

NATIONAL MEDIATION BOARD  
PUBLIC LAW BOARD NO. 2406

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NATIONAL RAILROAD PASSENGER CORPORATION  
(AMTRAK)

- and -

BROTHERHOOD OF MAINTENANCE OF WAY  
EMPLOYEES

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CASE NO. 71

AWARD NO. 71

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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:

"1. D. Parker, Carpenter Foreman, G. Young, Carpenter, J. Breitmayer, Carpenter, for twelve hours pay at their respective rate at time and one-half, and

2. R. DiMemmo, D. Rossett, T. Finizio, Carpenter Foremen, I. Baranowski, Assistant Carpenter Foreman, M. Cameron, S. Iannello, S. Green, G. Hardy, E. Pwedo, W. Robinson, R. Russell, A. Tiberi, G. Mattie, J. Kostak, P. Lavelle, D. Respass, J. Rocco, W. Bady, T. Hudson, V. Banks, J. Torres, and P. Desantis, Carpenters, for three hours pay at their respective rate at time and one-half for December 6, 1980 - 11:00 a.m. to 11:00 p.m. on December 7, 1980 when Electric Traction, Track Department and Management Employees performed carpentry duties."

### Background Facts

On December 19, 1980 a Local Chairman of the Organization filed a claim on behalf of the above-named Claimants based upon the contention that Track Employees, Electric Traction Department Employees and Management Employees had engaged in performing carpentry duties "by constructing and moving platforms and ties, being used as platforms, from Leigh Avenue to 16th Street and back to accommodate movement of a crane from 11:00 a.m. 12/6/80 to 11:00 p.m. 12/7/80."

By letter dated January 20, 1981 the Division Engineer responded to the claim and stated that after investigation he had determined that no platforms were constructed on the dates in question; that the planking and ties were utilized as blocking to move the burro crane; and that the planking was cut by B & B carpenters. The Division Engineer concluded that no agreement violation had occurred as the work in question was the type that was normally and customarily performed by the employees involved. Therefore the claim was denied.

### Positions of the Parties

The Organization points to its Scope and Work Classifications Rule which provides, in part, that employees represented by the Organization include carpentry employees and that such carpentry

employees are entitled to perform work which involves construction or repairs to or dismantling of structures made of wood or wood substitutes.

The Organization submits that the planking and blocking used for the movement of the crane were made from wood, and the Organization argues that its members were entitled to perform the work in question. The Organization argues that it is not necessary to "nail something down" in order for there to be an act of construction. The Organization maintains that the work of constructing plank crossings, the work involved in the instant dispute, has traditionally and customarily been performed by its members in the Bridge and Building Department.

The Organization cites a number of awards of the Third Division of the National Railroad Adjustment Board, which it contends support its position.

The Organization requests that its claim be sustained.

The Carrier argues that the Organization has presented insufficient evidence to support its claim.

The Carrier points out that the carpenters cut and delivered the blocking and planking that was used by the Track and Electric Traction sub-department employees to move a 225 ton crane which was necessary to facilitate the setting of catenary beams over the track. The Carrier maintains that absolutely nothing was constructed or

nailed down in any manner during the operation, and that the Organization has simply failed to prove that there was any temporary crossing constructed.

The Carrier submits that the Organization failed to establish that this non-carpentry work was work that was exclusively performed, as a matter of system-wide practice, by members of the craft or class that the Organization represents.

The Carrier cites a number of decisions from the Third Division of the National Railroad Adjustment Board in support of its position.

The Carrier argues, alternatively, that the relief requested is excessive, and cites cases in support of this contention.

The Carrier requests that the claim be denied.

#### Findings of the Board

The relevant facts are undisputed. The Claimants performed carpentry work on the dates in question when they cut the blocking and planking. The only question is whether the work performed by the employees in the Track and Electric Traction Department was work that the Claimants were entitled to under the terms of the Schedule Agreement.

The record evidence, as best this Board understands it, establishes that employees other than those in the Claimants' sub-department were involved in the placement of blocking and planking in order to facilitate the movement of a crane. On its face, this type of work does not appear to involve carpentry or carpentry

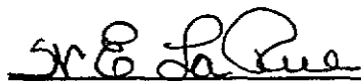
construction. Therefore, we cannot conclude, based upon the claim alone, that a prima facie case has been established by the Organization under the Scope and Work Classifications Rule.

Even if it were established that the work involved, the placing of the planking, was, in fact, "carpentry or carpentry construction", nevertheless, in this Board's opinion, absent specific language in the Scope Rule reserving this type of work to the members of the MW-B & B craft or class, the Organization would be obligated to establish, by the presentation of preponderant evidence, that the work involved was customarily performed by the members of its craft or class, and that the members of the craft or class have some exclusive color of claim to the work.

The record does not establish that such work has been traditionally or customarily performed, on an exclusive basis, by the employees represented by the Organization.

Accordingly, the claim will be denied.

Award: The claims are 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