

The Second Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Wilbur L. Gooley
(
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

1. Grievance of Electrician W. Gooley, Beech Grove, Indiana, identified as National Railroad Passenger Corporation File No. CHG-IBEW-354 and IBEW-TC-603.

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 employes involved in this dispute are respectively carrier and employes 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.

The dispute under review here is one of sixteen identical cases appealed to our Board, individually, by employees assigned in Carrier's Beech Grove, Indiana, Maintenance Facility. Claimants are all former Penn Central employees who were taken into employment by Amtrak under the terms and provisions of an Implementing Agreement made at Washington, D. C. on February 24, 1975, under which Amtrak acquired certain portions of the Repair Shop at Beech Grove and took over the maintenance and repair of its own equipment. The named Claimant in this docket, as well as those in the other cases, alleges that he has been placed in a worse position with respect to compensation and seeks retroactive adjustments thereto.

The Carrier contends that this matter is procedurally defective on a number of grounds and, accordingly, must be dismissed. It also argues that the Claim is without merit, and if the Board could consider the matter on its merits it must, nevertheless, be denied.

While the Board does not find the procedural objections of Carrier to be unpersuasive, we nonetheless feel that this matter warrants consideration on its merits. The underlying assumption on which this Claim is based is that employees conveyed to Amtrak from the former Penn Central at the Beech Grove Maintenance Facility are required to be paid wages at the same level they would have received had they remained in the service of Penn Central and its successor, Conrail. Particularly, Claimant bases this assumption on the "Whereas" of the February 24, 1975 Agreement and Paragraphs (6), (7) and (8) of the text.

From our reading of the "Whereas" and Paragraphs (6), (7) and (8) of the Agreement we are unable to find a clearly expressed intention that Amtrak would be required to pay wages at the same level Penn Central (now Conrail) employees received. Such an expression is necessary for Claimant to prevail.

Claimant contends, though, that references within the Agreement to Appendix C-1 protection and Merger Protective Conditions contemplate treatment as if they had not left Penn Central/Conrail service. In the instant case we view Merger Protective Conditions and C-1 Protection to be superseded by Federal Law. On this record it is clear that commencing April 1, 1976, Title V of the Regional Rail Reorganization Act governed Amtrak employees conveyed from Penn Central at Beech Grove and all prior coverage under the Penn Central Merger Protection Agreement and Appendix C-1 was terminated.


The Claim is without merit and will be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of November 1989.