



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P. O. BOX 3265, HARRISBURG, Pa. 17120

May 6, 1981

IN REPLY PLEASE
REFER TO OUR FILE

C-80011839

James W. Patterson, Esquire
Harper, George, Buchanan & Driver
1200 W. Savings Bank Building
Philadelphia, PA 19107

Villanova University

v.

National Railroad Passenger Corporation
(Amtrak), Consolidated Rail Corporation
(Conrail), Southeastern Pennsylvania

Transportation Authority (SEPTA),
(PennDot), County of Delaware and Radnor Township

To Whom It May Concern:

Enclosed is a copy of a proposed Initial Decision prepared by
Administrative Law Judge Martin R. Fountain.

An original and fourteen (14) copies of exceptions to the decision,
if any, must be filed in the Secretary's Office and a copy to each party of
record within 15 days of the date of this letter.

Replies to the exceptions, if any, must be filed within 20 days
of the date of this letter.

Exceptions should be clearly labeled as "EXCEPTIONS OF (name of
party) - (protestant, complainant, staff, etc.)". Do NOT label exceptions
as a "Brief" or "Brief on Exceptions".

All timely filed exceptions and replies thereto will be attached
to the decision for consideration at Public Meeting. Late filed exceptions
and late filed replies will not be attached.

Very truly yours,

James M. Zwart
for William P. Thierfelder
Secretary

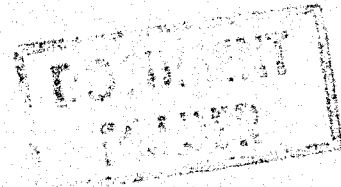
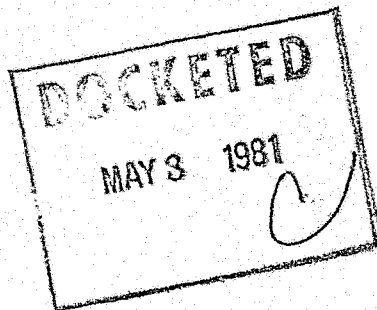
ts
Enclosures
Certified Mail
Receipt Requested

See attached list.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE: :
Villanova University : DOCKET NUMBER
v. :
National Railroad Passenger Corporation :
(Amtrak), Consolidated Rail Corporation :
(Conrail), Southeastern Pennsylvania :
Transportation Authority (SEPTA), :
Pennsylvania Department of Transportation :
(PennDot), County of Delaware and Radnor :
Township : C-80011839

INITIAL DECISION



MARTIN R. FOUNTAIN
Administrative Law Judge

HISTORY OF THE PROCEEDINGS

On January 31, 1980, Villanova University, hereinafter Villanova, filed a formal complaint against National Railroad Passenger Corporation, hereinafter Amtrak, Consolidated Rail Corporation, hereinafter Conrail, Southeastern Pennsylvania Transportation Authority, hereinafter SEPTA, Commonwealth of Pennsylvania, Department of Transportation, hereinafter PennDot, the County of Delaware, hereinafter County, and Radnor Township, hereinafter Township, alleging that the substantial pedestrian traffic was required to cross the tracks of Amtrak in the vicinity of Villanova; that the facilities for pedestrian movement under, above and across the lines of railroad were inadequate and dangerous and posed a serious threat to the safety of the public. Complainant Villanova sought to invoke the jurisdiction of the Commission pursuant to the Public Utility Code, 1978, P.L. 598, No. 116, (66 Pa.C.S.A. §101 et seq), so as to cause the construction of a safe and adequate means of crossing the said lines of the railroad.

Timely answers were filed by the Respondents, and a field investigation was held at the site of the crossing on April 29, 1980, by a member of the Commission's Staff. Hearings were held on the merits on October 7, 1980 in Philadelphia and on December 4, 1980 at Villanova.

The record consists of 234 pages and 11 exhibits.

FINDINGS OF FACT

1. Villanova University is surrounded by Route 30, (Lancaster Pike), Traffic Route 320, (Spring Mill Road), Ithan Avenue and the railroad tracks. (N.T. 5,6, Ex. C-1)

2. The main campus and buildings central to the University are located on the south side of the tracks and are bounded by Traffic Route 320. (N.T. 6)

3. Two buildings of the University are located on the north side of the tracks which house a school of nursing, dormitories, athletic facilities and law school. (N.T. 6,7. Ex. C-1)

4. To get to those buildings, students (approximately 2,000 daily) and faculty must cross the tracks. (N.T. 23)

5. There are two ways of crossing the tracks in the vicinity of the main campus: one is the overhead bridge carrying Spring Mill Road and the other is a tunnel (pedestrian underpass) under the tracks. The above grade bridge and tunnel are less than 200 feet apart. (N.T. 25)

6. There are problems with both of these facilities: The bridge is narrow and does not have any pedestrian walkways. Clear roadway width on the bridge is only 18 feet, 9 inches; and the tunnel has inadequate drainage and is flooded during rainy periods. Additionally, the tunnel is inadequately lighted, and female students are fearful of using it at night. (N.T. 26, 27)

7. There is yet another way of crossing the tracks by way of Ithan Avenue and County Line Road; however, that involves an additional distance of one mile or a mile and a half of travel. (N.T. 26)

8. The students, at times, tend to cross the tracks illegally, at grade, especially when the tunnel is flooded, which has resulted in one fatality in 1979. (N.T. 26, Tr. 2)

9. The bridge, carrying Spring Mill Road, is approximately 100 years old, narrow, and has ascending grades on both sides and is without a pedestrian walkway. Highway vehicular traffic presently using the structure is 12,720 vehicles a day. Pedestrian traffic counts are also substantial, 196 pedestrians for an approximate 12 hour period. (N.T. 71, 72)

10. The structure is adequate for vehicular loads but hardly meets present day design criteria. (N.T. 76)

11. The railroad tracks are presently owned by Amtrak. A high volume of trains, about 108 per day, are operated over the tracks at speeds up to 70 MPH. All train movements are scheduled by Amtrak, which is also responsible for operation of passenger trains. (N.T. 121)

12. Conrail operates freight trains as well as commuter trains under agreement with SEPTA. (N.T. 121, 122)

DISCUSSION

There is no doubt in the mind of the Administrative Law Judge that the situation which now exists at the

crossing under review presents a threat to the safety and well being of the traveling public. In the instant case many contributing factors account for the present serious problems, which had their genesis when Villanova University added grounds and buildings on the south side of the railroad tracks within the past 20 years. The growth of the University as aforesaid resulted in its grounds being truncated by the railroad tracks. Students and faculty therefore had to traverse the tracks from south to north and vice-versa in the course of University business. To do this they had four options:

- (1) Use the bridge carrying Spring Mill Road over the tracks.

The Administrative Law Judge, from personal observation and inspection, believes the use of this facility is fraught with peril for the pedestrian because of the narrowness of the structure and the heavy vehicular traffic, 12,720 vehicles use this bridge daily. There is no pedestrian walkway on the bridge and the fact that a pedestrian is in some part of the road when attempting to cross the bridge creates a patent hazard;

- (2) Use the tunnel under the railroad tracks.

This 90 year old facility has its drawbacks. It is poorly illuminated and is subject to flooding during a rain. Amtrak's efforts at improving this passageway were too little and too late. Complainant's witness, Frank Burns, testified that as late as October 25, 1980, the

tunnel was flooded (Exhibit 8) as the pictures comprising this Exhibit clearly portray. A previous flooding led to the death of a female student on October 1, 1979, when confronted with flood conditions in the tunnel, she attempted to cross the tracks at grade and was struck by a train. Then, too, female students are wary of using this facility at night;

(3) Cross illegally at grade.

The fatal accident above described is the best argument against this means of traversal. In his personal inspection of this site, the Administrative Law Judge noted the presence of a six foot high chain-link fence erected to deter students from crossing at grade, but it does not present a formidable barrier;

(4) Cross by way of Ithan Avenue and County Line Road

This means of crossing involves an additional distance of a mile or more of travel. To a hurried crosser this is impractical at best.

Some of the respondents suggest that the University has only itself to blame for the situation, pointing out that the buildings on the north campus were constructed within the last 20 years. To counter-balance this argument, and employing the same sort of logic put forth by respondents, the Administrative Law Judge is given to observe that if the railroad was not there, or if the tunnel under the tracks was in an acceptable condition,

the problem would not have arisen. It is also conceivable that if the bridge carrying the State Highway was wide enough and had a pedestrian walkway, the situation would be entirely different.

It is hardly relevant or constructive to assess blame in this matter. Rather, a permanent solution is top priority in view of the fact that the present situation was the proximate cause of the death of a coed. Accordingly, all possible alternatives must be explored. Villanova University recommends that a cantilever walkway be attached to the highway bridge. Although this proposal would seem to be the least expensive solution, PennDot is opposed to that alternative. PennDot believes that, because the bridge is old and is of wrought iron construction, attaching new structural members could cause unforeseen structural problems. Its recommendation is to build a separate pedestrian walkway at an estimated cost of approximately \$250,000.00.

None of the parties admit that they have any responsibility for the overhead structure. The railroad does acknowledge its responsibility for the pedestrian underpass. No party is willing to do any work or assume any costs pertaining to the existing structure, a new replacement structure or a new pedestrian bridge. Under the circumstances, we feel that PennDot should be directed to prepare a detailed study pertaining to the crossing. The study should explore: (1) the possibility of attaching a pedestrian walkway to the existing structure, outline the effects such a walkway

will have on the existing structure and include its cost; (2) the possibility of constructing an entirely new highway structure to present day standards for vehicular and pedestrian use, cost of such a structure and the availability of state and federal funds; (3) the possibility of constructing a separate pedestrian bridge, along with the cost estimate.

The Administrative Law Judge is of the opinion that PennDot is the proper party to do this work for the following reasons. The highway involved is a state highway. PennDot is an involved party in this proceeding and can be ordered to perform work, at its initial cost and expense. Furthermore, PennDot, because of its expertise, can perform this type of work much easier and expeditiously than any other party.

The Administrative Law Judge is of the further opinion that some immediate repairs should be made to the tunnel. It will probably be a long time before a final solution is found to the problem. In the meantime the tunnel is the best and the safest way to cross the tracks. However, since the female students of the university do not feel safe using the tunnel and since the drainage is inadequate, the Administrative Law Judge will direct Amtrak to make an immediate study of the drainage system and make proper improvements to the drainage system so that the tunnel does not get flooded during rainy periods. Amtrak will also be directed to improve the lighting in the tunnel and to make any other

improvements and repairs so that the tunnel is will lighted and passable at night.

The Administrative Law Judge realizes that Villanova University is a private party and it is beyond our statutory jurisdiction. However, for its own benefit, this Administrative Law Judge will suggest that if after repairs, female students of the University do not feel safe using the tunnel at night, it should look into the possibility of patrolling the tunnel, posting guards or taking some other suitable measure for the safety of its students.

CONCLUSIONS OF LAW

1. That the Complaint docketed at C-80011839 be and is hereby sustained.

2. That the Commission has jurisdiction of the parties and subject matter of this complaint.

3. That the record remain open.

THEREFORE,

IT IS ORDERED:

1. That Pennsylvania Department of Transportation, within six months from the date of service of this order, at its initial cost and expense, furnish all material and do all work necessary to prepare and submit to all parties of record and to this Commission, a detailed study about (1) the possibility of attaching a pedestrian walkway to the existing structure, the effects of such arrangement will have on the structure and the estimated cost of this work, (2) the possibility of an entirely new highway structure

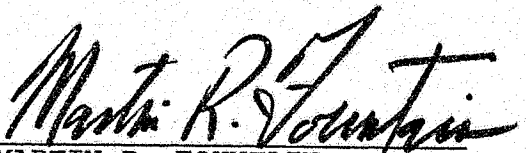
capable of carrying present day vehicular and pedestrian traffic, the cost of such a structure, the availability of federal funds for this work and the approximate time it would take to design and construct such a structure, (3) the possibility of constructing a separate pedestrian bridge, its suggested location, and the estimated cost of such a structure and (4) any other feasible alternative.

2. That National Railroad Passenger Corporation, within six months from the date of service of this order at its initial cost and expense, furnish all material and do all work necessary to prepare and submit to all parties of record and to this Commission a detailed study to (1) identify the problems associated with the inadequate drainage and lighting facilities in the pedestrian underpass and (2) recommendations to permanently eliminate these two problems and the estimated cost of their improvements.

3. That National Railroad Passenger Corporation, immediately, at its initial cost and expense, furnish all material and do all work necessary to (1) make temporary improvements and/or repairs so that the pedestrian underpass does not become flooded during periods of rain and (2) make any other repairs or improvements to the underpass so that it is safe and passable at all times.

4. That upon receipt of the reports ordered prepared by Pennsylvania Department of Transportation and

National Railroad Passenger Corporation, this complaint
be set for a further hearing to take testimony on the
reports and any other relevant matters concerning this
proceeding.


MARTIN R. FOUNTAIN
Administrative Law Judge

DATE: 4-28-81

ORIGINAL



May 26, 1981

RECEIVED

MAY 28 1981

SECRETARY'S OFFICE
Public Utility Commission

Mr. William P. Thierfelder,
Secretary
Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, Pennsylvania 17120

Subject: Villanova University v. National Railroad Passenger Corporation (Amtrak), Consolidated Rail Corporation, (Conrail), Southeastern Pennsylvania Transportation Authority (SEPTA), Pennsylvania Department of Transportation (PennDot), County of Delaware and Radnor Township. Complaint Docket No. C-80011839

Dear Mr. Thierfelder:

Enclosed are an original and fourteen copies of National Railroad Passenger Corporation's Answer to the Initial Decision to the above complaint.

Very truly yours,

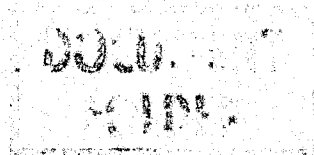
A handwritten signature in black ink, appearing to read "W. Scott Armentrout".

W. Scott Armentrout
Associate General Counsel
Northeast Corridor

Enclosures

cc: Administrative Law Judge M. R. Fountain

Parties of Record



BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

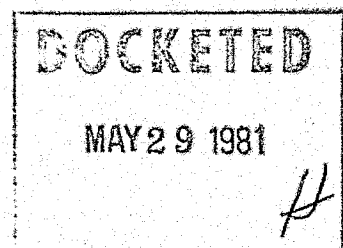
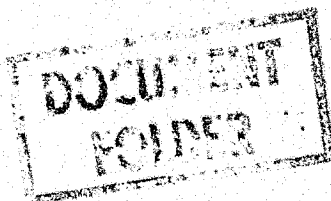
Villanova University)
)
 v.) Docket No.
)
 National Railroad Passenger) C-80011839
 Corporation (Amtrak), Consolidated)
 Rail Corporation (Conrail), South-)
 eastern Pennsylvania Transportation)
 Authority (SEPTA), Pennsylvania)
 Department of Transportation (PennDot),)
 County of Delaware and Radnor Township)

EXCEPTIONS OF NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)
TO INITIAL DECISION SERVED MAY 12, 1981

NOW COMES National Railroad Passenger Corporation (Amtrak) one of the respondents in the above-captioned matter and files these exceptions to the Initial Decision filed herein on May 6, 1981. Amtrak submits that the Administrative Law Judge erred in failing to make certain findings of fact and in certain conclusions of law set forth below:

EXCEPTIONS TO FINDINGS OF FACT

1. Recommended Findings of Fact Nos. 3 and 4 fail to show the timeframe within which the university buildings on the north side of the tracks were constructed as compared to the tunnel under the railroad. Indeed the record shows at page 123 that the tunnel track in this area was constructed approximately 90 years ago while the expansion of the school to the north side



of the track is a relatively new phenomenon. St. Mary's Hall was constructed in 1964, and Garey Hall (law school) was constructed in 1957. Thus the need cited in finding No. 4 across the tracks is one created by the expansion of the school.

2. The Findings of Fact fail to set forth the testimony of witness Cooper to the effect that the drainage on the south side of the tracks is toward the railroad and has been increased by the construction of a large Macadam parking lot and certain university buildings in the vicinity of the Villanova station. This construction puts an increased strain upon the railroad's drainage facilities in the vicinity of the station. The size of the parking lot is shown in the complainant's Exhibits C-2 and C-3.

3. Recommended Finding No. 6 concludes that the tunnel is "inadequately lighted." This finding assumes that Amtrak as the owner of the railroad is under an obligation to provide a lighted tunnel for the use of university students. There is no evidence in the record to show that the lighting in the tunnel is inadequate for the use of railroad passengers or that railroad passengers develop any trepidation about the use of the tunnel at night.

EXCEPTIONS TO PROPOSED ORDERING PARAGRAPHS

1. For the reasons noted above Amtrak takes exception to paragraphs 2 and 3 of the Proposed Order. Amtrak has not

participated in or encouraged the growth of Villanova University to the north side of the line of railroad, and owes no duty to provide any means of crossing for the benefit of Villanova students beyond those presently provided for users of the railroad.

Respectfully submitted,



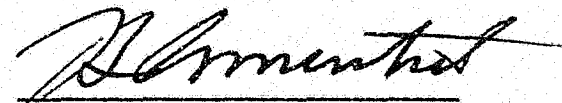
W. Scott Armentrout
Associate General Counsel
Northeast Corridor
400 North Capitol Street, N.W.
Washington, D.C. 20001

(202) 383-3995

May 26, 1981

CERTIFICATE OF SERVICE

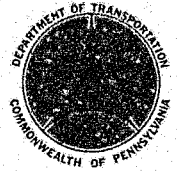
I hereby certify that on this 26nd day of May 1981 an original and fourteen copies of the National Railroad Passenger Corporation's Answer to the Initial Decision of Complaint No. C-80011839 has been mailed first class, postage prepaid, to Mr. William P. Thierfelder, Secretary, Commonwealth of Pennsylvania, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, Pennsylvania 17120, and one copy of this Answer to the Initial Decision of Complaint No. C-80011839 has been mailed first class, postage prepaid, to each party in this proceeding.


W. Scott Armentrout

CONFIDENTIAL

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

Harrisburg, Pennsylvania 17120
Office of Chief Counsel



May 28, 1981

IN REPLY REFER TO

William P. Thierfelder, Secretary
Pennsylvania Public Utility Commission
North Office Building
Harrisburg, Pennsylvania 17120

SECRET
PUBLIC UTILITY
COMMISSION

JUN 1 10 55 AM '81

Re: Complaint Docket No. C-80011839
Delaware County

Dear Mr. Thierfelder:

Enclosed for filing with the Commission are the original and fourteen (14) copies of Exceptions of Pennsylvania Department of Transportation to Initial Decision, in the above-captioned matter.

I hereby certify that copies have been sent to all parties of record.

Very truly yours

Herbert G. Zahn
Herbert G. Zahn
Assistant Counsel
(717) 787-5931

220/HGZ:rmm
Enclosures

cc: K. W. Walker, P.E. (Attn.: A. Velter)
District #6-0
Parties of Record - Page 2

RECEIVED
JUN 1 1981

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION JUN 1 10 55 AM '81

SECRETARY'S OFFICE
PUBLIC UTILITY
COMMISSION

IN RE:	:	
	:	
Villanova University	:	
	:	
v.	:	COMPLAINT
	:	
National Railroad Passenger	:	DOCKET
Corporation (Amtrak), Con-	:	
solidated Rail Corporation	:	NO. C-80011839
(Conrail), Southeastern Penn-	:	
sylvania Transportation Authority:	:	
(SEPTA), Pennsylvania Department	:	
of Transportation (PennDot),	:	
County of Delaware and Radnor	:	
Township	:	

EXCEPTIONS OF PENNSYLVANIA DEPARTMENT
OF TRANSPORTATION TO INITIAL DECISION

The Pennsylvania Department of Transportation (Department) takes exception to the Initial Decision of Administrative Law Judge, Martin R. Fountain, in the above-captioned matter as follows:

1. Exception is taken to the Administrative Law Judge's conclusion on page 7 which reads as follows:

"The Administrative Law Judge is of the opinion that PennDot is the proper party to do this work for the following reasons. The highway involved is a state highway. PennDot is an involved party in this proceeding and can be ordered to perform work, at its initial cost and expense. Furthermore, PennDot because of its expertise, can perform this type of work much easier and expeditiously than any other party."

DOCKETED
JUN 2 1981

WILLIAM
BOYD

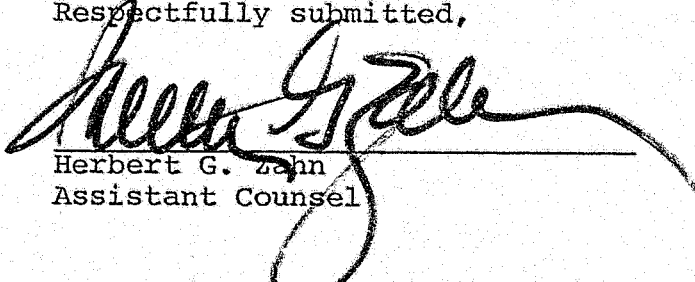
The reasoning for assigning the work to PennDOT does not take into account the fact that the Department must hire a consultant to do the work since, obviously, time is of the essence and the railroad can do the work in a more expeditious manner than the Department. (See 2. infra incorporated herein by reference and made a part hereof.) If the Department is required to employ a consultant complicated time consuming procedures must be followed. The use of a consultant to do the work is not generally expeditiously performed and the profit motive always results in higher costs. Since there are numerous consultants with expertise in state highway and bridge work, the advantage for PennDOT performing the work is lost as soon as a consultant is required. It is the Department's recommendation that the railroad has the expertise to do this work and that all the work be performed by the railroad at their initial cost and expense in the interest of expediting this project.

2. Exception is taken to Paragraph 1 of the Initial Decision wherein the work ordered by the Commission is to be completed within six (6) months. The Department is not able to do such work with its in house forces. The Department's workload is scheduled to the capacity of its manpower 18 months in advance, leaving two options: (1) If the work is to be done with in house forces, such work would commence in about 18 months and could not possibly meet the time frame of six months ordered by the Commission and; (2) If the work is let out to a consultant, the Department must obtain advance Program Management Committee approval, advertise

the requisite period of time in the Pennsylvania Bulletin and then enter into a consultant agreement. This procedure can take from 3 to 4 months time before the consultant's work can begin and several months thereafter until the work is completed.

Further, it is the Department's position that the University's pedestrian problem should not be expanded to include consideration of a new bridge and sidewalk on our highway. The solution to the present Complaint is adequate repairs and measures to be performed on the existing underpass, coupled with adequate University policing to insure tunnel safety. The Department is of the opinion that it is a waste of time and money to study a highway bridge.

Respectfully submitted,



Herbert G. Zahn
Assistant Counsel

LAW OFFICES
HARPER, GEORGE, BUCHANAN & DRIVER

1200 WESTERN SAVINGS BANK BUILDING

BROAD AND CHESTNUT STREETS

PHILADELPHIA, PA. 19107

(215) 735-3090

W. GLENN GEORGE
1934-1972

JOHN HARPER
WILLIAM M. BUCHANAN
THEODORE K. WARNER, JR.
RALPH P. HIGGINS
OF COUNSEL

PHILIP B. DRIVER, JR.
WESTON C. OVERHOLT, JR.
RONALD C. UNTERBERGER
ROBERT C. STEIGER
JAMES W. PATTERSON
RICHARD R. HIGH
LARRY R. MCDOWELL
JEFFREY R. ABBOTT
LOUISE HERZL-BETZ
EDWARD L. CIEMNIECKI*

*ALSO N.J. BAR

June 15, 1981

William P. Thierfelder, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17120

RECEIVED

JUN 16 1981

SECRET
Public Utility Commission

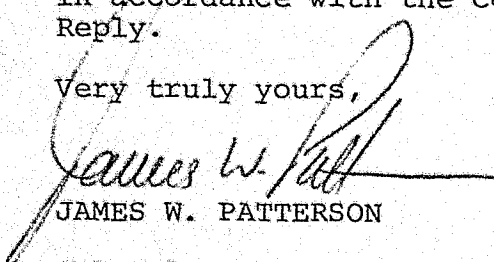
Re: Villanova University v. National
Railroad Passenger Corporation, et al.
Complaint Docket No. C-80011839

Dear Secretary Thierfelder:

Enclosed herewith please find the original and fourteen (14) copies of the Reply of Villanova University to the Exceptions of National Railroad Passenger Corporation and Pennsylvania Department of Transportation, in the above-entitled proceeding.

Copies hereof have been served upon all parties of record, in accordance with the Certificate of Service attached to the Reply.

Very truly yours,


JAMES W. PATTERSON

JWP:tal
Enclosures

cc: W. Scott Armentrout, Esquire
Herbert G. Zahn, Esquire
Joel E. Mazor, Esquire
Eugene H. Evans, Esquire
Francis P. Connors, Esquire
Edward H. Huss, Esquire
Dr. Richard Neville, Vice President-Student Life

ORIGINAL

RECEIVED

JUN 16 1981

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

SEC. 101
Public Utility Commission

IN RE: :

Villanova University :

v. : DOCKET NUMBER

National Railroad Passenger Corporation (Amtrak), :

Consolidated Rail Corporation (Conrail), Southeastern :

Pennsylvania Transportation Authority (SEPTA), Pennsylvania Department of Transportation (PennDot), County of Delaware and Radnor Township :

C-80011839

REPLY OF VILLANOVA UNIVERSITY
TO EXCEPTIONS OF
NATIONAL RAILROAD PASSENGER CORPORATION AND
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

RECEIVED
JUN 16 1981

Villanova University

By: JAMES W. PATTERSON, ESQUIRE

HARPER, GEORGE, BUCHANAN & DRIVER
1200 Western Savings Bank Building
Philadelphia, Pennsylvania 19107
(215) 735-3090

RECEIVED
JUN 17 1981
A

COMES NOW, Villanova University by its attorney, and files this Reply to the Exceptions of National Railroad Passenger Corporation ("Amtrak") and Pennsylvania Department of Transportation ("D.O.T.") in the above-captioned proceeding.

I. STATEMENT OF THE CASE

The History of the Proceedings set forth in the Initial Decision accurately sets forth the procedural background and issues involved in the proceeding. The Initial Decision, served under Secretarial Letter dated May 6, 1981, sustained the Complaint of Villanova University, finding, inter alia, that

"...the situation which now exists at the crossing under review presents a threat to the safety and well being of the travelling public." (at pp. 3-4)

Additionally, the Initial Decision directed both immediate repairs and the planning and implementation of permanent alterations, placing the responsibility for immediate repairs upon Amtrak and the responsibility for planning permanent improvements upon D.O.T..

Exceptions have been filed by Amtrak and D.O.T.. This constitutes the Reply of Villanova University to those Exceptions.

II. REPLY TO EXCEPTIONS

A. General

Although both Amtrak and D.O.T. except to the method, chosen by the Initial Decision, to remedy the hazards at the crossing in question, neither Amtrak nor D.O.T. quarrel with the conclusion that the crossing, in its present condition, "presents a threat to the safety and well-being of the travelling public."

Because no party has excepted to the conclusion of the Administrative Law Judge, relative to the existence of a threat to the public, that conclusion is not subject to being hereafter raised before the Commission and is deemed conclusive upon the parties.

B. Reply To Exceptions Of Amtrak

The Exceptions of Amtrak are directed at matters in the record which, it alleges, the Administrative Law Judge failed to consider.

Amtrak argues that since Villanova University chose to expand its campus on both sides of the line of railroad in question, Amtrak "owes no duty" to provide a means of crossing beyond those means presently provided for users of the railroad (Exceptions 1 and 3). Additionally, Amtrak argues that

the flooding of its tunnel is the fault of water run-off from a Villanova University parking lot (Exception 2).

The record is clear that the tunnel underneath the line of railroad at the Villanova Station is subject to flooding. The record is equally clear that, although Amtrak's witness attempted to lay the blame for the repeated floodings upon increased water run-off resulting from the Villanova parking lot, the attempt fell far short of the mark (T. 124-128, 135-136). Indeed, the record contains uncontradicted testimony that water runs into the underpass on the eastern side of the tracks -- on the other side of the tracks from the Villanova University parking lot (T. 61). The contention that the underpass flooding is the result of water run-off from the Villanova University parking lot is unsupported by testimony and evidence and should be rejected.

Amtrak seems to contend, in connection with its Exceptions 1 and 3, that, by growing, Villanova University has created the safety problem sought to be solved in this proceeding. The argument is without merit. Whether or not Villanova University has grown in size, the hazard to the public safety associated with this crossing would exist. Although Villanova's growth increases the number of citizens subjected to the hazards apparent at the crossing, that growth has not affected the existence of the hazard. Whether one

hundred or ten thousand individuals cross the tracks, per day, the hazardous condition sought to be remedied is unchanged.

Amtrak additionally contends (Exception 3) that the Initial Decision (Recommended Finding No. 6) imposes "an obligation to provide a lighted tunnel for the use of University students" and that the record does not support the conclusion that the lighting in the tunnel is inadequate for the use of railroad passengers.

First of all, the Amtrak argument suggests that its only obligation is to "railroad passengers." To the contrary, Amtrak's obligation is to the public -- its passengers and those individuals who must cross the line of railroad, including both University students and the general public.

Secondly, several of the witnesses who complained of the condition of the tunnel testified specifically as to their use of the railroad (as passengers) and the difficulties and dangers encountered in utilizing the tunnel after disembarking from or prior to embarking on the train (T. 19, 21-23, 25).

Finally, implicit in the Amtrak Exceptions is the premise that University students are the only ones using the tunnel and that University students are, somehow, not members of the public, entitled to protection from hazardous crossing conditions. University students, including those at Villanova,

do not forfeit their status as members of the public by virtue of their enrollment. Moreover, the tunnel in question is open to use by the public in general and, from the existence of public parking on both sides of the tracks, it can be fairly inferred that the general public, including railroad passengers, makes use of the tunnel.

C. Reply To Exceptions Of D.O.T.

D.O.T. does not take exception to the finding, at page 4 of the Initial Decision, that the "crossing under review presents a threat to the safety and well being of the travelling public." Moreover, D.O.T. does not quarrel with any of the findings of fact at pages 2 and 3 of the Initial Decision. Rather, D.O.T. quarrels principally with, a.) the fact that the Initial Decision requires it to prepare a detailed study regarding the three (3) options chosen by the Initial Decision as alternative remedies for the hazards at the crossing and, b.) that the detailed study be prepared and submitted within six (6) months of the date of service of the Initial Decision and Order (D.O.T. Exceptions 1 and 2).

D.O.T. asks that "the railroad" be required to perform the detailed study, because, it is argued, D.O.T. will be required to hire a consultant and that work performed

through the use of a consultant is "not generally expeditiously performed and the profit motive always results in higher costs" (D.O.T. Exception 1). Further, D.O.T. argues that it cannot prepare a detailed study within six (6) months (apparently with or without a consultant) because it schedules its work eighteen (18) months in advance (D.O.T. Exception 2).

First of all, there is no evidence or testimony of record which, in any regard, supports the position adopted by D.O.T.. Complainant and the Commission are, by the D.O.T. Exceptions, confronted with allegations of facts which are nowhere subject to being tested.

Surely, in its time and expense budgeting process, D.O.T. has recognized that it is subject to the jurisdiction of the Commission in crossing cases and that, from time to time, it will be called upon to perform studies in such matters. The D.O.T. Exceptions would have the Commission believe that it simply cannot comply with the terms of the Initial Decision, either with its own resources or by hiring a consultant. It is unimaginable that D.O.T., with all of its resources, cannot find the wherewithal to comply. D.O.T. must have had the presence of mind to budget for exigencies such as are raised by the Order here in question. Indeed, even if D.O.T. did not allow, in its budgeting process, for the normal reoccurrence of Commission-ordered work in connection with crossing cases,

there must surely be a means of altering priorities and shifting staff within the D.O.T., so as to arrange to comply with the Commission's Order.

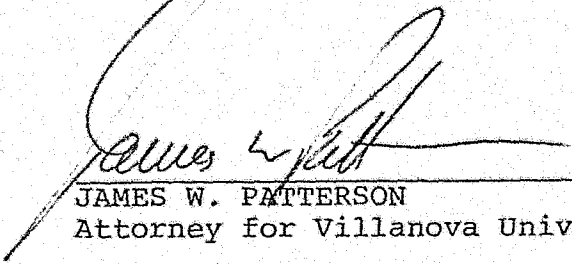
In the final paragraph of its Exceptions, D.O.T. suggests that the range of solutions set forth in the Initial Decision are overly broad and that repairs on the existing pedestrian underpass along with "adequate University policing" are the proper responses to the difficulty -- that D.O.T. "is of the opinion that it is a waste of time and money to study a highway bridge."

Again, D.O.T. has not taken Exception to the findings of fact set forth on pages 2 and 3 of the Initial Decision. Its position is thoroughly at odds with the findings of fact; it cannot, logically, agree with the findings of fact (as it has done by failure to except thereto) and, at the same time, develop a position which affords no answer to the problems identified by those findings. The suggestion that repairs to the tunnel and "University policing" will remedy the obvious public safety problems associated with use of the pedestrian tunnel is ingenuous and without merit.

WHEREFORE, Villanova University prays the denial of the Exceptions of Amtrak and D.O.T. and the entry of an Order affirming the Initial Decision; AND FURTHER, Villanova University prays the Commission enter an Order containing

terms designed to insure that remedies take place expeditiously with respect to the crossing in question, in view of the clear and continuing hazard to the safety of the public there apparent.

Respectfully submitted,

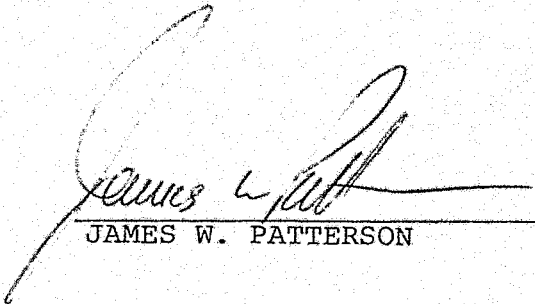


JAMES W. PATTERSON
Attorney for Villanova University

CERTIFICATE OF SERVICE

I hereby certify that I have this day served copies of the foregoing document upon all parties of record in this proceeding by postage prepaid, properly addressed, first-class mail.

Dated at Philadelphia, Pennsylvania, this 15th day of June , 1981.



JAMES W. PATTERSON

Of Counsel:

HARPER, GEORGE, BUCHANAN & DRIVER