient seven (7) years later in 2011.

In addition to the inequitable dollar values of the meal and lodging allowances, Award 298 suffers from four structural inequities that have magnified over time as the railroad industry has consolidated and geographic work territories have expanded exponentially. First, eligibility loopholes exploited by the railroads result in the denial of lodging and meal benefits to certain employees who work away from home in the service of the railroads throughout their work weeks. Second, the absence of adequate lodging standards results in disparate treatment for MofW employees. While employees in all other

^{3/} Article VI of the May 31, 2001 National Agreement is attached as Exhibit 3 to this Statement.

crafts are afforded single occupancy motel lodging, most railroads require double occupancy motel lodging for most MofW employees and one railroad, Norfolk Southern, still provides MofW employees with lodging in anachronistic camp cars that lack dignity, privacy, safety and sanitation. Third, eligibility loopholes exploited by the railroads result in employees being denied automobile mileage for using their personal vehicles to transport themselves from one mobile work site to the next throughout the work season. Finally, the absence of automatic adjustments to lodging and meal allowances driven by objective cost data results not only in inadequate allowances, but also in the railroads cynically holding lodging and meal allowances hostage in bargaining. This was precisely what occurred in the most recent national agreement dated July 1, 2007 which was concluded without any increase in lodging and meal allowances. Consequently, BMWED proposes to amend Award 298 as follows:

- 1. Eliminate the loopholes that allow railroads to deny lodging and meal benefits to employees that are truly working and living away from home in the service of the railroads.**
- 2. Provide that if the railroad company exercises its option to furnish lodging it must be in single occupancy motel or hotel rooms with private washing and toilet facilities.**
- 3. Provide that if the railroad company elects not to furnish lodging, the maximum lodging reimbursement of \$32.00 per day shall be replaced with a lodging allowance of \$77.00 per day based on the standard daily CONUS lodging rate established by the General Services Administration for Federal government employees traveling in the continental United States in effect for the 2011 fiscal year.**
- 4. Replace the current meal allowance of \$25.00 per day for each day of the calendar week with a meal allowance of \$46.00 per day**

for each day meals are obtained away from home based on the standard daily CONUS meal and incidental expense rate established by the General Services Administration for Federal government employees traveling in the continental United States in effect for the 2011 fiscal year.

- 5. Eliminate the loophole that results in employees being denied reimbursement for using their personal vehicles to transport themselves from one work site to the next throughout the work season.**

- 6. Provide that effective July 1, 2012 and each July 1st thereafter lodging and meal allowances shall be increased to the amount of the standard daily CONUS rates for lodging and meals and incidental expenses established by the General Services Administration for Federal government employees traveling in the continental United States in effect for the 2011 fiscal year.**

Taken as a whole, these six (6) proposals stand for two rather unremarkable propositions. First, there is no reasonable basis for treating MofW employees as second class employees when they work away from home. The lodging disparity between MofW employees and employees in all other crafts should be ended by eliminating the use of double occupancy motel and camp car lodging and instead requiring that when railroads elect to provide lodging to MofW employees, it must be in single occupancy motel or hotel rooms of the same quality enjoyed by employees in all other crafts. Second, employees who work away from home in the service of the railroad should not be required to subsidize the railroad's operations by paying out of pocket for lodging, meal or transportation costs. Rather, lodging, meal and transportation allowances should approximate actual cost. BMWED's proposals achieve this end by instituting allowances that are objective and data driven in the context of the Award 298 structure, thus assuring

no greater administrative burden for the railroads or the employees. BMWED submits that these proposals should be adopted not only because they are fair and equitable, but because they are consistent with standard rules and practices in effect for employees in all other crafts across the railroad industry. Indeed, not one of BMWED's proposals is new or novel. Benefits equal or superior to those sought by BMWED have been enjoyed by employees in all other crafts and some groups of MofW employees for decades. BMWED simply proposes that all MofW employees be brought into the 21st century railroad industry mainstream.

The compelling need for the changes proposed by BMWED are even better understood in the context of the history of this dispute. Consequently, in the following sections of this submission, we will set forth the history of the dispute followed by five separate sections where we analyze the existing provisions of Award 298 and explain why BMWED's proposed amendments should be adopted with respect to: (1) Eligibility; (2) Lodging; (3) Meals; (4) Travel Expenses; and (5) Subsequent Adjustments.

HISTORY OF THE DISPUTE

When Arbitration Board No. 298 rendered its decision in 1967, it relied on three (3) key premises that may have been perfectly valid more than four decades ago but are no longer valid today. First, the network of commercial lodging facilities that developed along with the nation's interstate highway system was in its infancy in 1967. Hotel and motel lodging was simply not readily available for large traveling MofW crews and, as Board No. 298 noted, "[t]hese traveling

“crews generally live in camp cars furnished by the railroad which consist of remodeled box cars or passenger coaches which are moved from one location to another over the carriers’ lines as maintenance work progresses. Some carriers provide highway trailers for accommodations of the crew in place of camp cars.” Opinion of the Neutral Members at 7. Indeed, Board No. 298 recognized that living conditions in camp cars “are difficult and unsatisfactory” but they were “the best conditions presently available”. Id at 8. Second, Board No. 298 recognized that the railroad industry remained fragmented with over 200 railroads represented by three (3) different Carriers’ Conference Committees party to the Board No. 298 arbitration. Moreover, Board No. 298 noted that, “[t]he practices now in effect on various railroads in connection with lodging and meal arrangements provided for these camp car employees vary considerably.” Id at 7. Finally, in what is perhaps the most profound distinction between 1967 and 2011, Board No. 298 recognized the validity of the railroads’ position that, “the financial condition of the railroad industry although relatively improved in 1965 and 1966 is still not good....” Id at 6.

Of course, none of these three (3) premises is valid today. In 2011 commercial lodging facilities are readily available and the railroad industry is consolidated and prosperous. Indeed, as commercial lodging facilities became more readily available, railroads gradually began phasing out the use of camp cars in the 1970’s with all railroads, except Norfolk Southern, abandoning the use of camp cars by the 1990’s. Norfolk Southern is the only railroad that routinely continues the practice of lodging some of its MofW employees in camp cars located in rail yards and along the right of way. Most railroads now provide double occupancy motel rooms for the majority of their traveling MofW employees and **one major railroad, CSXT, provides single occupancy motel**

lodging to a large group (800 to 1,000) of its MofW employees assigned to large traveling System Production Gangs.

At the same time the railroad industry was transitioning from the use of camp cars to commercial lodging, it entered a period of massive consolidation. Today, the vast majority of traveling MofW employees work on one of the four Class I railroads (BNSF, CSXT, NS or UP) involved in this contract dispute. The massive operating territories of these four railroads are shown in the following table:

RAILROAD COMPANY	ROUTE MILES OF TRACK	U.S. STATES OF OPERATION
BNSF	32,000	28 States
UP	32,426	23 States
CSXT	21,000	23 States and District of Columbia
NORFOLK SOUTHERN	20,183	22 States and District of Columbia

Source: Public web sites of each railroad^{4/}

The merger and consolidation of the U.S. railroad industry in the four decades following Award 298 was paralleled by a revolution in track maintenance equipment and materials. Advanced equipment technology coupled with heavier, more durable track components meant that fewer employees could maintain more track over ever-increasing geographic territories that were under the control of the consolidated railroads. As a result, the railroads sought ever larger geographical work territories for both traditional headquartered forces and mobile production gangs that could work across seniority territories over an entire railroad system. When voluntary

^{4/} Even the smaller Class I railroads represented by the NCCC in this proceeding have large operating territories. Kansas City Southern operates 6,000 route miles of track in 10 states and Soo Line operates 3,200 route miles of track in 5 states.

bargaining and *New York Dock* implementing proceedings did not produce the desired rate of change, the railroads sought contract terms that would allow them to compel larger geographic work territories. In 1991, Presidential Emergency Board No. 219 (“PEB 219”) recommended, and Congress imposed by legislation, contract terms that permitted railroads to combine and realign MofW seniority districts into larger territories and operate mobile regional and system production across seniority district boundaries on a regional or system-wide basis.^{5/} The railroads have taken full advantage of these provisions and, as a result, all classes of MofW employees (headquartered and mobile) work and travel over geographic territories exponentially larger in 2011 than the territories they traveled in 1967. In addition to leading to the massive expansion of geographic work territories, the consolidation of the railroad industry in the four decades after Award 298 also propelled the railroad industry to immense profitability.

In sum, Board No. 298 was confronted with a fragmented and financially ailing industry that lodged its traveling MofW employees primarily in camp cars because there was no viable commercial lodging alternative available in many areas. In contrast, the railroad industry in 2011 has consolidated and achieved record profitability. In the wake of that consolidation, the industry has compelled exponentially larger geographic work territories for both its headquartered and traveling MofW employees. While the railroads provide single occupancy lodging for all other crafts, they provide double occupancy motel lodging for most MofW employees, with the exception of CSXT that provides single occupancy for many of its MofW employees and Norfolk Southern that continues to lodge a substantial number of MofW employees in anachronistic camp

^{5/} Article XII - Combining and Realignment Seniority Districts and Article XIII - Regional and System-Wide Gangs of the July 29, 1991 Imposed Agreement are reproduced as Appendix “A” in the separately bound volume of BMWED Appendices.

cars. This is the juncture at which we find ourselves today and the context in which the Board should consider BMWED's proposals.

I. ELIGIBILITY FOR LODGING AND MEAL BENEFITS

Notwithstanding the relatively meager lodging and meal allowances provided by Award 298, the railroads regularly sharpshoot the agreement with the result that employees who are working away from home receive no lodging accommodations, meals or allowances in lieu thereof whatsoever. Article I of Award 298 requires the railroads to provide lodging accommodations or the specified allowances in lieu thereof to **“employees who are employed in a type of service the nature of which regularly requires them throughout their work week to live away from home.”** Article II of Award 298 applies to headquartered employees and requires the railroads to provide lodging and meals or allowances in lieu thereof only on days when such employees are **“unable to return to their headquarters”**. The railroads sharpshoot each of these provisions in different ways.

Sharpshooting Article I

With respect to Article I, the operative phrase at which the railroad sharpshooters take aim is “type of service”. In order to avoid providing lodging and meal benefits, the railroad simply asserts that a particular work assignment is not “a type of service the nature of which regularly requires the employees throughout their work week to live away from home.” The railroad then “headquarters” the crew pursuant to Section II to avoid its lodging and meal responsibilities. Then, as the work progresses to a new location, the railroad abolishes the crew and re-establishes it with headquarters at a new work location. It does not matter if the employees have to live away

from home; if the railroad says it's an Article II headquartered crew, it's an Article II headquartered crew and no lodging or meal benefits are provided. This has been the case even when the work (e.g., a mechanized rail or tie replacement crew) is the type of work typically performed by mobile crews because the railroads simply do not have sufficient manpower in any one locale to man such crews. The railroads know that an insufficient number of employees to perform the work reside in the area and they know that employees will have to live away from home to work on the crew; yet they "headquarter" the crew. Typical of the cases in the which the railroads have prevailed with this type of sharpshooting are Case Nos. 1, 3 and 4 of Public Law Board No. 4816 (CSX), Award No. 21 of Public Law Board No. 4604 (CSX) and NRAB Third Division Awards 22400 (SP), 22708 (CSX), 22433 (BN) and 26285 (DT&I), 31761 (former C&NW), 37844 (former BN) and 38951 (former BN).^{6/}

Case Nos. 1, 3 and 4 of Public Law Board No. 4816 are particularly revealing. In those cases, the railroad insisted that large (40 men), mechanized tie replacement crews were headquartered and, therefore, it had no obligation to provide lodging or meal benefits even though the employees were drawn from across the railroad's system and were living away from home. However, at the same time the railroad was insisting the crews were headquartered, the railroad provided "courtesy" camp cars for the employees to live in. In other words, the railroad knew perfectly well that there were an insufficient number of employees living in the area to perform the work and that employees on the crews would have to live away from home. At the same time, the railroad knew that it could not attract employees to work on the crews if it did not at least

^{6/} Case Nos. 1, 3 and 4 of Public Law Board No. 4816, Award No. 21 of Public Law Board No. 4604 and Third Division Awards 22400, 22708, 22433, 26285, 31761, 37844 and 38951 have been reproduced as Appendix "B" in the separately bound volume of BMWED Appendices.

provide lodging. The ultimate result was that the employees were required to live away from home as contemplated by Section I of Award 298 and they were cheated out of their meal allowances because the railroad was able to sharpshoot Section I and place the employees under Section II even though they were living away from home in camp cars.

Inequities In Article II

The second set of circumstances under which MofW employees are denied lodging and meal benefits when they are living away from home is a function of the dramatic expansion in geographical seniority territories that was driven by railroad mergers and the evolution of railroad equipment technology. Traditionally, basic track maintenance was performed by headquartered employees (e.g., section and maintenance crews) that worked within relatively small geographic seniority districts. Employees assigned to such crews reported to a fixed headquarters point and commuted back and forth from their homes on a daily basis. Pursuant to Award 298, such headquartered employees are entitled to lodging and meal benefits only when they are taken away from their headquarters point. Specifically, Article II, Section B provides:

“B. When employees are unable to return to their headquarters point on any day they shall be reimbursed for the actual reasonable cost of meals and lodging away from their headquarters point not in excess of \$57.00 per day.” (Emphasis in bold added)

The problem is that headquartered employees are entitled to lodging and meal benefits only on days when they are unable to return to their “headquarters” — not their homes. When employees lived and worked in the relatively small seniority territories that existed in 1967, this was a distinction without a difference because employees’ homes and headquarters points were within reasonable commuting distance. This premise, which was valid in 1967, was undermined

by the evolution in railroad equipment technology and railroad mergers that in turn drove the expansion of geographic seniority districts. As an ever-increasing percentage of track maintenance work was performed by highly mechanized mobile crews, the number of headquartered section and maintenance crews declined. This fact, coupled with expansion of geographic seniority territories that was driven by both railroad mergers and advancing equipment technology resulted in significantly fewer headquartered positions within massive new seniority territories that routinely stretch 500 miles and sometimes more than 1,000 miles. Consequently, the fundamental premise that all headquartered employees lived near their headquarters that was valid in 1967 is no longer valid in 2011. Today, the simple truth is that employees assigned to headquartered positions sometimes live too far from their headquarters points to reasonably or safely commute between their homes and headquarters on a daily basis. Thus, even though such employees are working and living away from their homes, they are denied meal and lodging benefits pursuant to Article II of Award 298 because they are not being taken away from their headquarters point.

BNSF is a quintessential example of how rail industry mergers in the four decades after Award 298 led to the massive expansion of geographic work territories that set the stage for employees to work on headquartered positions far from their homes. Between 1970 and 1995, eight separate railroads with eight separate BMW collective bargaining agreements and eight separate sets of geographic seniority territories were merged to form the railroad known today as BNSF. As part of its merger proceedings, the railroad company extinguished five of the eight BMW collective bargaining agreements with the result that by 1995 it was operating its massive new 32,000 mile system with only three collective bargaining agreements (former BN, Frisco and

Santa Fe) and three corresponding sets of geographic seniority territories. But changes for the employees and their geographic work territories had only just begun.

After the recommendations of PEB 219 were imposed by legislation in 1991, BN (and subsequently BNSF) took liberal advantage of both Article XII - Combining and Realigning Seniority Districts and Article XIII - Regional and System-Wide Gangs of the July 29, 1991 Imposed Agreement. BN first took advantage of Article XIII to compel an interest arbitration that would establish terms and conditions for operating mechanized mobile regional and system production gangs across its entire system.^{7/} After BNSF established the right to operate mobile production gangs that could work across seniority district lines throughout its massive 32,000 mile system, it next served notice under Article XII of the 1991 Imposed Agreement to combine its existing 47 seniority districts into 9 massive districts. When the parties were unable to agree on the terms and conditions necessary to implement the proposed changes, the matter was submitted to Arbitrator Richard Mittenthal who rendered his award on March 11, 1999.^{8/} As a result of the Mittenthal Award, there are currently 9 massive seniority districts that span BNSF's 28 state system as follows:

^{7/} The Regional and System Gang Award rendered by Arbitrator Joseph Sickles on June 15, 1992 is reproduced as Appendix "C" in the separately bound volume of BMWED Appendices. After BN and AT&SF merged in 1995, the terms of the Sickles Award were extended to AT&SF territory so that BNSF now operates highly mechanized mobile regional and system production gangs across its entire 32,000 mile, 28 state system.

^{8/} The Combining Seniority Districts Award rendered by Arbitrator Richard Mittenthal on March 11, 1999 is reproduced as Appendix "D" in the separately bound volume of BMWED Appendices.

DISTRICT	TERRITORY	MILEAGE
100	Keddie, CA to Columbia Falls, MT	981 Miles
200	Columbia Falls, MT to Mobridge, SD	838 Miles
300	Williston, ND to Sioux City, IA	680 Miles
400	Casper, WY to Kansas City, KS	759 Miles
500	St. Croix, WI to Paducah, KY	720 Miles
600	Richmond, CA to Dalies, NM	1090 Miles
700	Hahn, NM to Kansas City, KS	797 Miles
800	Hahn, NM to Avondale, LA	1170 Miles
900	Kansas City, KS to Birmingham, AL	750.5 Miles

All Class I railroads were driven by the same factors (economic, regulatory and equipment technology) that drove the BNSF consolidation and subsequent demand for expanded geographic seniority territories. Whether as a result of voluntary negotiation, *New York Dock* proceedings or through Articles XII and XIII of the 1991 Imposed Agreement, the employees of the Class I railroads, including employees assigned to headquartered positions, now work in large geographic work territories that routinely extend for more than 500 miles and sometimes more than 1,000 miles.^{9/} While some headquartered employees still live near their headquarters, many do not. In some cases, employees are “force assigned” to headquartered positions far from their homes when those positions go “no bid”. In other instances, employees bid on headquartered positions far from their homes because they are required to bid in order to maintain seniority in a particular job classification. And in still other cases, employees find themselves in headquartered positions far from their homes because there simply is no other position available to them. The common thread

^{9/} Tables illustrating the massive size of geographic work territories on a representative sample of Class I railroads are attached as Exhibit 4 to this Statement.

across all Class I railroads is that the explosion in the size of the seniority districts coupled with the diminution in the number of headquartered jobs caused by advancing equipment technology has resulted in employees who are working away from home on positions that are legitimately headquartered. Even though these employees are away from home throughout their entire work week they are denied lodging and meal benefits under Article II of Award 298 because headquartered employees are entitled to lodging and meal benefits only when they are away from their headquarters, not their homes.^{10/}

In sum, employees who are truly working away from home in the service of the railroad are denied lodging and meal benefits under Award 298 because: (1) the railroads sharpshoot Article I by designating crews as “headquartered” even though the work of the crew is the type of work customarily performed by mobile crews and employees have been drawn from large seniority territories and are living away from home; and (2) Article II affords lodging and meal benefits only when employees work away from their headquarters, not their home. In order to put an end to these inequities, BMWED proposes to amend the first paragraph of Article I, to read as follows:

“I. The railroad company shall provide for employees who are employed in mobile service without fixed headquarters and those employees assigned to

^{10/} In the wake of the Mittenthal Award, BNSF recognized that it was inequitable to “force assign” employees to headquartered positions that were far from their homes without providing a lodging and meal benefit. Consequently, in an agreement dated June 10, 1999, BNSF agreed to provide a limited lodging and meal benefit (double occupancy motel room and \$15.00 per day meal allowance) to employees force assigned to headquartered positions more than 75 highway miles from their homes. While half measures are better than none, this provision continued the discrimination against MofW employees. In addition to the insufficient meal allowance it required not just double occupancy, but double occupancy with strangers in the cheapest motels available. While employees in other crafts enjoy single occupancy in nearby motels, MofW employees are required to travel to cheaper motels and lodge with strangers as a result of strict enforcement of the MofW double occupancy policy. The June 10, 1999 Agreement is attached as Exhibit 5 to this Statement.

“positions with fixed headquarters located more than 50 miles from their homes as follows:” (Emphasis added)

BMWED submits that this amendment will ensure that employees truly working and living away from home in the service of the railroads will be eligible for the lodging and meal benefits set forth in Article I, Sections A and B, respectively. No lodging, meals or allowances in lieu thereof will be provided unless the employee is truly obtaining lodging and meals away from home. Moreover, to ensure that employees can not sharpshoot the system, BMWED proposes to further amend Article I by adding a new Section C, which reads:

“C. An employee occupying a headquartered position more than 50 miles from his home shall not be allowed lodging and meal benefits set forth in Sections I A and I B if he had the opportunity to instead bid or displace on a mobile position or a headquartered position within 50 miles of his home without forfeiture of seniority in any class. An employee occupying a headquartered position more than 50 miles from his home shall make every reasonable effort to bid or displace to a headquartered position within 50 miles of his home if such a bid or displacement does not result in the forfeiture of seniority in any class. The railroad shall notify employees when such positions become available.” (Emphasis added)

The new Section C proposed by BMWED clearly establishes that the lodging and meal benefits provided for in Sections I A and B shall only be provided to employees occupying headquartered positions away from home when those employees had no other reasonable opportunity to work elsewhere. These proposed amendments when taken together are fair, equitable and reasonable and should be recommended to correct long-standing inequities in Award 298 that have been exacerbated by the exponential explosion in seniority territories over the last four decades.

II. LODGING

Lodging benefits under Award 298 are primarily controlled by Article I, Section A which provides that when employees are eligible for a lodging benefit, the railroad company must furnish

lodging or reimburse the employee for actual reasonable expense thereof not in excess of \$32.00 per day. There are two significant inequities in Article I, Section A.

The Lodging Reimbursement Is Insufficient And Disparate

The first problem with the lodging provisions of Article I, Section A is that the lodging reimbursement if the railroad chooses not to provide lodging is capped at \$32.00. This figure was implemented in 2005 pursuant to Article VI of the May 31, 2001 National Agreement (Exhibit 3) and it was insufficient to reimburse employees for the actual cost of lodging in 2005 and woefully insufficient seven years later in 2011.

BMWED proposes that the lodging benefit should be increased from \$32.00 to \$77.00 for each day lodging is obtained in a hotel or motel. The \$77.00 figure is based upon the standard daily lodging CONUS rate established by the General Services Administration (“GSA”) for Federal government employees traveling in the continental United States for fiscal year 2011.^{11/} The GSA described the methodology for determining the standard daily lodging rate for the continental United States thusly: “Historically, GSA has worked with federal agencies, travelers, and the travel industry to improve the process of establishing federal lodging per diem rates. Since fiscal year 2005, lodging per diem rates are based on average daily rate (ADR) data, which is a widely accepted lodging-industry measure based upon a property's room rental revenue divided by the number of rooms rented as reported by the hotel property to the contractor. ***”^{12/}

^{11/} The GSA tables for FY 2011 Domestic Per Diem Rates which include the standard daily CONUS lodging, meal and incidental per diem rates as well as the non-standard rates across the continental United States are attached as Exhibit 6 to this Statement.

^{12/} The GSA publication “Factors Influencing Lodging Rates” that describes the methodology for determining CONUS lodging per diems is reproduced as Appendix “E” in the separately bound volume of BMWED Appendices.

In short, the standard daily CONUS lodging rate is based on widely accepted lodging-industry measures that are data driven and objectively verifiable. Moreover, BMWED's proposal is not only reasonable, but modest in that we propose to use only the "standard rate" rather than the much higher "non-standard" rates which are justifiable based on the objective data (see non-standard lodging rates in effect across the continental United States in Exhibit 6 to this Statement).

Paying MofW employees a lodging allowance that approximates the actual cost of lodging is hardly revolutionary. Indeed, the very same railroads that are now paying their MofW employees a \$32.00 daily lodging benefit under the national terms of Award 298 have routinely made local agreements with BMWED to reimburse certain classes of employees for the actual cost of lodging and meals when they work away from home. Typical of these rules are BN Rule 36A, ATSF Rule 38(d), and UP Rule 38(c), which read:

BN - RULE 36A:

"A. Employees, other than those covered by Section B of this rule, **will be reimbursed for cost of meals and lodging incurred** while away from their regular outfits or regular headquarters by direction of the Company, whether off or on their assigned territory. This rule not to apply to mid-day lunch customarily carried by employees, nor to employees traveling in exercise of their seniority rights." (Emphasis added)

ATSF - RULE 38(d):

"38(d) - **Employees Performing Detached Service.** Except as provided in NOTE below, employees without campers/trailers who are required in the course of their employment to be away from their regular assignment and who are unable to return to the designated assembly point of their regular assignment on any day, **will be reimbursed for actual reasonable necessary expenses incurred for meals and lodging** (the latter to be supported by bona fide receipts), except that no such reimbursement will be made when the Carrier provides meals and lodging." (Emphasis added)

UP - RULE 38(c):

“(c) Employees who are sent away from their headquarters, home station, outfits or regular sections two (2) hours or more prior to the beginning of their regular assignment and who are not afforded sufficient time for an opportunity to eat prior to reporting for duty, **will be allowed actual reasonable necessary expenses for meals and lodging** beginning with the first meal period after leaving their headquarters.” (Emphasis added)

Similar rules exist on most other railroads and they clearly establish that the very same railroads who have collectively refused to negotiate a national lodging benefit for MofW employees that covers actual lodging and meal costs have locally negotiated such benefits for certain classes of MofW employees. Moreover, the disparity does not stop there. Employees of other “non-operating” crafts such as those represented by the Brotherhood of Railroad Signalmen (“BRS”), Transportation Communications International Union (“TCU”) and the Shop Craft unions have historically received full expense reimbursements when required to work away from home. Typical examples of away-from-home expense rules for those crafts have been attached as Exhibit 7 to this Statement. There is absolutely no justification for treating most MofW employees as second class employees by paying them a lodging benefit that does not approximate actual cost while employees in other crafts and some MofW employees receive a full cost benefit.

Finally, it should be noted that under BMWED’s proposal, the railroads retain the right to choose between paying the \$77.00 per day lodging allowance or providing single occupancy motel lodging. Consequently, the railroads retain the power to control lodging costs by utilizing corporate lodging firms to exercise their enormous buying power and obtain discounted room rates that would be unavailable to individual employees. Indeed, most, if not all, of the Class I railroads currently utilize lodging consulting firms to obtain discounted motel rooms for their MofW employees. BNSF and CSXT use lodging consulting programs to provide motel rooms for most

of their traveling MofW employees and NS and UP utilize these programs to provide lodging for some of their traveling MofW employees. BMWED cannot know with certainty the discounted room rates that the railroads have been able to obtain through their corporate lodging programs. BMWED requested expense away from home costing data from the railroads during bargaining and the railroads refused to provide intelligible data.

While BMWED does not know the corporate lodging rates that railroads have been able to obtain, we have objective reasons to believe that it is less than \$50 per day on average. In 2005, BMWED pressed Norfolk Southern locally to discontinue the use of camp car lodging and Norfolk Southern asserted that it needed to continue utilizing camp car lodging because there was an insufficient number of reasonably priced motels or hotels in reasonable proximity to the railroad's tracks and work locations. In response, BMWED provided a comprehensive list of Norfolk Southern camp car sites to a corporate lodging company, Corporate Lodging Consultants ("CLC"), and inquired as to whether CLC could provide lodging at reasonable rates in reasonable proximity to Norfolk Southern camp sites. The CLC's Vice President's report^{13/} included the following summary:

"Below are two reports tied to your camp site GPS's. In the first attachment using all available hotels we found 2,764 hotels matched to your camp sites. We used a 30-mile maximum range to determine the total number of hotels in these areas. We found that these 2,764 hotels create 4,587 hotel combinations that could be used from the various camp sites. There were no GPS areas that were not covered by a CLC hotel. As you can see, the strength of our

^{13/} The report transmitted by e-mail from CLC Vice President Gary Shaw to BMWED General Chairman Jed Dodd on July 11, 2005 is attached as Exhibit 8 to this Statement. This report included two attachments. One attachment is a table showing the number of hotels in reasonable proximity to each NS camp site and the average cost and distance of each hotel. This attachment is included here. The second attachment was a listing of each of the 2,764 hotels identified in the report. For the sake of brevity, this report, which ran to several hundred pages, has not been included here. BMWED will make it available upon request.

“proposal is that we have a tremendous amount of hotels to choose from to handle any size work crew. The attachment shows that the average distance from camp site to the hotel is 17.54 miles. The hotel rates include, room cost, taxes, and our service fee. The average rates we have shown are between \$31.69 - \$44.75.” (Emphasis added)

It is clear that under BMWED’s proposal the railroads retain the ability to control lodging costs by providing motel lodging and that if they exercised this option they could provide lodging at substantially less than \$77.00 per day.

The Lodging Standards Are Seriously
Inadequate And Disparate

When the railroads elect to provide lodging under Article I, Section A, the absence of adequate lodging standards results in disparate treatment for MofW employees. While employees in all other crafts are afforded single occupancy motel lodging, most railroads require double occupancy motel lodging for most MofW employees and one railroad, Norfolk Southern, still provides MofW employees lodging in anachronistic camp cars that lack dignity, privacy, safety and sanitation. Moreover, in addition to suffering from double occupancy requirements, MofW employees are afforded motel rooms of lesser quality than employees in other crafts. There is no justification for treating MofW employees as second class employees when they work away from home. The lodging disparity between MofW employees and employees in all other crafts should be ended by eliminating the use of double occupancy motel and camp car lodging and instead requiring that when railroads elect to provide lodging to MofW employees, it must be in single occupancy motel or hotel rooms of the same standards afforded to employees in all other crafts.

Indeed, the time to end double occupancy motel and camp car lodging has not just arrived, it has long since passed. Other crafts have been in single occupancy literally for decades and this

includes both small and large craft groups. While MofW may be a large group, the number of traveling MofW employees is a fraction of the combined operating craft cohort consisting of the Brotherhood of Locomotive Engineers (“BLE”) and United Transportation Union (“UTU”) represented employees. Typical of examples of agreements demonstrating that BLE and UTU represented employees have been furnished single occupancy lodging since the 1980’s are the July 16, 1980 BN-UTU Lodging Agreement and Article 21B of the Southern Railway-BLE Agreement dated January 21, 1982.^{14/} Similarly, the small non-operating craft groups, including the Shop Craft unions and BRS have been provided single occupancy lodging based on local agreements and practices. Typical examples of the Shop Craft rules and practices are reproduced as Appendix “F” in the separately bound volume of BMWED Appendices. The BRS is a particularly compelling example because like BMWED, BRS was a party to Award 298, but unlike BMWED members, BRS members are all afforded single occupancy lodging based on local rules and practices on the railroads party to this dispute.

Moreover, in addition to the disparity between MofW and all other crafts with respect to single occupancy lodging, there is disparity between different MofW groups. As a matter of rules or practices, some MofW groups are afforded single occupancy lodging. The largest MofW group to be provided with single occupancy motel lodging are employees assigned to System Production Gangs on CSXT. CSXT operates approximately 20 of these gangs each year and they employ

^{14/} The July 16, 1980 BN-UTU Lodging Agreement and Article 21B of the Southern Railway-BLE Agreement are attached as Exhibit 9 to this Statement. Ironically, the 1980 BN/UTU Agreement that afforded single occupancy lodging to UTU represented employees on BN was negotiated and executed by BN Vice President A. E. Egbers. This is the same A. E. Egbers who served as a partisan Carrier Member of Board 298 in 1967 and argued that MofW employees should be lodged in camp cars. Either Mr. Egbers’ views about the appropriateness of single occupancy had changed over the intervening thirteen years or he was simply discriminating against MofW employees and thought it appropriate to afford them second class treatment.

from 800 to 1,000 MofW employees. These are the large mechanized gangs that travel over the CSXT system performing heavy maintenance work such as rail and tie replacement. Beginning in 2010, CSXT has voluntarily afforded these employees single occupancy lodging through a corporate lodging program. CSXT had no contractual obligation to provide single occupancy lodging, it did so of its own volition to improve employee morale, and because it was the right thing to do in the 21st century.

Other railroads provide single occupancy to small MofW groups to comply with local rules and practices. For example, UP provides single occupancy to MofW employees sent away from their headquarters pursuant to Rule 38(a), which reads:

“(a) **MEALS AND LODGING** – Employees sent away from their headquarters, home stations, outfits or regular sections at the direction of Management to work elsewhere and who are not accompanied by outfit car and if held away from headquarters for more than three (3) hours beyond their regular assigned quitting time, will be furnished meals where held on duty. **Employees who are required to stay overnight away from their assigned headquarters will be provided with free lodging. Such lodging will be single occupancy rooms at Carrier approved lodging facilities,** except for employees who are assigned by bulletin to outfit cars, on-line service, or where there are insufficient rooms available at a location within a reasonable distance from the employees job site. Where meals and lodging are not provided in accordance with this rule, actual reasonable necessary expense for same will be allowed beginning with the first evening meal.” (Emphasis added)

Similarly, BNSF had a decade’s long practice of providing single occupancy rooms to MofW employees who were sent away from their headquarters pursuant to Rule 36A (quoted at Page 18, supra). When BNSF attempted to unilaterally discontinue that practice and require such employees to use double occupancy motel rooms as part of its corporate lodging program, an

arbitrator ruled that BNSF must continue providing single occupancy rooms to this particular MofW group.^{15/}

While the practice throughout the railroad industry clearly shows that all other crafts are afforded single occupancy and that an increasing number of MofW employees are being afforded single occupancy, there is one railroad, Norfolk Southern, that stubbornly clings to anachronistic camp car lodging for its MofW employees. NS applauds itself because it has converted from filthy decrepit eight-man camp cars, where they warehoused workers like cattle without indoor plumbing as recently as 2007, to “refurbished” four-man camp cars.^{16/} But the truth is that the four-man cars still provide double occupancy sleeping “rooms” and requires employees to share bathing and toilet facilities and provide less privacy and comfort than even a double occupancy hotel room. Indeed, while NS brags that their “new” four-man camp cars have indoor plumbing (as opposed to the outhouses they were using as recently as 2007), they still do not have potable water.

But perhaps even more important than the lack of dignity, privacy and comfort is the lack of safety and the ability to get a decent night’s sleep that are inherent in camp cars. Camp cars are rail-mounted and must necessarily be stationed in rail yards or on sidings along the right-of-way where switching operations bang away and mile-long freight trains roar by throughout the night sounding their horns at crossings and shaking the camp cars as they pass. In this connection, we invite the Board’s very special attention to the two photographs attached as Exhibit 11 to this Statement. Photograph No. 1 shows an occupied NS camp car parked on a siding adjacent to a

^{15/} The June 16, 1997 Award of Arbitrator Margo Newman interpreting BN Rule 36A has been reproduced as Appendix “G” in the separately bound volume of BMWED Appendices.

^{16/} A floor plan of the four-man Norfolk Southern camp cars is attached as Exhibit 10 to this Statement.

main line grade crossing. There is no protection for the occupants against noise, hazardous materials in transit or derailments on the adjacent track. The grade crossing means that trains will be blowing horns as they go by the entire length of the camp cars. Photograph No. 2 shows a train crew building located between tracks in Norfolk Southern's Linwood Yard that is protected against a potential derailment by a heavy steel structure referred to as "The Cage". The disparity between the two photographs could hardly be more striking, but it's not just a disparity concerning the level of accommodations, it's a disparate respect for the very lives and safety of MofW employees v. trainmen. The disregard that Norfolk Southern demonstrates for the safety, privacy and dignity of its MofW employees is repugnant and repulsive and must be brought to an end by prohibiting the use of camp cars to lodge MofW employees.^{17/}

As this submission was being written, BMWED learned that Norfolk Southern is "testing" a new form of mobile lodging that provides even less comfort, privacy and living space than the already wholly unacceptable camp cars. These "refurbished" highway trailers cram three employees into an 8x29 foot living space that provides little or no privacy.^{18/} While Norfolk Southern purports to be providing three separate "bedrooms", it's clear from a review of the floor plan that employees in one end of the trailer must walk through the rooms of two other employees to get to the refrigerator and the employee at the other end of the trailer must walk through the room of his coworker to get to the bathroom. And, the "room" partitions do not extend all the

^{17/} A DVD showing camp cars currently being used by Norfolk Southern in West Virginia is attached as Exhibit 12 to this Statement.

^{18/} A floor plan of the three-man Norfolk Southern highway trailers is attached as Exhibit 13 to this Statement. The local Norfolk Southern supervisor refused the union's request to tour these trailers, so this schematic was drawn with the aid of employees required to live in the trailers who provided the measurements and confirmed that the schematic was accurate.

way from the floor to the ceiling, but instead leave a twelve inch gap at the top. Imagine trying to conduct a private telephone conversation or, imagine trying to sleep while a coworker watches television. Local employees were informed that this particular trailer was being utilized as a “test” because motel budgets had been exceeded and Norfolk Southern was searching for ever cheaper ways to lodge its traveling employees. These triple occupancy units that require three employees to share a bathroom are even worse than the anachronistic camp cars and should not be deployed for use in the system.

In sum, in order to alleviate the disparity suffered by MofW employees, with respect to lodging allowances and accommodations, BMWED proposes to amend Article I, Section A of Award 298 to read as follows:

“A. Lodging

- 1. If lodging is furnished by the railroad company, it shall be in a single occupancy motel or hotel room with a bed, mattress, pillow, bed linen, blanket, towels, soap and private washing and toilet facilities.**
- 2. Lodging facilities furnished by the railroad company shall be adequate for the purpose and maintained in a clean, healthful and sanitary condition.**
- 3. If lodging is not furnished by the railroad company, the employee shall be paid a lodging allowance of \$77.00 for each day lodging is obtained in a motel or hotel.”** (Emphasis added)

There is nothing novel in BMWED’s lodging proposal. It simply requires the railroads to provide MofW employees who work away from home with single occupancy motel or hotel lodging or a lodging allowance that approximates actual cost. The railroads have, in most cases for decades, provided similar or superior benefits to employees in all other crafts and to some

MofW groups. This proposal does nothing more than end the second class treatment afforded to most MofW employees and bring them into the 21st century rail industry mainstream.

III. MEALS

The meal benefits under Award 298 are primarily controlled by Article I, Section B which provides that if employees are required to obtain their meals in restaurants or commissaries, each employee will be paid a meal allowance of \$25.00 per day. This meal allowance is paid, "... for each day of the calendar week, including rest days and holidays, except that it shall not be payable for work days on which the employee is voluntarily absent from service, and it shall not be payable for rest days or holidays if the employee is voluntarily absent from service when work was available to him on the work day preceding or the work day following said rest days or holiday."

BMWED proposes that the current meal allowance of \$25.00 for each day of the calendar week should be amended to provide a meal allowance of \$46.00 for each day that employees are away from home working or traveling in the service of the railroad. The \$46.00 figure is based upon the standard CONUS daily meals and incidental expenses rate established by the General Services Administration for Federal government employees traveling in the continental United States in effect for the fiscal year 2011. It consists of a meal allowance of \$41.00 per day and an incidental allowance of \$5.00 per day to cover taxes and tips. The GSA described the methodology for determining the standard daily meal and incidentals rate for the continental United States thusly: "A M&IE study is conducted every three to five years. In FY 09, GSA conducted a nationwide meals study, effective in FY 10, to more accurately reflect actual prices

charged by restaurants in areas frequented by federal travelers. Based upon data received from more than 9,000 restaurants, the M&IE tiers range from \$46 - \$71.”^{19/}

In short, the standard daily CONUS meals and incidentals rate is a data driven and objectively verifiable per diem based on a survey of actual prices in over 9,000 restaurants across the nation. Moreover, like BMWED’s lodging allowance proposals, it is not only reasonable, but modest in that we propose to use only the “standard rate” rather than the much higher “non-standard” rates which are equally justifiable based on the objective data (see non-standard meal and incidental rates in effect across the continental United States in Exhibit 6 to this Statement).

Just like BMWED’s lodging allowance proposal, our meal allowance proposal is hardly revolutionary. As we pointed out above, the very same railroads that are now reimbursing their MofW employees far less than the actual value of lodging and meals pursuant to Award 298 routinely made local agreements with BMWED and other crafts to reimburse certain classes of employees for the actual cost of lodging and meals when they work away from home (*See* Pages 17 and 18, *supra* and Exhibit 7 to this Statement). There is absolutely no justification for treating MofW employees as second class employees by paying them a meal allowance that does not approximate actual cost while employees in other crafts and some MofW employees receive a full cost benefit. In order to alleviate the disparity suffered by MofW employees with respect to meal allowances, BMWED proposes to amend Article I, Section B of Award 298 to read as follows:

“A. Meals

Each employee shall be paid a meal allowance of \$46.00 per day for each day the employee: (1) works away from home; (2) travels to or

^{19/} The GSA publication “Frequently Asked Questions, Per Diem” that describes the methodology for determining CONUS meals and incidental per diems is reproduced as Appendix “H” in the separately bound volume of BMWED Appendices.

“from a work location on a rest day; or (3) on rest days, holidays or sick days the employee obtains lodging pursuant to Section I A above. When no work is performed on a day spent traveling from home to a work location or a work location to home the meal allowance shall be calculated at 75% (i.e. \$34.50).” (Emphasis added)

BMWED’s meal allowance proposal stands for the unremarkable proposition that the railroads should provide MofW employees with a meal allowance that approximates actual cost on days when they obtain meals away from home as a result of service for the railroad. To illustrate our proposal, consider an employee assigned to a system rail gang with a work week of four 10-hour days, Monday through Thursday with Friday, Saturday and Sunday as rest days. If that employee was working 400 miles from his home during a particular week, he would most likely receive the meal allowance for five days that week under BMWED’s proposal. The employee would have to leave home at mid-day on Sunday to travel approximately eight hours to his work location because the distance would be too great to travel before the start of work on Monday morning. The employee would reside in lodging provided by the railroad on Sunday night and would receive a meal allowance calculated at 75% or \$34.50 because Sunday would be a travel day on which no work was performed. The employee would receive a meal allowance for Monday, Tuesday, Wednesday and Thursday because they would be days worked away from home. If the employee was released from work early enough in the day on Thursday to travel home, his meal allowance would end on Thursday (4 days at \$46.00 and 1 day at \$34.50). If the employee worked so late on Thursday that he could not travel home on Thursday evening and had to travel home on Friday, a rest day, he would receive a meal allowance of \$34.50 for travel on a rest day when no work was performed. Finally, in some instances, employees are working so far from home that they can not return home on rest days, holidays and sick days. If not for their

mobile gang assignment, the employees would not be residing away from home in railroad provided lodging and, therefore, the employees would be entitled to a meal allowance on those days.

Like BMWED's lodging proposal, there is nothing novel in BMWED's meal allowance proposal. It simply requires the railroads to provide MofW employees who obtain meals away from home with a meal allowance that approximates actual cost. The railroads have, in most cases for decades, provided similar or superior benefits to employees in other crafts and to some MofW groups. This proposal does nothing more than bring MofW employees into the 21st century rail industry mainstream.^{20/}

IV. TRAVEL FROM ONE WORK POINT TO ANOTHER

Pursuant to Article I, Section C.1. of Award 298, “[t]ime spent in traveling from one work point to another outside of regularly assigned hours or on a rest day or holiday shall be paid for at the straight time rate.” These trips are often hundreds of miles. Pursuant to Section C.2., “[a]n employee who is not furnished means of transportation by the railroad company from one work point to another and who uses other forms of transportation for this purpose shall be reimbursed for the cost of such other transportation. If he uses his personal automobile for this purpose in the absence of transportation furnished by the railroad company he shall be reimbursed for such use of his automobile at the rate of 55.5 cents a mile. ***” While the railroads customarily pay

^{20/} BMWED also proposes to amend Article II, Section B to make it consistent with our proposed amendments concerning lodging and meals in Article I, Sections A and B set forth above. Where Article II, Section B now refers to a maximum reimbursement of \$57.00 per day for headquartered employees taken away from their headquarters, BMWED proposes to increase that amount to \$123.00 (\$77.00 + \$46.00 = \$123.00).

employees at their straight time rates for the time expended outside regular hours traveling from one work point to another, they have developed a uniform scheme to avoid paying employees mileage for using their personal automobiles to travel from one work point to another, even though the employees have no real option but to drive their personal automobiles from one work site to another. These trips are sometimes hundreds of miles and consume well over 1,000 miles during an annual work season.

The scheme the railroads have devised to avoid paying employees automobile mileage for driving their personal automobiles from one work site to another is based on the fact that in the current reality of massive geographic work territories and the absence of passenger train service that existed in 1967, employees have no real option but to transport themselves from one work location to the next in their personal automobiles. At the beginning of a work season, employees assigned to mobile gangs must transport themselves from home to the first work location of their assigned crew.^{21/} It is not uncommon for this trip to be hundreds of miles. After arriving at the first work location, the employees park their personal automobiles at the railroad's designated lodging site and each day they are transported from the lodging to the work location and back in a company bus or truck (30 minutes each way of this commuting time is unpaid time). At the end of the work week, the employees use their personal automobiles to make round trips home to enjoy what little time they have with their families and communities. This cycle continues until the crew has finished its work at the initial work location and it's time to move to the next work location on the crew's annual schedule. It is at this point that the railroads have developed a

^{21/} Pursuant to Article XIV of the September 26, 1996 National Agreement between BMWED and the NCCC, employees assigned to traveling gangs receive a liquidated travel allowance of \$25.00 per hundred miles traveled after the first 100 miles when they make round trips between home and their work sites on rest days. BMWED seeks to increase this benefit in a separate proposal.

clever scheme to avoid paying the employees for using their personal automobiles to transport themselves to the next work location. When it's time to make the move, the railroads tell the employees that the crew's bus will be traveling to the new work location and the employees are free to ride the bus from one work location to the next. Of course, the railroads know full well that the employees have their personal automobiles at the initial lodging location and can not simply leave them parked there for the duration of the 10-12 month work season. Moreover, railroads know full well that the employees will need their vehicles to make weekend trips home. The ultimate result is that the employees decline the proffered bus transportation and the bus gets loaded on a flat car with the rest of the crew's equipment and is shipped by rail to the next work location. This cycle is repeated throughout the annual work season as the crew moves from one work location to the next on its schedule. By the end of the work season, the employees will likely have driven their personal automobiles more than 1,000 miles traveling from one work location to the next.^{22/}

In sum, the practical reality of mobile gang work is that employees must drive their personal automobiles throughout the work season and the railroads should not be permitted to escape mileage reimbursement by the disingenuous proffer of bus transportation the employees can not accept and the railroads never really intended to provide. BMWED proposes to correct this inequity by amending Article I, Section C.2. (renumbered as Section D.2. in BMWED's proposal) to read as follows:

^{22/} The work territories for mobile production crews can be immense. Even on the smallest of the Big Four railroads, Norfolk Southern, it is common for these mobile crews to work across 5 or 6 states in a single work season. For example, see the 2011 work schedules for Norfolk Southern production gangs reproduced as Appendix "I" in the separately bound volume of BMWED Appendices.

“D. Travel from one work point to another

* * *

2. An employee who is not furnished means of transportation by the railroad company from one work point to another and who uses other forms of transportation for this purpose shall be reimbursed for the cost of such other transportation. If the employee elects to use his personal automobile for this purpose, he shall be reimbursed at the standard mileage rates used to calculate the deductible costs of operating an automobile for business purposes as promulgated by the Internal Revenue Service (i.e., 55.5 cents per mile effective 7/1/2011). If an employee’s work point is changed during his absence from the work point on a rest day or holiday, this paragraph shall apply to any mileage he is required to travel to the new work point in excess of that required to return to the former work point.” (Emphasis added)

Once again, BMWED’s proposal simply seeks to bring traveling MofW employees into the railroad industry mainstream by stipulating that if employees elect to use their personal automobiles to travel from one work point to another, they shall be reimbursed at the standard mileage rate. No other craft employees operate their personal automobiles in the furtherance of the railroad’s business operations without receiving reimbursement for automobile mileage. There is no basis for treating MofW employees differently. Moreover, there can be no question that traveling from one mobile work location to the next is a necessary part of the railroad’s operations because Award 298 makes it clear that this is paid time. It may have made practical sense in 1967 for railroads to provide transportation from one work location to the next by passenger trains or in the camp cars themselves when the majority of traveling employees lived in camp cars and

some rode passenger trains from home to their work locations and from one work location to the next.^{23/} However, the freight railroads discontinued passenger service in 1971 and the reality is that mobile MofW employees must drive their personal automobiles to get from home to distant work locations and from one work location to the next. They do this in the furtherance of the railroads' business interest and, therefore, they should be reimbursed for automobile mileage in accordance with standard practices in the industry.

V. SUBSEQUENT ADJUSTMENTS

It is axiomatic that the purpose of lodging and meal allowances are to reimburse employees for the cost of obtaining lodging and meals while living away from home in the furtherance of the business interests of the railroads. Expense reimbursements, whether for actual expenses or in the form of allowances adopted to facilitate administrative ease should not be considered a form of income, nor should they result in employees paying out of pocket to subsidize a railroad's operations. The expense payments required by Award 298 never satisfied this basic purpose. For all the reasons we have discussed above, the Award 298 allowances were insufficient to reimburse employees for actual cost when they were implemented in 1967 and they were not increased in

^{23/} The historic practice whereby traveling MofW employees living in camp cars rode passenger trains to make weekend trips home is illustrated by BNSF Rule 67 which is reproduced as Appendix "J" in the separately bound volume of BMWED Appendices. Rule 67 provides not only that employees will be provided passes to ride trains home, but that if their camp car was located away from a passenger station (for example on a branch line), the railroad would provide transportation to the station. This was the context in which Board No. 298 rendered its award in 1967. Of course all of that changed when the freight railroads discontinued passenger service in 1971 and all traveling MofW employees had to begin driving their automobiles from their homes to their distant camp sites and work locations.

sufficient amounts or with sufficient frequency to cover the increasing costs of lodging and meals over the next four decades. Indeed, in the 44 years that Award 298 has been in effect, the lodging and meal allowances have been adjusted a total of only twelve times in six national agreements.^{24/} Moreover, the railroads have frequently held increases in the lodging and meal allowances hostage in bargaining. There were no increases in the Award 298 lodging and meal allowances in the eleven years between their implementation effective September 30, 1967 and the first increase effective November 1, 1978. Similarly, the most recent increase was effective seven years ago on January 1, 2005 because the railroads held expenses away from home hostage to wage and healthcare bargaining in the July 1, 2007 National Agreement. Reimbursement for lodging and meal expenses are not income and should not be the subject of normal quid pro quo bargaining that allows railroads to offset wage increases by withholding adjustments in lodging and meal reimbursements to cover real costs.^{25/} BMWED's current proposals on lodging and meal expenses establish lodging and meal allowances that approximate the actual cost of obtaining lodging and meals based on the standard daily CONUS lodging and meals and incidental rates established by the General Services Administration for Federal government employees traveling in the continental United States in effect for the 2011 fiscal year. BMWED proposes to maintain the value of those allowances going forward by adjusting them as follows:

^{24/} A table showing the amount and frequency of the adjustments to Award 298 allowances between 1967 and 2011 is reproduced as Appendix "K" in the separately bound volume of BMWED Appendices.

^{25/} MofW employees are the second lowest paid group among railroad industry crafts. It is grossly inequitable to require one of the lowest paid crafts to subsidize the railroads' operations by paying out of pocket for lodging and meals expenses while traveling in the service of the railroads.

“Section 2 - Second Adjustment

Effective July 1, 2012, the daily allowances specified in Articles I and II shall be further adjusted as follows:

(a) The daily lodging allowance provided for in Article I, Section A(3) is increased from \$77.00 to the amount of the standard CONUS daily lodging rate established by the General Services Administration for Federal government employees traveling in the continental United States in effect for the 2012 fiscal year.

(b) The daily meal allowance provided for in Article I, Section B(1) is increased from \$46.00 to the amount of the standard CONUS daily meals and incidental expenses rate established by the General Services Administration for Federal government employees traveling in the continental United States in effect for the 2012 fiscal year.

(c) The maximum reimbursement for actual meals and lodging costs provided for in Article II, Section B is increased from \$123.00 per day to a per day amount equal to the sum total of the standard daily meal and incidental rate added to the standard daily CONUS lodging rate established by the General Services Administration for Federal government employees traveling in the continental United States in effect for the 2012 fiscal year.

Section 3 - Subsequent Annual Adjustments

Effective July 1, 2013 and on July 1st of each year thereafter, the daily allowances specified in Articles I and II shall be further adjusted as follows:

(a) The daily lodging allowance provided for in Article I, Section A(3) is increased to the amount of the standard daily lodging CONUS rate established by the General Service Administration for Federal government employees traveling in the continental United States for the applicable fiscal year.

(b) The daily meal allowance provided for in Article I, Section B(1) is increased to the amount of the standard daily meal and incidentals rate established by the General Services Administration for Federal government employees traveling in the continental United States for the applicable fiscal year.

“(c) The maximum reimbursement for actual meals and lodging costs provided for in Article II, Section B is increased to a per day amount equal to the sum total of the standard daily meal and incidental rate added to the standard daily CONUS lodging rate established by the General Services Administration for Federal government employees traveling in the continental United States for the applicable fiscal year.” (Emphasis added)

BMWED submits that its proposal on subsequent adjustments of the Award 298 allowances will simply maintain the value of those allowances over time and ensure that they continue to approximate the actual cost of obtaining lodging and meals while working away from home. This is consistent with the “actual and necessary” expense reimbursements afforded to some groups of MofW employees and employees in other crafts because those “actual and reasonable” expenses automatically adjust over time as lodging and meal costs change. Once again, BMWED’s proposal simply seeks to end the second class treatment of MofW employees and bring them in to the railroad industry mainstream.

SUMMARY AND CONCLUSION

BMWED’s proposals on expenses away from home simply seek to bring all MofW employees into the rail industry mainstream currently occupied by employees in all other crafts and certain classes of MofW employees. BMWED proposes to accomplish this end by amending Award 298 in six unremarkable ways:

- 1. Eligibility - Amend the Article I preamble to provide that all MofW employees who truly work away from home will receive lodging and meal benefits including those employees assigned to “headquartered” positions more than 50 miles from their homes.**
- 2. Lodging Accommodations - Amend Article I, Section A.1. to provide that if the railroad company furnishes lodging, it shall be in single occupancy motel or hotel rooms with private washing and toilet facilities.**

3. **Lodging Allowances** - Amend Article I, Section A.3. to increase the lodging allowance from **\$32.00** per day to **\$77.00** per day based on the standard daily CONUS lodging rate established by the GSA for Federal government employees traveling in the continental United States.
4. **Meal Allowance** - Amend Article I, Section B to increase the meal allowance from **\$25.00** for each day of the calendar week to **\$46.00** for each day that meals are obtained away from home based on the standard daily CONUS meal and incidental expense rate established by the GSA for Federal government employees traveling in the continental United States .
5. **Work Point to Work Point Travel** - Amend Article I, Section C.2. (Renumbered as Section D.2. in BMWED's proposal) to provide that when an employee elects to use his personal automobile to travel from one work site to the next, he shall be reimbursed at the standard mileage rate (currently 55.5 cents per mile).
6. **Subsequent Adjustments** - Provide that effective July 1, 2012 and each July 1st thereafter, lodging and meal allowances shall be increased to the amount of the standard daily CONUS rates for lodging and meals and incidental expenses established by the GSA for Federal government employees traveling in the continental United States.

None of BMWED's proposals are novel, much less revolutionary. The railroad companies that are party to this proceeding have negotiated lodging and meal benefits for employees of all other crafts that are equal or superior to those being sought by BMWED for MofW employees. Indeed, the railroads party to this proceeding have individually negotiated lodging and meal benefits for certain classes of MofW employees that are equal or superior to the benefits that they are now collectively denying to the majority of MofW employees. There is no reasonable basis for allowing this disparity to continue and it should be brought to a conclusion by adopting BMWED's proposals for expenses away from home.