

NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 2406

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NATIONAL RAILROAD PASSENGER CORPORATION \*  
(AMTRAK) \*

CASE NO. 70

- and -

BROTHERHOOD OF MAINTENANCE OF WAY \*  
EMPLOYES \*

AWARD NO. 70

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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:

"(a) Protest of Claimant, Paul D. Tregear, Ironworker protesting the awarding of Structural Welder position to a junior employee and sending of junior employees to welders training school without first considering the Claimant.

(b) The Claimant be afforded Structural Welders seniority one rank ahead of the most senior of the junior employees awarded the disputed position."

Background Facts

On August 26, 1977 the Carrier and the Organization entered into a Memorandum of Agreement for the purpose of establishing training programs for certain classes of employees including Track Welders/Structural Welders. The Agreement provided, inter alia, that the Carrier could, at its discretion, request employees holding seniority in any of the involved classes to attend appropriate training courses; that the Carrier would bulletin the types of training courses, qualifications for the course and location to be held, at least fifteen (15) days prior to the start of each month; that trainees would be selected jointly by the Assistant Chief Engineer-Maintenance and a designated representative of the Organization; that selection for the training programs would be based upon "earliest date of entry into Carrier's service" when qualifications and aptitude were deemed to be sufficient; and, that complaints from employees who were not selected as trainees could be referred to the Chief Engineer, Northeast Corridor, but that such complaints would not be considered, handled or recognized as grievances or penalty claims against the Carrier.

By letter dated March 2, 1979 Ironworker Paul D. Tregear (hereinafter the "Claimant") protested the fact that an employee, junior to him, had been sent to welding school and as a result of such schooling he had been awarded a position on the Welders'

Roster. The Organization requested that the Claimant be given the same training as the junior employee, and, if he was able to qualify, that he be placed on the appropriate seniority roster and recognition be given to his greater seniority. At the time this claim was made, the Carrier was not training employees in welding school. The Carrier advised the Organization that it intended to reopen the welding school during the first week of May 1979, and that the Claimant would be included in the first class at the school. Subsequent thereto, the Claimant apparently attended welding school and successfully completed the curriculum, and the Organization, on April 14, 1981, requested that the Claimant be placed on the Welders' Roster, B & B, with the same date in class as afforded the employee immediately junior to him, Terry Douglas, who had been awarded Position 5-79.

The Carrier denied the Organization's request first based upon the contention that the matter could not be raised as a grievance under the August 26, 1977 Training Agreement, and secondly based upon the language in Rule 10 in the parties' collective bargaining agreement which provided in part that ". . . an employee entering service in a class above that of Trackman will acquire seniority in that class from the date assigned to an advertised position . . ."

#### Positions of the Parties

The Organization contends that the Claimant was denied the

opportunity to attend training school at an earlier date because the Carrier did not properly bulletin the involved training course in violation of paragraph 3(d) of the 1977 training agreement. Because of this failure to bulletin the training, the Organization contends that junior employees were trained before the Claimant, and therefore they were given the opportunity to bid upon welders' positions ahead of the Claimant.

The Organization also argues that the Carrier did not notify an Organization representative prior to its selecting junior employees to attend welders' training school. The Organization points out that the Claimant possessed the qualifications and aptitude required, and that he had an earlier date entered service with the Carrier than did the involved junior employee.

The Organization submits that it properly progressed the Claimant's protest in accordance with Rule 75 of the Schedule Agreement.

The Organization maintains that when the Claimant qualified as a Structural Welder on April 7, 1981, after completing training school, he should have been given a 1979 seniority date on the Welders' Roster.

The Organization submits that the relief requested is justified in view of the fact that the Carrier violated the August 26, 1977 Agreement and the effective Rules Agreement, and also in view of the fact that the Carrier untimely delayed enrolling the Claimant in

training school.

In conclusion, the Organization submits that there are no prohibitions in the collective bargaining agreement against placing the names of employees on seniority rosters where those employees have been treated unjustly. The Organization points out that Rules 16(d) and 16(e) provide for corrections to seniority lists. Therefore, the Organization submits that the correction should be made in the instant case by placing the Claimant on the Welders' Roster with the appropriate 1979 seniority date.

The Carrier submits that the Organization did not properly progress the complaint as it initially submitted the matter to the Carrier's Director of Labor Relations, while paragraph 3(f) of the 1977 Training Agreement establishes that complaints were to be submitted to the Assistant Chief Engineer-Maintenance, and that in no event would such complaints be considered "grievances".

The Carrier argues, alternatively, if its procedural objections are rejected by the Board, that the claim lacks merit. - The Carrier contends that when, on February 26, 1979, Mr. T. Douglas was awarded a B & B Welder position, the Claimant lacked the necessary qualifications to bid on such a position. Additionally, the Carrier maintains that Rule 10 of the collective bargaining agreement governs the establishment of seniority in classes above Trackman, and that to place the Claimant on the Welders' Roster without his ever having

been assigned to an advertised welder's position would be contrary to the specific language of Rule 10.

The Carrier argues that the Claimant has failed to present any proof that he is eligible in any manner for the seniority date which he seeks. Therefore, the Carrier requests, if the Board does not dismiss the claim because of the procedural deficiencies regarding its progression, that the claim be denied on its merits.

#### Findings of the Board

The claim before us is essentially one which raises equitable considerations, as it is clear that a complaint regarding compliance with the Training Agreement of 1977 was agreed to by the parties as not being "a grievance or penalty claim against the Carrier".

It is also clear that Rule 10 in the Schedule Agreement establishes a specific and exclusive procedure for an individual to be placed on a seniority roster, where that roster involves a class above that of Trackman. Welders are a class above that of Trackman; and in order for the Claimant to be placed on the Welders' Roster he must have been assigned to an advertised position in that class.

There is no evidence in the record to establish that the Claimant ever was assigned to an advertised position as a Welder, and therefore if this Board placed him on the Welders' Roster we would be fashioning a remedy contrary to the specific requirements of the agreement.

In spite of that conclusion, we believe that this Board does have broad authority to fashion appropriate remedies where there is no limitation in the collective bargaining agreement upon our remedy jurisdiction. However, before we decide to grant the Claimant approximately nine (9) years of retroactive seniority, we have to be convinced that the equities are heavily weighted on his side of the scale. We are not so convinced.

There is no showing that the Claimant was purposefully bypassed for training in 1979.

We also take arbitral notice of the fact that during the 1977 to 1979 time frame the Carrier and the Organization were jointly striving to qualify as many employees as possible as Amtrak was in the process of acquiring its own employees for the first time. As a result, there was understandable confusion at the various operating divisions of the Carrier in terms of notifying employees regarding training opportunities.

Additionally, we cannot assume that the Claimant would have entered the same training class as Employee Douglas, even if he had notice and an opportunity at the same time as did Employee Douglas. Nor can we assume that the Claimant would have successfully completed training at that time.

We also note that the Carrier, upon advice that the Claimant desired an opportunity for training, afforded him that opportunity as soon as logistically possible.

Finally, the Board observes that the Claimant has not, to this date, been assigned to a position as a Welder. Therefore, if we were to grant him nine (9) years of retroactive seniority as a Welder, such an award, while it might be equitable from the Claimant's perspective, would be inequitable to numerous employees on the Welders' Roster who attained their seniority properly and in compliance with Rule 10 of the Schedule Agreement.

Based upon the foregoing considerations, this Board finds no basis to remedy the Claimant's complaint regarding his alleged failure to receive timely training. Accordingly, the claim will be denied.

Award: The claim is denied. This Award was signed this 26th day of February, 1988 in Bryn Mawr, Pennsylvania.



W.E. LaRue, Organization Member



L.C. Hriczak, Carrier Member



Richard R. Kasher, Chairman and Neutral Member