

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2406

NATIONAL RAILROAD PASSENGER CORPORATION *
(AMTRAK) *

- and -

BROTHERHOOD OF MAINTENANCE OF WAY *
EMPLOYEES *

CASE NO. 69

AWARD NO. 69

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:

"Claim for time made by Conrail employees performing work at Paoli Shops on various dates which accrues to employees in the Bridge and Building Department represented by the petitioning Organization."

Background Facts

The claim was filed as a result of the Organization's contention that a number of Conrail Paoli Shop Employees, not covered by the Scope and Work Classification Rule negotiated between the Organization and the Carrier, were assigned to perform certain work between the dates of October 1 through October 31, 1979, in lieu of that work being assigned to P.C. Essick, Foreman Painter, G.A. Smith, Assistant Foreman Painter and Louis Rossini and Anthony DiCarne, Painters (hereinafter the "Claimants").

The Carrier became the owner of the Electric Car Shop at Paoli, Pennsylvania as a result of the conveyance provisions of the Regional Rail Reorganization Act of 1974, which became effective April 1, 1976. At the time of the claim, the Consolidated Rail Corporation (hereinafter "Conrail") occupied the Shop and its employees, under the direction and supervision of Conrail management, performed maintenance on and made repairs to commuter rail cars.

The Claimants were listed on the Carrier's painting group rosters, were assigned to the Philadelphia work zone and had performed painting at the Paoli Car Shop prior to and following the date of the instant claims as part of their regularly assigned duties.

Positions of the Parties

The Organization cites its Scope Rule which establishes, inter alia, that in the event Amtrak plans to contract out work within the scope of the Schedule Agreement that the Chief Engineer shall notify the General Chairman of the Organization not less than fifteen (15) days prior thereto.

The Organization also cites the Work Classification Rule of the agreement, and points out that Painters and Painter Helpers are covered under this Rule.

The Organization contends that on the dates of the claim, Conrail employees, from various crafts who were employed in the Paoli Car Shop, were allowed to paint in the Shop, and that the work they performed properly belonged to Amtrak MW-B & B-Paint employees under the Scope and Work Classification Rules.

The Organization argues that the Carrier did not request to contract out this work which was ordinarily and customarily performed by Amtrak MW-B & B Painters. The Organization submits that the Carrier had been advised, on numerous occasions in the past, that similar violations were occurring at the Paoli Car Shops. The Organization maintains that it was the Carrier's responsibility to enforce the Schedule Agreement and that the Carrier failed to do so in the instant case.

The Organization cites a number of awards of the Third Division of the National Railroad Adjustment Board in support of its position,

and requests that the claims be sustained as presented.

The Carrier submits that the work in question, even if performed, and the Carrier contends that there is no proof that it was, does not accrue to Amtrak employees.

The Carrier points out that the Paoli Shops were leased to Conrail for its performance of commuter rail operations by contract with the Southeastern Pennsylvania Transportation Authority (SEPTA); and that Amtrak had no control over the operations or performance of work at the Paoli Shops except for that work which Amtrak was specifically directed to do from time to time in its capacity as a contractor.

The Carrier points out that it did not direct that any of the claimed work be done, and that it had no knowledge of the performance of the work and did not benefit from any such work that was allegedly performed.

The Carrier cites a number of awards of the Third Division of the National Railroad Adjustment Board, which it submits stand for the principle that a carrier's scope rules apply only to that work for which the carrier is responsible.

The Carrier further contends that the claim lacks merit, since the Organization has failed to prove that the Carrier violated some specific provision in the collective bargaining agreement. The Carrier points out that, in its opinion, the claims presented lack

description, specificity and proof; and are based upon assertions rather than evidence.

Finally, the Carrier submits that the claims seek excessive damages. Based upon the foregoing arguments, the Carrier requests that the claims be denied.

Findings of the Board

While the carrier has raised some significant defenses regarding, for example, its alleged lack of control over the work in question, this Board cannot reach those defenses since we have insufficient evidence in the record to determine what specific work the Conrail employees allegedly performed.

We do not know specifically what the work was that was allegedly performed. We do not know if the Claimants worked on offices, floors, etc. which Amtrak employees had allegedly worked on in the past. Nor do we know what the Claimants were doing at the time that the work was allegedly "taken from them".

The Carrier has cited Award No. 25563, involving these same parties and decided by the Third Division of the National Railroad Adjustment Board with Referee Frances Penn serving as neutral as relevant for this Board's consideration. While that case might be instructive, particularly since it involves a claim that Conrail employees were used to perform work at the Paoli Car Shop, in view of

our conclusion above that the instant claims lack specificity, we are restrained from reaching the merits of the instant dispute.

Therefore we are constrained to dismiss the claims.

Award: The claims are dismissed. This Award was signed this 26th day of February, 1988 in Bryn Mawr, Pennsylvania.

W.E. LaRue

W.E. LaRue, Organization Member

L.C. Hriczak

L.C. Hriczak, Carrier Member

Richard R. Kasher

Richard R. Kasher, Chairman and Neutral Member