

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 45047  
Docket No. MW-46471  
23-3-NRAB-00003-210357**

**The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.**

**(Brotherhood of Maintenance of Way Employees Division –  
IBT Rail Conference**

**PARTIES TO DISPUTE: (**

**(Springfield Terminal Railway Company**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Brotherhood that:**

- (1) The Carrier violated the Agreement when it failed to allow BMWED represented employees to opt out of the healthcare plan as of October 1, 2019 and continuing.**
- (2) As a consequence of the violation referred to in Part (1) above, the Carrier shall compensate any employee who sought to opt out and was denied the one hundred dollars (\$100.00) per month opt out amount. Moreover, the Carrier shall afford the Opt-Out Election right to all of its BMWED Bargaining Unit employees covered under the ST-BMWED Collective Agreement and that the Carrier notify each BMWED employee, in writing, immediately and every year thereafter for five (5) years of such rights (so to erase the Carrier’s false institutional instruction that no such rights are provided under Article 34) under the clear language of Article 34 of the Agreement as well as Section 3, subsection (h) of the Railroad Employees National Health and Welfare Plan.”**

**FINDINGS:**

**The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:**

**The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.**

**This Division of the Adjustment Board has jurisdiction over the dispute involved herein.**

**Parties to said dispute were given due notice of hearing thereon.**

**At the core of this grievance is the Organization's position that the Carrier violated Article 34 of the Parties' current Agreement, as well as Article IV of the 2007 National Mediation Agreement, when it did not allow employees covered by the Springfield Terminal (ST)/BMWED Agreement to opt out of the Carrier's healthcare plan. The relevant parts of those two provisions read as follows:**

**ARTICLE IV -- Health and Welfare  
(2007 National Mediation Agreement)**

**\* \* \***

**Part A, Section 3**

**(h) During a prescribed election period preceding January 1, 2008, and preceding each January 1 thereafter, employees may certify to the Plan or its designee in writing that they have health care coverage (which includes medical, prescription drug, and mental health/substance abuse benefits) under another group insurance policy... Such election is hereafter referred to as an 'Opt-Out Election' and, where exercised, will eliminate an employer's obligation to make a contribution to the Plan....**

**Each employee who makes an Opt-Out Election will be paid by his employer \$100 for each month that his employer is required to make a contribution to the Plan on his behalf...;provided, however, that the employee's Opt-Out Election is in effect for the entire month....**

**ARTICLE 34. Health and Welfare  
(2018 ST/BMWED Agreement)**

**34.1 The Carrier agrees to continue to provide health care coverage consisting of medical, vision, dental and early retirement, which will remain consistent at all time with the benefits of the ‘Railroad Employee’s National Health and Welfare Plan’,...covering Maintenance of Way Employees....The Parties agree to ‘stand by’ on future national agreements with respect to the health and welfare benefits referenced herein, excluding the cost share provisions, so as to effectuate the parties’ intent of keeping consistent at all times with the level of benefits as nationally negotiated....**

**34.5 (a) Employees covered under this Agreement will provide monthly cost sharing contributions for the coverage referred to in paragraph 34.1....**

**34.5 (b) As of the effective date of this amended agreement, all Employees covered by this agreement will provide a monthly cost sharing contribution in an amount that is equal to the lesser of 15% Carrier’s monthly premium payment or \$235. This Employee cost sharing contribution will remain in effect until March 1, 2022. Beginning on March 1, 2022, all Employees covered by this agreement will provide a monthly cost sharing contribution that is equal to the lesser of 15% of the Carrier’s monthly premium payment or \$250. This Employee cost sharing contribution will remain in effect until a new Agreement between the parties is ratified.**

**34.5 (c) It is further understood that any Employee entitled to the benefits referred to in this Article 34, will be required to provide his/her requisite monthly cost sharing contribution...in each and every month(s) that the Carrier is required to make premium payments on behalf of the Employee, even if the Employee is not earning wages during said month(s). In any month(s) that the Carrier is not required to make premium payments on behalf of the Employee, the Employee will not be required to make his/her requisite monthly cost sharing contribution. Eligibility for benefits is defined by the plan coverage(s), as determined by the Joint Plan Committee.**

The Organization in this case is alleging that the Carrier has prevented BMWED employees from opting out of the Carrier's health care plan, as outlined in Article IV, Part A, §3 (h) of the 2007 National Mediation Agreement. Thus, the Organization maintains, the Carrier must now compensate any employee denied the right to opt-out the payment of \$100 per month as allowed by the National Mediation Agreement. It notes that the Parties own Agreement, at Article 34.1 provides that the Parties agree to 'stand by' (i.e., comply with) the 2007 National Agreement and any future national agreements. The Organization insists that by failing to allow BMWED employees the opt-out option, the Carrier has violated both the national and local agreements and asks that affected employees be compensated for that violation.

The Carrier protests at the outset that there are no Claimants listed by the Organization. Nor is there any showing that any employees have been denied the opportunity to opt-out of the Carrier's health care plan. Further, the Carrier argues that there is nothing in the current ST/BMWED Agreement that allows employees not to pay their required contribution to the Carrier's health care plan. In particular, the Carrier notes that in Article 34.5(c) of the Parties' Agreement, it provides that 'any Employee entitled to the benefits referred to in this Article 34, will be required to provide his/her requisite monthly cost sharing contribution...'. At bottom line, the Carrier protests that nothing in the Parties Agreement allows an employee covered by the ST/BMWED Agreement to exercise an "opt-out" option. It asks that the instant claim be denied.

The Board has reviewed this case, including the applicable National and local Agreement language with care. It is struck by the fact that, in the Carrier's interpretation, all Employees covered by the ST/BMWED Agreement must pay their contribution to the Carrier's health care plan, even if, hypothetically, their spouse has an equally robust health care plan under which a particular Employee is covered. On its face, such a situation would run counter to the provision of the first paragraph of Article IV, Part A, §3(h) of the National Agreement. Moreover, if the Carrier would then incur no medical plan contribution for that particular employee, it defies logic that the employee would still be required to make a cost-sharing contribution to a plan under which he is not covered.

The Carrier has also alleged that their pay system has no provision for an employee under the ST/BMWED Agreement to opt out of the Carrier's health plan. The Board finds such an argument naïve, at best. It is difficult to imagine a computerized pay program that has so little flexibility that it could not easily be modified to account for an employee not being covered under the Carrier's health plan.

**Notwithstanding the Board's comments above, the Organization has failed to show that any particular employee or employees attempted to opt out of the Carrier's health care program (because they had other equivalent coverage) and were refused the right to do so. In the absence of such a showing, the Board has no choice but to deny the instant claim for lack of specificity, and absence of clearly defined claimants.**

**AWARD**

**Claim denied.**

**ORDER**

**This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division**

**Dated at Chicago, Illinois, this 7<sup>th</sup> day of September 2023.**