OFFICIAL BMWED POSITION ON "RESIDENCE" AND 50-MILE RULE

On February 6, 2017, UP Vice President of Engineering Greg Workman issued a "policy" that suggested an employee could own multiple "residences" for purposes of application of the so-called "50-mile rule" regarding eligibility for away from home expenses (*per diem* and travel allowance). Essentially, this policy provided that if an employee had any ownership interest in a piece of real property within 50 miles of his work location, that property would be his "residence" for purposes of applying the 50 mile rule. This policy was accompanied by charges against select MW employees for "dishonesty" for claiming away from home expenses when their "residences" (as allleged by UP) were within 50 miles of their work locations.

On February 24, 2017, the collective UP General Chairmen wrote to the Carrier taking strong exception to VP Workman's policy. The essence of the General Chairmen's argument was that the term "residence" was a term of art that had a long history in the railroad industry. The Union's argument was that regardless of the number of pieces of real property an employee might own, either on his or her own, or jointly with other family members, that employee could have only one "residence" for purposes of administration of the 50 mile rule. That residence was the one on record with the Carrier and the place the employee registered motor vehicles, registered to vote, carried a mortgage or rental agreement, etc. In other words, the standard indicia of permanent residence in a spot.

On May 3, 2017, the UP finally responded in a letter from AVP Labor Relations Pat Kiscoan. In that letter, AVP Kiscoan said the February 6, 2017 policy was put into place because employees could simply change their residences of record on-line. The purpose of the policy was to prevent employees from moving from place to place temporarily to remain more than 50 miles from their work location. Importantly, UP now agreed that an employee can have only one permanent "residence" and that is the benchmark for applying the 50 mile rule. In fact, that was the same argument UP used <u>against</u> employees who claimed relocation allowances under the <u>New York Dock</u> and <u>Oregon Short Line</u> conditions. In those cases, employees had retained their prior residences and had taken lodging closer to their fixed headquarter work locations. UP contended, and the arbitrators agreed, that such a move was not a relocation and that an employee could have but one "residence" and that was their primary residence where their family resided, their vehicles were registered, etc. The February 6, 2017 policy contradicted UP's earlier position by suggesting that any one of an employee's pieces of real property could be used for application of the 50 mile rule and that if <u>any</u> of the employee's real property was within 50 miles of the work location, the employee would be ineligible for away from home expenses.

What this means in practice going forward is that when an employee officially changes "residence," the Carrier will require some proof that an actual relocation has occurred. That is consistent with the position we took with the Carrier and is the way the term "residence" has been used in this industry for at least 50 years. AVP Kiscoan's letter also included a draft of an email that will be sent to any BMWED member who makes a change of residence in the Carrier's system. That email identifies some of the elements of proof necessary to show a *bona fide* change of residence. The General Chairmen will be discussing this matter further with the UP because some of the requirements, *i.e.*, driver's license changes or vehicle registration changes within 30 days of a move are problematic based on how each state handles such changes. Also, utility bills usually run on a monthly cycle, so a copy of such a bill probably won't be available until over 30 days have elapsed since the move.

As we work through these issues, we believe a greater structure and regularity to the process will develop. However, until then, our general information to the membership is that when they change residence and have any questions, they should call their appropriate System Officer or Lodge Local Chairman. This letter is directed to you so that you are aware such calls are coming and also to provide you with the BMWED's official position in this matter.

This dispute arose from many reasons. In a few cases, some folks tried to game the system and got caught. For many others, they got stuck in the middle of domestic issues that caused trial or permanent separations and they had to take different lodging arrangements even though they still "owned" what had been their permanent residence. In some other cases, a particularly complicated ownership structure of a piece of property led to a charge that an employee had gamed the system. We believe most of those issues are now behind us. However, the best thing we can do for the members going forward is to give them clear advice and act as their advocates with the Carrier when there is an issue with an employee's claimed relocation. In such a case, the dispute should be resolved quickly and in a way that does not subject any of our members to unwanted and unnecessary disciplinary action.