

**STATEMENT OF THE BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYES DIVISION/IBT REGARDING IMPROVEMENTS
IN THE REST-DAY TRAVEL ALLOWANCE PAID TO EMPLOYEES
WORKING AWAY FROM HOME**

The Brotherhood of Maintenance of Way Employes Division/IBT ("BMWED")¹ proposes amendments to Article XIV of the September 26, 1996 agreement between the Brotherhood of Maintenance of Way Employes and the National Carriers' Conference Committee ("the September 26, 1996 National Agreement") that restore the value of the allowances provided therein which have been eroded by inflation over the 15 years elapsed since the Agreement's effective date. Additionally, the BMWED proposes to amend Article XIV to permit employees to fly (or take the train or bus) home on each weekend subject to the proviso that the employee will receive no greater allowance than if he or she traveled home by highway in an automobile.²

BMWED's proposal is set forth below:

1. Amend Article XIV, Section 1(a) of the September 26, 1996 National Agreement to read:

101 - 200 miles \$36.00

201 - 300 miles \$72.00

301 - 400 miles \$107.00

401 - 500 miles \$142.00

Additional \$36.00 payments for each 100 mile increments.

2. Amend Article XIV, Section 1(b) of the September 26, 1996 National Agreement to substitute the amount of "\$18.00" for the current "\$12.50."

¹ BMWED merged with the International Brotherhood of Teamsters on January 1, 2005. Prior to that, the union was called the Brotherhood of Maintenance of Way Employes ("BMWE"). References in this submission to "BMWE" refer to events prior to January 1, 2005.

² Article XIV of the September 26, 1996 National Agreement is attached as Exhibit 1 to this Statement.

3. *Effective January 1, 2013 and each January 1 thereafter, adjust the allowance set forth in Paragraph 1, by the percentage change in the Consumer Price Index Urban Wage Earners and Clerical Workers (CPI-W (1967 = 100)) in the previous 12 month period (October to October).*

4. *Effective January 1, 2013, amend the amount set forth in Paragraph 2 to equal one half of the amount paid for traveling 101 to 200 miles.*

5. *Amend Article XIV, Section 2 of the September 26, 1996 National Agreement to provide the following:*

Employees may choose a different type of travel than Highway Travel (e.g. air, rail or bus) for each weekend trip home. Employees selecting a different type of travel other than Highway Travel will receive an allowance as though they used Highway Travel for the weekend trip home.

HISTORY OF THE DISPUTE

Presidential Emergency Board No. 219 ("PEB 219") recommended, and Congress imposed by legislation, contractual terms upon the BMW and the carriers represented by the National Carriers' Conference Committee ("NCCC") that permitted carriers to operate system and regional production gangs and also permitted carriers to combine and realign maintenance of way seniority districts into larger territories. The PEB 219 recommendations became effective in 1991 and the BMW began an effort to modify or roll back those provisions in the PEB 219 settlement which it found to create undue hardship on BMW-represented employees of the carriers.

In November 1994, BMW served Section 6 notices on the carriers seeking to obtain, among other things, mileage reimbursement and paid travel time for employees required to engage in weekend travel to and from system and regional production gangs and other traveling gangs. Negotiations between the BMW and NCCC did not result in a voluntary agreement. Accordingly, on May 16, 1996, President Clinton appointed Presidential Emergency Board No. 229 ("PEB 229") to investigate the dispute and make recommendations for its resolution. PEB 229 held hearings on May 28-30 and June 4-8, 1996. The record produced for the Board

comprised 1500 pages of hearing transcripts and 129 bound volumes of exhibits. *PEB 229 Report at 2.*³

BMW's presentation to PEB 229 noted that existing rules did not generally provide travelling employees with travel time compensation or mileage reimbursement when traveling round trip from home to their assigned gangs. BMW did acknowledge that Burlington Northern Santa Fe ("BNSF") paid a flat \$20.00 weekend travel allowance to employees in "regional gangs" and CSX paid a flat \$50.00 weekend travel allowance to employees in system gangs established under the PEB 219 rules. However, these allowances were exceptions to the general rule that weekend travel was uncompensated. *BMW Submission at 21, n.14.*⁴ BMW presented data for regional or system gangs on BNSF, CSX, Norfolk & Western and Conrail which demonstrated employees assigned to those gangs traveled, on average, over 14,000 miles per year in weekend travel and spent over 200 hours per year in such travel. BMW compared those totals with a 1990 Census report showing the average commute consumed 22.4 minutes each way or 3.73 hours per week. *Id. at 24.* The average weekend commute time for employees in a BN regional gang was 10.35 hours. *Id. at 25.* Actually, these comparisons were quite favorable to the carriers because the census report measured the daily commute times. Maintenance of way employees assigned to traveling gangs also "commuted" from their lodging facilities to the worksite and that "commute" at the time of PEB 229 was unpaid regardless of duration.

The NCCC's response to this argument and evidence was to assert that traveling employees were not deserving of additional compensation for weekend travel. The carriers argued that employees were not "required" to travel great distances to these gangs because they either could opt to stay in the gang on the weekend and forego the time and expense of the trip home or elect not to bid on positions in traveling gangs in the first place. *NCCC Submission at 14-15.*⁵ The

³ Relevant excerpts from the Report of PEB 229 are Exhibit 2 to this Statement.

⁴ BMW's submission to PEB 229 is reproduced as Appendix "L" in the separately bound volume of BMWED Appendices.

⁵ The NCCC submission to PEB 229 is reproduced as Appendix "M" in the separately bound volume of BMWED Appendices.

NCCC further contended that “weekend travel is a working condition that figures into the overall compensation package paid to BMW employees.” *Id. at 16.* Therefore, “[n]o carrier forces an employee to drive a personal automobile long distances, they simply offer jobs that employee are free to bid on or not.” *Id. at 17.* The carriers concluded that granting the BMW’s demands on weekend travel would undo in large part the economic benefits the carriers received from the PEB 219 recommendations on regional and system gangs. *Id. at 18.*

PEB 229 issued its report on June 23, 1996. The Board commented that it followed four general guidelines in making its recommendations (Report at 29):

1. *The parties have been given every opportunity to state their case and provide the Board with a complete understanding of the issues.*
2. *Each issue would be considered on its own merits as well as its relative position within a total contract.*
3. *The competitive and economic conditions so necessary for the carriers’ survival are balanced with employment and institutional security so critical to the unions’ survival.*
4. *Our recommendations would provide a framework for a stable, self-reliant and durable collective bargaining relationship.*

PEB 229 proposed a travel allowance substantially different from BMW’s proposal. Instead of payment for time traveled and a mileage reimbursement, PEB 229 proposed an expansion of the flat rate travel allowances already provided by some of the carriers to some of their traveling employees. The Board essentially provided a liquidated travel allowance of \$25.00 per hundred miles traveled payable to all employees assigned to traveling gangs who traveled to and from home to the worksite on their rest days. Additionally, PEB 229 proposed that employees working more than 400 miles from home could demand that their employer provide them round-trip airline tickets to go home every third weekend trip. However, an employee opting for this benefit would be ineligible for any type of travel allowance on the other two weekends, but could receive meal and lodging from the carrier if the employee chose to remain at the work location during the weekend. *PEB 229 Report at 34.* On September 26, 1996, the NCCC and BMW adopted the PEB 229

recommendations on travel allowance almost *verbatim* and included them in Article XIV of their Agreement.

Although the NCCC carriers voluntarily adopted the travel allowance recommendation of the PEB 229 Report, they immediately began a narrow interpretation of its scope. Rather than providing the allowance to all employees assigned to traveling gangs, the carriers limited payment of the allowance solely to those employees assigned to regional or system production gangs. BMWED disputed the carriers' actions and struck them. This dispute led to litigation and ultimately arbitration before Special Board of Adjustment No. 1114 (Richard Kasher, Referee). On June 20, 1999, Referee Kasher issued the following "award:"

The position of the BMWED that the travel allowance benefits of Article XIV of the September 26, 1996 National Agreement apply to all traveling employees is sustained.

Article VII of the subsequent National Agreement dated May 31, 2001 between the BMWED and the NCCC amended Article XIV to provide a "home station" for the railroad employee who maintained a permanent residence for Article XIV purposes in a state where his employing carrier did not operate a line of railroad.⁶ Essentially, Article VII was designed to prevent an employee from maintaining a permanent residence in a state where his employer did not operate a line of railroad to claim a greater weekend travel allowance. No changes were made to Article XIV in the July 1, 2007 National Agreement between the BMWED and the NCCC.

BMWED'S PROPOSAL IS A FAIR AND EQUITABLE RESOLUTION OF THE DISPUTE

The foregoing history of the dispute shows that the merits of a travel allowance for BMWED members assigned to traveling gangs was subject to a full and fair hearing before PEB 229. The Board heard testimony regarding the changed traveling conditions for BMWED working in traveling gangs and recommended a remedy for the greater distances maintenance of way employees were obligated to travel to and from work locations. In 2001, the parties

⁶ Article VII of the May 31, 2001 National Agreement is Exhibit 3 to this Statement.

voluntarily resolved a loophole where employees potentially could inflate the amount of travel allowance due to them. Since PEB 229 issued its report over 15 years ago, no one can dispute that those working conditions for BMWED members have not changed. Indeed, the distances BMWED members assigned to traveling gangs have only increased.

In 1998, BNSF engaged in an arbitration to combine and realign seniority districts. That arbitration concerned the entire BNSF system and consolidated 47 seniority districts into 9 new seniority districts. Employees assigned to district traveling gangs on BNSF, now traverse territory formerly only covered by regional and system production gangs. Also in 1998, the Union Pacific engaged in a New York Dock transaction to create system gangs that operate over the territories of the former Southern Pacific (Western Lines), pre-merger Union Pacific and the former Chicago & North Western. Finally, in 1999, Norfolk Southern and CSX acquired and dismembered Conrail, putting the former Conrail employees into larger seniority territories on Norfolk Southern. The trend in the industry since 1996 has been to expand the use and territory covered by traveling gangs. BMWED submits the need for a travel allowance is greater today than it was when PEB 229 recommended it in 1996.

As noted earlier in the history of the dispute, PEB 229 rejected BMWED's request for a minute-by-minute and mile-by-mile compensation for the time and distance an employee spent traveling on his or her rest days. Instead, PEB 229 recommended, and the parties accepted, a liquidated amount designed to partially reimburse an employee for expenses and time spent traveling to and from home on rest days. That reimbursement, however, only applies to trips in excess of 100 miles each way. In other words, PEB 229 expected the initial two or so hours of any rest day trip to be uncompensated. The BMWED's proposal here does not seek to change the basic structure of that recommendation and the parties' agreement. Instead, our proposal simply seeks to restore the "value" of the allowance lost to inflation over the past 15 years.

Cost of living adjustments and other adjustments based on inflation in the railroad industry commonly use the Consumer Price Index – Urban Wage Earners and Clerical Workers (1967=100) (“CPI-W”) published by the Bureau of Labor Standards. Our proposed adjustment takes the percentage increase in the CPI-W from October 1996 through July 2011 and applies it to the current travel allowance. The percentage change in the CPI-W from October 1996 to July 2011 is 42.3%. Applying that percentage increase to the \$25.00 travel allowance amount provides an adjusted amount of \$35.80, which we have rounded up to \$36.00. BMWED submits this adjustment merely restores the same value to the travel allowance that it had on September 26, 1996 when the parties entered into their National Agreement. This adjustment continues, in 2011 dollars, the deal struck voluntarily in 1996.

BMWED proposes two other modifications to Article XIV.

The first, an annual adjustment, effective January 1st of each year, to the allowance based upon the change in the CPI-W over the prior twelve month period measured from October to October. This annual adjustment merely retains the value of the travel allowance equivalent to what it provided in September 1996 on an annual basis.

The second adjustment seeks to change the way airline (or rail or bus) travel is treated under Article XIV. Today, the Union Pacific and CSX operate a substantial number of their traveling gangs on compressed half schedules. A compressed half schedule is established by determining the number of straight time hours a gang working Monday through Friday would work in that half, usually 80 or 88. Those hours are divided by the number of days the gang is scheduled to work consecutively. In practice, most gangs on such compressed schedules work 10 or more hours per day, so the gang works eight days in a row and then has seven consecutive rest days.

Under the current Article XIV, an employee would be required to wait three work cycles, or a month and half to obtain a carrier paid airline ticket home while working in a compressed half gang. Moreover, during the period, the employee

either would have to stay at the worksite for the seven consecutive rest days, or drive home and receive no travel allowance whatsoever. Needless to say, no employees take the air travel option.

BMWED's proposed amendment would permit an employee to purchase an airline (or rail or bus) ticket home and receive an allowance as though he or she drove. We submit this proposal provides no windfall to an employee, because he or she will receive no more than what the employee would have received by driving home which is the "default" provision in the rule. We also submit that making an airline option more readily accessible, the employee hopefully will arrive home quicker than if he or she drove and obtain more rest and return to work rested by not having to drive hundreds of miles to and from the gang. We stress this alternative arrangement is one the employee can choose or refuse and probably is one best suited for employees working compressed half schedules. However, such a rule would be a benefit to the employees and cost the carrier no premium over the standard travel allowance payments.

In conclusion, BMWED submits its proposal merely restores the value of the original 1996 travel allowance and provides a reasonable alternative method of travel for those employees assigned to gangs where air travel would be a viable option. Both of these changes provide a fair resolution of the parties' dispute regarding travel allowance.