

The Second Division consisted of the regular members and in addition Referee George E. Larney when award was rendered.

Parties to Dispute: { International Brotherhood of Electrical Workers
{ National Railroad Passenger Corporation

Dispute: Claim of Employees:

1. Claim in favor of Electrical Employees of the National Railroad Passenger Corporation (Amtrak) for violation of 2-A-1 (e) of the Controlling Agreement.
2. That, accordingly, the National Railroad Passenger Corporation (Amtrak) be ordered to pay the Claimants, who are Electrical Employees of the Carrier, IBEW, listed as follows:
 - a. Electrician D. T. Cunningham - three (3) hours penalty pay at his prevailing rate of pay for the following dates: November 16, 22; December 9, 21, 22, 27 and 28, 1978; January 5 and 6, 1978 and eight (8) hours penalty pay for December 5, 1977.
 - b. Electrician W. P. Schnurr - three (3) hours penalty pay at his prevailing rate of pay for the following dates: November 7, 9, 10, 14, 15, 16, 18, 21, 23, 25, 28 and 29, 1977; December 1, 2, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 23, 27, 28, 29, 30, 1977; and January 3, 4, 5, 6, 10 and 11, 1978.
 - c. Electrician J. Nolan - three (3) hours penalty pay at his prevailing rate of pay for the following dates: November 14 and 18, 1977; January 5 and 6, 1978.
 - d. Electrician D. Sheppard - three (3) hours penalty pay at his prevailing rate of pay for the following dates: November 14 and 18, 1977; January 5, 6 and 9, 1978. That the System Federation 152 Agreement of April 1, 1952, with amendments of 1961, 1974 and 1976 is controlling.

Findings:

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

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employe 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 waived right of appearance at hearing thereon.

The several claims herein were initiated and advanced by the Organization under the contention Carrier violated the Memorandum of Understanding with regard to the application of the last paragraph of Rule 2-A-1(e) contained in the System Federation No. 152 and Penn Central Railroad Agreement of April 1, 1952 with amendments of 1961, 1974, and 1976, which the Organization alleges is the controlling agreement.

On the other hand, the Carrier at all times material to the handling of these claims has denied them on the basis that the controlling agreement in effect is the one between it and the Organization dated September 1, 1975.

The Board views this controversy between the parties regarding which agreement is controlling as posing a threshold question which must first be resolved before moving to consideration of the merits of the instant claims. It is the Board's judgment that resolution of this threshold question can be resolved only by rendering an interpretation as to the meaning and applicability of Section 504(f)(2) of Title V of the Regional Rail Reorganization Act of 1973, as amended. Such an interpretation however, the Board notes, causes a jurisdictional question to arise as to whether our Board or Special Board of Adjustment 880 has the authority to construe the subject Section. Based on a full review of the evidence of record before us, we are of the opinion that Special Board of Adjustment 880 has the authority to render such an interpretation and that our Board does not. We therefore at this time defer consideration of the merits of the instant claims and direct the threshold question be remanded to Special Board of Adjustment 880.

A W A R D

The Board directs the threshold question as to which Agreement is controlling be remanded to the Special Board of Adjustment 880.

Claims deferred for lack of immediate jurisdiction by the Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 16th day of September, 1981.