BOARD OF ARBITRATION

PETER R. MEYERS
Neutral Member

BETWEEN

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

(TRACK LAYING MACHINE AND DITCHER DISPUTE)

Hearing: April 13, 1988

DECISION AND AWARD

This Board of Arbitration was established by agreement between the Brotherhood of Maintenance of Way Employees and the National Railroad Passenger Corporation (Amtrak) pursuant to Section 3, Second of the Railway Labor Act, 45 U.S.C. § 153, Second.

Issues Presented

The following questions are submitted to the Board by mutual agreement of the parties for final and binding arbitration:

1. Was Amtrak obligated under the contract provisions of the Track Laying Machine Ditching Machine and Tamper Operator Agreements to continue employees on the positions it abolished by notice dated January 12, 1988?

2. If question No. 1 is in the affirmative, what is the Carrier's responsibility to the employees with regard to compensation, benefits, and seniority?

Introduction

By letter dated December 29, 1987, Carrier, the National Railroad Passenger Corporation (Amtrak), notified the Organization, the Brotherhood of Maintenance of Way Employes, that due to a reduction in capital funds, Carrier would abolish certain contract positions in the track laying machine ("TLM") and ditcher machine units that had been operating in Carrier's "Northeast Corridor" rail properties between Boston, Massachusetts, and Washington, D.C. On January 12, 1988, Carrier notified the Organization that twenty-two such positions would be abolished as of the close of business on January 21, 1988. The Organization responded by charging that Carrier's intended action would violate the parties' collective bargaining agreement and the

Railway Labor Act.

On January 22, 1988, the Organization initiated proceedings in the United States District Court for the District of Columbia, seeking to enjoin Amtrak from abolishing these positions. Upon a hearing on the Organization's motion for a preliminary injunction, the district court ruled that the dispute between the parties was a "minor dispute" relating to the interpretation of the parties' collective bargaining agreement; the district court accordingly dismissed the Organization's complaint for lack of subject matter jurisdiction. The parties thereafter agreed to submit this dispute for final and binding arbitration. This matter came to be heard before a three-member board of arbitration on April 13, 1988, in Philadelphia, Pennsylvania.

Relevant Contract Provisions

Collective Bargaining Agreement

Rule 23. Force Reduction - Advance Notice - Emergency Force Reduction

When forces are reduced or positions abolished, employees will be given not less than five (5) working days advance notice and bulletin shall be promptly posted identifying the position to be abolished. All abolishments shall be effective at the close of the employees' tour of duty.

Emergency Force Reduction: (a) Rules, agreements, or practices, however established, that require advance notice before positions are temporarily abolished or forces are temporarily reduced, are hereby modified so as not to require advance notice where a suspension of Amtrak's operations in whole, or in part, is due to a labor dispute between Amtrak and its employees; (b) Except as provided in paragraph (a) hereof, rules, agreements or practices, however established, that require advance notice to employees before temporarily abolishing positions or making temporary force reductions, are hereby modified to eliminate any requirement for such notice under emergency conditions, such as flood, snow storm, hurricane, tornado, earthquake, fire, or a labor dispute, other than as defined in paragraph (a) hereof, provided that such conditions result in suspension of Amtrak's operations in whole, or in part. It is understood and agreed that such temporary force reductions will be confined solely to those work locations directly affected by any suspension of operations. It is further

understood and agreed that, notwithstanding the foregoing, any employee who is affected by such an emergency force reduction and reports for work for his position without having been previously notified not to report, shall receive four (4) hours' pay at the applicable rate for his position. If an employee works any portion of the day, he will be paid in accordance with existing rules.

Rule 89. Northeast Corridor - Units

Amtrak may establish one or more of the following units not assigned to fixed headquarters to work over the Southern and Northern Districts as herein provided:

. . .

9. Track Laying Machine and Track Laying System Support Unit.

10. Track Laying System Welders and Grinders.

11. Track Undercutter Machine.

12. Ditcher Machine.

I. Each of the units hereinbefore mentioned will be considered as a separate seniority district.

. . .

III. Seniority of an employe entering any of the units hereinbefore specified will begin with the date he is first awarded an advertised position in such unit. He will also retain and accumulate seniority in his home seniority district.

IV. An employe who has acquired seniority in any of the units covered by this Rule and who has been returned to his home unit in reduction in force must, in order to protect his seniority in such unit, bid on advertised new positions or vacancies in the classes in which he holds seniority and return to his class in such unit at the first opportunity or forfeit his seniority therein except:

An employee in active service on his home seniority district may not be required to accept an equal or lower rated position in a Corridor Unit so long as he is able to hold an equal or higher rated position on his home seniority district. Upon being relieved from an equal or higher rated position on his home seniority district the employe must return to the Corridor Unit and exercise seniority therein or forfeit seniority in such unit.

Track Laying Machine Agreement

I. C. Applicants who are accepted for the [TLM contract force] position(s) identified in Item I will remain on their assigned position beginning January 1 of each year, to an including

December 31 of the same year, except under extenuating circumstances to be evaluated and approved by the Deputy Chief Engineer and the General Chairman, or his designated representative, of the district involved. Successful applicants for these positions will be subject to the following conditions:

1. Employes presently assigned to positions on the TLM who had previously acquired seniority on the TLM rosters will be given preference to positions established under Item I above.

2. Beginning with the last working day of November 1981, and each succeeding month of November thereafter, those employes who are assigned to the TLM contract force on positions identified in Item I will have the option of (1) remaining on their assignment for another period of one year and notify their supervisor to that effect; (2) elect to exercise displacement rights to any available position in their home seniority district in accordance with the provisions of the Schedule Agreement.

   It is understood that an employe who elects option (1) will notify the Senior Engineer of TLS, in writing, no later than the first working day of November of his intention to remain on the TLS for the succeeding year.

II. During the period employes are assigned to positions described in Item I, they will not be displaced, nor may they exercise seniority by bid to other rosters or positions not related to the TLM contract force.

. . .

IV. The TLM will not normally operate during the winter months, January through March and portions of December; however, the positions described in Item I will be maintained during this period. The incumbents of those positions will only be utilized to perform necessary maintenance of the Track Laying System equipment. It is also understood that by utilizing the incumbents of these positions, it will not serve as a basis for reduction of positions of repairmen regularly assigned to perform such mechanical work at a location where the Track Laying System equipment will be maintained.

Ditching Machine Agreement

1. The Ditching Machine Operator's position will be classified as an EWE "A" position.

2. Employees who are awarded positions covered by this Agreement will remain on their assigned positions for a period of twelve (12) months beginning on January 1 of each year, to and including December 31 of that same year, except under extenuating circumstances to be evaluated and approved by the Assistant

Regional Engineer East-Track and the General Chairman, or his designated representative, of the district involved.

3. Beginning with the first working day of October and each succeeding month of November thereafter, those employees who are assigned to positions covered by this Agreement will have the option of:

   (a) remaining on them for another period of twelve (12) months and so notifying the Assistant Regional Engineer East-Track to that effect; or

   (b) exercising displacement rights commencing the first day of January to any available position in their home seniority district in accordance with the provisions of the Schedule Agreement.

   It is understood that an employee who elects the first option will notify the Assistant Regional Director East-Track, in writing, no later than the first working day of November of his intention to remain on his position for the succeeding year.

Tamper Operator Agreement

1. Employees who are awarded positions covered by the Tamper Operator Agreement will remain on their assigned positions for a period of twelve (12) months beginning on January 1 of each year, to and including December 31 of that same year, except under extenuating circumstances to be evaluated and approved by the Deputy Chief Engineer and the General Chairman, or his designated representative, of the district involved.

2. Beginning with the first working day of November and each succeeding month of November thereafter, those employees who are assigned to the Tamper Operator "contract" force will have the option of:

   (a) remaining under "contract" for another period of twelve (12) months and so notifying the Assistant Chief Engineer-Track to that effect; or

   (b) exercising displacement rights commencing the first day of January to any available position in their home seniority district in accordance with the provisions of the Schedule Agreement.

   It is understood that an employee who elects the first option will notify the Assistant Chief Engineer-Track, in writing, no later than the last working day of November of his intention to remain under "contract" for the succeeding year.

The Organization's Position

The Organization contends that under the provisions of the TLM

Agreement, the Tamper Operator Agreement, and the Ditching Machine Agreement, as each has been amended, the employees assigned to positions covered by these letter agreements all have the option of remaining in those positions from year to year by notifying Carrier of their intention to remain. The Organization argues that Carrier may not abrogate this right by abolishing these positions; under the Railway Labor Act, the letter agreements may be revised, and the positions abolished, only by the mutual agreement of the parties.

The Organization points out that it is well established that a specific contractual provision supersedes a general provision. The Organization contends that the employee option provided in the TLM, Tamper Operator, and Ditching Machine agreements is a more specific provision that supersedes the general provision in Rule 23 of the parties' collective bargaining agreement that allows Carrier to abolish jobs and implement reductions in force whenever it deems such action to be necessary. The Organization therefore contends that by abolishing the positions under these three letter agreements, Carrier has violated the letter agreements' provisions that give employees the option of remaining in their positions from year to year.

The Organization asserts that the contract positions under the TLM, Tamper Operator, and Ditching Machine agreements may be abolished only by the mutual agreement of the parties. The Organization therefore asserts that the abolished positions should be restored, the twenty-two employees who occupied these positions should be reinstated to them with their seniority rights unimpaired, the employees should be compensated for all lost wages and benefits, including travel time, and the junior employees who were displaced by the employees leaving the abolished positions also should be reinstated with unimpaired

seniority rights and compensation for all lost wages and benefits, including travel time.

The Organization then argues that even if the Board finds that the Carrier does have the right to abolish these positions without negotiating with the Organization and that the employees do not have the option of remaining in their positions from year to year, the affected employees still are entitled to a remedy. The Organization points out that it is undisputed that in November 1987, Carrier offered contract renewals to all employees occupying positions under the three letter agreements. Moreover, all of these employees properly notified Carrier that they intended to remain in their positions during 1988; the employees therefore started a new contract year on January 1, 1988. The Organization argues that if this Board finds that the employees do not have the right to remain in their positions from year to year, the employees are entitled, under the terms of the three letter agreements, to remain in their positions for the rest of 1988. The Organization therefore contends that at the very least, the employees whose positions were abolished and the employees that they displaced are entitled to reinstatement for the rest of 1988, with unimpaired seniority rights and compensation for all lost wages and benefits, including travel time.

The Carrier's Position

The Carrier contends that none of the relevant provisions in the letter agreements require it to maintain the positions at issue. Moreover, Carrier retains the basic management right to determine work requirements, operation plans, and necessary staffing according to service and funding requirements. Carrier asserts that the letter

agreements must be read together with Rule 89 of the schedule agreement; nothing in these provisions guarantees that the contract positions must continue to exist if there is no work or money to continue their operation. Carrier therefore argues that the employees' option to remain in the contract positions from year to year depends on Carrier's being able to continue operating these positions. If Carrier cannot operate these positions due to lack of work or money, then the positions do not exist; employees cannot opt to remain in nonexistent positions.

Carrier then argues that the Organization's assertion, that the letter agreements constitute unending guarantees of employment, is absurd. Carrier points out that the Organization's interpretation means that Carrier never could abolish a contract position, without regard for the availability of work and operating funds. Carrier contends that it did not guarantee perpetual continuation of the positions at issue; such an agreement would be absurd. Carrier also points out that most, if not all, of the affected employees had seniority rights that enabled them to obtain other positions; these employees therefore lost little or no compensation because the contract positions were abolished. Carrier further asserts that if this Board determines that the affected employees are entitled to remedial compensation, then each employee's situation must be reviewed to determine the extent of the appropriate remedy.

Carrier further argues that Rule 89 provides Carrier with the right, but not the obligation, to establish track units, such as the units that include the positions at issue. Rule 23, governing reductions in force, also authorizes Carrier to abolish positions. Moreover, the letter agreements neither establish guaranteed

positions, nor do they except the contract positions from Rules 89 and 23. Carrier additionally contends that it previously abolished positions under the Tamper Operator Agreement and that the Organization has acknowledged and acquiesced in the reductions. Carrier therefore contends that under both the schedule and the letter agreements, it is not required to maintain these positions after properly shutting down the units of which they are a part.

Carrier also disputes the assertion that the affected employees are entitled to remain in the contract positions at least during 1988. Carrier points out that it notified the Organization that the units would not operate in 1988 on December 29, 1987. Also, the affected employees did not perform any of the units' normal work during 1988; they worked only at "mothballing" equipment. The Carrier points out that not one tie was laid or ditch dug during 1988. In addition, the contract language does not support the contention that these positions must be maintained when there is no work and no operating funds for them. Carrier therefore contends that its action was authorized by all of the relevant agreements, and the claim should be denied.

Decision

This Board has thoroughly reviewed the evidence in this case, and we must find that the Organization has not presented sufficient evidence and authority to support its position that Amtrak was obligated to continue the Claimants in the "contract" positions involving the track laying machine, ditching machine, and as tamper operators after the Carrier properly notified the Organization that the twenty-two positions were being abolished. Therefore, the claim must be denied.

The record in this case is clear and unrebutted that Amtrak was forced by economic circumstances to abolish the twenty-two positions in the two Rule 89 production units. Rule 89 specifically states that "Amtrak may establish one or more of the following units . . ." (Emphasis added.) Additionally, Rule 23 of the collective bargaining agreement allows Amtrak to implement reductions in force and to abolish positions when Amtrak deems it necessary. Rule 23 states in part:

> When forces are reduced or positions abolished, employees will be given not less than five (5) working days' advance notice, and bulletins shall be properly posted identifying the position to be abolished. All abolishments shall be effective at the close of the employees' tour of duty.

It goes without saying that a legitimate reason for a carrier to abolish certain positions is when there are no longer any funds available to pay the personnel for those positions. Amtrak has established that there was no longer any funding for the positions in question; and therefore Amtrak, exercising its management rights to direct its operations and rearrange existing work assignments to meet its operational necessities, abolished the positions and notified the Organization properly pursuant to the rules.

The Organization argues that the agreements that led to the creation of these highly technical positions were not intended to be subject to the constraints of Rule 23. The Organization contends that Amtrak wanted to set up a situation in which it would have a group of technicians that Amtrak could rely on for an entire year and, in return, those employees could rely on their "contract" guaranteeing their employment position for the balance of that same year. The Organization argues that the parties did not intend that the jobs

could be abolished pursuant to Rule 23. The Organization points out that the language of the TLM Agreement, for example, provides that it "supersedes any agreement to the contrary and shall remain in effect unless changed in accordance with the Railway Labor Act, as amended." This language, according to the Organization, thereby removes the positions from the purview of Rule 23 and other aspects of the collective bargaining agreement.

This Board disagrees with the Organization's analysis. Although specific provisions of a contract often carry more weight than general provisions and can supersede them and, in some cases, can be read to overrule conflicting general rules, that principle of contract interpretation is not applicable here. There is nothing in the three agreements creating the new highly specialized units that in any way restricts the Carrier's rights under Rule 23. If the Carrier has legitimate reasons, such as economic considerations, to abolish positions, then even in view of the language creating the highly specialized units at issue here and the individual employees' year-long contracts with the employer, the Carrier can still exercise its management rights and abolish those positions.

This Board recognizes that one major problem in the fact pattern in this case is that as late as November 30, 1987, the Carrier was still soliciting signatures on the one-year contracts for the year 1988 from the employees in these units. That action certainly indicated to the employees that for the year 1988, they did not have to worry about their job assignments and would continue on as tamper operators or in their other positions pursuant to Rule 89. Then, three weeks later, the Carrier abolished the very positions that it had just contracted with the employees to work in for the year 1988.

It is hard to believe that in late November, the Carrier had no knowledge that it was possibly facing the abolishment of those positions and could not have notified the employees of that possibility at the time that it was signing them up for 1988. This Board believes that the Carrier could have more tactfully dealt with the impending abolishment of positions. However, that public relations blunder on the part of the Carrier does not take away its Rule 23 rights to abolish the very positions for which it signed up employees three weeks before. It could have been handled better and more tactfully, but the actions of the Carrier in no way violate the clear terms of the collective bargaining agreement, nor do they detract from the definite right of the Carrier to direct its work force. And, those Carrier actions do not give authority to this Board to require that the employees be allowed to remain in their former positions for the balance of 1988.

In summary, this Board finds that, although possibly inartfully done, the Carrier acted fully within its rights under Rule 23 in abolishing the positions at issue. Therefore, there is no basis to the claim of the Organization that the employees have rights to remain in their positions indefinitely, nor do they have any right to remain in those positions for the balance of the year 1988.

Award

Claim denied.

Neutral Member

Carrier Member

Organization Member

Date: