SPECIAL BOARD OF ADJUSTMENT
Travel Allowance

PARTIES TO DISPUTE:

(BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
(DIVISION/IBT
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(AND
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(UNION PACIFIC RAILROAD COMPANY

INTRODUCTION

THE PARTIES to this Dispute established this Special Board of Adjustment and agreed to the following:

> There shall be established a Special Board of Adjustment, in accordance with the first unnumbered paragraph of Section 3, Second of the Railway Labor Act, 45 U.S.C. § 153, Second, as amended, hereinafter referred to as "the Board." This Board shall have jurisdiction provided for under Section 3, Second of the Railway Labor Act and this Agreement to decide the disputed questions identified in Attachment "A". It is agreed that the disputes in Attachment "A", are properly before the Board and are to be decided on the merits by the Board, and neither party will interpose any procedural or other arbitrability objection (such as timeliness, sufficiency of specificity, sufficient identification of claimants) to the Board's ability to decide the claims on their merits. No additional claims or disputes of any kind shall be submitted to this Board. The parties agree that the procedures set forth in this Agreement satisfy any requirements for on-property handling or conference prior to arbitration.

ATTACHMENT "A":

Question # 1: Are employees that are displaced or abolished from their old gang entitled to mileage when returning home after the abolishment or displacement?

Question # 2: Are employees that are displaced or abolished from their old gang entitled to mileage when reporting to their new gang?

Question # 3 Are employees that are bidding to a new gang at a different work location and report directly from the old work location to the new work location entitled to mileage from the old work location to the new work location?

Question # 4: Are employees that are bidding to a new gang at a different location and returning home from the work cycle from the old gang entitled to mileage from old gang location to home and mileage from home to the new work location when reporting back to the new work location?

Question # 5: Are employees that are recalled to a gang entitled to mileage when traveling home from the old assignment and/or when reporting to the new gang either from home or from the previous gang location?

Question # 6: Are employees that are driving daily to their assignment entitled to mileage when their reporting location is less than fifty (50) miles from their home?

Question # 7: Are employees entitled to mileage to return home and report to their new gang when they utilize a "walk off" provision of the CBA due to a schedule change?

Question # 8: Are employees utilizing the "Fly Home Option Agreement" entitled to claim the higher mileage rate for drivers when driving to an airport that is on the most direct highway route?

FINDINGS

UPON THE WHOLE RECORD and after hearing, the Board finds:

The parties herein are carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934. This Board is duly constituted by agreement and has jurisdiction of the parties and subject matter.

Background Facts

In the most recent round of National Bargaining and in mediation, the Brotherhood of Maintenance of Way Employee Division ("BMWED" or "the "Organization") sought substantial improvements in away from home expense reimbursements including increases in *per diems*, travel time, mileage, etc. (hereinafter "travel allowance"). The parties were unable to reach agreement on contract terms.

On August 16, 2022, Presidential Emergency Board ("PEB") No. 250 issued recommendations regarding the 2020 National Bargaining Round for the Class I Railroad Industry. The PEB wrote that the BMWED proposals regarding travel allowances should be adopted by the parties. Shortly thereafter, the National Carriers Conference Committee ("NCCC"), met with International and General Chairpersons of the BMWED, to negotiate how to implement PEB No. 250's recommendations. On September 10, 2022, the NCCC and the Organization entered into a tentative agreement ("National TA") based on PEB No. 250's recommendations, including provisions governing travel allowances and expense reimbursement for eligible employees assigned to work away from home. Article V, Section (g) of the National TA stated that "Nothing

in this Article will bar a carrier and the organization from entering local agreements that provide for different terms than are contained herein."

The travel allowance and expense reimbursement provisions of the National TA provided, as follows:

ARTICLE V – TRAVEL ALLOWANCES AND EXPENSES AWAY FROM HOME

(a) Effective as of January 1, 2023, employees on traveling gangs who are assigned to work away from home shall be reimbursed for business travel expenses, lodging, and meal expenses (in lieu of any other travel and expense reimbursement) as follows:

(1) Mileage and Tolls

i. Each employee who drives a personal vehicle for travel between home and reporting or work locations, and between work locations will be provided mileage reimbursement at the then-current IRS mileage rate for business travel via the most direct highway route to and from the work location, as well as other miles driven in connection with the Employee's performance of work for the carrier including traveling to and from their home and carrier-provided lodging, designated assembly points, gang startups and break ups, midweek worksite moves, changes in worksite, or worksite reporting, and to and from lodging. Employees will not be reimbursed for mileage for transportation from carrier provided lodging to a worksite and back to that lodging when the carrier provides transportation between that lodging and the work site.

ii. When lodging is not provided by the carrier, mileage for trips between the lodging and designated assembly point will not exceed the distance between the nearest appropriate lodging location that falls within the GSA's standard CONUS lodging rates and the designated assembly point.

iii. Each employee who drives a personal vehicle under Paragraph 1(a)(i) will be reimbursed for tolls as an expense by the carrier if the tolls are within the employee's most direct route of travel and are necessary to complete such travel, and provided that the employee submits appropriate receipts to substantiate the costs of such tolls.

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(d) A joint study of the adequacy of reimbursements will be conducted by the BMWED and the carriers beginning in early 2025 when data for the prior two full years will be available…

These provisions differed from the travel allowance and expense reimbursement arrangements that previously existed on Union Pacific ("UP" or "the Carrier") prior to the National TA. Additionally, if these provisions had been adopted, travel allowances paid to some employees would have been lower than the amounts paid under the then-effective local travel allowance agreements.

BMWED and UP bargained and ultimately reached a tentative agreement on a Local Agreement as contemplated by Article V, Section (g), which would supersede the provisions of the National TA. The 2022 Local Agreement increased the amounts paid for mileage allowances for all employees, increased the amount of the meals and incidental per diem to the amount in the National TA, and maintained the payment of a lodging per diem to all UP employees. This Local Agreement was not ratified by the Organization's membership.

On December 2, 2022, President Biden signed a bill imposing the TA, including any local TA's as binding on the Parties. Accordingly, the National TA, along with the local Application of Article V became the final agreement for this round of bargaining. This was codified by the Chairman of the NCCC and the BMWED President and took effect on January 1, 2023. Thereafter, the UP drafted a National Negotiations Q&A regarding the application of the newly negotiated mileage reimbursements, which BMWED took exception to. Thereafter, this Special Board of Adjustment was established.

The Local Agreement

The relevant provisions of the 2022 Local Agreement state, as follows:

(a) Effective as of January 1, 2023, employees on traveling gangs who are assigned to work away from home shall be reimbursed for business travel expenses, lodging, and meal expenses (in lieu of any other travel and expense reimbursement) as follows:

(1) Mileage and Tolls

i. Each employee who drives a personal vehicle for travel between home and reporting or work locations will be provided mileage reimbursement at the rate of $0.57 per mile for business travel via the most direct highway route to and from the work location, and for traveling for gang startups and break ups, midweek worksite moves, or changes of designated assembly points. Employees who elect to use means other than driving their personal vehicle (i.e., flying, traveling with coworkers, train, bus etc.) will be reimbursed at $0.375 per mile via the most direct highway route for the aforementioned moves. The driver and non-driver mileage rates herein shall be adjusted to reflect nominal increases or decreases in the IRS mileage rates, from the IRS mileage rate of $0.625 per mile in effect upon the ratification date of this agreement. For example, if the IRS mileage rate increases

to $0.645 cents per mile, then the driver mileage rate will be adjusted from $0.57 per mile to $0.59 per mile and the non-driver rate shall increase from $0.375 per mile to $0.395 per mile. If the IRS mileage rate decreases to $0.605 per mile, then the driver mileage rate will be adjusted from $0.57 per mile to $0.55 per mile and the non-driver rate shall decrease from $0.375 per mile to $0.355 per mile.

ii. Each employee who drives a personal vehicle under Paragraph 1(a)(i) will be reimbursed for tolls as an expense by the carrier if the tolls are within the employee's most direct route of travel and are necessary to complete such travel and provided that the employee submits appropriate receipts to substantiate the costs of such tolls.

iii. The parties will work together to consider alternative travel reimbursement structures....

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(d) A joint study of the adequacy of reimbursements will be conducted by the BMWED and the carriers beginning in early 2025 when data for the prior two full years will be available.

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(g) The parties' October 30, 2012, agreement will continue to govern non-driver travel allowance arrangements.

(h) This agreement will not affect the Carrier-provided lodging to those employees working under Appendix 14 of the November 1, 2001, Agreement.

The Contentions of the Parties

The Organization contends that the parties adopted a provision regarding travel allowance that mirrored that of the National TA in many key respects, and the identical language should be interpreted in the same way. The Organization contends that there is no dispute that under the National TA, employees would be entitled to travel allowance as sought here, and they should also be entitled to it under the Local Agreement. The Organization contends that the parties agreed to different reimbursement levels, but not different qualifying conditions.

The Organization contends that the parties used the term, "business travel expenses," in the Local Agreement, which is the same qualifying language as was used in the National TA, and there is no evidence that the parties intended for them to be interpreted differently than under the National TA. The Organization contends that the Carrier has conceded that if the parties had adopted the National TA, the employees would receive travel allowance under the circumstances in dispute here.

The Organization contends that the two-page Local Agreement constitutes the entire agreement regarding travel allowances and rules, and supersedes all prior provisions in the parties'

collective bargaining agreements, except where preserved. The Organization contends that if the parties intended to simply add the new Local Agreement to all the previous Travel Allowance agreements, there would have been no need to expressly retain "non-driver" travel allowance from the 2012 Agreement in paragraph (g) and "Carrier-provided lodging" from the 2001 Agreement in paragraph (h). The Organization also points out that the Carrier has conceded that if the National TA had been adopted, it would have superseded any prior agreements regarding travel allowance.

The Organization contends that the parties adopted the National TA with different rates, and the addition of reimbursement of mileage to non-drivers. The Organization contends that the parties did not intend to retain the prior travel allowance provisions or practices from the previous agreements.

The Organization contends that adoption of these provisions properly shifts the cost of this burden from the employees to the Carrier, as recommended by the PEB. The Organization points out that the PEB wrote, in part,

> Employees should not be required to pay significant sums of money out of pocket without reimbursement for the privilege of traveling to the often-remote sites where work is to be performed. That is more appropriately a business expense for the Carriers than a burden to be borne by the Maintenance of Way employees. Second, there is no reason as to why reimbursements should need to be paid for or offset by *quid pro quos* of similar value prior to being granted even if historically that was the case in the Carrier-specific negotiations. As the cost of food, lodging, and gas rises, so too must the amount of reimbursements. Third, even with the local Carrier-specific agreements, it is apparent from the BMWED presentation that a significant number of employees are currently required to pay expenses out of pocket without full reimbursement in order to travel to the location chosen for the gang's work. The fact that employees remain willing to work these jobs even if they have to pay for some of their own travel expenses is not a justification for prolonging this inequity...

The Organization contends that the Carrier's position would simply prolong the inequity by continuing the cost-shifting that occurred under the parties' prior agreements, rather than what they intended by adopting language mirroring the National TA.

The Carrier contends that the Organization is attempting to gain through arbitration what it did not achieve at the bargaining table. The Carrier contends that although the parties agreed to the terms of the Local Agreement, they did not simultaneously agree to negate all the travel allowance rules in the prior agreements. Since collective bargaining agreements under the Railway Labor Act do not expire, all the travel allowance provisions in the parties' previous agreements are still in effect, unless expressly modified in the 2022 Local Agreement. The Carrier contends that the 2022 Local Agreement must be interpreted in the context of all prior agreements.

The Carrier contends that if the parties had adopted the terms of the National TA, only drivers would be entitled to reimbursement of mileage at the higher IRS rate under the circumstances sought by the Organization now. But the Carrier points out, the Organization rejected the National TA in order to gain reimbursement for those employees who were passengers in cars or who flew to assignments and agreed to a lower reimbursement rate for drivers. The Carrier contends that it would make no sense for the Carrier to agree to an Agreement that would cost it more than the National TA.

The Carrier contends that if the term "business travel" includes all travel to and from the work site, as the Organization claims, there was no need to add the additional qualifying language, "and for traveling for gang startups and break ups, midweek worksite moves, or changes of designated assembly points." The Carrier contends that the parties did not add superfluous language, so the term "business travel" cannot be as broad as the Organization claims.

The Carrier contends that the term "in lieu of any other travel and expense reimbursement" was to distinguish the 2022 Local Agreement from the National Agreement or other existing collective bargaining agreements that might be in conflict with the new terms. The Carrier contends that the parties did not intend to render all other travel allowance agreements null and void. The Carrier contends that the parties only intended to change the specific language that was discussed and there was no agreement to nullify all the previous travel allowance rules from the 2012 and 2001 Agreements.

The Carrier contends that the savings clauses in paragraphs (g) and (h) were added at the Organization's insistence, to ensure that its members continued to receive the benefits of those provisions from the 2012 and 2001 agreements. The Carrier contends that since those provisions remained in effect, there was no reason not to include them when the Organization requested it.

The Carrier contends that the parties expressly discussed the elimination of the exclusion of travel between 0 and 100 miles from the End of Work-Week Travel Allowance, but no other travel allowance rules from prior agreements were discussed. Therefore, the Carrier contends, this is the only rule from a prior Agreement that was amended by the 2022 Local Agreement.

The Carrier contends that under the prior collective bargaining agreements, past practices, and arbitration awards, employees would not be entitled to mileage reimbursement under any of the questions posed. The Carrier contends that the parties did not agree to change any of these provisions or past practices, so the questions in Attachment A should all be answered in the negative.

Discussion

The prime directive to a labor arbitrator is to implement the intent of the parties when they negotiated and mutually agreed to language in a collective bargaining agreement. That intent is

most often manifested in the plain meaning of the words that the parties used. In Public Law Board 7778, Special Board, Chairman Dana Eischen wrote,

> Therefore, arbitrators and courts alike usually hold that clear understandable words say what they mean and mean what they say, despite subsequent contentions of one of the parties that some meaning other than the apparent meaning was intended. *Independent School Dist. No. 47*, 86 LA 97, 103 (1985) (Gallagher). Parties to a negotiated contract are charged with full knowledge of provisions they agreed to and the significance of their mutually agreed language. *See, Carnation Co.*, 3 LA 229, 232 (Updegraff, 1946).
>
> Simply stated, an arbitrator who finds disputed contract language to be clear and unambiguous concludes perforce that the plain everyday meaning of those words is the mutually intended meaning of the words. *See, e.g.*, *Safeway Stores*, 85 LA 472, 476 (Thorp, 1985); *Metropolitan Warehouse*, 76 LA 14, 17-18 (Darrow, 1981); *Clean Coverall Supply Company*, 47 LA 272, 277 (Fred Witney, 1966); *Continental Oil Company*, 69 LA 399, 404; (A. J. Wann, 1977), *Ohio Chemical & Surgical Equipment Co.*, 49 LA 377, 380-391, (Solomon, 1967); *Hecla Mining Co.*, 81 LA 193,194 (La Cugna, 1983).

The function of the arbitrator is to apply and enforce the terms that the parties have chosen, not to substitute our own judgment of what is fair or reasonable for that written by the parties. *City of Pontiac*, 129 LA 727, 730 (Daniel, 2011). Standards of contract interpretation are intended to aid the arbitrator in determining what the parties intended by the adoption of certain language.

Here, the parties disagree as to what was meant by the introductory phrase, "in lieu of any other travel and expense reimbursement." The Organization contends that the language conveys that the parties intended for the two-page Travel Allowance agreement to be the entire agreement between the parties as to travel allowances. In its rebuttal, the Carrier asserts that the term meant only that the parties were agreeing to the Local Agreement, rather than the National TA, and not that the parties were abrogating all previous local rules.

Certainly, the parties did not adopt this language in a vacuum. At the time the Local Agreement was negotiated, the National TA had been drafted by the NCCC and the International and General Chairpersons of the BMWED. As the Organization points out, the UP and the BMWED drafted a Travel Allowance agreement which mirrored that in the National TA, except for a few key provisions. Additionally, there is no question that the BMWED sought to shift the financial burden of business travel from its members to the Carrier and the PEB recommended the Organization's proposal be adopted for this purpose.

The plain meaning of the phrase, "in lieu of any other travel and expense reimbursement" favors the Organization's position. By using that phrase, the parties agreed that employees on traveling gangs who are assigned to work away from home would be reimbursed for business

travel expenses, lodging, and meal expenses in accordance with the provisions of the Local Agreement *instead of* any other travel and expense reimbursement. They did not distinguish solely the travel allowance set forth in the National TA, but "any other" travel allowance. The choice of this term demonstrates that the parties intended for the 2022 Local Agreement to be the entire Agreement regarding travel allowance and that prior agreements regarding travel allowance were no longer in effect, except as expressly reserved.

The Carrier asserts that the parties intended to retain their past practices regarding which circumstances constitute business travel and thus, which mileage expenses are reimbursable. Certainly, if the parties had intended that prior provisions regarding travel allowances would continue to govern, they would have said so. Paragraphs (g) and (h) make clear that the parties intended to retain two provisions from the 2001 and 2012 agreements. If they had also agreed to retain the remainder of their prior agreements regarding travel allowance, including binding past practices, certainly they would have said so here. The inclusion of non-driver travel allowance arrangements and Carrier-provided lodging in and the exclusion of the other travel allowance provisions from the Local Agreement indicates an intention to only continue those two provisions into the new Agreement. Additionally, if they had agreed that all prior travel allowance provisions were to govern, except as expressly modified in the Local Agreement, there would have been no need to include paragraphs (g) and (h).

Moreover, the Carrier has conceded that if the parties had agreed to the National TA, it would have superseded all prior agreements regarding travel allowance. The same "in lieu of" language appears in the National TA as in the Local Agreement. When parties choose to use the same language, it is generally thought to have the same meaning. In any event, the Carrier has not demonstrated that the parties intended a different meaning in the Local Agreement when they wrote that employees would be reimbursed for business travel expenses as set forth in the Agreement in lieu of any other travel and expense reimbursement.

The PEB's intention in recommending the adoption of this language was clear. They wrote that the cost of traveling to and from the worksite "is more appropriately a business expense for the Carriers than a burden to be borne by the Maintenance of Way employees." The PEB recognized that these recommended modifications would have a significant monetary value to the BMWED members. Regardless of which agreement they adopted, the Carrier would have experienced an increase in this business expense. The National TA provides mileage reimbursement to employees who would not have been traveling "but for" their work assignments.

The parties also disagree as to whether the employees whose travel gave rise to the questions in Appendix A are employees "on traveling gangs who are assigned to work away from home" who must be "reimbursed for business travel expenses." As the Carrier points out, in the past, employees in the circumstances listed in Appendix A were not entitled to mileage reimbursement. For instance, if the employee applied for, received, and reported for a bulletined position on another gang or if the employee exercised seniority displacement rights to a position on another gang, no mileage reimbursement would be paid.

The term, "business travel," like the "in lieu of" language discussed above, is identical to that used in the National TA. The Carrier concedes that under the National TA, mileage would be reimbursable under most of the circumstances identified in Attachment A. When the language is identical, contract interpretation principles instruct that it should be interpreted in the same way. The Carrier has not pointed to any agreement between the parties to retain their prior definition of "business travel." It certainly cannot be found in the four corners of the 2022 Local Agreement and should not be read into it.

The Organization points out that the primary way in which the Local Agreement differs from the National TA is that a lower mileage rate is paid to drivers and non-drivers are also reimbursed for mileage between home and reporting or work locations. Again, there is no evidence in the Local Agreement that the parties intended to continue the exclusion of mileage reimbursement for conditions identified in the 2001 agreement. While they made clear in paragraph (h) that the new Agreement would not affect Carrier-provided lodging to those employees working under Appendix 14 of that agreement, there is no language saving the remaining provisions from the 2001 collective bargaining agreement. Based on the ratified language, the intent of the parties was to create a complete agreement, superseding the prior travel allowance provisions.

There is no question that these new provisions will alter the parties' practices regarding mileage reimbursement. But the new Local Agreement should be read in the context that the intent was to provide for a greater benefit to the members. The PEB recognized this fact when they wrote that the recommendation was intended to preserve local agreements only to the extent that they provide for greater reimbursements than the revised national standards. In other words, the National TA should represent the minimum allowance. If there is perceived inequity going forward, the parties have provided a remedy. As part of their agreement, they agreed to a Joint Study of the adequacy of reimbursements beginning in early 2025, signaling their willingness to reconsider the impact of the terms of the 2022 Local Agreement, both on the Carrier and on the Organization's members.

AWARD AND ORDER

Turning to the Questions listed in Attachment A, the Board answers as follows:

Question # 1: Are employees that are displaced or abolished from their old gang entitled to mileage when returning home after the abolishment or displacement?

Answer: Yes. When employees who are displaced or abolished from their old gang return home, they are traveling between home and reporting or work locations and are entitled to mileage reimbursement.

Question # 2: Are employees that are displaced or abolished from their old gang entitled to mileage when reporting to their new gang?

Answer: Yes. When employees who are displaced or abolished from their old gang report to their new gang, they are traveling between home and reporting or work locations and are entitled to mileage reimbursement.

Question # 3: Are employees that are bidding to a new gang at a different work location and report directly from the old work location to the new work location entitled to mileage from the old work location to the new work location?

Answer: Yes. When employees bid to a new gang at a different work location and report directly from the old work location to the new work location, they are traveling between work locations and are entitled to mileage reimbursement.

Question # 4: Are employees that are bidding to a new gang at a different location and returning home from the work cycle from the old gang entitled to mileage from old gang location to home and mileage from home to the new work location when reporting back to the new work location?

Answer: Yes. When employees bid to a new gang at a different work location and return home at the end of the work cycle, and report to the new work location, they are traveling between home and reporting or work locations and are entitled to mileage reimbursement.

Question # 5: Are employees that are recalled to a gang entitled to mileage when traveling home from the old assignment and/or when reporting to the new gang either from home or from the previous gang location?

Answer: Yes. When employees are recalled to a gang travel home from the old assignment or report to the new gang (either from home or from the previous gang location), they are traveling between home and reporting or work locations and are entitled to mileage reimbursement.

Question # 6: Are employees that are driving daily to their assignment entitled to mileage when their reporting location is less than fifty (50) miles from their home?

Answer: Yes. When employees daily drive less than fifty miles from their home to their assignment, they are traveling between home and reporting or work locations and are entitled to mileage reimbursement.

Question # 7: Are employees entitled to mileage to return home and report to their new gang when they utilize a "walk off" provision of the CBA due to a schedule change?

Answer: Yes. When employees utilize a "walk off" provision of the CBA due to a schedule change return home and report to their new gang, they are traveling between home and reporting or work locations and are entitled to mileage reimbursement.

Question # 8: Are employees utilizing the "Fly Home Option Agreement" entitled to claim the higher mileage rate for drivers when driving to an airport that is on the most direct highway route?

Answer: No. When employees utilize the Fly Home Option Agreement, they are not entitled to the higher mileage rate for drivers when driving to an airport that is on the most direct highway route, as they are not driving a personal vehicle between home and reporting or work locations.

Kathryn A. VanDagens, Neutral Member

Zachary Voegel, Organization Member

Terrill Maxwell (Dissent Attached)
Terrill Maxwell, Carrier Member

Dated: 10/27/23

SPECIAL BOARD OF ADJUSTMENT
Travel Allowance

PARTIES TO DISPUTE:
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CARRIER DISSENT

Because the Board exceeded its jurisdiction by ignoring the plain language of the applicable agreement and the parties' bargaining history of the local agreement, the Carrier must dissent from the Board's Award. For the reasons described below, the Board's Award fails to draw its essence from the applicable agreement and should not be followed in future disputes between the Parties. I write separately only to highlight the major flaws in the Board's Award.

First, by its terms, the Local Agreement did not eliminate prior agreements between the Parties that impact, but do not necessarily provide for travel expenses. On the contrary, the very first paragraph of the Local Agreement notes that the provisions of the Local Agreement apply to territories coming within the jurisdiction of the collective bargaining agreements dated January 1, 2011 (MP), July 1, 2001 (UP), November 1, 2001 (CNW), and December 31, 2003 (SPWL). Those existing agreements remain in effect and contain important provisions impacting travel expenses. Many of those provisions were bargained for in exchange for prior concessions made by the Carrier.

Neither the 2022 National Agreement nor the Local Agreement between the Carrier and the Organization jettison existing agreements between the parties. On the contrary, as Emergency Board No. 250 stated, the Board's recommendation was not intended to undo restrictions on

eligibility for reimbursement previously agreed to as quid pro quo by the organization. On this very point, the Board stated "nor do we intend to undo any of the quid pro quo's that the BMWED provided in order to have enjoyed the benefits of those Carrier-specific allowances and reimbursements over the years." The only way to address these issues is to actually reach an agreement to change these work rules.

Second, the Local Agreement addresses only the expenses for "employees on traveling gangs who are assigned to work away from home." The agreement does not provide for travel expenses for employees who choose to travel; it provides for travel expenses when employees are "assigned" to do so. Furthermore, the intrinsic limitation of the travel expense rule is that employees must, as a condition of their assignment, need to travel to the work location; employees who can commute to the work location from home are not, by definition "assigned to work away from home."

This result is consistent not only with the plain language of the agreements but with the bargaining history recited in the Report of Emergency Board No. 250. As described therein, as BMWED's support for its proposal, BMWED argued that since national standards for travel allowance were set in 1967, the consolidation of the railroad industry has resulted in significantly increased travel, sometimes as much as 1,000 miles each way for Maintenance of Way employees to get to work. As BMWED argued, it is the Carriers that choose when and where the work is to be performed and employees should not be expected to have to pay their own way to get to a remote site. BMWED cited an example of an employee being required to drive from Illinois to Nevada to get to work every work cycle. BMWED provided "scores of anecdotes" highlighting the same issue. Nowhere did BMWED allege, nor did the PEB describe, situations where an

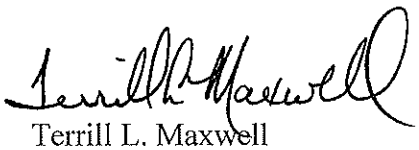
employee is able to commute to and from the work site on a daily basis. On the contrary, the PEB cautioned against "inappropriate windfalls."

Nevertheless, providing inappropriate windfalls to Union Pacific employees is precisely the result of the Board's award in this case. Perhaps no clearer example of the Board's failure to adhere to its jurisdiction is its conclusion that employees are entitled to mileage when their reporting location is less than fifty (50) miles from their home (Question No. 6). By definition, an employee who travels fifty miles or less to work, is not "assigned to work away from home" and, therefore, it was improper for the Board to extend mileage to employees who are assigned to work to which they can commute from home. If the Board's reasoning on this point were correct, it would be just as logical to state that an employee who commutes from home would be entitled to lodging and per diem expenses if the employee chose to stay at a hotel near the worksite. No reasonable construction of the local agreement can yield that result.

Equally egregious is the Board's conclusion that employees who voluntarily elect to bid on a new gang and a different work location, and report directly from the old work location to the new work location or who travel home and then to the new work location, are entitled to mileage from the old work location to the new work location (Questions No. 3 and 4). The entire basis of the recommendation of PEB 250 and the subsequent local agreement is the Organization's position that it is inequitable to force a Maintenance of Way employee to shoulder travel expenses when the employee is traveling to work at the behest of the Carrier. By expanding the required mileage reimbursement for employees who voluntarily exercise seniority, after having been transported at Carrier expense to an away-from-home work location, is completely at odds with the language and intent of both the PEB recommendation and the local agreement. Again, no rational basis exists to justify this conclusion.

The same analysis applies to extending mileage for employees who return home and report to their new gang when utilizing a "walk off provision" of the CBA due to a schedule change (Question No. 7). Again, such employees have already been transported to the work location at Carrier expense and there is no justification in either the language of the local agreement or the PEB recommendation to justify redundant mileage payments to such employees.

In short, the Board's conclusions are not justified by the language of the local agreement, the language of the PEB recommendation or the bargaining history recited in the PEB recommendation. Moreover, the Carrier rejected these asks by the Organization during bargaining over the local agreement. Accordingly, I dissent from the Board's Award and give notice that the Carrier does not intend to acquiesce to the Board's decision in future disputes.



Terrill L. Maxwell
Carrier Member
October 27, 2023