Award No: 61
Case No. 87

Public Law Board No. 3783

PARTIES TO DISPUTE: Joint Council of Carmen, Helpers, Coach Cleaners and Apprentices

and

National Railroad Passenger Corporation

STATEMENT OF CLAIM: "1. The Carrier violated Appendix C-2 when it failed or refused to compensate all adversely affected employees at the Niagara Falls Carrier facility due benefits provided for in C-2, following a transaction.

2. The Carrier should now be required to allow the adversely affected employees benefits provided by Schedule C-2 for either displaced or dismissed employees, and all seniority rights, unimpaired, and other benefits"

FINDINGS: Claimants seek protective benefits under the provisions of Appendix C-2. They contend that they were adversely affected by the discontinuance of service by Trains 73 and 74 between Niagara Falls and Albany.

As a result of the enactment of the Rail Passenger Service Act of 1970 (Public Law 91-518), Carrier was established for the purpose of providing intercity rail passenger service. Section 405(a) of that Act requires Carrier to provide "fair and equitable arrangements" to protect the interests of employees affected

by discontinuance of intercity rail passenger service.

Pursuant to Section 405, Appendix C-2 was agreed to by Carrier and the labor organizations representing its employees. It sets forth the protective benefits for affected employees as well as the conditions for receiving them. Appendix C-2 was signed on July 5, 1973 and approved by the Secretary of Labor on October 1, 1973.

Under Appendix C-2, an employee is entitled to protective benefits if as a result of a "transaction" he or she is placed in a worse position with respect to compensation or working condition rules or is deprived of employment with Carrier. "Transaction" is defined as a discontinuance of intercity rail passenger service.

The present claim arose when Carrier discontinued operation of Trains 73 and 74 between Albany and Niagara Falls, effective January 15, 1986. Those trains had theretofore been operated between New York City and Niagara Falls; after January 15, 1986, they continued to run but only between New York City and Albany.

As a result, according to Petitioner, during the next two weeks, carman positions were abolished at Niagara Falls, and claimants J. Franklin, A. Dombrowski, C. Jeffries, M. Walker, J. Nicometo and B. Galuska were furloughed and Claimants J. Gangloff and J. Ross were downgraded from carmen to coach cleaners.

Carrier does not take issue with Petitioner's contention that carmen were adversely affected by the discontinuance of the aforementioned runs between Albany and Niagara Falls. It maintains that the central issue in this dispute is whether the modification in the route of Trains 73 and 74 is a "transaction" within the meaning of Appendix C-2. As it correctly contends, only when the adverse affect on employees is directly attributable to a "transaction," are they entitled to Appendix C-2 protective benefits.

Carrier points out that three trains -- The Mohawk, The Niagara Rainbow and The Maple Leaf --still are serviced by carmen at Niagara Falls and that ample alternating Amtrak transportation to and from Niagara Falls continued to be available after January 15, 1986. In Carrier's view, the modification in the route of Trains 73

and 74 did not amount to a "transaction" since it did not result in the elimination of all passenger rail service to and from Niagara Falls.

It is Carrier's position that Appendix C-2 only applies where there is a complete abandonment of passenger rail service between cities, not merely a frequency adjustment in such service. Carrier reasons that in the present case, since service was merely decreased by one round trip frequency and alternate transportation was available, there is no "transaction" and no basis for awarding C-2 protective benefits. It emphasizes that the decline in federal subsidies and passengers, heavy economic pressures, the Gramm-Rudman Amendment and operational considerations made the reduction in frequency of service of critical importance.

In Carrier's opinion, its position is supported by the legislative history of Section 405 (a) of the Rail Passenger Service Act. As it indicates, the Consolidated Omnibus Budget Reconciliation Act, signed by President Reagan on April 7, 1986, among other things amended Section 405 (a) by adding at the end thereof the following:

"For purposes of subsection (c) of this section an any agreement designed to implement the provisions of such subsection, a discontinuance of intercity rail passenger service shall not include any adjustment in frequency....."

The difficulty with Carrier's position is that the April 7, 1986 amendment just quoted came too late, over two months after discontinuance of Niagara Falls' service by Trains 73 and 74 and after claimants' furloughs or reductions in grade. No provision of that April 7, 1986 Act nor any other legislation brought to this Board's attention made the April 7, 1986 amendment retroactive to January 15, 1986. Accordingly, no valid basis is perceived for giving any weight to that amendment in the instant case. We are not impressed by the contention that the April 7, 1986 amendment shows that the Congress had always intended to exclude any frequency adjustment from the definition of a discontinuance of intercity rail passenger service.

The legislative history, as of the critical date, January 15, 1986, shows that Section 405(a) had been amended in 1972 to read as follows, in relevant part:

(a) A railroad shall provide fair and equitable arrangements to protect the interests of employees including employees of terminal companies, affected by a discontinuance of intercity rail passenger service whether occurring before, on, or after January 1, 1975. A "discontinuance of intercity rail passenger service" shall include any discontinuance of service performed by railroad under any facility or service agreement under sections 305 and 402 of Act or pursuant to any modification or termination thereof or an assumption of operations by the corporations.

The phrase "any discontinuance" is definite and unambiguous. As found by Public Law Board 3782 in Case No. 1 (December 30, 1985), it means, when given its plain and ordinary meaning, "any type of discontinuance of service." The partial discontinuance of service to and from Niagara Falls manifestly is "any discontinuance" as defined in Section 405, as amended in 1972.

When Carrier discontinued service by Trains 73 and 174 between Albany and Niagara Falls, Section 405 as amended in 1972 was in force and should have been heeded. While the change in route is undoubtedly attributable to the economic pressures mentioned by Carrier, that factor did not relieve Carrier from its obligations under Section 405 and Appendix C-2. It could not validly ignore those obligations, as

they existed on January 15, 1986. Operational changes, no matter how desirable from the standpoint of economy and efficiency, can only be made with due regard to Carrier's contractual commitments and applicable statutory requirements.

In the light of the foregoing considerations, it is this Board's conclusion that the January 15, 1986, discontinuance of passenger service by Trains 73 and 74 between Niagara Falls and Albany is a "transaction" within the meaning of Section 405 and Appendix C-2.

AWARD: Claim sustained. To be effective within 30 days.

Adopted at Washington, D.C., June 8, 1987.

Harold Weston, Chairman

Carrier Member

6-8-1987
Employee Member