

In the Matter of Interest Arbitration:

NATIONAL RAILROAD PASSENGER
CORPORATION (AMTRAK)

and

BROTHERHOOD OF MAINTENANCE OF
WAY EMPLOYES (BMWED), affiliated
with TEAMSTERS RAIL CONFERENCE,
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS

and

BROTHERHOOD OF RAILROAD SIGNALMEN,
AFL-CIO (BRS)

and

PASSENGER RAIL LABOR BARGAINING
COALITION (PRLBC) (as the representative
of the BMWED and BRS)

Interest Arbitration

2010-14 Agreement

BOARD OF ARBITRATION

Ira F. Jaffe, Esq., Chairman
Shyam Das, Esq., Member
Herbert Fishgold, Esq., Member

APPEARANCES:

For Amtrak:

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For the PRLBC:

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OPINION

This interest arbitration arises pursuant to a September 6, 2013 Arbitration Submission Agreement between the National Railroad Passenger Corporation (“Amtrak” or “Carrier”), and the Brotherhood of Maintenance of Way Employees (“BMWED”) and the Brotherhood of Railroad Signalmen (“BRS”). The BMWED and BRS were each represented by the Passenger Rail Labor Bargaining Coalition (“PRLBC”).

In accord with the Arbitration Submission Agreement, a Board of Arbitration (“Board”) was established consisting of three neutral members, each of whom was required to be a member of the National Academy of Arbitrators and be experienced and knowledgeable in resolving rail labor disputes, based upon prior experience as a neutral on a railroad “parties-pay” adjustment board or a railroad Presidential Emergency Board (“PEB”). A preliminary session was held between the Chair and Counsel for the Parties on October 28, 2013. Hearings were held on January 6, 7, 13, 14, 15, 16, and 17, 2014. A final session was held between the Chair and the Parties on February 21, 2014 in which an attempt was made to reach a mediated solution.

The Parties introduced approximately 5,000 pages of exhibits, including written and oral testimony and arguments from a variety of expert and non-expert witnesses. The Parties filed prehearing statements and briefs and closed orally at the January 17th arbitration hearing. It should be noted that the Board has carefully reviewed and scrutinized the totality of the record evidence prior to reaching its determination in this

case. Pursuant to the joint request of the Parties, this Opinion and Award will dispense with any detailed summary of that evidence or the contentions of the Parties and focus instead upon the ruling of the Board and a summary explanation of the principal reasons for that ruling.

The Board's task in this case is to determine the terms and duration of the successor agreements to: 1) the agreement between Amtrak and the BMWED covering the Northeast Corridor, as amended, and known as the Northeast Corridor Agreement; 2) the agreement between Amtrak and the BMWED covering the remainder of the Amtrak system, known as the Corporate / Off-Corridor Agreement; and 3) the agreement between Amtrak and the BRS covering the system, known as the Wage and Rule Agreement, effective March 1, 2007. (Collectively, these successor agreements will be referenced hereinafter as the "Agreements.")

A number of items are not in dispute. First, there is agreement to provide significant wage increases during the term of the Agreements. Both the Carrier's proposal and that of the PRLBC with respect to wages provide for significant wage increases during the five year term of the Agreements. Second, there is agreement that the changes in wages and benefits are to be the same for the Northeast Corridor, Corporate / Off-Corridor, and Wage and Rule Agreements. Third, there is agreement to provide full retroactivity. Fourth, there is agreement as to the duration of the Agreements – i.e., they will be effective as of January 1, 2010 and will be amendable as of January 2, 2015 – a duration of five years and one day. Fifth, there is agreement to effect improvements to the Supplemental Sickness Benefits Plan. Sixth, there is agreement regarding the costing of extending to AMPLAN certain plan design changes that were

part of the agreements reached between the Freight Railroads and a number of organizations (including the BMWED and BRS) in the aftermath of PEB No. 243. All of these features appear fair and appropriate to the members of the Board and are reflected in the Award of the Board in this matter.

The Appropriate Pattern

A number of items, however, are hotly contested by the Parties. The single overarching disputed issue relates to whether the agreements reached by the Freight Railroads with the BMWED, BRS, and other organizations (the “Freight Pattern”) should form the basis of the wage, benefits, and work rule changes ordered in this proceeding or whether the agreements reached between Amtrak and its other organizations (the “Amtrak Pattern”) should form the basis of the wage, benefits, and work rule changes provided for in the Agreements.

The Carrier’s Proposal

The Carrier’s proposal, which is based upon the Amtrak Pattern, would provide for the following general wage increases (“GWIs”):

Date	General Wage Increase
7-1-10	1.5%
1-1-11	1.5%
7-1-11	1.5%
1-1-12	1.0%
7-1-12	1.5%
1-1-13	1.5%
7-1-13	1.5%
1-1-14	1.0%
7-1-14	1.5%
1-1-15	1.5%
Total	14.0% uncompounded (2.80% over 5 years)

The Amtrak Pattern agreements provided for retroactivity for all changes in wages and health contributions. The retroactivity was “full” traditional retroactivity, and extends to individuals who have retired or left employment as well as those who are actively employed as of the date of this Award, as contrasted with the more limited eligibility retroactivity that was recommended by PEB No. 242.

The Amtrak Pattern agreements also contained provisions confirming the Carrier’s intention to create and implement an incentive pay plan tied to statutory and corporate performance metrics, such as Customer Service Index, financial, etc. The details of the potential performance bonus incentive plan were not included in the Amtrak Pattern agreements. Side letters appended to those agreements, however, noted that Amtrak planned to develop performance measures, publicize them and have them become applicable in 2011, and payout incentive bonuses beginning in 2012. Some of the later-signed agreements deleted the reference to implementation dates. The amounts of the payouts were projected to be “up to 5% of the measurement year’s straight time earnings,” with an anti-pyramiding provision and offsets in the event that the employee qualifies for and receives payments under another incentive plan.

The Amtrak Pattern agreements also contained “me, too” language, in a series of appended side letters, which stated that:

In the event the Carrier reaches agreements with other Organizations (representing other crafts) which contain more favorable general wage increases or benefits during the current round of negotiations, such provisions will be incorporated into this agreement, unless such improvement(s) was made in consideration for modification(s) in other work rules in the agreement between the parties.

The Carrier agreed to include these provisions in the Agreements because they are part of the Amtrak Pattern, but asserted that they cannot trigger because all of the other agreements have been bargained. The PRLBC asserted that the agreement reached

between the Carrier and the UTU may have triggered these “me, too” provisions with respect to the provisions for certification pay. The assertions relative to the UTU agreement’s certification pay provisions will be discussed at greater length later in this Opinion.

Unlike the Freight Pattern, there were only modest changes to the AMPLAN design and premium structure. The co-pay for Emergency Room treatments was increased from \$50 to \$75, but with the proviso that if the participant or beneficiary was admitted to the hospital, then the co-pay was waived. Employee premiums remained at the lower of 15% of total AMPLAN, Dental, Vision, AD&D and Life Insurance cost or a capped amount. The capped amount, which was \$200 in the prior agreements, was set at the following rates during the life of the Amtrak Pattern agreements: effective July 1, 2011, the cap is \$190; effective July 1, 2012, the cap is \$210; and, effective July 1, 2013, the cap is \$230. Actual premiums, were \$177.54 (in effect prior to January 1, 2010), \$181.62 (effective July 1, 2011), \$189.53 (effective July 1, 2012), and \$209.19 (effective July 1, 2013). The Carrier’s proposal provides that the actual premiums as of July 1, 2013 would continue to be the premium amounts, unless adjusted by future agreement, until July 1, 2016. An early reopener for Health Care was also provided for in the Amtrak Pattern agreements. Any notice of reopener for Health Care could be served on or after May 1, 2014, with any changes effective on or after July 1, 2014.

The Amtrak Pattern agreements and the Carrier’s proposal in this case provide that:

In the event that changes to the National Supplemental Sickness Benefit Plan are agreed to by the National Carrier’s Conference Committee (NCCC) and the union, in settlement of notices now served on the NCCC, such changes will become a part of this agreement.

In the Freight Pattern settlements, the parties adopted the recommendations of PEB No. 243 and agreed to change the indexing of the Supplemental Sickness Benefit Plan (“SSBP”) from a situation in which reindexing took place only at the beginning or end of each collective bargaining agreement to a situation in which renewed indexing occurs each time that there is a GWI. The Freight Pattern implemented that new reindexing prospectively, beginning with the first GWI granted after new collective bargaining agreements were entered into for that round of bargaining. The indexing is designed to ensure that the ratio of SSBP benefits to pay that was in effect as of December 31, 2009 is maintained.

The different agreements reached with the Carrier by the other organizations contained different terms relative to work rule changes. Some included more extensive changes than others. The Carrier identified a large number of potential work rule changes in this matter that it was not proposing be adopted, as such, but which it indicated a willingness to adopt and to then monetize in the form of additional GWIs. Both the BMWED and BRS indicated no interest in work rule changes (other than the health plan changes discussed in greater detail herein) even if they translated into greater GWIs. Accordingly, no purpose would be served by summarizing those various items herein.

The bulk of the Amtrak Pattern agreements contained, however, several “administrative” work rule changes. These included two rules that were labeled as “Payroll Efficiencies” and provided for: 1) payment bi-weekly, by direct deposit, with an itemized record of all deductions being provided; and 2) a definition of the work week, for payroll purposes, as a period of seven consecutive days beginning Monday at 12:01

a.m. The bi-weekly pay rule change was in each of the Amtrak Pattern agreements, other than some that already provided for bi-weekly pay. All of the Amtrak Pattern agreements that provided for bi-weekly pay also contained side letters that provided that, concurrent with the implementation of bi-weekly pay, payroll shortages of eight hours or more (or the equivalent) will be corrected by either check or direct deposit within two business days of the notification to the Carrier of the shortage. The change in the definition of the work week rule change appeared in some, but not all, of the Amtrak Pattern agreements. The Carrier's proposal includes both of these changes.

The Carrier also proposed two work rules that related to the administration of discipline and that are asserted to be part of the Amtrak Pattern. One alters the discipline rule to eliminate formal investigations for Alcohol and Drug Waiver violations. The right to appeal directly to the Director of Labor Relations and to arbitration was also noted, as well as the fact that the burden for proving an Alcohol or Drug Waiver violation remained with the Carrier. That rule change was reflected in the vast majority of agreements reached during this round of bargaining. The second appeared in some, but far less than all, of the Amtrak Pattern agreements. The second discipline rule would create a new step in the disciplinary process. The change would provide for a meeting prior to any formal investigation and further provide that if the Carrier fails to attend the meeting, then the proposed discipline would be withdrawn and cancelled, but if the employee failed to attend the meeting, then the Carrier could assess "whatever discipline it considers appropriate" subject to appeals rights. The rule also specified the location and timing of any investigation later held.

The PRLBC Proposal

The PRLBC Proposal, which is based upon the Freight Pattern, would provide for the following GWIs:

Date	General Wage Increase
7-1-10	2.0%
7-1-11	2.5%
7-1-12	4.3%
7-1-13	3.0%
7-1-14	3.8%
1-1-15	3.0%
Total	18.6% (3.10% average over 6 years)

The January 1, 2015 3.0% GWI in the Freight Pattern was optional in the sense that it may be elected by each organization or not. The BRS and BMWED elected the 3% in the Freight negotiations (as did every other organization) and the PRLBC indicated its preference to do so in this case as well. As a condition of accepting the January 2015 GWI under the Freight Pattern, the parties remained free to bargain different wage provisions for the period after January 1, 2015, but committed that if no bargain is reached and the disposition of the 2015 Bargaining Notices is referred to any third party (including but not limited to a PEB or arbitration board), there would be agreement that the 3.0% general wage increase was intended to constitute a complete resolution of the compensation adjustment issue for calendar year 2015.

The Freight Pattern also includes a one-time, lump sum payment equivalent to 1% of straight time earnings (after application of the July 1, 2010 and July 1, 2011 General Wage Increases) for the 12 month period November 1, 2010 through October 31, 2011. This lump sum would be paid after ratification of the agreement. This lump sum is also part of the PRLBC proposal in this case.

The PRLBC Proposal contains higher GWIs than the Amtrak Pattern, but also contains significant plan design changes to the health plan that result in increased employee cost sharing for medical expenses. The changes consist of the following: 1) new provisions for annual deductibles of \$200 (individual) and \$400 (family); 2) new provisions for 5% employee coinsurance; 3) new provisions for maximum out of pocket payments (\$1,000 for an individual and \$2,000 for a family); 4) continuation of the \$177.54 per month contribution rate for the entire term of the Agreements and thereafter (unless modified by a subsequently negotiated provision) until July 1, 2016, at which time the monthly cap increases to \$230 (unless modified by a subsequently negotiated provision); 5) changes to co-payments for prescription drug coverage (reductions for the generic drug copay to \$5 per refill and increases for the brand-name formulary refill copay to \$25 and for the brand-name non-formulary prescription copay to \$45); and 6) increases in the copayment for Emergency Room treatment to \$75. The PRLBC proposal would phase-in the health changes as of the effective dates provided for in the Freight agreements, for purposes of determining appropriate offsets against retroactive pay (since the current plan design provided employees with greater benefit coverage than they would have enjoyed if AMPLAN had been amended to include the Freight Pattern changes), but would simply implement the health changes prospectively without any phase-in as of July 1, 2014.

The PRLBC Proposal included the change to the indexing of SSBP benefits, summarized above, but included no proposed changes to work rules. While PEB No. 243 did not recommend adoption of any other work rule changes, it did refer certain items on an organization by organization basis back to the parties for local handling.

The explanation provided by PEB No. 243 that accompanied its recommendations indicated that, of the 18.6% in recommended GWIs, approximately 1.3% was due to an effort to monetize conductor certification pay that was negotiated by the UTU and an additional 0.3% GWI was a result of monetizing certain changes in the UTU agreement that shortened the period in which newly hired employees attain full pay rates for the job. The Carrier disputed the propriety of monetizing those items for purposes of the Award in this case since the UTU Agreement with the Carrier contains different certification pay provisions and makes no change to job rate progression, unlike the agreement that the UTU reached with the Freight carriers. The PRLBC replied that the genesis of the wage increases was not important and that so long as the GWI was part of the Freight Pattern, it should be included as part of the wage increases in this case.

The Historical Linkage of Changes in Amtrak Wages and Benefits to the Freight Pattern

The relationship between the Freight Pattern and the wage and benefits for Amtrak employees was central in PEB 242. In that case, the Board noted that:

Amtrak was chartered in May 1971 as a result of the Rail Passenger Service Act. The Carrier was created after the Freights left the unprofitable passenger rail business. The initial complement of employees came from Conrail. Amtrak has been unprofitable for its entire existence, relying upon a federal operating subsidy to continue operations. It is the only federally owned or controlled entity subject to the Railway Labor Act.

There is no dispute that, despite the differences between Amtrak's unprofitable passenger rail operations and the Freights, the Freight Agreements have served over the years as the historical pattern referenced for establishment of wages, benefits, and working conditions, at Amtrak. For over 30 years, the Parties have used the Freight Agreements as the pattern for purposes of negotiating new Amtrak Agreements with the Organizations. Presidential Emergency Boards which have issued reports in connection with Amtrak and one or more organizations have treated the Freight Agreements as the pattern against which fair and reasonable agreements may be measured.

The importance of pattern bargaining in the railroad industry has been the subject of commentary by a number of PEBs over the years. In each of these reports, the PEB has noted that pattern bargaining principles serve a number of functions. First, absent changed circumstances sufficient to break the pattern, they provide an objective indicator of the terms that should result from arms length, good faith bargaining between parties in the same industry, attempting to set wages and working conditions in similar jobs, at the same points in time. Second, pattern bargaining promotes stability, both internally within a carrier and externally in the industry, by utilizing referents that the

Parties themselves used in prior rounds of bargaining and, depending upon the proposals, perhaps even in the current round of bargaining. Third, these principles provide benchmarks in bargaining, enhancing the likelihood of voluntary agreements. Fourth, the absence of a pattern would be much more uncertain and chaotic, encouraging groups at one carrier to attempt to outdo others, creating an undesirable and disruptive cycle. Given the critical nature of the services provided and the economic repercussions of labor disruptions, stability as a goal is even more important than in other industries. Avoiding strife and work stoppages, while ensuring that wages, benefits, and working conditions are fairly and appropriately determined, are among the principal goals underlying the RLA generally and the PEB process in particular. Fifth, patterns assist in the maintenance of well recognized parity relationships among the wages paid to employees in different classes or crafts or working at different carriers.

The Carrier and the Organizations embrace these general concepts. It is in their application where their positions diverge. The Organizations seek an Agreement that mirrors closely the Freight Agreements and seeks retroactivity for the entire period since December 31, 1999. The Carrier points, instead, to certain differences in its operations from the Freights – differences that have existed for virtually the entire life of the Carrier – and asks, instead, that the Organizations and the Board focus principally upon a claimed “internal pattern,” consisting of several Agreements reached in 2003 and 2004 and extend that “internal pattern” forward based upon a variation of the Freight pattern after 2004, and that retroactivity not be applied, except for the offered lump sum.

(Report at 14-16).

In a footnote, PEB No. 242 noted, however, that:

The Board appreciates that the general wage increases provided under the TCU, ASWC, and ARASA (OBS) Agreements of 2003 and 2004 mirror to a significant degree the Freight Agreement of 2000-04 and that general wage increase provisions of the rejected BLET TA of 2007 mirrors to a significant degree the 2003-04 internal pattern of ratified agreements and the Freight Agreement of 2005-09. The finding in this case that the Freight Agreements provide the most fair and appropriate pattern for the Organizations in this dispute is grounded squarely upon historical considerations and also record facts and should not be construed as opining on whether in the future some pattern other than the Freight Agreement might be fair and appropriate.

In PEB No. 242, it was determined that there was no persuasive evidence of a claimed “Amtrak Pattern” and that the Freight Pattern remained applicable to Amtrak. The PEB’s recommendations included one that applied the Freight Pattern (both the 2000-04 and 2005-09 Freight Agreements) to all of the organizations at Amtrak, with retroactivity.

In 2010, Amtrak embarked upon a negotiation strategy of attempting to settle early, even prior to settlements being reached between the Freight carriers and the organizations. This stands in stark contrast to the behavior of Amtrak during the period

preceding PEB No. 242, in which Amtrak did not reach agreement with its organizations over an approximately eight year period, spanning virtually two complete rounds of bargaining between the organizations and the Freight carriers. The relevant evidence as to this current round of bargaining is summarized next.

The Development of the Amtrak Pattern in the Current Round of Bargaining

The collective bargaining agreements between Amtrak and the organizations became amendable as of January 1, 2010. Rather than wait for the outcome of the Freight negotiations, a number of organizations at Amtrak entered into negotiations with the Carrier and reached early agreements. The entry by Amtrak and the organizations into agreements prior to the conclusion of the bargaining between the Freight Railroads and their organizations is unprecedented. A number of factors contributed to the decision to engage in such early bargaining, including a desire to avoid in this round of bargaining the changes to health plan design that were anticipated to result from the bargaining between the Freight Railroads and the organizations, the desire to begin to receive bargained-for wage increases in a more timely fashion and without creating significant retroactive pay obligations that would likely require Congressional action to effectuate, and the ability of the Carrier to have offered significant wage increases in this early bargaining notwithstanding the uncertain economic climate in which these bargains were being made.

These agreements contained identical provisions for GWIs and health and welfare benefit changes, and included “me too” provisions, changes to SSBP indexing, and modest work rules changes. The work rule changes included some that were

administrative in nature and were agreed to by all of the settling organizations and others that were organization specific.

The dates of the settlements, on an organization by organization basis, were as follows:

Joint Council of Coachmen, Coach Cleaners and Helpers (“JCC”) – June 21, 2010

Transportation Communications Union (“TCU”) – June 22, 2010

Amtrak Service Workers Council (“ASWC”) – June 28, 2010

American Train Dispatchers Association (“ATDA”) – July 1, 2010

American Railway and Airway Supervisors Association (“ARASA”) –
Maintenance of Way Supervisors (“MW”) – August 10, 2010

ARASA – Onboard Supervisors (“OBS”), ARASA – Mechanical Foremen (“ME”), and International Brotherhood of Electrical Workers (“IBEW”) –
October 20, 2010

Sheet Metal Workers International Association (“SMWIA”) – April 19, 2011
(SMWIA was a member of the PRLBC prior to settling)

Fraternal Order of Police (“FOP”) – June 7, 2011

National Council of Firemen and Oilers (“NCFO”) – August 30, 2011
(NCFO was a member of the PRLBC prior to settling)

International Brotherhood of Boilermakers (“IBB”) – September 8, 2011
(IBB was a member of the PRLBC prior to settling)

[The 11 Organizations at Amtrak that settled prior to the issuance of the Presidential Emergency Board No. 243 Recommendations on November 5, 2011 represented over 11,000 Amtrak employees, accounting for approximately 64.4% of Amtrak’s total represented employee complement. Over the next three months, settlements were reached between the Freight Railroads and all of the organizations based closely upon the recommendations of PEB No. 243].

Brotherhood of Locomotive Engineers and Trainmen (“BLET”) – January 27, 2012

United Transportation Union (“UTU”) – April 17, 2013

Thus, as of April 17, 2013, approximately 84.0% of Amtrak's unionized workforce, represented by 13 organizations, were covered by agreements with the Carrier. The terms of those agreements were common with respect to general wage increases and health benefits and contributions. Contrary to the assertion of the PRLBC, we find that they formed a true internal pattern.

The only organizations that have not reached agreements in this round of bargaining at Amtrak are the BMWED and the BRS. Following a number of mediation sessions at which the Parties were unable to reach agreement, based in large part upon their dispute as to whether the Amtrak Pattern or the Freight Pattern was of greatest significance in crafting the terms of the successor Agreements, the Parties reached agreement to have their dispute resolved through this interest arbitration proceeding.

The General Wage Increases and treatment of health care, including contribution rates and early reopener provisions, are identical among the various Amtrak Pattern agreements. The Carrier's Agreement with the UTU contains provisions for certification pay for Conductors – a provision not found in the other agreements – that differ significantly from the certification pay provisions adopted as part of the UTU Agreement with the Freight Railroads. The Parties in this proceeding disagree as to whether that additional provision renders the UTU Agreement other than “pattern” relative to wages. The Carrier asserted that the net cost of the certification pay provisions was not significant. The certification pay consists of two payments. One, a \$250 payment, is first payable in March 2014, and is payable only to Conductors who attain and also maintain full qualification, including certification and physical qualification. The second payment,

a \$500 payment, is first payable in September 2014, and is payable only to Conductors who are compensated as a Conductor for at least 118 shifts during a six month period. By inducing employees to qualify and work as Conductors, rather than as Assistant Conductors, the Carrier projects reduced training costs and reduced needs for Extra Board Conductors, resulting in “net” projected cost savings to the Carrier in excess of \$200,000 annually. The PRLBC, on the other hand, asserts that the payments are being made for nothing more “than doing one’s job” and urged that the costs of the payments (which can amount to up to \$1,250 per year) be treated as part of the wage value of the UTU Agreement.

The Amtrak Pattern, Rather than the Freight Pattern, is the More Significant Reference Point for this Round of Bargaining for the BMWED and BRS Agreements

While the PRLBC challenged whether an Amtrak Pattern was established, we find that the record clearly demonstrated the existence of a consistent internal Amtrak pattern developed during this present round of bargaining relative to wages, benefits, and certain administrative work rules. All of the criteria typically considered in determining the existence and strength of a pattern are present in this case. The settlements encompassed 13 of Amtrak’s 15 organizations and covered the vast majority – 84% – of the Carrier’s organized workforce. The settlements included operating and non-operating crafts and included a supervisory engineering group, as well as three organizations that were initially part of the PRLBC. The pattern settlements were reached mostly prior to the Freight settlements that followed PEB No. 243, but two large operating craft organizations, the BLET and UTU, reached agreements with the Carrier modeled upon the Amtrak Pattern even after the Freight Agreements were reached. All of the settlements contain the same general wage increase and benefits provisions, with only

modest variation on work rules issues, and cover the same bargaining cycle and have identical duration and amendable dates.

There are a number of reasons why the Board is persuaded in this case that the Amtrak Pattern, with some modification on a cost-neutral basis with respect to the January 1, 2015 GWI, represents the more appropriate reference for the terms of the Agreements for the BMWED and BRS crafts. First, well-established internal patterns have traditionally been given great weight by PEBs and interest arbitration boards, both in and outside the railroad industry. Internal patterns involve the same employer and, as such, involve the same circumstances relative to affordability and other conditions that are carrier-specific. They also ensure internal equity among different craft groups and avoid the instability associated with each organization trying to exceed the gains achieved by other organizations in bargaining. While the existence of “me, too” provisions in the other Amtrak Pattern settlements could potentially operate to prevent internal inequity even if the Board were to direct the terms of the successor Agreements based principally upon the Freight Pattern, such an approach would still create significant disruption as the terms freely negotiated by 13 organizations and the Carrier would be changed to provide greater wage increases, but to also implement health care design changes that were deliberately avoided by those organizations and the Carrier as part of the collective bargaining process. Moreover, given the phrasing of the “me, too” provisions and the linkage between some, but not all, of the Freight Pattern wages to the health care plan design changes, application of the “me too” provisions would be anything but a simple matter and could easily result in a situation in which different crafts received different wage adjustments and different health care. Further, all this would occur at a time near

the date on which the agreements, including those directed herein, would be amendable. Finally, adoption of the Freight Pattern in this case would minimize the likelihood that early collective bargaining settlements at Amtrak would occur in the future and virtually ensure that the bargaining would revert to a situation in which Amtrak and the organizations would wait years after the amendable date until the Freight carriers have settled before beginning their negotiations and following the Freight Pattern. Amtrak employees would then receive no wage increases for substantial periods, followed by large back pay obligations that could be at risk of not being fully funded by Congress. The Board is persuaded that, when fair and appropriate bargains can be reached, there are mutual benefits in settlements that resolve outstanding bargaining disputes promptly, as occurred during this round of bargaining.

While the Board does not subscribe to Amtrak's assertion that a strong internal pattern will always trump or prevail over evidence of an external pattern, and while we recognize that the Freight Pattern remains a highly relevant and significant referent in terms of appropriate wage and benefit rates at the Carrier, the particular combination of facts present in the current round of bargaining persuades us that the Amtrak Pattern is a better indicator of the wage, benefits, and work rules terms of fair and appropriate agreements than the Freight Pattern.

The Board's Determination as to the Terms of the 2010-15 Agreements

The Board is persuaded that the fair and appropriate terms of the Agreements in this case rest largely upon the terms of the Amtrak Pattern, but also incorporate certain elements from the Freight Pattern. The Board is persuaded that the modifications to the Amtrak Pattern, which the Board believes are on a cost-neutral basis, allow

accommodation to the preferences of the BMWED and BRS for greater wage increases, with acceptance of the Freight Pattern health care design changes that the other organizations wished to avoid, in a fashion that will result in a minimum of disruption to the bargains reached under the Amtrak Pattern, and which may enhance labor relations stability and internal and external equity.

Wages

The Board recommends adoption of the formulation of GWIs contained in the Amtrak Pattern through the end of 2014. For the last GWI, however, which is to take effect on January 1, 2015, the Board directs that the GWI be increased from the 1.5% that is part of the Amtrak Pattern settlements to an increase of 3.0%, with the additional 1.5% increase funded by the changes in health care plan design that were part of the Freight Pattern and which are ordered adopted as of the same date. The GWIs awarded, therefore, will be as follows:

Date	General Wage Increase
7-1-10	1.5%
1-1-11	1.5%
7-1-11	1.5%
1-1-12	1.0%
7-1-12	1.5%
1-1-13	1.5%
7-1-13	1.5%
1-1-14	1.0%
7-1-14	1.5%
1-1-15	1.5%
1-1-15	1.5%
Total:	15.5% (3.1% over 5 years)

While the two January 1, 2015 GWIs of 1.5% occur on the same day, it is intended that they be treated as two separate GWIs and thus will be compounded.

These wage increases are to include full retroactivity, less offsets for the difference between the health premiums that should have been paid under the terms of the Amtrak Pattern and this Award and the actual premium amounts that were paid by the employees covered by this Award. The Board intends that the retroactivity provided to the BMWED and BRS employees mirror the full retroactivity that was provided to the other organizations under the Amtrak Pattern.

The Agreements are to each contain the same side letter relative to the possible development of an incentive plan as were included in the most recently concluded Amtrak Pattern agreements. While the Carrier's initial intentions to have established that plan at a much earlier date have failed to materialize, the side letter regarding the incentive plan should nevertheless be included so that, in the event that the incentive plan is implemented prior to successor agreements being adopted, the BMWED and BRS represented employees may also participate in and share in the rewards provided by that incentive plan.

The Agreements are to contain the same "me, too" provisions contained in the agreements that the Carrier reached with the other 13 organizations. The limited record evidence with respect to the UTU Agreement was insufficient to establish that the UTU Agreement was outside the Amtrak Pattern with respect to wages. The absence of any such grievances by the other organizations would normally suggest that such a claim may not be well founded, but as of date of the hearings in this matter, no actual payments have been made pursuant to those provisions. However, the question of whether the UTU Agreement's provisions on certification pay trigger the "me, too" provisions of the side letter(s) is not an issue that has been submitted to the Board for determination in this

case. Accordingly, the Board directs simply that the BMWED and BRS Agreements include side letters identical to the other “me, too” side letters that are part of the Amtrak Pattern agreements. Whether or not the “me, too” side letters were triggered as a result of any of the agreements is a matter that will need to be resolved, if there is an actual dispute, in accord with the grievance and arbitration provisions of the BMWED and/or BRS Agreements.

The change to indexing of the Supplemental Sickness Benefit Plan benefits provided for in the Amtrak Plan agreements (and which are based, in turn, upon the Freight Pattern agreements) is also directed prospectively, effective as of April 1, 2014, with future index adjustments as of the date of any wage increases.

Finally, while the wage increases effective as of January 1, 2015, mirror those set forth in the Freight Pattern agreements, there is a significant difference between those two increases. The Freight Pattern agreements, allow for bargaining with respect to wages for 2015, but mandate that in the event that the matter is resolved through a PEB or interest arbitration process, then both the carrier and the organization agree to take the position that the 3.0% general wage increase was intended to constitute a complete resolution of the compensation adjustment issue for calendar year 2015. The January 1, 2015 wage increase provided for in this Award contains no such limitation or condition, thus rendering it potentially more valuable to the BMWED and BRS members than the increase provided for under the Freight Pattern agreements.

The adoption of the health plan changes and the linked wage increases, effective January 1, 2015, rather than at an earlier date, has multiple benefits. First, it should avoid triggering the “me, too” provisions, but any of the other organizations that desire the

tradeoff of health plan design changes for additional wage increases can utilize the early reopener provisions of their agreements and obtain the same bargain. Second, there is no destabilizing effect to implementing the provisions in this fashion. It will not even take place until a date when other organizations may agree pursuant to the early reopener provisions of their agreements to adopt similar changes. Thus, the prospect of uniform administration of a single plan of benefits remains possible. Third, the change accommodates the different balance between health care changes and wages held by the BMWED and BRS while not forcing such changes upon other organizations during the term of the existing agreements. Fourth, the changes appear fair and reasonable, both in terms of mirroring the changes that were part of the Freight Pattern (which, while not adopted herein, still remains relevant to the wage and benefit terms of Amtrak's represented workforce) and in terms of the clear trend towards changes in cost sharing and health plan design. Fifth, by providing that the changes not occur until January 1, 2015, a number of notice and administrative issues have been minimized.

Health Plan

The health care provisions of the Agreements are to mirror those under the Amtrak Pattern agreements through December 31, 2014. Thus, no plan design changes other than the change to the Emergency Room co-pay to \$75 (waived in the event of admission to the hospital) are to be made and the monthly premiums are to be set at the following amounts: \$177.54 (July 1, 2009); \$181.62 (July 1, 2011); \$189.53 (July 1, 2012); and \$209.19 (July 1, 2013 and thereafter until adjusted by future agreement or until July 1, 2016, when new rates can be implemented). Since the BMWED and BRS represented employees have been paying premiums of \$177.54 per month, as part of the

calculation of retroactive pay, offsets may be taken to reflect the failure of those individuals to have paid the full Amtrak Pattern employee premium rates.

Effective January 1, 2015, the Carrier is to implement the design changes to AMPLAN that were provided for under the Freight Pattern and PEB No. 243. These include specifically the adoption of deductibles, coinsurance, out of pocket maximums, and changes to the prescription drug program. Premiums are to be set at \$209.19 (the premiums paid pursuant to the other Amtrak Pattern agreements) or, if lower, 15% of the total cost of AMPLAN, Dental, Vision, AD&D and Life Insurance cost. Unless a different rate is set through subsequent negotiations, the employee premiums will be reset, effective July 1, 2016, at the lower of \$230 per month or 15% of the total cost of AMPLAN, Dental, Vision, AD&D and Life Insurance cost.

Work Rules

The Board is persuaded that adoption of the bi-weekly pay, direct deposit, definition of the workweek, and adjustment of pay error administrative work rule changes described above are appropriate, are part of the Amtrak Pattern settlements, and should be adopted.

The Board is further persuaded that the change in disciplinary rule with respect to eliminating investigations and expediting the appeal of Alcohol and Drug Waiver disciplines is appropriate and part of the Amtrak Pattern and should be adopted.

All other proposed work rule changes are rejected. The PRLBC has provided persuasive reasons not to adopt the proposed pre-disciplinary meeting changes proposed by the Carrier that were agreed to by some, but nowhere near all, of the other organizations.

The Amtrak Pattern does not contain evidence of core job security work rule changes of the type urged by the Carrier. Nor was it established in the interest arbitration proceeding that adoption of the proposed rule changes was appropriate or necessary to address some of the underlying problems that were identified. To the extent that a future showing is made that the present approach of negotiating specific exceptions, when appropriate, is insufficient, the matter can appropriately be addressed in the near future in any event since the Agreements will be amendable as of January 2, 2015 – a mere eight months or so from the present date.

Term

The term of the Agreements are January 1, 2010 through January 1, 2015. The Agreements are to be amendable, effective as of January 2, 2015. The provisions of the Amtrak Pattern agreements relative to the dates for filing Section 6 Notices, as well as the provisions of the Amtrak Pattern agreements relative to potential early reopening for proposed health care changes, are to be included in the Agreements.

In all other respects, the existing provisions of the Northeast Corridor Agreement; the Corporate / Off-Corridor Agreement; and the Wage and Rule Agreement, effective March 1, 2007, are to be continued.

The Parties are directed to expeditiously meet to adopt precise language implementing the changes encompassed by this Award. Jurisdiction is retained to resolve any disputes over that language that the Parties are unable to resolve on remand, to be presented to the Board by either Party on or before April 8, 2014.

March 25, 2014



Ira F. Jaffe, Esq.
Chairman, Board of Arbitration



March 25, 2014

Shyam Das, Esq.
Member, Board of Arbitration



March 25, 2014

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Member, Board of Arbitration