

**PUBLIC LAW BOARD NO. 7035
CASE NO. 1**

PARTIES TO THE DISPUTE: (Brotherhood of Maintenance of Way Employes
(
(and
(
(National Railroad Passenger Corporation
(Amtrak

STATEMENT OF ISSUE:

1) Does Amtrak violate Rule 29 of the Amtrak BMWF Corporate Agreement dated March 1, 1976 (as amended) when it fails to allow a weekend travel allowance to employees assigned to the Michigan District DynaCat Tamper Gang when they make weekend trips from their homes to the headquarters point and vice versa?

2) If the answer to Question No. 1 is "Yes", what shall the remedy be?

FINDINGS:

The Board, upon consideration of the entire record and all the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by Agreement; this Board has jurisdiction over the dispute involved herein; and that the parties were given due notice of the Hearing held.

On October 17, 2006, the Carrier and the Organization reached an agreement, subject to the provisions of Rule 29, concerning the staffing and its operation of a piece of equipment on the Michigan District known as the DynaCat Tamper. Pursuant to that agreement, the positions were advertised and awarded to qualified employees on the Michigan District. The selected employees were compensated at the appropriate rate for work performed and additionally were paid a \$29.50 per diem applicable to gangs established under Rule 29 of the Agreement.

Subsequent to the establishment of these positions, the Organization requested that the incumbents receive the weekend travel allowance provided for in Rule 29. Amtrak advised the Organization that the per diem payments made under the September 17, 1986 Letter Agreement were in lieu of all other allowances in the District Unit Rule and therefore, the incumbents were not entitled to the weekend travel allowance set forth in Rule 29.

By letter dated December 15, 2006, the Organization formally protested Amtrak's application and interpretation of Rule 29 and the September 17, 1986 Letter Agreement. By letter dated December 22, 2006, Amtrak detailed its application and interpretation of the Agreement and provided copies of the original provision of Rule 29, as well as the negotiated amendments relating to this issue. By letter dated February 2, 2007, the Organization indicated their desire to forward the dispute to arbitration. By agreement of the parties, Claims on behalf of the involved employees were held in abeyance pending the Board's determination in the instant case.

According to the Organization, the Carrier violated Rule 29 of the Agreement when it denied Claimants their Rule 29 weekend travel allowances. According to the Organization, the plain language of Rule 29 provides that employees are entitled to both the weekend travel and per diem allowances. These were not meant to be separate and exclusive. The 1986 Letter does not change this result. According to the Organization, there was never any intent to eliminate the weekend allowance when the 1986 Letter or subsequent agreements were entered into. In addition, even if this Referee finds that the language of Rule 29 is ambiguous, the Organization stresses that there is a past practice of compensating employees for both the weekend allowance and the per diem. As a remedy, the Organization claims that Claimants should be paid for the weekend and the per diem allowances concomitantly, for work on the DynaCat Tamper.

Conversely, the Carrier takes the position that the Organization cannot meet its burden of proof and that Claimants are not entitled to payment for both the weekend and per diem allowances. According to the Carrier, when the 1986 Letter Agreement was reached, it was the parties' intention that the increased per diem would replace all other allowances including the weekend allowance. According to the Carrier, it was understood that the 1986 Letter Agreement provided for the elimination of the weekend allowance. The Carrier contends that it acted appropriately when it did not compensate Claimants for the weekend allowance, because the per diem had been paid. An Award favorable to the Organization would provide a windfall to employees. The Carrier stresses that the burden in this matter is on the Organization and the Organization cannot meet that burden of proof.

The language of Rule 29 provides:

VI. Travel Allowance

1. Employees assigned to positions in District Units established pursuant to this Agreement, will be allowed a travel allowance of:

(a) \$12.50 for each week end trip from their homes to the headquarters point, including the initial trip in establishing the District Unit.

(b) \$12.50 for each week end trip from the headquarters point to their homes, including the final trip after termination of the District Unit.

However, an employee assigned to a unit working a four (4) day week shall forfeit twenty-five percent (25%) [twenty percent (20%) when working a five (5) day week] of such travel allowance for each day of the work week on which compensation paid him by AMTRAK for service performed has not been credited. Compensation referred to in this section is understood to include that received for holidays under Article II of the Agreement of August 21, 1954 as amended.

2. The payment referred to in Section (a) hereof, is to cover any expenses these employees may incur while making such week end trips and is in lieu of all other compensation said employees may be entitled to under the provisions of any other agreement, practice or working condition for such week ends.

3. The provisions of this Article are not applicable to trips made by employees to and from their homes on legal holidays.

4. Each employee assigned to a position in a District Unit established under this Agreement will receive, in addition to regular earnings, a per diem allowance of \$29.50 per day for each working day in which he performs compensated service. This allowance is in lieu of any other allowance or provisions by rule, custom or practice relating to travel time, transportation, meals or lodging, however established.

5. Should the headquarters for a particular gang change more than 70 miles from the point originally established, the per diem allowance

provided for in Article VI, Paragraph 4 above, will cease and the following will apply:


Employees are entitled to lodging and meals. Amtrak may substitute a \$29.50 per diem allowance in lieu of meals for each work day that covered employees perform compensated service, whether Amtrak provides camp cars or other lodging. ...


After a complete and through review of all the relevant evidence and arguments, this Board finds that the Organization has been able to meet its burden of proof to show that employees are entitled to both the per diem and weekend allowances when the conditions of Rule 29 are met. The Organization has proven that the language of Rule 29 is plain and unambiguous in that employees are entitled to both the weekend and per diem allowances when traveling to and from headquarters on a weekend to perform weekday work. The language of the 1986 Letter Agreement makes no reference to the weekend allowance, and the 1992 Agreement reiterates the weekend allowance language of Rule 29. We believe that to eliminate the weekend allowance would render the significant language of Rule 29 meaningless, clearly not the intent of the parties. Therefore, this Board finds in favor of the Organization and finds that employees who qualify are entitled to both the weekend and per diem allowances according to Rule 29.

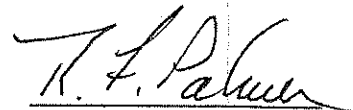

The Claim is sustained.

AWARD

Claim sustained.


Steven M. Bierig
Chairperson and Neutral Member


Bradley Winter
Organization Member


Richard Palmer
Carrier Member


Dated at Chicago, Illinois this 24th day of March 2008

Public Law Board No. 7035

Case No. 1

Amtrak's Dissent

The issue before the Board in this case was whether or not Amtrak violated the BMW agreement by not paying the travel allowance to employees assigned to District Units established under Rule 29 when they are receiving the per diem payment provided for in the September 17, 1986 Letter Agreement. The majority in this case elected not to interpret the existing agreements, but to change them.

The September 17, 1986, Letter Agreement was negotiated to pay an allowance in lieu of providing production gang employees with lodging, meals and travel under certain conditions. Those conditions being where the employees are not "away from home", requiring lodging and meals, but are commuting to work each day. The Letter Agreement clearly states in the opening paragraph that the parties agreed to provide a per diem allowance for certain types of gangs (as defined in the agreement) "in lieu of all other allowances provided in those rules." Again in Item 1 of that agreement, it is clearly provided that "This per diem allowance is in lieu of any and all other allowances for which covered employees are otherwise eligible."

Clearly, the intent of the parties in the September 17, 1986, agreement was to provide a daily payment to compensate employees for any and all expenses associated with reporting for duty on a daily basis in a covered gang. They are not away from home during the week, are not being lodged or required to purchase meals because they are held away from home, nor are they traveling between the work site and their homes on the weekends. That agreement also provides that when the headquarters of the gang is changed by more than 70 miles, the daily payment will cease and employees will be afforded all the allowances provided in the applicable rule. This would include lodging, meal allowance and travel allowance for travel between home and the work location on the weekends.

The majority decided to change the unambiguous language of the letter to provide that the per diem is only in lieu of meals and lodging, rather than in lieu of "all other allowances provided in those rules." As noted in our submission to the Board, if that is what the parties had intended by the letter, that is what they would have written.

The Board clearly exceeded the scope of its authority by amending rather than interpreting the agreement. For this reason, Amtrak vigorously dissents to the decision and finds it to be without precedential value in resolving disputes.



R. F. Palmer
Carrier Member
March 24, 2008