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SUPPLEMENTAL AWARD

BOARD OF ARBITRATION

(Convened pursuant to a May 31, 1998
Arbitration Agreement with respect to the
labor protective provisions of various
Collective Bargaining Agreements)

In the Matter of the Arbitration

between

NATIONAL RAILROAD PASSENGER CORPORATION
AMTRAK

-and-

COALITION OF AMTRAK UNIONS

Richard Mittenenthal
Chairman

Joshua M. Javits
Amtrak-Designee

Carl E. Van Horn
Coalition-Designee

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BACKGROUND

On October 29, 1999, this Board of Arbitration issued an award concerning the labor protective provisions (LPPs) to be included in various collective bargaining agreements (CBAs) between Amtrak and a Coalition of fourteen unions (Coalition) which together represent some 22,000 employees in various Amtrak bargaining units.

One portion of the award, pages 14-17, dealt with "transaction" triggers, namely, the circumstances under which employees become eligible for LPP benefits. The narrower or more restrictive the trigger, the less employees will receive and the lower the LPP costs for Amtrak. The broader or more expensive the trigger, the more employees will receive and the greater the LPP costs for Amtrak. The parties disagreed as to how the triggers should be defined and what "exceptions" should be applied to the triggers. The award decided most of the points in dispute.

However, one of the "exceptions" urged by Amtrak raised the following issue:

Amtrak also urges...that any jobs "associated with Federal, State and local government projects and contracts [including rail services], or private sector projects and contracts" be excluded from LPP coverage. The Coalition disagrees. This "exception" would apply, for instance, to situations in which a State agrees to underwrite Amtrak's operating losses on some route segment within its borders and later cancels or refuses to renew its contract with Amtrak. And it would apply to a situation in which a metropolitan transit agency contracts with Amtrak to perform maintenance work on its trains for a period of years and later changes its mind. Amtrak employees are dismissed or displaced when these contracts are terminated.

Because these matters had not been fully explored in the parties' briefs, because there were equitable

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considerations on both sides of the issue, and because the "transaction" language in Article III(a) of C-2 was not unambiguous, the Board remanded this part of the dispute to the parties for further discussion "in an attempt to find a satisfactory solution".

The parties' discussions resulted in four distinct agreements. First, where Amtrak receives private funding for a particular train service (e.g., Reno Fun train, Florida train) and discontinues this service when such funding is eliminated or reduced, no LPP benefits are required. Second, where Amtrak provides special passenger trains (e.g., transport of military troops) pursuant to federal contract and discontinues the trains when the contract is cancelled, no LPP benefits are required. Third, where Amtrak contracts with shippers or USPS on an intercity route and discontinues the route in whole or part when the contract terminates, LPP benefits are required. Fourth, where Amtrak receives federal funding on an intercity route and discontinues the route when such funding ceases or is reduced, LPP benefits are required.

The parties, however, were unable to resolve all of their differences. They have returned to the Board for a ruling on three matters. They submitted briefs on September 17, 2001. The Board met on November 16, 2001, to consider the issues. We sought additional information from Amtrak which was received on December 20, 2001. Further written arguments were made by both parties in the past few months.

DISCUSSION AND FINDINGS

Shop crafts. This disagreement concerns "insourced" work for shop craft employees. Amtrak wins a contract, through competitive bidding or as sole bidder, to perform repair, maintenance, rehabilitation, or construction in its shops for a private sector company or some governmental unit. When the contract work is completed (or cancelled), Amtrak employees are dismissed or displaced. The question is whether, in such a situation, the affected employees are entitled to LPP benefits.

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Our answer is "no". "Insourced" work is not part of Amtrak's core shop craft work. It is additional work that helps to provide continuity of employment for the shop crafts; it is additional income, a basis for profits, for Amtrak. When the contract ends, the "insourced" work ends. Amtrak cannot thereafter schedule work which no longer exists. To require Amtrak to give LPP benefits to shop craft people in these circumstances would impose a money burden for a condition over which Amtrak has no control whatever. This should be an "exception" to the "transaction" trigger.

Federally mandated service. This disagreement concerns the federal government requiring train service between certain cities (e.g., between St. Louis and Washington) and supporting this service with federal funds. The federal government then withdraws "its mandate on funds and Amtrak discontinues the service. Employees are displaced or dismissed. The question is whether, in such a situation, the affected employees are entitled to LPP benefits.

Our answer is "no". This train service is mandated by the federal government. Amtrak has no choice in the matter. It must establish the service requested. But when the mandate ends and Amtrak discontinues the service, it cannot reasonably be expected too provide LPP benefits for a condition it had nothing to do with. Indeed, the parties have already agreed that when Amtrak establishes special passenger trains pursuant to federal contract and discontinues the trains when the contract is cancelled, no LPP benefits are required. This situation is sufficiently similar to the case of federally mandated service to call for the very same result. The latter should also be an "exception" to the "transaction" trigger.

State-appointed train service. Amtrak was established by the Rail Passenger Service Act (RPSA) in 1970 to operate a national system of intercity passenger trains. Amtrak has, in addition to the national system, contracted with various states to provide other passenger service. There are presently 19 such state-supported trains. They represent a relatively small part of Amtrak's total operations - for instance, 18 percent of total train miles

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and 9 percent (excluding state subsidies) of total train revenue. State support, subject to negotiations with Amtrak, covers a certain percentage of Amtrak's "operating loss" on a particular train service. That "operating loss" is the dollar amount by which total train and route costs exceed passenger revenue.

It should be emphasized that the freight railroads originally employed the train and engine crews on state-supported trains. Not until 1986 did these crews become Amtrak employees.¹ Hence, any LPP obligations which may have arisen between 1970 and 1986 were apparently the responsibility of a freight railroad. Thereafter, any such responsibility was Amtrak's. The Amtrak Reform & Accountability Act (ARAA) of 1997 repealed all LPP benefits effective June 1, 1998, with the parties being directed to negotiate new arrangements and if unsuccessful being offered the option to arbitrate.

The issue concerns the following scenario. A state fails to renew its contract with Amtrak for train service or puts out the contract for competitive bidding and Amtrak is not the successful bidder. In either event, Amtrak is forced to discontinue this train service and the affected employees are dismissed or displaced. The employees seek LPP benefits from Amtrak.

Amtrak contends that because the discontinuance of train service is the result of a decision made by the state rather than Amtrak, because this decision is "out of Amtrak's control", the job losses should not trigger LPP benefits. It asserts that the imposition of LPP liability in this situation will place Amtrak at a competitive disadvantage in bidding for new state contracts (or in retaining contracts) by raising its contingent costs and hence distorting its cost structure. It asserts further that any LPP liability will place Amtrak at a practical disadvantage in attempting to negotiate full cost recovery from the states.

¹ There was one exception. The crews on the Keystone train became Amtrak employees in 1983.

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The Coalition, on the other hand, contends that the existence of state funding for a train service "should not permit Amtrak to escape its pre-existing responsibilities ..." for LPP benefits. It says that because Amtrak was liable for LPPs on state trains long before the passage of the ARAA in 1997, there is no sound basis for relieving Amtrak from that liability now and that "state funding neither created nor increased Amtrak's labor protection responsibilities". It does not believe the continuation of LPPs will place Amtrak at a meaningful disadvantage in its contracting with states.

In evaluating these arguments, it must be remembered what the Board said in its original award:

Congress, in enacting the ARAA, repealed that portion of the RPSA which had required 'fair and equitable' LPPs and also extinguished the existing LPPs in any CBA between Amtrak and the various unions in the Coalition. Its purpose, as set forth in the ARAA, was to help the parties in effect 'to reduce Amtrak's costs and increase its revenues' and to provide Amtrak with 'additional flexibility' so as 'to operate in a businesslike manner' in managing costs and maximizing revenues. It urged the parties 'to modify [CBAs] to make more efficient use of manpower and to realize cost savings...' That Congress contemplated lower LPP costs for Amtrak seems perfectly clear.

...It was Congress, in establishing Amtrak through the RPSA, that required LPPs for Amtrak employees. It was Congress again, through the ARAA, that eliminated these LPPs and anticipated cost restraint in negotiating a new and more modest LPP arrangement.

To ignore the Congressional statements of purpose found in the ARAA, under these circumstances, would be to ignore the root basis for this arbitration. The need for lower cost, higher revenue, and greater flexibility is a legitimate consideration for this Board...

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There is much to be said for the arguments made by both sides. It is true that LPP benefits were paid by Amtrak when it discontinued state-supported trains in 1981 and 1982 due to insufficient state support. But we note, in this connection, that it was Amtrak's decision, not the state's, to discontinue the trains. The states apparently were willing to continue support but not at a sufficiently high percentage of Amtrak's operating loss. This situation is not likely to recur. When Amtrak was asked by the Board whether there was "any likelihood of Amtrak 'canceling' or getting out of any of the [state-supported] trains...", it replied, "No...we are not likely to withdraw services..." Should this scenario occur again and the decision to discontinue a state-supported train is Amtrak's alone, then we believe Amtrak would be liable for the full LPP benefit set forth in pages 18-19 of our earlier award.

However, a different result is called for when it is the state that cancels the contract with Amtrak and ends its support. Whatever Amtrak's wishes, that particular state-supported train no longer exists. In these circumstances, given the Congressional objectives mentioned above and given Amtrak's need for lower cost, we believe the LPP benefits should be much less than what Amtrak employees on national system trains receive.² This distinction is also justified by the differences between these two groups of employees. Those who work on state-supported trains became Amtrak employees in 1986 or later; those who work on national system trains became Amtrak employees in 1970 or later. Those on state-supported trains are ordinarily dependent for their employment on a state's decision, not Amtrak's; those on national system trains are dependent for their employment on Amtrak's decision alone. Both groups of employees, as well as management, have much to gain from the continuation or growth of state-supported trains which serve to feed passengers into the national system and enhance Amtrak's

² Amtrak concedes that if states were to subsidize some part of national system trains, LPPs would nevertheless continue to apply in full for the employees on such trains even if their train routes were discontinued.

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viability. These aims are more likely to be realized through further restraints on LPP benefits.

For these reasons, the LPP benefits for employees on state-supported trains will be one-third the amount provided in the original award to employees in the national system³, assuming of course that the discontinuance of the train is the state's decision, not Amtrak's.

We recognize that if a state train is discontinued, a question may arise as to whether Amtrak or the state is responsible for the discontinuance. Because this would be essentially a fact question, dependent on the circumstances of the particular case, we do not believe it would be appropriate to establish rules or criteria for the resolution of any such dispute.

³ This means that the level of benefits would be as follows:

<u>YOS</u>	<u>Amount</u>
2 to 3	2 mos. pay
3+ to 5	4 mos.
5+ to 10	6 mos.
10+ to 15	8 mos.
15+ to 20	12 mos.
20+ to 25	16 mos.
25+	20 mos.

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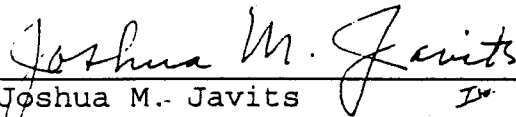
AWARD

Amtrak's position with respect to the shop crafts and federally mandated service is adopted.

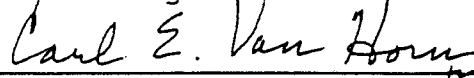
The state-supported train service issue is resolved in the manner set forth in the foregoing opinion.



Richard Mittenthal
Chairman



Joshua M. Javits
Amtrak-Designee
Dissenting on State-supported
train service
Concurring on other matters



Carl E. Van Horn
Coalition-Designee
Dissenting on Shop Crafts and
Federally mandated service
Concurring on other matters

May 10, 2002