

PUBLIC LAW BOARD NO. 5210

Case No. 3
Award No. 3

PARTIES TO DISPUTE: BROTHERHOOD OF LOCOMOTIVE ENGINEERS
-and-

PORT AUTHORITY TRANS-HUDSON CORPORATION

QUESTION AT ISSUE:

Under the terms of the Agreement, is the Carrier constrained to utilize covered members to perform pilot work on self-propelled vehicles such as the Burro Crane, Tamper and Snow Blower?

FINDINGS:

This Board, upon the whole record and all the evidence, finds as follows:

That the parties were given due notice of the hearing:

That the Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934:

That this Board has jurisdiction over the dispute involved herein.

The Port Authority Trans-Hudson Corporation (hereinafter referred to as PATH or the Carrier) is a short, turn-around, electric passenger railway that is wholly-owned by The Port Authority of New York and New Jersey. The Brotherhood of Locomotive Engineers (hereinafter referred to as the Organization or the BLE) represents approximately 170 employees in the titles of Engineer, Engineer-Switching and Yard Supervisor.

In 1966, PATH purchased its first self-propelled vehicle, the Burro Crane. On October 27, 1966, as part of a new collective bargaining agreement, the parties agreed how the Burro Crane would be brought to, from or within a work site. That agreement provided, in pertinent part, as follows:

(q) Article XVII of the basic agreement is amended by adding thereto a new paragraph, to be called Paragraph G (which shall follow Paragraph F). Paragraph G shall read as follows:

"G. The following rule shall govern the manning of Burro Crane No. BC-1 and any replacement therefor (sic) (hereinafter "the Burro Crane") which may hereafter be operated by PATH.

The Burro Crane may be coupled to, or be the motive power of, a work train and be brought to or from a work site by the Motorman assigned to the work train. It will be coupled or uncoupled by a Motor-Switchman, except that at points where there is no Motor-Switchman on duty the Motorman on the work train may be required to perform this work from his cab, or it may be performed by an employee not covered by this agreement.

The Burro Crane may be moved from one point to another within a work site, without a Motorman, provided it does not pass through Interlocking Signals (unless in an area protected by a Train Order) and stays within the working limits provided for in a Train Order.

It is recognized that there is a dispute pending between PATH and the Brotherhood concerning the necessity of manning self-propelled equipment moved on rails. This rule concerning the operation of the Burro Crane is made without prejudice to the position of either party to this dispute (but shall govern the operation of Burro Crane No. BC-1 and any replacement therefor) (sic), and shall not be construed so as to prejudice the position of either said party therein."

In 1968, PATH purchased a Tamper and a Snow Blower and entered into a letter agreement with the Organization setting forth how this equipment would be staffed. That letter agreement provided as follows:

It is proposed that Article XVII of the agreement between us dated August 24, 1967 be amended by adding thereto a new paragraph to be called Paragraph F. Paragraph F shall read as follows:

"F. The following rule shall govern the manning of Tamper No. T-1 and Snow Blower No. SB-1 while operating independently, or any replacements therefor (sic) so operating.

For the purposes of this rule, the word 'pilot' shall mean an employee qualified as a Motorman (and paid the Motorman's rate of pay while acting as a pilot) who accompanies the operator of the Tamper or Snow Blower and directs him with respect to movements on rails of the unit involved.

The Tamper may be moved from one point to another within a work site, without a pilot, provided it does not pass through Interlocking Signals (unless in an area protected by a Train Order) and stays within the working limits provided for in a Train Order. Notwithstanding Article VI-A of this agreement, a Motor-Switchman may be assigned to pilot the Tamper to or from a work site. However, a Motor-Switchman so assigned will be paid at the Motorman's rate of pay for the entire day, including the time spent in his regular tour both before and after piloting the Tamper. The Terminal or Yard that sends a Motor-Switchman to pilot the Tamper to a work site shall send the senior available qualified Motor-Switchman.

The Snow Blower may be moved for storage, shopping, etc. etc., without a pilot, provided it does not pass through Interlocking Signals (unless in an area protected by a Train Order) and stays within the limits provided for in a Train Order....

It is recognized that there is a dispute pending between PATH and the Brotherhood concerning the necessity of manning self-propelled equipment moved on rails. This rule concerning the operation of the Tamper and Snow Blower is made without prejudice to the position of either party to his dispute (but shall govern the operation of Tamper No. T-1,

Snow Blower No. SB-1 and any replacements therefor), (sic) and shall not be construed so as to prejudice the position of either party herein."

Since 1966, the Burro Crane has always been operated by a locomotive engineer. And since 1968, a locomotive engineer has always piloted both the Tamper and the Snow Blower. The aforementioned agreements have remained essentially unchanged to the present time although the title of "Motorman" has been changed to "Engineer" in the present Agreement between the parties and the title of "Motor-Switchman" has been changed to "Engineer/Switching." Also, the pilot assigned to the Tamper and Snow Blower works a maximum of six (6) hours rather than the eight (8) hour maximum allowed by the 1966 and 1968 agreements. Other than these alterations those agreements have not changed in any material respect.


On May 3, 1994, PATH wrote to the Federal Railroad Administration (FRA) and inquired if it was permissible for it to use Maintenance Equipment Operators on self-propelled on-rail equipment such as burro cranes, tampers and snow blowers without a locomotive engineer being assigned to such equipment. On May 16, 1994, the FRA responded that Maintenance Equipment Operators could operate this equipment without a locomotive engineer also being assigned provided this is consistent with PATH operating rules. The Carrier subsequently submitted the aforementioned Question at Issue to this Board.

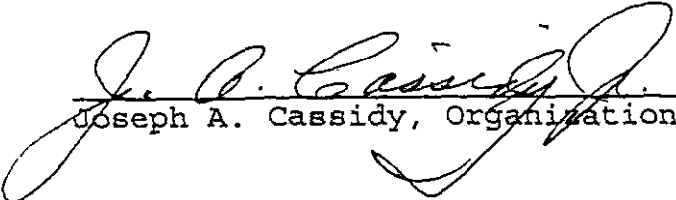
As noted above, since the late 1960's locomotive engineers have been given the contractual right to staff or pilot Burro Cranes, Tampers and Snow Blowers on PATH when such equipment is operated outside the worksite, shop or storage area. Moreover, the current Agreement between the parties requires pilots on the Tamper and Snow Blower to be qualified as Engineers. These contractual obligations are mandatory, not permissive. Accordingly, PATH may not unilaterally remove Engineers or Engineers/Switching from this equipment.

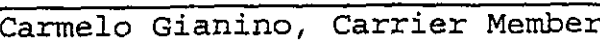
The FRA's response to the question posed to it by the Carrier cannot alter the clear contractual requirement on PATH mandating that Burro Cranes, Tampers and Snow Blowers be operated or piloted by locomotive engineers. It is the collective bargaining Agreement that is controlling in this dispute, not FRA regulations. In accordance with the current Agreement, qualified Engineers must staff or pilot Burros Cranes, Tampers and Snow Blowers on PATH when such equipment is operated outside the worksite, storage area or shop. Any changes to this Agreement must be negotiated pursuant to Section 6 of the Railway Labor Act, notwithstanding the opinion expressed by the FRA in their May 16, 1994, response to PATH.

ANSWER

Under the terms of the Agreement, the Carrier is constrained to utilize covered members to perform pilot work on self-propelled vehicles such as the Burro Crane, Tamper and Snow Blower.


Robert M. O'Brien, Neutral Member


Joseph A. Cassidy, Organization Member


Carmelo Gianino, Carrier Member

Dated: