Before

SPECIAL BOARD OF ADJUSTMENT
(AGREEMENT DATED JANUARY 23, 2007)
ESTABLISHED PURSUANT TO THE PROVISIONS OF THE RAILWAY LABOR ACT, AS AMENDED
PETER R. MEYERS
Neutral Member and Chairman

In the Matter of the Arbitration between: **BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES, DIVISION OF THE INTERNATIONAL BROTHERHOOOD OF TEAMSTERS,** Organization, And **COLORADO AND WYOMING RAILWAY COMPANY,** Carrier.	Health Care Cost Sharing Dispute

DECISION AND AWARD

Appearances on behalf of the Organization

Steven V. Powers—Organization Board Member

Appearances on behalf of the Carrier

Mark Dabney—Carrier Board Member
Mark D. Selbert--Consultant

This matter came to be heard before Neutral Peter R. Meyers on the 15th day of May 2007 at the offices of the Brotherhood of Maintenance of Way Employees, 150 South Wacker Drive, Suite 300, Chicago, IL 60606-4101. Mr. Steven V. Powers presented on behalf of the Organization, and Messrs. Mark Dabney and Mark D. Selbert presented on behalf of the Carrier.

Statement of the Issue:

1. Did the Colorado & Wyoming Railway Company violate the April 27, 2004 BMWE/C&W Agreement when, beginning January 2005 and each month thereafter, it deducted employee contributions for Health and Welfare from the pay of BMWE-represented employees?

2. If the answer to Question No. 1 above is "Yes," what shall the remedy be?

Introduction

Beginning in early 2004, the Carrier became involved in Section 6 negotiations with the BMWE and with other Organizations representing different employee groups. The Carrier entered into Agreements with the BMWE, the TCU-Carmen, and the TCU-Clerks that settled all then-outstanding issues in the Section 6 notices involving these Organizations. The Agreement between the Carrier and the BMWE includes a provision calling for covered employees to make a monthly payment, an "employee participation amount," to offset the cost of the employees' health insurance premiums. The Agreement also contained a "me too" provision, which specifies that BMWE-represented employees would not contribute more toward the cost of their Health and Welfare insurance than would any other Carrier employees covered by a national health and welfare plan. The Agreements between the Carrier and the TCU-Carmen and the TCU-Clerks, respectively, contain identical Health and Welfare provisions, including identical "me, too" clauses. On or about April 26, 2004, the Carrier and the TCU-Clerks entered into a letter of interpretation that specifically addressed the meaning of the "me, too" language in the Health and Welfare provision contained in the Agreement between the Carrier and the TCU-Clerks.

Effective January 1, 2005, Carrier employees represented by the UTU were enrolled in the UTU National Health Plan, which is administered by United Healthcare. Pursuant to the Agreement between the Carrier and the UTU, the UTU-represented employees were not obligated to make any contribution toward the cost of their health insurance premiums. Relying on the "me, too" provision in its local contract, the TCU-Clerks filed a grievance asserting that its covered employee-members should not be required to contribute to their health insurance premiums. The Carrier and the TCU-Clerks ultimately agreed that the TCU-represented Clerks would not contribute toward their health coverage, and these employees were subsequently reimbursed for the contributions that they had made subsequent to January 2005.

BMWE's General Chairman also requested that the employee participation amount for BMWE-represented employees be adjusted to match that of the UTU-represented employees, in that this was the lowest employee participation amount on the property. The Carrier refused this request, and it has continued to deduct an employee's contribution for health care premiums in the amount of $97.43 per month for BMWE-represented employees.

The BMWE thereafter filed a grievance asserting that BMWE-represented employees should no longer have to contribute toward the cost of their health care premiums under the "me, too" provision of the Agreement between the Carrier and the BMWE. The Carrier denied the grievance.

Applicable Contractual Provision

Agreement dated April 27, 2004, between Colorado and Wyoming Railway Company and the Brotherhood of Maintenance of Way Employees

. . .

Health and Welfare:

. . .

Once the calculations have been made and the amount chosen, the employee participation amount will not change until the Agreement under which the employee participation amount was chosen requires doing so, or for a period of twelve (12) months. At the point of readjusting the employee participation amount, the carrier will review all of the National Health and Wealth plans on the property to ascertain the lowest employee participation amount and the lowest will apply as set forth above.

Applicable Letter of Interpretation

Letter dated April 26, 2004, from Ted P. Stafford, President of the Allied Services Division/TCU to Franklin Lloyd, Vice President of the Colorado & Wyoming Railway Company

April 26, 2004

Mr. Franklin Lloyd, Vice President
Colorado & Wyoming Railway Company
P.O. Box 316
Pueblo, CO 81002

Dear Sir:

This will have reference to our Agreement of April 26, 2004 and in particular the section under the heading with Health and Welfare.

During our telephone conversation of this date we discussed the meaning of this section, and I wanted to make certain that I have a clear understanding of the intent of this section. It is my understanding that as of the date of this agreement there are four (4) Unions having National Agreements containing employee cost

sharing arrangements which you have referred to as "employee participation" that have various amounts of cost sharing and further that TCU has the lowest being $79.74 per month.

It is my further understanding that the $79.74 will increase on July 1, 2004 to $91.32 and is subject to further increases or reduction depending on what happens in the next round of National Negotiations on Health and Welfare. However, should any other Union, who has reached an agreement with the C & W have a lesser amount of cost sharing, that rate will the (sic) be applied to ASD/TCU employees at the time of signing by that Union and further be subject to review and possible adjustment at the time that Union's Health and Welfare is adjusted Nationally. In addition the Carrier will also review the cost sharing at least once every 12 months to determine if a lower amount of cost sharing is available and if so make the appropriate adjustment.

As an example you indicated that another Union was close to signing and that they are expected to sign May 15th and that they have a cost sharing of $70.00. You stated that then you would change our amount to the $70.00 June 1st and that rate would stay in effect until their National adjustment date on cost sharing would come due or in another comparison would be made, and if another contract had a lower rate our cost sharing would be adjusted to the lower rate.

If you agree that the above represents a correct interpretation of the Health and Welfare section please sign in the space provided below and return one copy to my office.

Respectfully,

/s/Ted P. Stafford, President
Allied Services Division/TCU

I Concur:

/s/Franklin Lloyd, Vice President

The Organization's Position

The Organization initially contends that the "me, too" language in the parties' Agreement is clear and unambiguous. The Organization asserts that this language requires the Carrier to review all of the National Health and Welfare plans on the

property to determine which has the lowest employee participation amount. The lowest such amount then will apply as set forth in the "me, too" provision.

The Organization argues that following the adoption of the April 27, 2004, Agreement between the Carrier and the BMWE, the Carrier entered into an Agreement with the UTU. By letter dated October 19, 2004, the Carrier and the UTU resolved the details associated with the enrollment of the Carrier's UTU-represented employees into the health insurance program under the UTU National Agreement. The Organization emphasizes that there is no dispute that the Carrier's UTU-represented employees enrolled in a "National Health and Welfare plan on the property" with an "employee participation amount" of "no cost to the employees." The Organization maintains that there also is no dispute that the Carrier's UTU-represented employees continue to enjoy health insurance under the UTU National Agreement with no employee contribution deducted from their wages. The Organization therefore contends that there can be no question but that as of January 1, 2005, "the lowest employee participation amount" for employees enrolled in a National Health and Welfare plan on the property has been "no cost."

The Organization asserts that because the Agreement between the Carrier and BMWE requires that the lowest employee participation amount be applied for BMWE-represented employees, there can be no question that the clear language of the Agreement requires that the employee participation amount for the Carrier's BMWE-represented employees should have been "at no cost to the employees" as of January 1, 2005. The Organization insists that the Carrier therefore should be required to cease all Health and

Welfare deductions from BMWE-represented employees and to reimburse said employees for all amounts previously deducted as employee contributions for Health and Welfare from January 1, 2005, until those deductions have ceased.

The Organization goes on to contend that if the Board finds it necessary to look beyond the clear language of the parties' Agreement in order to discern the parties' intent, that intent is clear and unambiguous in the context of the multiple collective bargaining agreements that were negotiated with the Carrier during the same period as the BMWE Agreement. The Organization points out that the Carrier's Agreements with the TCU-Carmen and the TCU-Clerks both contain the exact same provision entitled "Health and Welfare" that appears in the BMWE Agreement; moreover, all three of these Agreements include the same "me, too" clause, which provides that no employees covered under these Agreements would pay more for health insurance than any other employees covered under a National Health and Welfare Agreement.

The Organization argues that the purpose of such a "me, too" clause is consistent with the purposes of the Railway Labor Act, in that such a clause allows for the prompt settlement of contract negotiations where multiple Organizations are in bargaining by assuring that employees represented by the first Organization to reach an Agreement will not be effectively penalized if another Organization subsequently is able to obtain a better deal from the Carrier. The Organization emphasizes that in this case, the BMWE, the TCU-Carmen, and the TCU-Clerks all reached agreement with the Carrier on identical language on the common issue of Health and Welfare insurance. The Organization insists that the inclusion of this identical language signifies that it clearly was the parties'

intention that the employees represented by each of these Organizations would be required to pay no more for their health coverage than any other Carrier employee covered by a National Health and Welfare Agreement. In addition, the parties intended that reaching an agreement before all other parties had settled would not penalize the members of any of the Organizations should another Organization be granted more favorable terms with regard to its members' "employee participation amount."

The Organization insists that when the Carrier and the UTU agreed to enroll the Carrier's UTU-represented employees into the UTU's National Health and Welfare plan effective January 1, 2005, at no cost to the employees, the Carrier effectively penalized its BMWE-represented employees by giving a better deal on this common issue to the UTU-represented employees. The Organization argues that such a result is contrary to the purpose for which the "me, too" language was negotiated.

The Organization goes on to assert that the intent of the parties also is manifestly clear from the Carrier's own interpretation of the Agreement language as it has been applied to the Carrier's employees represented by the TCU-Clerks. The Organization emphasizes that the Health and Welfare section of its Agreement is identical to that of the TCU-Clerks Agreement. The Organization points out that there is no dispute that the Carrier ceased withholding employee contributions and has refunded amounts that previously were withheld for those of its employees covered by the TCU-Clerks Agreement. Addressing the Carrier's assertion that the TCU-Clerks Agreement is to be treated differently because of the April 26, 2004, Letter of Interpretation, the Organization maintains that this Letter simply restates the "me, too" provision that is

written into the Agreement and gives a hypothetical example about its application. The Organization argues that although the Carrier has attempted to defend its actions by mischaracterizing the April 26, 2004, Letter of Interpretation, it is evident that this Letter does not modify the TCU-Clerks Agreement. The Organization insists that this Letter merely states the intent of the parties with regard to the employee participation requirement, and it confirms the Carrier's interpretation of the Health and Welfare section that is contained in the TCU-Clerks Agreement and in the BMWE Agreement.

The Organization submits that the Carrier's interpretation of the Agreement language as expressed in the April 26, 2004, Letter of Interpretation, and its implementation of this language as to employees represented by the TCU-Clerks, represents the parties' intent when they negotiated this language. The Organization insists that it is absurd to argue that the identical contract language means one thing in the TCU-Clerks Agreement and quite the opposite in the BMWE Agreement. The Organization maintains that the only reasonable conclusion is that the identical clauses of the two Agreements must mean the same thing and lead to the same result. The Organization emphasizes that the identical contract language in the BMWE Agreement and the TCU-Clerks Agreement concerning Health and Welfare issues were negotiated contemporaneously. In fact, the evidence shows that the Carrier's negotiator knew that the "employee participation" provision was meant to apply exactly as the Carrier is applying it in relation to the TCU-Clerks. The Organization submits that the Health and Welfare section of the BMWE Agreement cannot reasonably be interpreted to mean anything other than what it means under the TCU-Clerks Agreement.

The Organization argues that because the Carrier has interpreted this contract language to apply to the lowest "employee participation" amount on the property, currently "no cost," that interpretation of the contract language also must apply to the Carrier's BMWE-represented employees.

The Organization contends that the Carrier is attempting to mischaracterize the April 26, 2004, letter as a separate agreement with the TCU-Clerks. The Organization maintains that an examination of this letter reveals that by its very terms, it is NOT an agreement. Instead, a plain reading of this letter demonstrates that its purpose simply was to confirm that the TCU-Clerks' understanding of the contract provision matched that of the Carrier (and that of the BMWE). The Organization insists that there can be no question that by signing and returning this letter, the Carrier confirmed its concurrence as to what the Health and Welfare section mean; the Carrier was NOT entering into a separate agreement with the TCU-Clerks that bestowed a greater benefit under their agreement. The Organization emphasizes that because the Health and Welfare section in the TCU-Clerks' Agreement is identical to the one in the BMWE Agreement, the April 26, 2004, letter necessarily indicates the Carrier's concurrence that the letter represents a correct interpretation of the Health and Welfare section of the BMWE Agreement. The Organization argues that this letter should be viewed as authoritative as to what the Carrier intended the contract language to mean.

The Organization additionally points out that the Carrier's submission misstates the current amount that it is deducting and misstates the remedy requested herein. The Organization acknowledges that during the handling on the property, it was established

that the amount initially deducted from the pay of BMWE-represented employees as a "participation amount" under the Agreement was $79.74 per month. The Organization emphasizes, however, that by 2006, that amount had risen to $97.53 per month. The Organization argues that the Carrier never disputed the actual monthly amount that it has been deducting from the employees' pay.

The Organization then contends that the $1421.82 figure cited in the Carrier's submission represents the Organization's May 2, 2006, calculation of excess employee contributions that had been deducted from employee pay up to that time. The Organization points out that the Carrier has continued to deduct excess health insurance contributions since that time, and those amounts also must be returned to the employees. The Organization then argues that if there is any question as to the monetary remedy, it would be appropriate to instruct the parties to conduct a joint search of Carrier records to finally determine the amounts involved for each Claimant.

The Organization asserts that pursuant to the current Agreement, the Carrier immediately must cease all deductions from the pay of its BMWE-represented employees for Health and Welfare contributions. In addition, the Organization maintains that the appropriate remedy for the Carrier's violation of the Agreement is for the Carrier to reimburse each of the Claimants for any and all amounts previously deducted as an employee contribution for Health and Welfare benefits commencing from January 2005 and continuing until such deductions are discontinued.

The Organization ultimately contends that the instant claim should be sustained in its entirety.

The Carrier's Position

The Carrier initially contends that the BMWE-represented employees are not entitled to a reduction in the employee participation amount with regard to payment for Health and Welfare benefits under their Agreement with the Carrier. The Carrier asserts that there is no dispute that the Carrier had the right to deduct the contributions under the language of the Agreement, and the Carrier further maintains that the fact that UTU-represented employees and TCU-Clerks did not have to contribute to their health plan is irrelevant to the BMWE's Agreement with the Carrier. The Carrier emphasizes that the reference in the Agreement to the lowest rates of all National Health and Welfare Plans set the rate for BMWE-represented employees at $79.74 per month, which is what they have been paying since May 2004. The Carrier points out that there has been no change to the Agreement that would require the BMWE-represented employees to pay less than $79.74 per month toward their Health Plan.

The Carrier argues that the Organization's position is totally unsupported by any arguable interpretation of the pertinent and relevant Agreement language. The Carrier emphasizes that in view of the clear and unambiguous language in the Health and Welfare Benefits portion of the parties' Agreement, progression of this matter to arbitration constitutes improper use of the grievance process in that the Organization is attempting to gain what it did not negotiate. The Carrier insists that there is absolutely no contractual or practical basis to argue that the Organization is entitled to the "me, too" provision of the TCU-Clerks' Agreement.

The Carrier maintains that in this matter, there is only the equity argument that if

the UTU and TCU-Clerks do not have to pay, then neither should the BMWE-represented employees. The Carrier emphasizes that numerous Board Awards hold that Boards are not convened to determine whether an issue should be decided on such grounds. If the parties to this dispute cannot reach an equitable solution, it is beyond this Board's authority to impose one. The Carrier emphasizes that the Agreement specifically provides that BMWE-represented employees will share in the cost of the H&W insurance at a rate of $79.74 per month, which is the lowest calculated amount from all the National Agreements. The Carrier asserts that this language ties the cost-sharing payments to the National Health Plans.

The Carrier goes on to contend that although the UTU-represented employees were enrolled in the UTU National Health Plan in January 2005, and they currently are not obligated to make monthly payments, this is because the UTU-represented employees were not enrolled in any plan prior to January 2005. The Carrier argues that it was beneficial to the Carrier to enroll those employees in the UTU plan. The Carrier points out that part of the bargain with UTU was that these employees would not have to participate in cost-sharing for 2005, even though the UTU National Health Plan includes a cost-sharing contribution that is the same amount being paid by BMWE-represented employees. The Carrier further asserts that its March 2006 Section 6 Notice to the UTU included cost-sharing for their health plan.

The Carrier then argues that the April 23, 2004, letter of interpretation between the TCU-Clerks and the Carrier applies only to the TCU-Clerks; this was a local agreement made with very limited application. The Carrier insists that the BMWE did not negotiate

such a letter of interpretation with any Carrier officer, and the Carrier maintains that it never anticipated that the TCU-Clerks' letter would apply as it does. The Carrier asserts that the BMWE does not have such an agreement, and BMWE-represented employees continue to contribute to cost-sharing at the extremely low rate of $79.74 per month.

The Carrier insists that it has not violated any Agreement provisions, and it is in full compliance with the Railway Labor Act. The BMWE did not negotiate a local "me, too" agreement, and the contributions made by BMWE-represented employees were proper under the Agreement. The Carrier emphasizes that is has no obligation to refund the contributions to its BMWE-represented employees or to cease requiring the monthly contribution. The Carrier argues that the Organization is attempting to escape the obligation for cost-sharing that is clearly and unambiguously provided for in the Agreement.

The Carrier ultimately contends that the instant claim should be denied in its entirety.

The parties being unable to resolve their dispute, this matter came before this Board.

Findings

In this dispute over the proper interpretation and application of the parties' Agreement, the Organization bears the burden of proof. This Board's analysis of the parties' opposing positions must, of course, be based upon the relevant language of that Agreement. The Health and Welfare provisions in the Agreements between the Carrier, on the one side, and the BMWE, TCU-Carmen, and TCU-Clerks, on the other, all contain

identical language. The three Agreements include identical descriptions of the manner in which employee contributions toward health insurance is to be calculated, and these three Agreements also contain identical "me, too" language.

The "me, too" clause in the BMWE Agreement, as is true of the identical clauses in the other two Agreements, specifies that the "employee participation amount" will be the "lowest calculated amount from all the National Agreements." At the time that the BMWE and the Carrier entered into their agreement, the "lowest calculated amount from all the National Agreements" was the $79.74 monthly contribution set forth in the Agreements between the Carrier and the TCU-Clerks and the TCU-Carmen.

It is important to bear in mind why "me, too" provisions are employed in situations such as the one at issue. The Carrier's various employee groups are represented, for collective bargaining purposes, by a number of different Organizations, including the BMWE. In order to make pattern bargaining possible, the Carrier and these different Organizations typically incorporate "me, too" clauses that allow all Organization-represented employees to benefit from the most favorable terms on certain common issues that ultimately are negotiated between the Carrier and any of the Organizations representing its employees. This means that none of the employees are effectively penalized if the Organization representing them reaches the first agreement with the Carrier, but then another Organization subsequently negotiates terms on a common issue that are more favorable to its members. A "me, too" clause therefore serves as an incentive to both the Carrier and the Organization to diligently pursue negotiations to an agreement, without waiting to see the results of other collective

bargaining negotiations. With pattern bargaining as a fixture in the railroad industry, "me, too" clauses essentially are necessary to make this type of negotiation work.

In the instant situation, the record conclusively demonstrates that the Health and Welfare section of the BMWE Agreement, including the "me, too" clause, contains the very same language that appears in both the TCU-Clerks and the TCU-Carmen Agreements. Accordingly, there is no discernible basis on the face of these Agreements for finding anything other than that these provisions all should be interpreted and applied in the same way. The Carrier nevertheless has asserted that Health and Welfare provision of the TCU-Clerks Agreement should be interpreted differently than the identical provisions in the other two Agreements. The stated rationale for the Carrier's assertion that the TCU-Clerks Agreement should be handled differently than either the BMWE Agreement or the TCU-Carmen Agreement is the existence of the April 26, 2004, letter between the TCU-Clerks and the Carrier.

The only way for the Carrier's argument to succeed is if the April 26, 2004, letter serves to alter or modify the Health and Welfare language that appears in the TCU-Clerks Agreement, thereby making that provision different than the Health and Welfare sections of the BMWE and TCU-Carmen Agreements. A careful review of this letter reveals, however, that it is not a modifying Agreement between the Carrier and the TCU-Clerks. Instead, the April 26, 2004, letter is a restatement of the "me, too" clause in the Health and Welfare section, and a confirmation that the Carrier and the TCU-Clerks have the same understanding of the meaning and intent of this "me, too" clause.

This Board finds that the April 26, 2004, letter does not serve to modify or alter, in

any way, the Agreement between the Carrier and the TCU-Clerks. This Board holds that the Health and Welfare section contained in that Agreement, including the "me, too" clause, therefore must be considered as remaining identical to what appears in both the BMWE Agreement and the TCU-Carmen Agreement. The only reasonable conclusion from this is that the Health and Welfare sections in all three of these agreements, being identical, must be interpreted in the same way.

There is nothing in the April 26, 2004, letter that justifies treating the TCU-Clerks Agreement differently than the BMWE and TCU-Carmen Agreements in connection with the application of the Health and Welfare section. The letter's description of the agreed-upon meaning and intent of the "me, too" clause in the TCU-Clerks Agreement applies with equal force to the identical "me, too" clauses in the other two Agreements. If the April 26, 2004, letter accurately sets forth the Carrier's understanding of the language of the "me, too" clause in the TCU-Clerks Agreement, then it is reasonable to conclude that this letter accurately sets forth the Carrier's understanding of the very same language that appears in the BMWE and TCU-Carmen Agreements.

The evidentiary record in this matter and the language that appears in the Organization's Agreement with the Carrier does not support any finding that the instant Agreement may be interpreted in a different manner than the TCU-Clerks Agreement, or that the Carrier ever had a different understanding or intent with regard to the language of the Health and Welfare section, including the "me, too" clause, than it had in connection with the TCU-Clerks Agreement. Although the BMWE and the TCU-Carmen did not exchange any letters with the Carrier that, like the April 26, 2004, letter between the

Carrier and the TCU-Clerks, confirms the parties' understanding of the "me, too" clause, there can be no serious doubt that the meaning and intent of the "me, too" clause in the Organization's Agreement with the Carrier is identical to what is expressed in the April 26, 2004, letter.

In light of these considerations, and in accordance with the plain meaning of the language contained in the Health and Welfare section of the Organization's Agreement with the Carrier, this Board finds that the Carrier-UTU agreement calling for UTU-represented employees to be enrolled in the UTU National Health Plan, and without any obligation to make any contribution toward the cost of their health insurance premiums, should have triggered the "me, too" clause in the Organization's Agreement with the Carrier, just as it triggered the identical "me, too" clause in the Agreement between the Carrier and the TCU-Clerks.

This Board holds that just as the TCU-Clerks no longer were obligated to contribute toward the cost of their health insurance once the UTU Agreement was implemented, the Carrier's BMWE-represented employees also should not have been obligated to contribute toward the cost of their health insurance. So long as the Carrier's UTU-represented employees, or employees represented by any other Organization, do not have to contribute toward the cost of participation in their Organization's National Health Plan, then the "me, too" clause in the Health and Welfare section requires that the Carrier cease deducting contributions toward the cost of their health insurance from the pay of its BMWE-represented employees.

The language of the Organization's Agreement, when compared with the language

of the TCU-Clerks Agreement, conclusively establishes that the Carrier's BMWE-represented employees should have been treated in precisely the same manner as the TCU-Clerks in connection with the issue of employee contributions toward the cost of health care. This Board finds that as of January 2005, when the UTU Agreement providing health care coverage under the UTU's National Health Plan at no cost to the UTU-represented employees, the Agreement between the Carrier and BMWE required the Carrier to immediately cease deducting health care contributions from the pay of its BMWE-represented employees. This Board holds that the Carrier violated the parties' Agreement when it continued to deduct health care contributions from the pay of its BMWE-represented employees after the implementation of the UTU Agreement in January 2005. This Board further finds that the appropriate remedy for the Carrier's violation is an Order directing the Carrier to immediately cease making said deductions, and to reimburse the individual Claimants represented by the BMWE Organization in an amount equal to the total amount of such deductions for the period from January 1, 2005, through the date that such deductions cease. This Board further directs that so long as the current Agreement between the Carrier and the BMWE remains in effect, and the Carrier employees represented by the UTU or any other Organization are not required to contribute toward the cost of their participation in a National Health Plan, then, in accordance with the "me, too" clause in the parties' agreement, the Carrier's BMWE-represented employees also shall not be required to make such contributions.

Award

The claim is sustained. The Colorado and Wyoming Railway Company violated

the April 27, 2004, BMWE/C&W Agreement when, beginning January 2005 and each month thereafter, it deducted employee contributions for Health and Welfare from the pay of BMWE-represented employees. The Carrier is directed to immediately cease making said deductions and further to reimburse the individual Claimants represented by the BMWE Organization in an amount equal to the total amount of deductions for the period from January 1, 2005, through the date that such deductions cease.

PETER R. MEYERS
Neutral Member

FOR THE ORGANIZATION:

Steven V. Powers
STEVEN V. POWERS

FOR THE CARRIER:

MARK DABNEY