

*"An Injury To One Is An Injury To All"*

## Pennsylvania Federation

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Office of the General Chairman  
Jed Dodd

overnight mail

January 20, 2009

Mr. Joseph M. Bress, Vice President – Labor Relations  
National Railroad Passenger Corporation  
60 Massachusetts Avenue, N.E.  
Washington, D.C. 20002

Re: Calculation of Article I, Section 9 retroactive pay

Dear Mr. Bress:

Article I, Section 9 of the January 18, 2008 BMWED/Amtrak agreement provides for the payment of retroactive compensation to employees with an employment relationship with the Carrier as of December 1, 2007. These retroactive payments are to be made in two installments: 40% of the amount within sixty (60) days of ratification of the agreement and the remainder on or before the first anniversary of the initial payment. The Union recently was informed that Amtrak does not consider payments of claims and grievances that were settled or arbitrated with a remedy expressed in hours paid at a specific rate of pay; *i.e.*, "eight (8) hours' pay at the applicable Track Foreman rate", to be part of the compensation received by employees that is subject to retroactive calculation. The Union strongly disagrees with this position and considers the Carrier's position a repudiation of the January 18, 2008 BMWED/Amtrak agreement.

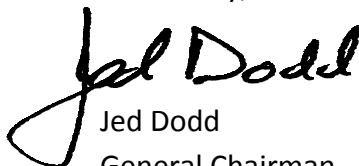
First, Article I makes retroactive adjustments to "all rates of pay" initially set by inclusion of the \$.27 per hour COLA into the rates on July 1, 2002. Article I makes no exclusions for any "rates of pay," including those utilized in the resolution of claims and grievances. Second, the Carrier distributed a four-page leaflet entitled "Frequently Asked Questions Regarding the Retroactive Payments" when the initial retroactive payments were made under

Article I, Section 9. These “FAQs” noted that the adjustments in hourly rates “applied to all hours paid during each period” when a rate was adjusted by a particular percentage increase. The “FAQs” continues by noting that payments already received during each period were subtracted from the new adjustment, as well as retroactive health and welfare cost-sharing amounts. That simple set of calculations, in the Carrier’s words, provided the “gross” retroactive compensation owed to each employee. The “FAQs” clearly states that “hours paid for or worked” are included in the retroactive compensation calculations. Accordingly, the Union does not understand now how the Carrier can allege that claim and grievance settlement and payments expressed in hours paid for are not considered part of the gross retroactive compensation amount owed to each employee.

Without prejudice to the foregoing, the Union also believes the Carrier’s actions implicate the “countdown” to self-help set forth in Article VI of the January 18, 2008 agreement. As you know, the bifurcated payment of retroactive compensation to the employees required the negotiation of what is Article VI of the January 18, 2008 agreement. Article VI reserved to the Union the right to exercise self-help if the Carrier informs it that it will not be able to make the full retroactive compensation payments required under Article I, Section 9. In this case, the Carrier’s failure to make retroactive adjustments to claims sustained on the basis of “hours paid for” is accepted by the Union as constructive notice that the Carrier will not make the full retroactive compensation payments required under Article I, Section 9. As such, the Union expects the Carrier to comply with its obligations under Article VI.

Please contact me as soon as possible to discuss this very serious issue.

Yours truly,

  
Jed Dodd  
General Chairman

cc Fred Simpson, President BMWED-IBT National Division  
Don Griffin, BMWED- IBT Director of Strategic Planning  
Pennsylvania Federation BMWED - IBT Joint Protective Board  
All Amtrak General Chairman  
All Pennsylvania Federation Committees