

NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 2406

\*\*\*\*\*

NATIONAL RAILROAD PASSENGER CORPORATION \*  
(AMTRAK) \*

CASE NO. 68

- and -

BROTHERHOOD OF MAINTENANCE OF WAY \*  
EMPLOYES \*

AWARD NO. 68

\*\*\*\*\*

Public Law Board No. 2406 was established pursuant to the provisions of Section 3, Second (Public Law 89-456) of the Railway Labor Act and the applicable rules of the National Mediation Board.

The parties, the National Railroad Passenger Corporation or Amtrak (hereinafter the Carrier) and the Brotherhood of Maintenance of Way Employees (hereinafter the Organization), are duly constituted carrier and labor organization representatives as those terms are defined in Sections 1 and 3 of the Railway Labor Act.

After hearing and upon the record, this Board finds that it has jurisdiction to resolve the following claim:

"Compensate Mr. M.A. Akers at the Trackman's rate of pay for each working day beginning April 14, 1980 up to and including May 20, 1980."

### Background Facts

By letter dated May 22, 1980, Mr. Michael Akers (hereinafter the "Claimant") first wrote to the Carrier regarding the instant claim. He stated that he had elected furlough from his position as Trackman and understood that he was to be called back to work in accordance with his seniority. The Claimant then wrote "I have not been notified to return to work and have been told that new or younger employees have now been employed as trackmen".

The Carrier responded and disagreed with the Claimant's contention, and also noted that the Claimant had been directed to present himself for a physical examination on May 20, 1980 and to place himself on a position within Working Zone (4) immediately following the completion of the examination.

The matter was progressed by the Organization on the basis that the Claimant should have been recalled to work on or about April 14, 1980. The claim was denied, and is before this Board for adjudication.

### Positions of the Parties

The Organization contends that the Claimant brought his claim to the attention of the Carrier in a timely manner.

The Organization submits that its investigation revealed that a Mr. David Rely was hired as a new employee on April 14, 1980, and

that this fact belies the Carrier's contention that the claim was vague and without substance.

The Organization maintains that the Carrier's Assistant Chief Engineer failed to respond to the June 30, 1980 claim submitted by the Claimant, and thus argues that the claim should be sustained.

The Carrier contends that the claim submitted on the property was vague, non-specific, without rules citation and completely without proof to support its filing.

The Carrier further contends that the claim was improperly filed with two different officers at the same time, and that it was subsequently progressed to the final level of appeal without any proof that the Carrier had failed to recall the Claimant in accordance with the agreement's provisions.

The Carrier cites a number of decisions of the Third Division of the National Railroad Adjustment Board which establish that "mere assertions do not constitute proof or fulfill the burden to provide such proof". Therefore the Carrier requests that the claim be denied.

#### Findings of the Board

In his letter of May 22, 1980 and in his letters of June 30, 1980 to Assistant Chief Engineer Ellis and Division Engineer Scott, the Claimant alleges that he was not recalled and that junior

employees or new employees were, apparently, recalled and/or hired in his stead.

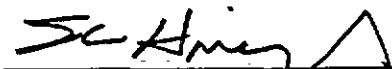
The Claimant provided no evidence or information which would indicate when or where these "new or junior employees" were hired or recalled. Nor did the Claimant identify who these "new or junior" employees were. The Carrier denied that such action took place, and denied the claim because it was non-specific.

When the Organization appealed the matter it stated that its investigation revealed that a "Mr. David Rely was hired as a new employe April 14, 1980". However, there is no identification of where Mr. Rely was allegedly hired, and we note that the Carrier has argued that there is no proof supporting the allegation that a Mr. Rely was hired in lieu of the Claimant's being recalled.

The Board agrees with the Carrier's position. The claim lacks sufficient specifics regarding any alleged violations of the Claimant's recall rights. Accordingly, the claim will be denied.

Award: The claim is denied. This Award was signed this 26th day of February, 1988 in Bryn Mawr, Pennsylvania.

  
W.E. LaRue, Organization Member

  
L.C. Hriczak, Carrier Member

  
Richard R. Kasher, Chairman and Neutral Member