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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 Mittenthal
Chairman

Joshua M. Javits
Amtrak-Designee

Carl E. Van Horn
Coalition-Designee

BACKGROUND

This interest arbitration case arose out of Section 141 of the Amtrak Reform & Accountability Act of December 1997. The parties are the National Railroad Passenger Corporation, better known as Amtrak, and a coalition of fourteen unions (Coalition) who represent some 22,000 employees in various Amtrak bargaining units. The parties disagree as to what labor protective provisions (LPPs) should be included in the various collective bargaining agreements (CBAs).

The background facts are not really in dispute. In the 1960s, perhaps earlier, railroads were abandoning passenger service and limiting their business activity to hauling freight. The commuter railroads serving major metropolitan areas continued, of course, to carry passengers. But inter-city passenger service was disappearing. In order to preserve such service, the Congress passed the Rail Passenger Service Act (RPSA) in 1970. It established Amtrak, a national railroad corporation, to provide the intercity service that private carriers were no longer willing to provide.

Section 405 of this Act required Amtrak to create "fair and equitable arrangements" to protect employees adversely affected by a discontinuance of intercity passenger service. These "arrangements", the so-called LPPs, were negotiated by the parties and certified by the Secretary of Labor in 1971 (C-1) and 1973 (C-2). There were several types of LPP. One, designated as C-1 protection, covered employees of private freight carriers who did not obtain subsequent employment with Amtrak. Another, designated as C-2 protection, covered Amtrak employees, including those who were former employees of private freight carriers. There was also "Rule 10/11" for shop craft employees which provided the same (or much the same) benefits as C-2. The present dispute concerns C-2 and "Rule 10/11" employees.

C-2 benefits mirrored the kind of LPPs in effect at many of the freight railroads. Its major characteristics can be briefly explained. To be eligible for a LPP benefit, an employee had to be adversely affected by a "transaction". That adverse effect was either "displacement" to a "worse

position" with respect to pay or work rules or "dismissal", that is, losing one's position. The "transaction" trigger for operating and non-operating crafts was a discontinuance of intercity passenger service. The "transaction" trigger for shop crafts under "Rule 10/11" was transfer of work across seniority district lines or abandonment or discontinuance of a facility or a combination of two or more facilities. Assuming a "transaction" and a "dismissal" or "displacement" of an operating employee, for example, the latter was to receive a certain sum of money for a period that could last as long as six years. The money benefit was defined with precision for each covered situation. A similar arrangement was in place for shop craft people. C-2, in short, was an attempt to reimburse an employee for all or part of the money loss he experienced on account of certain operating changes.

Amtrak has never been self-sufficient. Its operating revenues have not covered its operating costs. It has been able to continue functioning only through large federal operating and capital subsidies. Those subsidies, however, prompted Congressional criticism of Amtrak's performance. That criticism grew over the years, particularly as the government sought to address the problem of its large budget deficits. This led to two significant pieces of legislation in 1997. The first was the Taxpayer Relief Act (TRA) which, among other things, granted Amtrak 2.3 billion dollars for capital expenditures. Under the terms of the TRA, Amtrak is required to provide a portion of the TRA funds to the States which have no Amtrak service. Each non-Amtrak State (six in the first year) received 1 percent of the total TRA funds disbursed. The same formula will apply in the second year, leaving approximately 2 billion of the total 2.3 billion dollars for Amtrak's use. This grant was conditioned upon the enactment of legislation which Congress believed would enable Amtrak to change its operating methods and achieve new efficiencies and cost savings. That condition was met a short time later with the passage of the Amtrak Reform & Accountability Act (ARAA).

ARAA included a number of "Findings" as the basis for this legislation. It stated among other things:

- that "Amtrak is facing a financial crisis, with growing and substantial debt obligations severely limiting its long-term viability",

- that "all of Amtrak's stakeholders, including labor, management...must participate in efforts to reduce Amtrak's costs and increase its revenues",

- that "additional flexibility is needed to allow Amtrak to operate in a businesslike manner to manage costs and maximize revenues", and

- that "Amtrak and its employees should proceed quickly with proposals to modify [CBAs] to...realize cost savings which are necessary to reduce Federal assistance".

It also created an Amtrak Review Council (ARC) to oversee Amtrak operations and determine whether Amtrak was meeting the objectives set forth in ARAA. A failure to meet those objectives by the end of the fiscal year 2002 could prompt Congress to liquidate Amtrak. The possibility of such dire consequences is plainly contemplated by ARAA.

More to the point, Section 142 of ARAA "extinguished" any CBA provision between the parties "relating to employee protection arrangements and severance benefits...including all provisions of Appendix C-2..." This repeal of LPPs took effect June 1, 1998. Section 141 anticipated that the parties would negotiate new LPPs and that should they fail to reach agreement they would resolve their differences through either of two possible procedures. One such procedure was binding arbitration under Section 7 of the Railway Labor Act. The rulings of such an arbitration panel would be retroactive to April 1, 1998. It should be noted too that Section 141(e) provides that "nothing in this Act...shall affect the level of protection provided to freight railroad employees and mass transportation employees as it existed on [December 1, 1997]."

The parties exchanged proposals with regard to the terms of future LPPs in their CBAs. They discussed the

matter at length but their negotiations proved fruitless. They decided to submit this dispute to binding arbitration. A three-person Board was duly constituted following the procedure set forth in Section 141. It consists of Joshua M. Javits, Amtrak-designee, Carl E. Van Horn, Coalition-designee, and Richard Mittenthal, Neutral Chairman. Hearings were held in Washington, D.C. on April 14, 15, and 16, 1999. Amtrak was represented by Harry A. Rissetto and Katherine B. Houlihan, Attorneys (Morgan Lewis & Bockius). The Coalition was represented by Mitchell Kraus, General Counsel, Transportation Communications International Union, Clinton J. Miller, III, General Counsel, United Transportation Union, Harold A. Ross, General Counsel, Brotherhood of Locomotive Engineers, Donald F. Griffin, Assistant General Counsel, Brotherhood of Maintenance of Way Employees, Christopher Tully, Assistant General Counsel, TCU, and Joel Parker, Vice President, TCU, and Chairman, Amtrak Bargaining Coalition. A transcript of the proceedings was made. The Coalition submitted a brief at the close of the hearings. Amtrak filed a post-hearing brief on July 7, 1999. The Coalition filed a reply brief on August 20, 1999. The Board met in executive session on October 2, 1999. The parties, by written agreement, extended the time for the issuance of this Award to November 1, 1999.

POSITIONS OF THE PARTIES

The Coalition urges the Board to resolve this dispute primarily, but not entirely, on the basis of the "prevailing pattern of protective benefits in the railroad industry". It emphasizes the dominant role of "patterns" in wage and rules determinations by Presidential Emergency Boards (PEBs) and by the rail industry itself. It notes, in this connection, the rationale of PEB No. 234 which rejected Amtrak's attempt to depart from the rail industry "pattern" in dealing with wages and rules in the most recent round of industry-wide negotiations. It believes that rationale is equally applicable here. It stresses that its LPP proposal, for the most part, follows the former C-2 arrangements for operating and non-operating crafts and the former "Rule 10/11" arrangements for shop crafts and would be largely

consistent with the LPPs available to all crafts within the industry.

The Coalition states that its proposal calls for certain LPP benefits to be somewhat less than had earlier been available under C-2 and "Rule 10/11". It notes, for example, that the length of protection would be reduced from a maximum of six years to a maximum of five years and that the level of protection (i.e., the amount of the benefit) for those who are displaced would remain 100 percent of an average month's earnings. For those who are dismissed, however, the allowance would be 60 percent rather than 100 percent. The separation allowance would be computed in a manner consistent with the Washington Job Protection Agreement (WJPA).

In other respects, however, the Coalition would add certain LPPs which had never been part of C-2 or "Rule 10/11". Specifically, it seeks a supplemental unemployment benefit (SUB) plan which would pay a $50 per day benefit ($250 per week) to eligible employees, those with ten years' seniority who are unemployed over 20 days in a 12-month period. It also seeks a successorship clause which would require Amtrak to condition any sale of its operations on the purchaser agreeing to continue in effect the existing CBAs including all LPPs and to recognize the Coalition unions as the bargaining representatives of their respective crafts. It asserts that Amtrak's LPP proposal, by comparison, does not meet WJPA standards which are the rail industry baseline and would leave Amtrak employees with inferior protection well below the minimum in the industry.

The Coalition estimates that the cost of its proposal, including SUB, would be somewhere between $1.1 and $1.7 million per year. It contrasts this figure with Amtrak's C-2 (presumably "Rule 10/11" as well) cost of $36 million over the last 24 years, an average of $1.5 million per year. It observes that Amtrak has built into its strategic business plan for the coming years the historical cost of between $1.0 and $1.5 million for LPP wage costs. It believes, accordingly, that its proposal would not impose an undue financial burden on Amtrak. In any event, its position is that Amtrak should reasonably be expected to bear the cost

of providing its employees the minimum LPP benefits they would be entitled to were they Class I railroad employees. And, it adds, the Coalition proposal calls for less than the prevailing LPPs enjoyed by Claim I railroad employees.

* * *

Amtrak begins its analysis of the dispute by emphasizing the terms of the ARAA. It notes that Congress eliminated the then existing LPPs in the various craft CBAs, anticipated a reduction in such benefits, and made clear that any such reduction would not affect LPPs on the freight railroads. It argues that Congress in effect rejected the notion of using freight railroad "patterns" to determine Amtrak benefits. It says that such Congressional action was a product of its wish to make Amtrak operationally self-sufficient and thus eliminate the federal government's operating subsidies to Amtrak. It says Congress underscored its wishes by creating ARC and a procedure which could well lead to the liquidation of Amtrak after fiscal year 2002.

Amtrak explains that in order to satisfy Congress' goal, it must increase revenue and control costs. It insists that the "contingent costs" of LPP make it much more difficult for Management to experiment with new routes, to reduce the number of trips on existing routes, to bid for maintenance and service business, to initiate or modify State-assisted service, or to take a variety of other initiatives. It contends that such "contingent costs" inhibit Management's ability to be nimble, to make decisions quickly without fear of incurring cost penalties from LPPs, and hence inhibit Management's ability to raise revenue. It therefore believes a more modest safety net of LPP costs is appropriate. It urges that such a cost reduction be achieved in two ways - a more limited definition of the "transactions" which trigger benefits and a lower level of benefits. It suggests that adoption of the Coalition's LPP package, even greater employee protection than existed before ARAA, would likely cause Congress to question Amtrak's capacity to deal with this significant issue.

Amtrak insists that the basic purpose of LPPs is to allow employees adversely affected by a Management change in

operations to transition to other employment, perhaps in another industry, with some form of financial aid. It claims that such a purpose can surely be achieved without need of five years of substantial compensation. It alleges that the "pattern" of LPP benefits in the railroad industry is far in excess of what exists in any other industry. And it states further that Amtrak, an unprofitable passenger railroad subject to the ARAA and dependent on federal subsidies, should not be bound by any "pattern" set by the profitable freight railroads.

Amtrak contends that its LPP proposal offers a reasonable alternative to what had previously been in effect under C-2 and "Rule 10/11" given the critical initiatives Management must now take to comply with ARAA. It asserts that the cost analysis behind the Coalition proposal is highly conjectural and is based on a number of faulty assumptions. It opposes any successorship arrangement on the ground that no precedent exists for such a clause in the railroad industry and that this is a matter for Congress, rather than this Board, to determine. It opposes the SUB plan on the ground that such a matter should be negotiated in conjunction with the contracting out provision of the RPSA which Congress (in Section 121 of the ARAA) repealed and placed in the current CBAs for future negotiation, that the granting of SUB elsewhere has been a <u>quid pro quo</u> for some union concession, and that SUB has been introduced in certain railroad relationships as a substitute for, not a supplement to, LPP benefits. It contends that the SUB issue should not be part of this arbitration.

DISCUSSION AND FINDINGS

This dispute concerns the level and nature of LPP benefits to be incorporated in the current CBAs. Amtrak recognizes that, notwithstanding the importance of reducing its costs, some LPP benefits are appropriate. It asks this Board to embrace a level of benefits considerably less than what had been in effect prior to Congress' elimination of the LPP clauses. It believes such restraint is necessary in order to enhance its chances of achieving the operational self-sufficiency demanded by the ARAA. The Coalition

recognizes that some reduction in the pre-existing level of benefits, that is, in displacement and dismissal allowances, is appropriate. But it would add to these allowances certain new LPP features, namely SUB and successorship obligations, which had never been part of the CBAs. It believes this is necessary in order to protect employees against the possibility of a failure in Amtrak's strategic business plan, against the ever-present possibility of job loss and temporary unemployment.

The coming years represent a critical period in Amtrak's existence. Given the Congressional intent behind ARAA, it would appear that Amtrak must now increase its revenues and decrease its costs if it is to avoid major reorganization or liquidation. Operating subsidies appear to have ended. The dangers are real. Everyone involved in this enterprise, employees and managers alike, has a large interest in finding a LPP package which will help Amtrak realize its goal of self-sufficiency while at the same time provide employees with a reasonable level of job protection. It is these objectives which we have kept in mind as we analyzed the record in this case.

I - ARAA

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.

However, it is also true that Congress simply directed the parties to negotiate new LPP arrangements and offered them the opportunity to arbitrate if the negotiations proved fruitless. Nothing in the statutory language states what

the outcome of such an arbitration should be. As the Coalition noted at the arbitration hearing, the ARAA "...sets no limits on what the parties may agree [to]". But the silence of Congress on this point, its unwillingness to dictate specific LPP arrangements as a substitute for collective bargaining, does not mean the purposes it expressed in the ARAA can be ignored. Those purposes are a necessary backdrop against which the Board should examine the parties' proposals. 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. Congressional purpose is just one of many factors in this dispute. It would be wrong to allow such purpose alone to control the outcome of this case just as it would be wrong to disregard such purpose.

II - Comparability

The Coalition alleges that the "pattern" or "prevailing practice" supports its proposed LPPs. It points to the LPP arrangements in place on the freight railroads and the commuter railroads; it points to the WJPA which was long considered a template for LPP benefits within the rail industry. It believes these are the comparables entitled to the greatest weight in this arbitration. It asserts that Amtrak's proposal falls well below any of these standards and should be rejected.

There are several difficulties with this argument. To begin with, as explained in part I above, this is not a typical interest arbitration. It was prompted largely by Congress' action in eliminating LPPs from the various CBAs in effect for Amtrak employees and in repealing the original statutory basis for the creation of such LPPs. Congress directed the parties to negotiate new LPPs in the

expectation that this would mean cost savings and greater managerial flexibility. Congress provided for a period of negotiation in which the parties could agree upon new LPPs; it provided two options if they failed to agree. One was to use the National Mediation Board procedures which might ultimately lead to a strike; the other was to submit their differences to final and binding arbitration. The parties chose the latter option.

That choice was obviously made with full knowledge of Congress' objectives. The parties can no more escape those objectives than the Board can. To allow the alleged comparables to dictate the decision in this case would ignore Congressional intent and thus ignore the charter through which this Board was brought into being.

It must be remembered too that Congress stated in Section 141(e) of the ARAA that "nothing in this Article...shall affect the level of protection provided to freight railroad employees and mass transportation employees..." This was plainly an attempt to prevent the results of this arbitration from having any impact on LPPs for the freights and commuters. If this Amtrak arbitration award cannot be a "pattern" for others, surely the LPPs of others should not be a "pattern" for Amtrak. To rule that Amtrak should be bound by what much of the industry has done would not only disregard Amtrak's unique situation but also disregard Congress' intent to distinguish and separate Amtrak from the others.

III - Cost Considerations

There is strong disagreement about the cost consequences of the parties' LPP proposals. The Coalition says its proposal includes a reduction in LPP benefits, namely, in the dismissal and displacement allowances which existed under C-2 and "Rule 10/11". It sees its proposal as responsive to Amtrak's financial ability. Amtrak, on the other hand, says its proposal involves the kind of sensible reduction in LPP benefits that will help it to achieve the goals set by Congress. It insists that the Coalition's demand would expose it to an "onerous financial burden".

The problem here is that the parties approach cost from different perspectives. The Coalition emphasizes past costs, assumes the future will be little different, and regards SUB cost, given the ten-year service eligibility requirement, as likely to be relatively small. Amtrak emphasizes future costs, assumes its greater initiatives will expose it to greater LPP liability, and believes SUB cost could in a variety of situations be substantial.

Both parties' claims are conjectural. No one can say with confidence what the actual LPP cost will be in the coming years. The answer depends on Amtrak's success or failure in growing its business through new routes and new technology and in controlling cost through better utilization of employees and equipment. The answer depends on the fate of such new business, on the nature and scope of work force disruptions caused by more aggressive decision-making by management. These are highly speculative matters. We suspect that the cost consequences of the Coalition's proposal will not be as modest as it anticipates. We suspect that the cost consequences of the Coalition's proposal will not be as large as Amtrak fears. But we do know that LPP benefits, like any other cost, are a real factor in management planning.

This cautionary view leads us to treat cost in a somewhat neutral fashion. That is, cost considerations alone cannot defeat the Coalition proposal any more than they can buttress the Amtrak proposal. We shall look elsewhere to the extent we find it appropriate to do so.

The cost issue encompasses a number of considerations, some of which are interrelated. Three factors in particular require discussion: (1) the Coalition's SUB proposal, (2) the "transaction" triggers, those changes in circumstances that bring LPP benefits into play, and (3) the level of the displacement and dismissal allowances, the length of time an employee remains eligible for such an allowance.

IV - SUB

To begin with, Amtrak urges that the Coalition's request for a SUB plan is beyond the scope of the

arbitration. It refers to the language in Section 141(a) of the ARAA which reveals that the Congress contemplated negotiations and possible arbitration "with respect to all issues relating to employee protective arrangements and severance benefits which are applicable to employees of Amtrak..." It argues that this language refers only to those LPPs in effect at the time they were eliminated by ARAA, that no SUB plan was in effect at Amtrak prior to ARAA, that SUB was not one of the "protective arrangements...applicable to employees of Amtrak", and that this subject therefore cannot be considered by the Board. The Coalition disagrees. It emphasizes that "all issues..." concerning LPPs can properly be raised before the Board so long as they concern "protective arrangements...applicable to employees". It urges that SUB meets this test.

Section 141(a) is ambiguous. Its language could reasonably be read to support either party's argument. There is no need, however, to resolve this ambiguity. Even assuming the SUB proposal is properly before us, we do not accept it.

The cost estimates of the SUB proposal are dependent on many factors which are difficult to measure. SUB could prove to be far more expensive than the Coalition anticipates or it could prove to be far less expensive than Amtrak suggests. This is a highly speculative matter. Since Amtrak has been formed, no CBA with any of its unions has contained a SUB plan. New LPPs of this nature within the industry have ordinarily been agreed upon, or have been imposed by statute, due to structural changes that threaten substantial job loss. No such immediate threat appears to be present here. Amtrak's plans call for expansion rather than contraction. The problem on the horizon is the ARAA provision which calls for negotiations with respect to Amtrak's contracting out authority. A greater use of contractors might well result in more temporary unemployment. That in turn might well call for some form of supplemental unemployment benefit, a SUB, beyond current RUIA benefits. Given Amtrak's troubled condition and given the need for moderation, this is hardly the time for an innovation as significant as SUB. This matter is best left for the next round of bargaining which is about to begin.

Those negotiations will offer a far more reliable procedure for exploring the true costs and benefits of SUB. The Conrail SUB history is plainly distinguishable from Amtrak's circumstances.

V - "Transaction" Triggers

LPP costs are intimately related to the "transaction" triggers which define 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 expansive the trigger, the more employees will receive and the greater the LPP costs for Amtrak. The parties disagree as to how the triggers should be defined and what "exceptions" should be applied to the triggers. Each of these matters presents a distinct challenge and calls for a separate answer.

* * *

The C-2 "transaction" trigger was the "discontinuance of intercity rail passenger service" below tri-weekly on a route. That is, employees on a given route were entitled to LPP benefits when passenger service on that route was eliminated or was reduced to just one or two trips per week. The Coalition believes this should remain the applicable criterion. Amtrak urges at least two changes.

First, Amtrak would limit the trigger so that it applies only to passenger service in effect as of March 31, 1998.[1] This would mean that any new intercity service established after March 31, 1998, would not be covered by LPPs. Employees dismissed or displaced from such a new service would receive no LPP benefits. We do not accept Amtrak's proposed limitation. Amtrak itself recognizes that some form of LPP is appropriate for employees involved in intercity services in effect on March 31, 1998. To deny

[1] Neither side has proposed any change in the present "transaction" trigger for the shop crafts.

that LPP coverage to employees merely because they are part of a service created after that date seems arbitrary. The employee need is the same in either event. If LPPs are a sensible protective device, as everyone agrees, they should be available to all employees regardless of when their service happens to have been established.

We recognize, however, that management can never be certain of the utility of new passenger services. New routes may be started in the belief that they are warranted by market conditions and are likely to be successful. Whether they actually succeed will depend on many variables. Because of the real possibility that LPP costs could well inhibit managerial initiatives, we believe Amtrak should be allowed a two-year grace period within which to test a new route with the right to withdraw from that route within this period without incurring LPP benefits. But if the route continues beyond two years, the affected employees would receive LPP benefits should management change its mind and eliminate the route or limit the route to something less than three trips per week.

Second, Amtrak would limit the intercity service trigger so that it applies only to a complete cessation of all trains on an existing route. This would mean that a reduction in such service to one or two trains per week would not trigger any LPP benefit for dismissed or displaced employees. We do not accept this proposed limitation. To begin with, the trigger for years has been anything less than three trains per week. Nothing in the record suggests that one or two trains per week is a feasible arrangement. When it has been tried, it apparently has not worked out. Amtrak recognizes that its ability to meet the Congressional goal of self-sufficiency depends on expansion rather than contraction of its intercity services. It seems highly unlikely that this kind of limited reduction in service will occur. In any event, employees have need of LPP benefits whether the reduction is from four to three trains (LPP coverage not in question), from three to one or two trains (no LPP coverage under Amtrak proposal), or from one or more trains to none (LPP coverage not in question). The distinction Amtrak proposes is not persuasive.

* * *

Several "exceptions" to a "transaction" trigger are in dispute. The parties agree that an "exception" should be provided, as was the case under C-2, for any seasonal intercity passenger service which is discontinued in 120 days or less. Amtrak proposes that this exception be limited so that it applies only to seasonal services existing as of March 31, 1998, and not to any such service introduced at a later date. For the reasons already expressed, this proposal is rejected.

Amtrak also urges, as has apparently been true in the past, that any jobs "associated with Federal, State and local governmental 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.

The proposed "exception" involves matters which were not fully explored in the parties' briefs. There are equitable considerations on both sides of this issue. And the "transaction" language in Article III(a) of C-2 can hardly be considered unambiguous. Because of these uncertainties, we direct the parties to negotiate on this Amtrak proposal in an attempt to find a satisfactory solution. If they do not reach agreement within 60 days of the date of this Award, they shall submit briefs to the Board and a final ruling on this point will follow.

In all other respects, the "exceptions" in place under C-2 and "Rule 10/11" should continue in effect under the current CBAs. The parties agree that because commuter railroad service performed by Amtrak is not "intercity... service", it is not covered by the LPPs. The LPP

"procedures" in place under C-2 and "Rule 10/11" should continue in effect under the current CBAs.

VI - Scope of LPP Benefits

The parties have very different ideas as to the scope of LPP benefits to be provided. They disagree on (1) the length of service required to be eligible for such benefits, (2) the length of protection, that is, the duration of such benefits for an eligible employee, and (3) the level of benefits, that is, the amount of money to be paid to an eligible employee. The details are set forth in the following discussion.

It should be noted that under C-2 and "Rule 10/11", there was no length of service requirement. Affected employees received benefits related to the length of their service up to a maximum of six years. And the benefit was income protection based on a monthly guarantee calculated by averaging an employee's 12 months' wages preceding his dismissal or displacement.

As to the length of service requirement, the Coalition proposes the same arrangement as in C-2 and "Rule 10/11". Amtrak, however, would require two years' service in order to be eligible for displacement and dismissal allowances. The notion that fringe benefits increase with years of service is well-accepted throughout American industry. Vacation time, retirement pay, and so on become more generous as one accumulates service. That is true as well for the length of protection for displacement and dismissal allowances. Short-service employees simply have not invested enough time on the job to be entitled to the larger benefit. The question here is whether there should be a two-year service requirement in order to be eligible for these allowances. We find that such a requirement is a sensible device which will reduce LPP cost and will make employees earn the right to these allowances through a brief period of work.

As to length of protection, Amtrak urges a sliding scale, based on years of service, to a maximum of two years of protection. The Coalition urges a sliding scale to a maximum of five years of protection. Their differences can be seen in the following table:

Amtrak		Coalition	
YOS	Amount	YOS	Amount
		0 to 1	60 days pay
2+ to 6	3 mos. pay	1+ to 2	6 mos.
6+ to 9	6 mos.	2+ to 3	12 mos.
9+ to 12	9 mos.	3+ to 5	18 mos.
12+ to 18	12 mos.	5+ to 10	36 mos.
18+ to 24	18 mos.	10+ to 15	48 mos.
24+	24 mos.	15+	60 mos.

In resolving this issue, we have considered the fact that Amtrak has already included in its strategic business plan for the coming years a LPP benefit cost of 1 to 1.5 million dollars per year and the further fact this cost over the past 24 years has averaged 1.5 million per year. Thus, prior to this arbitration, Amtrak anticipated that its LPP costs would continue to be essentially what they have always been. We know too that C-2 and "Rule 10/11" costs in previous years were based on conditions which have, through the rulings already made, been modified in Amtrak's favor. All of this is bound to reduce its LPP benefits cost. Moreover, Amtrak's witnesses stressed that management would in all probability expand rather than contract its routes and that it had no plan for any major reduction in routes. These and other factors all point to fewer LPP "transactions" in the coming years. Finally, the long history regarding the level of LPP benefits is entitled to substantial weight as is the need for moderation. We do not believe, given the changes we have embraced, that the level of benefits required by this award is likely to be troublesome. Of course, there is a large element of conjecture in whatever we do. Accordingly, apart from certain modifications we deem appropriate, we accept the Coalition's notion of a maximum of five years' protection, a 100 percent displacement allowance and a 100 percent dismissal allowance. The level of benefits shall be as follows:

YOS	Amount
2 to 3	6 mos. pay
3+ to 5	12 mos.
5+ to 10	18 mos.

10+ to 15	24 mos.
15+ to 20	36 mos.
20+ to 25	48 mos.
25+	60 mos.

As for health benefits (medical and dental), they should continue for the length of the employee's coverage, that is, for the length of time he is entitled to LPP benefits.

VII - Separation Payment

Under C-2 and "Rule 10/11", a dismissed employee who was entitled to LPP benefits could resign and opt for a separation allowance, a lump-sum payment in lieu of a dismissal allowance. The separation pay involved a sliding scale - based on years of service - to a maximum of 12 months at 30 days per month. The Coalition asks that this arrangement be continued. Amtrak asks that separation pay be reduced to two-thirds of its proposed dismissal allowance (see Part VI of the award) based on a normal work month.

We have already provided for a reduced dismissal benefit. We are not convinced it is necessary to reduce the separation payment further except that an employee must have two years' service before he is entitled to this payment. Apart from this single change, Section 9 of the WJPA will continue to determine the size of the separation payment, the maximum still being 12 months' pay.

VIII - Relocation Benefits

Under C-2 and "Rule 10/11", a dismissed employee required to change his point of employment and move his residence was entitled to moving expenses, travel expenses, and so on. The Coalition seeks substantially the same relocation monies. Amtrak seeks to place a limit on relocation expenses, namely, $2000 for renters and $6000 for homeowners.

Here too we believe the C-2 and "Rule 10/11" should be continued. Nowhere has the Board been given any specifics as to the size of relocation expenses in the past. We shall not assume that those expenses pose any real burden for Amtrak.

IX - Successorship Language

The CBAs presently in effect contain no successorship language. The Coalition proposes that the CBAs include a clause which would require that Amtrak condition any sale of its rail lines (or any contracting out of its operations) upon the purchaser (or contractor) agreeing to honor the existing LPP arrangements and to preserve employee rights and benefits under such CBAs, including the right to continue to be represented by unions of their own choosing. Amtrak insists no such clause is justified.

There appear to be no precedents for a successorship clause in the rail industry. More important, such a broad clause could well interfere with Amtrak's ability to take the initiatives so important to its future. The costs and consequences of such a clause are unknown. Given the need for Amtrak to achieve self-sufficiency within the next few years, this is not the time to impose a new successorship requirement. The Coalition's proposal is rejected.

AWARD

The Coalition's SUB and successorship proposals are rejected.

The "transaction" triggers and "exceptions" to be included in the collective bargaining agreements are set forth in Part V.

The scope of the LPP benefits to be included in the collective bargaining agreements is set forth in Parts VI, VII and VIII.

This award shall be retroactive to April 1, 1998. It is to be considered "final, binding and conclusive" as the parties themselves stipulated in their May 31, 1998 Arbitration Agreement.

With respect to unions other than the BMWE, BRS and TCU (Clerks/Telegraphers), the provisions of this Award shall not be amendable until the date on which each union's labor

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agreement that was under negotiation as of May 31, 1998, may be reopened. With respect to the BMWE, BRS and TCU (Clerks/Telegraphers), the provisions of this Award shall not be amendable until the date that the last collective bargaining agreement with the BMWE, BRS and TCU (Clerks/Telegraphers), respectively, may be reopened.

At the written request of either duly designated representative (J. M. Bress for Amtrak and J. M. Parker for the Coalition), any difference that arises as to the meaning or application of the provisions of this Award shall be referred back to the Board, within 180 days from the date of the Award, for a final ruling.[2]

Richard Mittenthal, Chairman

Dissent in part (see attached)
Concur in part

Joshua M. Javits
Amtrak-Designee

Carl E. Van Horn
Coalition-Designee

October 29, 1999

[2] Both the Amtrak-Designee and the Coalition-Designee on the Board dissented as to portions of the Award. However, each ruling in the Award is supported by at least two of the three Board members.