

**REPORT
TO
THE PRESIDENT
BY
EMERGENCY BOARD
NO. 207**

**APPOINTED BY EXECUTIVE ORDER 12495,
DATED DECEMBER 21, 1984, PURSUANT TO SECTION 9A
OF THE RAILWAY LABOR ACT, AS AMENDED**

To investigate the dispute between the Port Authority Trans-Hudson Corporation and certain of its employees represented by the Brotherhood of Railroad Signalmen

(National Mediation Board Case No. A-11287)

**Washington, D.C.
February 15, 1985**

LETTER OF TRANSMITTAL

WASHINGTON, D.C.
February 15, 1985

THE PRESIDENT
The White House
Washington, D.C.

DEAR MR. PRESIDENT:

On December 21, 1984, pursuant to Section 9A of the Railway Labor Act, as amended, and by Executive Order 12495, you created an Emergency Board to investigate the dispute between the Port Authority Trans-Hudson Corporation and certain of its employees represented by the Brotherhood of Railroad Signalmen.

Following its investigation of the issues in dispute, including both a formal hearing on the record and informal meetings with the parties, the Board has prepared its Report and Recommendations for settlement of the dispute.

The Board now has the honor to submit its Report to you, with its selection of the most reasonable final offers for settlement of this dispute.

The Board acknowledges the invaluable assistance of Roland Watkins and David Strom of the National Mediation Board's staff, who rendered aid to the Board during the proceedings, and in the preparation of this Report.

Respectfully submitted,

HAROLD M. WESTON, *Chairman*
IRVING T. BERGMAN, *Member*
PETER FLOREY, *Member*

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I. CREATION OF THE EMERGENCY BOARD

On December 10, 1984, the Port Authority Trans-Hudson Corporation requested the creation of an emergency board. Pursuant to Section 9A of the Railway Labor Act, as amended, 45 U.S.C. Section 159a, President Ronald Reagan created the Emergency Board by Executive Order 12495 on December 21, 1984. A copy of Executive Order 12495 is attached as Appendix "A".

The President appointed Harold M. Weston, Arbitrator, as Chairman of the Board. Irving T. Bergman, Arbitrator, and Peter Florey, Arbitrator, were appointed as Members of the Board.

II. PARTIES TO THE DISPUTE

A. The Carrier

The Port Authority Trans-Hudson Corporation (PATH) is a wholly owned subsidiary of the Port Authority of New York and New Jersey (Port Authority). It is a rail rapid transit system operating on 13.9 miles of track that connect the cities of Newark, Jersey City, and Hoboken with the borough of Manhattan in New York City. The system includes 13 stations, seven of which are in the State of New Jersey and six in the State of New York. Approximately 200,000 passengers are transported by PATH each weekday. Of these, two-thirds are carried during the daily rush periods. PATH maintains and operates a fleet of about 300 passenger rail cars.

The Port Authority acquired this rail line from the financially troubled Hudson and Manhattan Railroad in 1962. Historically, PATH has been a loss producing operation. In 1963, the first year of operation, PATH had a deficit of \$2.3 million. The operating deficit has been steadily rising and by 1983 reached \$56.3 million. The loss is expected to narrow for the first time because the fare increased from 30 cents to 50 cents on July 31, 1983 and to 75 cents on June 3, 1984.

The 1983 operations of the Carrier, as it reports them, are summarized in the following table:

| | |
|---|---------------|
| Total passengers carried | 54,933,580 |
| Total passenger miles | 267,526,535 |
| Typical weekday morning peak (7-10:00 a.m., Fall 1983) | 72,982 |
| Employee Compensation | \$39,180,000 |
| Total Expenses | \$79,400,000 |
| Total Revenues | \$24,227,000 |
| Gross Operating Deficit | \$56,303,000 |
| Cumulative Gross Operating Deficit (Sept. 1962 to Dec. 1983) | \$465,371,000 |
| Cumulative Capital Investment (Sept. 1962 to Dec. 1983) | \$298,700,000 |
| Revenue per passenger (Average) | \$0.44 |
| Cost per passenger | \$1.78 |
| Operating Loss per passenger (Average) | \$1.34 |

A total of 937 employees on PATH are represented by nine separate labor organizations.

B. The Organization

The Brotherhood of Railroad Signalmen (Organization) represents all of the approximately 54 employees (Signalmen) of PATH who are involved in this dispute. These employees are primarily engaged in signal maintenance.

III. HISTORY OF THE DISPUTE

By notice dated November 28, 1982, the Organization, in accordance with Section 6 of the Railway Labor Act, as amended, requested a number of changes in its collective bargaining agreement with PATH. The Organization amended its notice of April 21, 1983.

On June 27, 1983, the Organization applied to the National Mediation Board (NMB) for mediation services. This application was docketed as NMB Case No. A-11287 on June 29, 1983. Mediation was conducted by NMB Mediator Joseph E. Anderson. Later, NMB Member Walter C. Wallace joined Mr. Anderson in mediatory efforts.

On July 17, 1984, the National Mediation Board proffered arbitration to the parties in accordance with Section 5, First, of the Railway Labor Act. The carrier declined the proffer, and on July 26,

1984 the parties were formally advised by the NMB that it was terminating its mediation services.

By letters dated August 13, 1984 and August 20, 1984, the Organization and PATH, respectively, requested that the President establish an emergency board. Section 9A(c) of the Railway Labor Act provides that the President, upon such a request, shall appoint an emergency board to investigate and report on the dispute.

The President, in Executive Order 12486, dated August 24, 1984, created Emergency Board No. 204. The Board was ordered to investigate the dispute and report its findings to the President within 30 days from the date of its creation.

Following its investigation of the issues in dispute, including both formal hearings on the record and informal meetings with the parties, the Board prepared its report and recommendations for settlement of the dispute. Emergency Board No. 204 submitted its Report to the President on September 24, 1984.

On December 10, 1984, PATH requested the creation of an emergency board pursuant to Section 9A(e) of the Railway Labor Act. Emergency Board No. 207 was created by Executive Order on December 21, 1984. Section 9A(f) provides that the parties must submit their "final offers for settlement of the dispute" to the Board within 30 days of the creation of the Board. Final offers were submitted by PATH and the Organization on January 18, 1985. PATH submitted the following as its final offer for settlement of the dispute:

1. Term of contract—January 28, 1983 to June 8, 1985.
2. Wages—effective January 28, 1983, increase of 4.0% in all rates; effective January 28, 1984, increase of 4.0% in all rates; effective June 8, 1984, increase of 12.6% in all rates.
3. Pension Contribution and "Giveback" a) effective June 8, 1984, PATH will contribute \$67,392 per annum (amounting to \$1248 per employee) for the purpose of establishing a pension similar to that enjoyed by PATH's other non-operating employees. b) Amend Article IX-A of the agreement so as to provide that those employees who do not presently have a waiting period for eligibility to collect sickness benefits (that is, those employees hired before June 1, 1978) will be eligible to collect sickness benefits only for "each workday when sick, after the first five (5) workdays of said sickness." Further provide that this restriction shall not apply in the case of sicknesses extending beyond five (5) workdays.
4. Inclusion in the National Dental Plan at no cost to employees.

5. Two paid personal excused days in exchange for certain specific excused days.
6. Improvement in paid sick leave for employees with 5 years service.
7. Medical insurance to cover dependent students at no cost to employee.
8. Increase in education refund benefits for employees.
9. Increase in retirees life insurance from \$3,000 to \$5,000.

The Organization submitted the following as its final offer:

Wages—effective January 28, 1983, wage increase of 7.88%; effective February 28, 1984, wage increase of 4.23% and; effective June 8, 1984, wage increase of 8%.

According to Section 9A(g) of the Railway Labor Act, the Board must choose “the most reasonable offer”. This choice must be made by February 17, 1985.

IV. ACTIVITIES OF THE EMERGENCY BOARD

On January 29, 1985, the Board conducted a hearing with respect to the final offers. The parties were given full opportunity to present their respective positions and supporting evidence. Board Members questioned the parties with respect to the issues.

Thereafter, the Board met informally with representatives of the Organization and PATH on a number of occasions and encouraged the parties to discuss the issues among themselves in an effort to settle the dispute.

V. ISSUES IN DISPUTE

The Board has carefully considered and analyzed the underlining factors of the dispute. The major issues in this matter are signalmen's wages and a supplemental pension. The wage issue concerns the difference in hourly base rate between signalmen and other employees of PATH, particularly shop craft mechanics represented by the Brotherhood of Railway Carmen of the United States and Canada (Carmen). The pension issue involves the utilization of

money which PATH had earmarked as contributions for a supplemental pension plan for signalmen.

Another issue is the moratorium date. The old moratorium date had been reached on January 27, 1983. It is essential that a new moratorium date be established.

Characteristic of package settlements in negotiations, the other issues demanded by the Signalmen in their Section 6 notice would fall into place if the wage issue is resolved.

VI. DISCUSSION

A. Wages

Emergency Board No. 204 recommended that the wage issue be resolved by bringing the signalmen's hourly rate of pay up to \$15.47 by June 8, 1984, the date on which the hourly rates of shop craft mechanics will reach that level. That Board made it quite clear PATH would not be expected to make the entire increase in a single adjustment. Emergency Board No. 204's report contemplated that the increase to \$15.47 per hour would be made in several steps over the approximately sixteen month period between January 28, 1983 and June 8, 1984. The timing of the steps and the amount of increase in each step was left to the parties to resolve in further negotiations.

This Board notes that the Organization and PATH in their final offers agree that the \$15.47 hourly wage rate should be reached by the signalmen on June 8, 1984. The present dispute centers on the steps by which the hourly pay rates will be progressed to that level.

PATH's final offer provides for three hourly wage rate increases for signalmen during the new contract term. They are increases of 4% on January 28, 1983, 4% on January 28, 1984 and 12.6% effective June 8, 1984.

The Organization's final offer also calls for hourly wage rate increases of 7.88% on January 28, 1983, 4.23% on February 28, 1984 and 8% on June 8, 1984.

At the hearing conducted by the Board, the Organization's General Chairman made it clear that wage "parity" during the term of the new contract was the primary objective. He stated that:

"We were willing to put aside all of our other important requests for parity and settle for at least closing the gaps in wages."

The Organization explained that by the time the old moratorium date was reached on January 27, 1983, a new agreement with additional hourly wage increases had been in effect for over seven months. It reasoned that if it accepted the same increases that the Carmen had agreed to, the signalmen's hourly wage rate "would fall behind." The Organization takes issue with PATH's final offer because it does not offer sufficiently high adjustments during the first thirteen months of the new contract and is too heavily weighted, in terms of adjustments, on the target date, June 8, 1984. The Organization maintains that signalmen will lose substantial earnings as a result of PATH backloading its wage offer.

In PATH's view, its final offer is responsive to Emergency Board No. 204's recommendations that the signalmen's hourly wage rate be brought up to \$15.47 by June 8, 1984, that a supplemental pension be established as of June 8, 1984, and that the new moratorium date for signalmen be June 8, 1985. PATH contends that it is operating at a substantial loss and that its wage offers to all of its employees must come within an 8% limitation. It insists that it can go no further in meeting the Organization's demands.

While the Organization contends that PATH's final offer is less than an offer it had made earlier during negotiations, PATH maintains that that offer was made informally and on the condition that a number of "givebacks" would be made by the Organization.

B. Supplemental Pension

By choice in past negotiations, the Signalmen have not elected to have the supplementary pension benefit previously negotiated for shop crafts employees. Carmen, in particular, are considered by the Signalmen to be a comparable group that have enjoyed the benefit of a supplemental pension for several years. PATH's offer to institute the supplemental pension on June 8, 1984, is accompanied with its proposal to offset a part of the supplemental pension contribution with an amendment to the sick day leave benefit of the Signalmen's agreement.

C. Miscellaneous Fringe Benefits

In its final offer, PATH proposed the fringe benefits that had been included in its patterned settlements reached with the other eight labor organizations.

VII. SELECTION OF THE MOST REASONABLE OFFER

Under the provisions of the applicable statute (Section 9A of the Railway Labor Act), the function of this Board differs from that of Emergency Board No. 204. It was the previous board's function to "investigate and report on the dispute." This Board's function is to submit a report "setting forth its selection of the most reasonable offer."

The Board is satisfied that it may make that selection either on the basis of the entire package offer of each party or on the basis of each individual item.

The Board has decided to make the prescribed selection on the basis of the entire package of items offered by one of the parties. This Board must select what is reasonable and objective in light of the goals to be accomplished. It considers that method of selection to be in the public interest as well as in the interest of the parties in this case. In considering the last offers of the parties, the Board has decided to select PATH's last offer in its entirety.

By raising the signalmen's hourly rate of pay to that of shop craft mechanics, PATH's final offer, well in advance of the wage increase pattern, will enable the Organization to obtain its primary objective. It is a compelling consideration that the signalmen attain the desired hourly wage rate by June 8, 1984. Within a few months from now the organization will again be in a valid position to seek new wage adjustments.

Recognizing the irreconcilable differences that have existed between the parties, the Board, in arriving at its decision, has carefully reviewed and considered the factors underlining these differences.

Respectfully submitted,

HAROLD M. WESTON, *Chairman*
IRVING T. BERGMAN, *Member*
PETER FLOREY, *Member*

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HAROLD M. WESTON, *Chairman*
IRVING T. BERGMAN, *Member*
PETER FLOREY, *Member*

APPENDIX A
EXECUTIVE ORDER 12495

ESTABLISHING AN EMERGENCY BOARD TO INVESTIGATE A DISPUTE BETWEEN PORT
AUTHORITY TRANS-HUDSON CORPORATION AND THE BROTHERHOOD OF RAILROAD
SIGNALMEN

A dispute exists between the Port Authority Trans-Hudson Corporation and the Brotherhood of Railroad Signalmen representing employees of the Port Authority Trans-Hudson Corporation.

The dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended ("the Act").

A party empowered by the Act has requested that the President establish an emergency board pursuant to Section 9A of the Act.

Section 9A(e) of the Act provides that the President, upon such a request, shall appoint an emergency board to investigate and report on the dispute.

NOW, THEREFORE, by the authority vested in me by Section 9A of the Act, as amended (45 U.S.C. § 159a), it is hereby ordered as follows:

Section 1. *Establishment of Board.* There is hereby established a board of three members to be appointed by the President to investigate this dispute. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier. The board shall perform its functions subject to the availability of funds.

Sec. 2. *Report.* (a) Within 30 days from the creation of the board, the parties to the dispute shall submit to the board final offers for settlement of the dispute.

(b) Within 30 days after submission of final offers for settlement of the dispute, the board shall submit a report to the President setting forth its selection of the most reasonable offer.

Sec. 3. *Maintaining Conditions.* As provided by Section 9A(h) of the Act, as amended, from the time a request to establish a board is made until 60 days after the board makes its report, no change, except by agreement, shall be made by the parties in the conditions out of which the dispute arose.

Sec. 4. *Expiration.* The board shall terminate upon the submission of the report provided for in Section 2 of this Order.