

An Injury to One Is An Injury to All

Pennsylvania Federation

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Office of the General Chairman
Jed Dodd

certified letter number 91 7199 9991 7038 5106 0697
return receipt requested

March 13, 2018

Sharon Jindall, Senior Manager Labor Relations
National Railroad Passenger Corporation
30th Street Station
2nd Floor, South Tower
Philadelphia, PA 19104

Dear Ms. Jindal:

Re: 02-LCR-20-0917 (Proceed)
72nd Street Yard and Track Work Project
Empire Line, NY

This is in response to your March 2, 2018 letter in connection with the 72nd Street and Track Work Project on the Empire Line in New York. Your letter is just another attempt by Amtrak to confuse a simple and straightforward issue by mischaracterizing the Organization's previous statements and facts. This letter is necessary to set the record straight.

First, the Carrier contends that it can assign this work to contractors without my concurrence. Once again, let me be clear. If the Carrier moves forward with its plans to use outside forces for the track and ET work involved in this project without my written concurrence, the Carrier will be abrogating the clear terms of Scope A 1 A and Side letter No. 2. This is very simple, the

track and ET work involved in this project is reserved to Maintenance of Way forces by Scope A 1 A. Thus, the Carrier cannot contract out this work without my written concurrence. It is unquestionable that the work involved in this project is of the scope and magnitude historically performed by Maintenance of Way employes and thus side Letter 2 explicitly prohibits any exceptions to my written my concurrence. Despite all of Amtrak's hand waving and mischaracterizations the issue is just that simple.

Second, I must address other inaccuracies seasoned throughout the Carrier's March 2, 2018 letter. Importantly, the Carrier's statement that the Organization refuses to provide its concurrence to contract out the work involved in this project "under any circumstances" is just not true. At no time during our discussions and exchanging of correspondence have I once indicated that I would not provide concurrence "under any circumstances". It is true that I would not concur with Amtrak to contract out this work to this point, because the Carrier has not been acting in good faith and the only option that the Carrier has provided thus far is that for Organization capitulate to the Carrier's plans as outlined in its initial letter dated November 24, 2017. Throughout this process I have expressed a willingness to meet and discuss the Carrier's plans. In fact, in my letter dated February 7, 2018 I once again expressed a willingness to discuss Amtrak's plans, yet the Carrier's response in its March 2, 2018 letter was that it's moving forward with the contracting out of this work as outlined in its November 24, 2017 letter.

Additionally, Amtrak has implied that the Organization is not providing any alternatives to the Carrier, and that we have stated that we are not responsible for planning the Carrier's work. BMWED should not and cannot be involved in the actual assignment of equipment and forces because that is the sole responsibility of the Carrier and it's nonsensical to think otherwise. However, to imply that the Organization is not open to any alternatives is not accurate. If the Carrier made any attempts to assign this work to Maintenance of Way forces, which it has not, I would be willing to discuss the Carrier's needs in connection with the Agreement restrictions or other genuine needs it may have for accomplishing this work with Maintenance of Way forces.

The next issue I am compelled to address is Amtrak's reference to PLB 6671 Award 3. Amtrak contends that the Organization's reliance on PLB 6671 Award 3 is misplaced. However, PLB 6671 Award 3, clearly held that when the work is of the scope and magnitude historically performed by Maintenance of Way, there are no exceptions to the General Chairman's concurrence.

“As specified in Side Letter No. 2, the exceptions set forth in Paragraph A.1.B. of the Scope Rule, including the ‘lack of essential equipment’ exception, do not apply to work ‘of the scope and magnitude historically performed by members represented by the BMW.’ This language is critical to a proper understanding of the application of the Scope Rule to the instant dispute. Quite simply, the Carrier may not rely on the ‘lack of essential equipment’ exception to support the contracting out of covered work of the scope and magnitude historically performed by its BMW forces.”

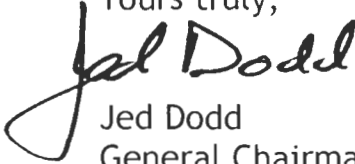
Award 2 of PLB 6671 held to a similar affect. BMWED should not have had to arbitrate those cases before PLB 6671 because of the clear language of the Agreement, and it’s absolutely frivolous that Amtrak is again making the same arguments that were rejected as contrary to the clear terms of the Agreement by PLB 6671. In other words, Amtrak is well aware that the work involved here is of the scope and magnitude historically performed by Maintenance of Way, yet regardless of these facts Amtrak is once again trying to apply exceptions that are prohibited by the clear terms of the Agreement. Award 3 of PLB 6671 is not misplaced, is extremely relevant and highlights the Carrier’s frivolous arguments in this case as well as its bad faith.

Also, Amtrak’s portrayal of our position on Amtrak’s use of the affidavit from former labor relations officer Hriczak is incomplete-intentionally no doubt. There are three things I would like to make clear about my position on that affidavit. First, it’s contrary to clear terms of the agreement. Second, the Carrier’s bad faith is highlighted by the fact that it’s attempting to use evidence to support its position that the parties had agreed would not be used. Third, without prejudice that the Hriczak memo is barred from consideration by the clear terms of the 1987 agreement, I was the Chairman of the BMW bargaining committee on Amtrak when this contract language was adopted and I can state without equivocation the memo is false and not accurate in any respect.

In connection with the availability of employees, the bottom line is that Amtrak has provided nothing to show that the track and ET work involved in this project is not anything beyond the capabilities of the current Maintenance of Way forces or that this work could not be completed using proper scheduling of men and equipment.

I have already addressed Amtrak’s contentions in my previous correspondence and there is no need to fully repeat my position again here

other than to say Amtrak's contentions are all contractually irrelevant and frivolous. Amtrak's letter shows an overwhelming concern about meeting commitments and promises it has made in meeting its obligations. We expect that Amtrak will fulfill its commitments and promises it has made with this Organization and begin determining how it will assign this work to its Maintenance of Way forces. Once again, I remind Amtrak that I stand by willing to discuss the Carrier's needs in assigning this work to Maintenance of Way forces.

Yours truly,

Jed Dodd
General Chairman

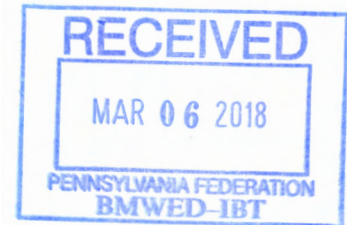
cc D. J. Stadtler



FEDERAL EXPRESS MAIL # 7716 0269 3807

March 2, 2018

Mr. Jed Dodd
General Chairman – BMWED-IBT
421 North 7th Street, Suite 299
Philadelphia, Pa. 19123



**Re: 02-LCR-20-0917 (Proceed)
72nd Street Yard and
Track Work Project
Empire Line, New York**

Dear Mr. Dodd:

This concerns your letters of December 4, 2017 and February 7, 2018 responding to Amtrak's November 24, 2017 notice of our plans to contract out work on the Empire Line between the 157/159 Switch within the "A" Interlocking in PSNY up to the Spuyten Duyvil Bridge.

As discussed during the January 8, 2018 meeting between the Organization, representatives of the Engineering Department and Labor Relations, this project involves: the changing out the 155# rail and replacing it with new 136# rail on approximately 7 miles of track on the Empire Line, replacing the direct fixation track and steel fasteners and lowering the invert of the tunnel, and construction of the 72nd Street Yard by contractor labor. This track project will coincide with repairs to the Spuyten Duyvil Bridge, allowing for all repairs to be completed during a three (3) month line outage running from Memorial Day to Labor Day.

The Organization asserts the Carrier is required to get the Organization's concurrence for track, tie, and resurfacing work before this work may be contracted out and states that it refuses to do so under any circumstances. However, it is clear that under the terms of the BMWED Agreement, the Carrier has the right to contract out track work without concurrence when the required time of completion cannot be met because of a lack of available skilled manpower. The Organization's reliance on PLB 6771, Award No. 3 is misplaced when the award is read in its entirety. The Organization also asserts that the Carrier's reliance on an affidavit from the author and former Labor Relations Director regarding the application of Side Letter 2 (which speaks for itself) is impermissible and for reasons that we will not go into in this letter, the Carrier disagrees with this assertion.

As the Organization is well aware and does not dispute, the Empire Line project must be completed while rail traffic is rerouted through Grand Central Station during the three month

*Mr. Jed Dodd
Re: 02-LCR-20-0917 (Proceed)
Empire Line Track Project
New York*

track shutdown. All available manpower is fully engaged in maintenance and capital projects at other locations and cannot be assigned to this project during this timeframe.

Nonetheless, the Carrier met with the Organization to discuss concerns and suggestions for how to manage the work. The Organization suggested that the Carrier refrain from doing critical undercutting work in order to re-assign employees to this track project. However, upon review with line management, this is not possible, given the severe ride quality on the southern district. Additionally, the Organization has expressed that they are not responsible for planning the Carrier's work and has offered no other viable alternatives to the contracting out of this work.

As shared during our meeting on this topic, Amtrak has continued to hire BMW employees over the past ten (10) years and increased our workforce by 60%, even after attrition. In the last two fiscal years, Amtrak hired and is hiring approximately 200 additional trackmen. Unfortunately, even with these additional hires, Amtrak will not have sufficient manpower to complete this project during the timeframe required.

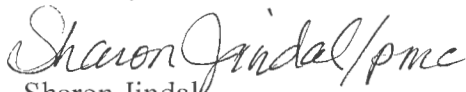
FY18 is Amtrak's all-time peak year for funding projects, and Amtrak has a commitment to meet the expectations of the capital funding to restore the infrastructure to a state of good repair. Rail work alone has progressively increased over the last three years, replacing 43% more rail in a year than previously handled. The FY18 capital funding increased by approximately \$200M over the same time period and manpower has similarly increased.

Amtrak's workforce is not only fully engaged in the increased capital work but also with increased funding for critical maintenance work. Weekly inspections turn up repair items that need an immediate remedy. Deferral of the much needed maintenance until manpower is available is not an option. All teams are fully engaged in FY18 including, continuing with improvements to New York Penn Station infrastructure with the switch exchange project, and production gangs will be fully engaged with high speed surfacing work, the TLS program, the undercutter program on both the Southern and New England Divisions, along with other projects that must be completed.

Additionally, Amtrak has committed that no Amtrak forces will be furloughed as a result of contracting out of this work.

Based on the foregoing, the Carrier intends to proceed with contracting out the work described in the initial notice provided to the Organization regarding the Empire Line Track project. Amtrak forces will provide for third rail and RWP protection, foul time, inspections and track outages, as required.

Sincerely,



Sharon Jindal
Director – Labor Relations