

PUBLIC LAW BOARD NO. 4259

Award No. 5

Case No. 5

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees

and

National Railroad Passenger Corporation (AMTRAK)

Statement of Claim

1. The Carrier violated the Work Classification Rule and Rules 1, 3, 4 and 18 of the BMWE-AMTRAK Schedule Agreement of May 19, 1976, as amended, when it abolished the Claimant's Truck Driver position on December 26, 1985, resulting in the Claimant's furlough from service on January 6, 1986.

2. The claimant be compensated for all lost earnings between January 6, 1986 and March 17, 1986, inclusive, as a result of the Carrier's aforementioned violation of the Agreement.

Findings and Opinion

The Board, upon consideration of the entire record and all of the evidence finds:

The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

This Board has jurisdiction over the dispute involved herein.

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The parties to said dispute were given due and proper notice of hearing thereon.

The claim in this case involves the question of whether a truck driver is required to be part of a crew if truck driving is done as an incidental part of the work of the crew.

Claimant held the position of truck driver in the Panel Renewal System Unit (PRS). His position was abolished and he was required to accept furlough status on January 6, 1986. Thereafter, under the May 21, 1979, Letter of Understanding between the parties, certain employees in the PRS unit continued to work and as part of their work drove a truck. Claimant contends that he should have been given an opportunity to be recalled and to have performed the work of a truck driver for which he had greater seniority than the individuals who drove the truck as part of their other duties.

Rule 1, of the Agreement between the Parties, in relevant part, provides: "In the assignment of employees to positions under this Agreement, qualifications being sufficient, seniority shall govern."

Rule 3, in relevant part, provides: "All positions and vacancies will be advertised within thirty days previous to or within five days following the dates they occur."

Rule 4, in relevant part, provides: "A position or vacancy may be filled temporarily pending assignment. When new positions or vacancies occur the senior available employees will be given preference..."

Rule 18, in relevant part, provides: "When force is reduced employees affected shall have the right . . . to elect to take furlough or to exercise seniority..."

Rule 58, Assignment to Higher or Lower Rated Positions, provides:

An employee may be temporarily or intermittently assigned to different classes of work within the range of his ability. In filling the position of an employee which pays a higher rate, he shall receive such rate for the time thus employed. If assigned to a lower rated position for reasons other than reduction in force or his request or fault, he will, except as provided in Rule 50, be paid the rate of his regular position.

The Letter of Understanding of May 21, 1979 between the parties provides in Item 1 that the PRS crew shall include a Track Foreman, eight Equipment Operators, two Engineers working "B" Front End Loaders, one Engineer working "B" Multi Crane, one M/W Repairman and one Track Foreman Support Effort. It further provides in Item 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.

It is the contention of the Organization that a claim similar to the instant one was decided by the Third Division of the National Railroad Adjustment Board in Award Number 26167,

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Referee Cloney, and that the Carrier should be estopped from re-litigating the same issue. The Organization further contends that on the merits, the decision in Award Number 26167 is correct and that the arguments which the Carrier has raised in opposition to that Award were raised in the previous case and found to be without merit.

The Carrier contends that the truck driving work was incidental to the other work of the crew; that during the Winter months under the Memorandum of Understanding of May 21, 1979, the Carrier is specifically allowed to operate a specially reduced work crew which does not have to include a truck driver; and, finally, that the position of truck driver which Claimant wishes to fill is part of another crew, not the instant one. The Carrier also contends that Award Number 26167 should not be followed for the reasons stated in the dissent to that Award.

One of the major problems involved in the settlement of grievances under Section 3 of the Railway Labor Act is the non-binding effect of decisions of referees on either of the parties. In the ideal situation, this Board would like to give great, if not binding, weight to the previous decisions of other referees. However, it must consider all of the facts which are presented to it, and if it believes that a previous decision is wrong, or that all of the facts were not available to another referee, it must consider the situation anew. Such is the situation in this case. Award Number 26167 apparently did not take into consideration the effect of the Memorandum of Understanding

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between the parties on the right of the Carrier to operate the crew in question without a truck driver. This Board must attempt to harmonize that memorandum with the basic agreement between the parties.

The Force Account for the Southern District of AMTRAK lists three separate PRS gangs. One, Gang Z-172, appears to be the gang which was working during the Winter and which Claimant wishes to join. Another, Gang Z-182 contains five trackman positions and finally, Gang Z-192, contains fourteen positions including that of a Truck Driver. The duties of a Truck Driver are described under the agreement between the parties as "Operates highway or rail-highway vehicles assigned to the M. of W. Department where the duties of a position consist exclusively of the operation of such vehicles."

Item 7 of the Memorandum of Understanding states:

The Carrier may, as required, use manpower and/or equipment as support units in this panel renewal system program, in which event the positions assigned to support units will be advertised in accordance with rules of agreement to coincide with the Panel Renewal System Unit.


It is clear that Gangs Z-182 and Z-192 are such supplemental support units. While there have been modifications of the Memorandum of Understanding, there is no evidence indicating that the special status of Gang Z-172 was modified by agreement of the parties. It, therefore, seems apparent that the Organization agreed to a limitation on the right of its members to require the filling of positions for the Winter months for this particular

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PRS crew. Accordingly, without regard to Claimant's general rights, he had no right to have the advertisement of, or the assignment to him on the basis of seniority of, the position of truck driver for the PRS crew in question.

Award

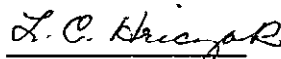
Claim denied.



Robert O. Harris
Chairman and Neutral Member



J. Dodd
For the Organization
[Concur / Dissent]



L. C. Hriczak
For the Carrier
[Concur / Dissent]

dated, *August 8*, 1988
Philadelphia, PA