

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(National Railroad Passenger Corporation (Amtrak)  
Northeast Corridor

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the May 21, 1979 Memorandum of Understanding when it abolished the Panel Renewal System Gang effective December 17, 1987 (System File NEC-BMWE-SD-2139).

(2) As a consequence of the aforesaid violation, Panel Renewal System Gang employees J. Wright, D. Adams, S. Clore, L. Slavin, W. B. Allison, K. Koppel and M. Rodden shall each be allowed pay at their respective straight time rates for forty (40) hours per week beginning December 17, 1987 and continuing until the violation is corrected."

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 employees 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.

At the time this dispute arose, the Claimants were members of the Panel Renewal System ("PRS") Gang. This Gang was established for special purposes under an Agreement dated May 21, 1979, which reads in pertinent part as follows:

"Whereas it is necessary to replace a large number of wayside switches and turnouts in our interlocking plants in the rehabilitation of track in the Northeast Corridor; and

Whereas the equipment that will be used in the replacement of these track panels is of special design requiring specially trained employees to operate and maintain the equipment;

IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. Amtrak will use a panel renewal system and equipment for its panel turnout renewal program on the Southern District of the Northeast Corridor, and the operation and maintenance thereof will continue from the date established until the panel renewal program is completed or terminated.

\* \* \* \*

Amtrak will establish a separate roster which will be known as the Panel Renewal System (PRS) Roster and shall be composed of foremen, operators and repairmen.

The Panel Renewal System Roster will remain in effect until the panel renewal unit is terminated at which time the roster will be dissolved and the employees holding seniority rights thereon will be placed on the Southern District roster as agreed to between the parties.

\* \* \* \*

5. The Panel Renewal System will not operate during the winter months, December through March; however, the positions described in Item 1 above will be maintained during this period. During the winter period the incumbents of the positions described above may only be utilized to perform necessary maintenance of the (PRS) equipment used in the Panel Renewal System. It is also understood that by utilizing the incumbents of the positions described in Item 1, it will not serve as a basis for reduction of positions of repairmen regularly assigned to perform such mechanical work at the location where the PRS equipment will be maintained.

6. Rule 90A of the current Agreement is amended on the effective date of this agreement by adding thereto item number 6 - Panel Renewal System Unit, and each of the positions and vacancies listed above will be advertised and awarded in accordance with that rule. Employees assigned to the above-listed positions shall establish seniority on the Panel Renewal Unit and remain on that Unit as prescribed by this Agreement."

A June 12, 1981 letter amendment to the Agreement stated in pertinent part as follows:

"This confirms the understanding we reached in conference on June 8, 1981, in connection with the above-referenced agreements.

During our discussion the parties recognized that the work force stabilization provisions of these two agreements were no longer effective after June 11, 1981.

The parties also recognized that, inasmuch as the 1981 Summer Work Program has already begun, it would not be in our best interest to disrupt this program at this time. Therefore, it was mutually agreed to continue the work force stabilization provisions of the aforementioned agreements until December 31, 1981.

It was also understood that we will meet at a future date to discuss work force stabilization provisions applicable to future work seasons."

The May 21, 1979 Agreement makes reference to Rule 90-A. This Rule provides that the Carrier "may establish one or more of the following track units not assigned fixed headquarters to work over the Southern District." The Panel Renewal System is listed as one of these units, and Rule 90-A provides detailed requirements as to the establishment and operation of such units.

Also relevant here, as argued by the Carrier, is Rule 23, which states in pertinent part:

"When forces are reduced or positions abolished, employees will be given not less than five (5) working days advance notice and bulletin shall be promptly posted identifying the position to be abolished. All abolishments shall be effective at the close of the employees' tour of duty."

On December 17, 1987, the Claimants' positions in the PRS unit were abolished. The Carrier contended that "all scheduled interlocking rehabilitation work for which there was funding had been completed." This gave rise to the dispute here under review, with the Organization initiating a Claim on January 7, 1988.

At a later time, on June 8, 1988, the Carrier advised the Organization that it had "now received sufficient funding to warrant establishment of this [PRS] unit," and this was made effective thereafter. Of course, this resumption of PRS work was not known at the time the Claim herein was initiated.

The Organization argues that the May 21, 1979 Agreement prohibits the Carrier from removing the Claimants from their PRS positions at the time it did so. The Organization points in particular to Paragraph 5, which states:

"The Panel Renewal System will not operate during the winter months, December through March; however, the positions described in Item 1 above will be maintained during this period."

Stated in broad strokes, it is the Organization's position that the Carrier has simply evaded this requirement by abolishing the PRS positions, despite the contention that the program was not "completed or terminated" as evidenced (after the fact) by the program's resumption six months later.

The Carrier contends that nothing in the May 21, 1979 Agreement or its amendments prohibits the action taken, given its general rights under Rule 23 to reduce forces or abolish positions. The Carrier maintains that the PRS program was, in fact, "completed" in December 1987. The Carrier further notes the permissive language of Rule 90-A, to which the Agreement refers, in its statement that the Carrier "may" establish a variety of units such as PRS, but is not required to do so.

As to "work force stabilization provisions" of the Agreement, the Carrier refers to the June 12, 1981 letter, quoted above, which leaves this open for future discussion.

The Board finds no Rule support for the Organization's assumption that the Carrier is required to continue the PRS program in the absence of anticipated work to be performed. The theory advanced by the Organization is that the cessation in December and resumption the following June was simply a ploy to avoid continuing the Claimants in their positions during the winter months. This, however, is speculative. There is no basis to dispute the Carrier's contention that, as of December 1987, PRS work was "completed."

The Board's conclusion is supported by the Board of Arbitration Award issued May 16, 1988, involving the same parties but a different special program. While the facts and circumstances are somewhat at variance to those under review here, the conclusions therein are applicable here.

A W A R D


Claim denied.

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Award No. 29044  
Docket No. MW-28879  
91-3-89-3-291

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of November 1991.