March 27, 2019

To: All General Chairpersons

CC: President Simpson, Vice Presidents, Angela Carr, Rob Shanahan, Peter Kennedy

From: National Division Secretary-Treasurer David Joynt

Subject: Non-Working Dues and Timely Payment of Dues

I am seeing far too many of our members who are off-work due to illness or injury, failing to timely pay their dues in order to remain in good standing. I have been asked to review many cases recently where a member who is a Local Lodge Officer and who is off work for whatever reason, and wanted to remain in good standing but did not think to pay the non-working dues timely.

I am asking you and all System Officers who know a member is off work to contact that member and advise them of the opportunity to pay non-working dues to remain in good standing. And, at the same time advise them of his or her obligation to pay their dues either prior to or during the month in which they are being credited to. The dues must be paid timely unless there is a valid reason why they could not be paid in the month they are to be applied to.

I know when a member goes off work for any reason that keeping their dues paid up is not the first thing on their mind. That is why it is so important for all System Officers and/or Local Officers to talk to these members as soon as possible. We need to make sure they know they can pay the non-working dues if they want to remain in good standing, but the dues must be paid either the month prior to or during the month they are to be applied.

We all want as many of our members as possible to be eligible to be elected to office and to be considered to be in good standing, and that is why we implemented the non-working dues rate. However, the creation of the non-working dues rate does not change the IBT Constitution that requires all dues to be paid in the month they are due. Many people worked very hard to create the non-working dues provision so let's make sure it is working for our members as intended.

I thank you in advance for your assistance in this matter.

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Brotherhood of Maintenance of Way Employes Division
of the International Brotherhood of Teamsters

Freddie N. Simpson
President

March 27, 2019
(Via Email)

Dear Brother Simpson:

The purpose of this letter is to ask you to render an interpretation of the Bylaws, with respect to Article XV's dues provisions, and how they are to be applied in the case of a member experiencing illness or injury, but receiving some minimal vacation pay. I believe the off-duty or non-working dues rate was established to help the member who is off work, but still wants to remain in good standing in order to be nominated and elected to office.

The member in our current scenario is off duty due to sickness or injury. This member is also being allowed by the railroad to take one day at a time vacation to help extend their insurance coverage and benefits. Not all railroads are willing to do this.

What if the one-day vacation pay is on the half where insurance cost sharing is deducted? There would be nothing left for dues anyway.

Because this member is in the position we were trying to help with the non-working dues rate, I would say we should allow them to only pay the non-working dues rate.

This brings up the question of where you draw the line. Is it two days' pay, three, a week? What if they get paid a claim that was submitted on their behalf?

The same dilemma occurs if a member works one day then is furloughed. They are not off on sickness, but they are still off work and furloughed in which the reduced dues rate was also established to cover furloughed members.

I recommend we adopt a policy that if a member receives less than forty (40) hours compensation in the month, they can pay the non-working dues rate to keep their good standing status with the BMWED. I realize this does not take care of all scenarios, but would address many of them.

We have not been able to identify any prior binding interpretation of the bylaws addressing this particular situation. And, even if it had been previously addressed, circumstances have changed, with respect to our being governed by the Constitution of the International Union, the adoption of out of work dues by our Convention, and changes in the flexibility of taking vacation entitlement under some of our collective-bargaining agreements. Thus, it appears to be time to address this in order to give guidance to the organization, and to strive toward an implementation that honors our shared desire to maximize membership participation, including maintenance of eligibility to hold elected office, especially so at the local Lodge level, where members selflessly take on substantial duties without pay.

Sincerely and fraternally,

David D. Joynt
Secretary-Treasurer

WAB/ama
opeiu-42

cc: National Division Officers
    R. J. Shanahan, Jr.
    W. A. Bon

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Telephone 248.662.2660 Facsimile 248.662.2659
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March 28, 2019

(Via E-mail)

Dear Brother Joynt:

The purpose of this letter is to respond to your correspondence regarding members' dues obligations, and to set forth my interpretation of the Bylaws, to facilitate uniform practices throughout the organization. In your letter (enclosed), you describe a scenario where an affiliate officer, not on a leave of absence from his rail carrier employer on account of service in a full-time union capacity, suffers illness or injury. That affiliate officer then draws on his earned vacation entitlement, to which he is entitled based upon the vacation agreement applicable on his property. In that case, that day of pay has the effect of continuing his health care coverage during months in which he could not perform compensated service on account of his health status.

Is that member required to pay full dues on account of one day's vacation pay, paid during months of sickness or disability?

The general rule, over time, has been to insist on every member's satisfaction of their financial obligation to the organization, where they have earnings directly attributable to service in the craft or class, service as a union officer, or obtain work-related income during a period when they are not performing active service. This could include, for example, a full month in which a member is on vacation, or, as has been the case over the years, a member may be receiving income based upon an entitlement grounded in the labor protective provisions embodied in our collective-bargaining agreements or in laws and governmental regulations, such as New York Dock. In those cases, the compensation directly relates back to the performance of service in the craft during a prior period. So, for our purposes, these income streams are a sort of deferred compensation, related to employment in the craft or class.

Prudence suggests that we not ignore changes that have occurred over time. In 2005, we merged with the International Brotherhood of Teamsters. One of the points the International insisted on was a maintenance of union-wide uniformity with the provisions of the International Brotherhood of Teamsters International Constitution, as it applies to members' financial obligations to our union. Therefore, in order to be in good standing, BMWED members, like all Teamsters, must be fully paid up in their dues in order to vote. In order to hold elected office, they must likewise satisfy their dues obligations. It is possible for an officer to break his continuous good standing, e.g. make up his dues, late, and remain in his elective office for the balance of his term, but that break will disqualify him from eligibility for election or re-election unless and until he has again acquired 24 months of continuous good standing.

This caused some hardship for our members, because, especially among newly hired and younger members, seasonal furloughs and the like would render many unable to pay full dues while their railroad employment income stream has been disrupted. The way we dealt with this problem was not to eliminate the fixed provisions of the IBT Constitution as it applies to good
standing, but rather, to lighten the dues obligation. So, our out-of-work dues today are made up of the sum of our per capita obligation to the International Union, plus one dollar each to the members' System Division or Federation and Local Lodge. The hope is that the significantly lightened dues burden will encourage members to maintain their continuous good standing, and be eligible to serve in Local Lodge, System Federation, and National Division offices in the future.

In addition to our changes to our internal laws, the patterns appearing in our collective-bargaining agreements have shifted as well. For one thing, on some properties there is now flexibility in taking single days of vacation, an option that may not have existed decades ago. Secondly, some level of employee cost sharing has become more or less universal in the industry. So, a member extending his health care benefits by having a vacation day in a given month would have a very large portion of that day's pay absorbed by employee cost sharing.

The situation cries out for relief. Since the purpose of creation of a category of out-of-work dues was to encourage continuous good standing among our members who suffer sickness or injury, the purpose and intent of that Bylaw change can only be realized by permitting the member, finding himself in the circumstances discussed herein, to satisfy his monthly dues obligation by paying the out-of-work rate only.

Therefore, in order to have a uniform rule which can be applied, not just in case of sickness or accident, but for other instances where a member has some compensation but is effectively and in the main out-of-work throughout an entire month, I concur in your recommendation: if a member receives less than 40 hours compensation in the month, they can pay the non-working dues rate and keep their good standing status for the BMWED.

Thank you for your cooperation in this matter. If you have questions or comments concerning the foregoing, please do not hesitate to contact me.

Sincerely and fraternally,

Freddie N. Simpson
National Division President

WAB/ama
opelu-42

Enclosure

cc:  National Division Officers
     General Chairpersons
     Secretary-Treasurers
     Robert J. Shanahan, Jr.
     William A. Bon