

Sent: Monday, June 25, 2018

Subject: Retroactive Pay and "True-up" Arbitration

To All IBEW Railroad Local Unions With Members Covered Under the National Agreement:

Dear Sisters and Brothers,

After a few weeks of fighting with the railroads pertaining to the retroactive pay and the "true-up" arbitration, we have finally reached a resolution on these issues. It's been a long 1.5 months since you ratified the agreement, and many things have changed concerning the "true-up" since we put the agreement back out for a vote. The two major issues affecting the "true-up" matter were: 1. The IBB agreed to pay a "true-up" and, 2. Subsequent to that, the arbitrator in the BMW-D / SMART Mechanical arbitration not only ruled that those organizations must keep the Health Care plan in effect for the rest of us, he also ruled that their members were responsible for paying a "true-up" of \$73.24 per member per month for the months of February 2018 through May 2018. When we reached agreement with the railroads to arbitrate the "true-up" issue, we had the option of taking the decision the arbitrator rendered in the aforementioned case. That decision was rendered on May 23rd. However, since that decision was unfavorable, we decided that we would continue to fight it and take our chances in arbitration. We, along with our attorney, have been preparing our case ever since that decision was rendered.

As many of you are aware, the railroads have been insisting that they were not going to make your retroactive payments until after an arbitration award was rendered pertaining to the "true-up" situation. We have been strenuously arguing with them concerning the retroactive payments, insisting that they live up to the agreement and make those payments to our members within the 60 day time frame, which would end on July 7th. Early Friday evening an agreement with the railroads was reached, and finalized this morning, that provides the following:

1. The railroads will make every effort to pay our members their retroactive pay by Monday July 9th, the first business day following the expiration of their 60 day period, but under no circumstance later than July 13th.
2. An amount of \$292.96, \$73.24 per month for the months of February 2018 through May 2018, will be deducted from each members retroactive pay. This money will be held until the "true-up" arbitration award is rendered.
3. If we are successful in convincing the arbitrator that we should not have to pay the "true-up, or if the arbitrator rules that we must pay something less than the full amount, that money will be refunded to all employees no later than the next regular payroll period following the date of the arbitration award. If the railroads prevail in arbitration, then the matter will be considered closed.
4. So the arbitration case will not be prejudiced, neither party will be permitted to mention this settlement during the arbitration process.

Sisters and Brothers, I have to tell you this was one of the most difficult decisions we've ever had to make. Our arbitration is scheduled for July 10th, with a decision due within 7 days of that date. First the railroads advised us that they were not going to pay the retroactive pay until after an arbitration decision was rendered in our "true-up" case, claiming that, if successful in arbitration, they intended to take it out of your retroactive pay and paying by July 25th. One of the railroads even put out a memo stating when they were going to pay, or had paid, the other organizations. The BMW-D / SMART Mechanical "true-up" arbitration decision was rendered May 23rd, and the railroads advised them that their members wouldn't get their retroactive pay until July 25th – over two months later! The tentative pay date on the memo for IBEW members was listed as the same – July 25th. And now that arbitration could be slightly delayed due to a possible conflict with the arbitrators schedule which we were just advised of Thursday, that could possibly push the date past July 25th. We adamantly claimed that one had nothing to do with the other, that they could pay the retroactive pay timely and, if they won the arbitration, deduct the "true-up" amount from a regular paycheck following the arbitration decision. If they had stuck to their position, especially in light that the arbitration could be delayed a few days, our members could be waiting longer than July 25th for their back pay.

Our position has been that by not paying our members their retroactive pay timely, the railroads would be considered in violation of the agreement. Of course, they would have argued, and have been arguing, that it was *impossible* (an out provided to them in the agreement) for them to pay it timely. As far as we were concerned, their argument was nothing short of unmitigated BS! We considered all options available to us as to how to proceed, discussing our options internally with our General Chairmen, with President Stephenson and with our attorneys. We considered what could be extracted from the railroads if we were to take some type of job action for them not paying timely, and, on the other hand, what the cost could be to our members. If we had declared this a major dispute and walked off the job, the railroads would have claimed it was a minor dispute, gone to court, had us enjoined and ordered back to work immediately, all within a matter of probably less than a couple of hours. So who would have suffered – probably only our members who work third trick and who would have been the first to walk off the job. Would it have taken a toll on the railroads? Possibly. But if it went like most other disputes such as this have gone in the past, it probably would have had very little effect on them except the cost of going to court for the injunction. So, unfortunately, it probably would have cost some of our members much more than it would have cost the railroads.

Of course, our main concern was getting our over 5,300 members their retroactive pay as soon as possible, as we know many of you are depending on this money. And while quite some time ago we did make the statement that nothing would come out of your retroactive pay concerning a "true-up" until after an arbitration decision was rendered, circumstances dictated that we change direction. We made a decision we think is in the best interests of the railroad members we represent – getting you the money you worked so hard for as soon as we were able to do so, all the while taking into

consideration the adverse impact it could have on many of our members lives by having a regular paycheck short by almost \$300.

This decision came down to the last minute, for if we prolonged it any longer payment by the week of July 9th would have been virtually impossible. We pushed and pushed the railroads as far as we thought we could, and after many hours of back and forth towards the end of last week we finally reached settlement. We know that some of you will not be pleased with this decision, as you would like to have seen some type of job action taken against the railroads. We would really like to have seen that too. But to do so we must have more to gain than to lose, and we didn't believe that was the case in this situation. We truly believe, and hope, that by agreeing to the above and having our members paid by July 9th, or no later than four days later, is a decision that the majority of our members will be pleased with. In the end, that is at least three weeks earlier than they intended to pay us.

If you have any questions pertaining to the foregoing, please don't hesitate to contact me.

Fraternally & in Solidarity,

Bill Bohné, Jr.

Director - IBEW Railroad Department

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