

Arbitration in the Railroad Industry

The grievance rules of many railroad collective bargaining agreements provide that claims not settled on the property may be resolved through arbitration. The three arbitration forums provided for in the Railway Labor Act are the National Railroad Adjustment Board, Special Boards of Adjustment, and Public Law Boards.

The National Railroad Adjustment Board

The Railway Labor Act (RLA) of 1926 was an improvement over previous legislation aimed at regulating labor relations in the railroad industry. Even so, there were problems with the RLA's dispute resolution machinery almost at once, because the RLA of 1926 lacked any provision to compel arbitration of claims and grievances. As a result, a proliferation of unadjusted claims and grievances quickly accumulated, and with no other apparent recourse, several unions took strike votes over this problem, once again threatening the very interruptions to commerce the Act was designed to prevent (see Union Pacific R.R. v. Price, 360 U.S. 601, 610-14 (1959)). As a result, the Federal Coordinator of Railroads, Joseph Eastman, proposed several amendments to the Act.

As they pertain to dispute resolution, the Eastman amendments proposed the establishment of the National Railroad Adjustment Board (NRAB). Disputes could be submitted to the NRAB by either party, bipartisan participation was compelled, awards (decisions) would be final and binding, and there was a provision for court enforcement of the awards. The NRAB was to consist of 36 members, equally divided between labor and management, sitting in four Divisions headquartered in Chicago, who could call in a referee (arbitrator) to help settle disputes in cases where the partisan members could not agree upon a resolution. Congress passed the amendments effective June 21, 1934, and the National Railroad Adjustment Board was established.

Specifically, the NRAB hears and decides disputes involving railway employee grievances and questions concerning the application and interpretation of rules. Its decisions are final and binding on both parties to the dispute.

In keeping with the 1934 amendments, there are four divisions of the bipartisan NRAB and carriers and rail labor organizations are represented equally. A combined total of 34 members are now authorized to serve on the four divisions. The NRAB and its four divisions remain headquartered in Chicago.

The First Division has jurisdiction over disputes involving train and yard service employees; the Second Division, shop crafts; the Third Division, clerical, maintenance-of-way, signal and dispatcher forces; and the Fourth Division, water transportation and miscellaneous classifications including present-day yardmasters and supervisors. The First Division has eight members, the Second and Third Divisions each have ten members, and the Fourth Division, six members. The Carriers have three active members and the rest are statutory "ghost members".

In practical application, the normal practice is for carrier members to vote for the carrier position and the union members to vote for the union position, which creates a “deadlock.” When the members of a Division cannot agree on an award, they are required under the Railway Labor act to attempt to agree on a neutral person within 10 days to sit with the Division members and make an award. If the regular members of the Division fail to agree upon a neutral person within that time, the Act provides that the National Mediation Board (NMB) will select the neutral, who is sometimes called a “referee.” Almost all cases are decided with the participation of a referee.

Referees are chosen from a pool of arbitrators who have applied to the NMB and must meet certain criteria. In addition to having the requisite analytical skills necessary to decide complicated contractual issues, qualifications of the neutrals are implicit in the Act’s designation of such individuals as a “neutral person.” In this regard, the law requires that appointees to such positions be wholly disinterested in the controversy, impartial, and without bias as relates to the parties in dispute. As required by the Railway Labor Act, persons serving as neutrals or referees for the NRAB’s four divisions are compensated by the Federal government through the NMB. Presently, railroad arbitrators are paid \$300.00 per day for all railroad arbitration. The salaries and expenses of the railroad and union members of the Board are paid for by their respective employers.

Alternatives to the NRAB ***Special Boards of Adjustment and Public Law Boards***

An ongoing criticism of the NRAB (especially certain Divisions) since at least 1940 has been the large backlog of unresolved cases which seems to plague the “minor dispute” resolution process. This not a phenomenon peculiar to the RLA. NRAB predecessor Boards were inundated with cases. For instance, the U.S. Railroad Labor Board, the immediate predecessor to the NRAB (created under the 1920 Transportation Act) docketed more than 13,000 cases in a five year span, and passed along its considerable backlog to the NRAB upon its genesis in 1934. At the NRAB, this backlog grew between 1939 and 1943 to number about 6,000 cases in all.

By 1965 that number had shrunk to 4,000 cases. Notwithstanding the fact that Supplemental Boards of Adjustment as well as Special Boards of Adjustment that were established to reduce the case backlog at the NRAB seemed to be having good effect, there was a push to establish new consensual Boards to further reduce the backlog. This led to the 1966 Amendments to the Act providing for the establishment of Public Law Boards (PLBs). In a very short time the backlog disappeared from the NRAB only to re-appear and worsen before the PLB’s. The NRAB and its four divisions presently adjust less than 22% of the several thousand grievances filed yearly in the railroad industry. The remainder are handled by SBAs and PLBs.

Both SBAs and PLBs are established by written mutual agreement generally between an individual railroad and a single labor organization, although SBAs may also

be set up on a multi-carrier or multi-union basis to decide specifically agreed-to disputes arising out of discipline or out of the interpretation or application of provisions of a collective bargaining agreement. Such disputes *could* be sent to the appropriate division of the NRAB for adjudication but for a number of reasons the parties sometimes prefer to establish an SBA. Concurrence of both parties is required not only to establish an SBA or PLB, but the disputes to be presented must also be assigned by mutual agreement. SBA and PLB neutrals come from the same pool of arbitrators used at the NRAB, and are likewise paid by the NMB for their services.

The basic difference between an SBA and a PLB is that the neutral serving on an SBA is appointed for a finite term, while the neutral on a PLB is appointed for the duration of the Board. SBAs are sometimes created to hear just one case and are dissolved thereafter, but the most common purpose of SBAs utilized by TCU is the resolution of discipline cases. PLBs are often “standing boards” that have become semi-permanent institutions on most major railroads and are commonly used for both rules interpretation and discipline cases.

SBAs usually consist of three members: a railroad member, a labor organization member, and a neutral chairperson. The NMB designates the neutral if the parties fail to agree, and it also pays for the neutral’s services and expenses. The first SBA was established in 1949 at the suggestion of the NMB to expedite resolution of disputes by using an adaptation of the methodology employed by the NRAB divisions to help reduce the backlog of cases pending before the NRAB.

Public Law Boards were authorized in 1966 by Public Law 89-456, which amended certain provisions of the RLA to provide for such forums. Unlike an SBA, if either the union or the railroad refuses to agree to establish a PLB, the other party may use the administrative procedures of the RLA to force the establishment of a PLB and to assign its initial docket of cases. This is accomplished through the rulings of a “procedural neutral” appointed by the NMB, and it can be a time-consuming process. As with the SBA, both parties must agree on the disputes to be added to established Boards. And like awards issued by the NRAB and SBAs, Public Law 89-456 also makes the awards of a PLB final and binding.

Enforcement of Awards

Awards of the NRAB, SBAs and PLBs are all enforceable in Federal District Court, but enforcement action must be taken within two years of the date of an award’s issuance. Because awards are final and binding, the courts will only provide limited judicial review. In general, a court will not reverse an arbitrator’s decision unless it is proven that the arbitrator exceeded his jurisdiction, did not draw his award from the essence of the collective bargaining agreement, or that the outcome was influenced by fraud or collusion. In recent times the courts have added another standard of review, and that is whether an award is contradictory to “public policy.” A recurring example of the type of award that carriers often cite as being contradictory to public policy is one in

which an employee used drugs while on duty but is returned to service by an arbitrator based on a minor technicality in the discipline process. In some circumstances, the courts have overturned such arbitration awards because to have drug users in the midst of the work force (particularly an employee like a railroad engineer) is deemed offensive to public policy, technicality or not.

Dealing with the Backlog of Cases

Given the perpetual backlog of cases dating back to the first railroad dispute resolution forums, it is safe to say that the industry has always generated a large number of grievances.

Arbitration under the RLA is a process that evolved out of the bullets and bloodshed of over a century of adversarial railroad labor/management relations. The Courts and the parties fully understand that the current practices are designed to make sure that there will be little, if any, disruption to service, with the equally important goal of resolving disputes in a timely manner.

The timely resolution of grievances remains of grave concern for every Union and its members. In addition to the time consumed by the RLA process itself, it would be impossible to recount all of the various ploys that railroads have used to abuse and lengthen the process. In response, TCU has taken aggressive steps to expedite the process, including quicker handling by arbitrators.

Modern Solutions

In 1992, the National Mediation Board's Section 3 Committee (so named for Section Three of the RLA) was revitalized and focused on eliminating avoidable delays. That joint labor/management committee, in conjunction with the NMB, oversees the grievance resolution process, offering new and innovative ideas to improve grievance arbitration. The result of TCU's efforts is made evident by a comparison of the case load over the past 14 years. At the Section Three Committee's inception in 1987 there were 20,000 unresolved cases before the various forums. That figure has now been reduced to just below 10,000, a marked improvement.

In its 1998 Report the Committee recommended that the parties institute joint educational programs on the various properties to teach and encourage joint problem solving. The goal of this initiative is for the parties to jointly resolve disputes when they arise and decrease the flow of grievances.

In an out-of-service case, the goal is to have the on-property handling completed within six months and, if necessary, have the case listed for arbitration. To further accelerate the handling of discipline cases, many railroads and unions (including TCU) have established special "expedited" boards of arbitration where the parties proceed without formal written submissions and without the necessity of an oral hearing before

an Arbitrator. The decisions are then rendered expeditiously and in an abbreviated format. The Claimants in the cases are given the opportunity to elect that procedure as opposed to the traditional process and, in so doing, must furnish the Union with a waiver acknowledging that their claims will be pursued in expedited arbitration. TCU also employs another form of expedited arbitration board that includes a “mini submission” (usually limited to five pages) and an abbreviated oral presentation.

In the area of “rules” cases, the Committee recommended the following action be taken:

1. Non precedential issues which are currently docketed should be identified by the parties. The parties should then work aggressively toward removing those cases from the system through a combination of compromise payments (where warranted), administrative closings by the Union because of the issue either having no precedent or becoming moot, or referral back to the local level for the appropriate final disposition.
2. Identify lead cases as being dispositive of like issues. In those instances where the Arbitrator’s award clearly responds to the issue before the Board and forms the basis for settlement of like cases, the parties should resolve the remaining cases held in abeyance. Write strict Abeyance/Precedent Agreements wherein prior to arbitration the parties agree that all cases held in abeyance will be disposed of in the same manner as the “lead” precedent case assuming it is decided on its merits. There should be no second bite of the apple for either party.

The Committee further suggested that expedited handling could be undertaken in the following areas:

1. Settlement of all discipline cases, other than out-of-service cases, and rules cases with no precedent value through internal review, bench or expeditious decision process.
2. Accelerated resolution of out-of-service cases; i.e., to be placed before an arbitrator within six months of the incident.

The Committee also suggested that another proven method to streamline the arbitration process would be to begin utilizing a form of grievance mediation, a process in which qualified mediators/arbitrators could be selected to review dockets of cases and make recommendations which would form the basis for settlement. These recommendations would be oral, thus eliminating the need for written decisions and, at the same time, lessening the cost for the process.

In addition, the Section 3 Committee instituted the “six month rule” for arbitrators which provides that if an arbitrator still has not rendered an award on any case heard

over six months ago, he or she will not be allowed to hear any new cases until the delinquent decision is issued. The institution of that rule has made a marked improvement on the decision making process as it directly affects the arbitrator's compensation.

Another Variable – Federal Funding

Federal agencies such as the National Mediation Board (which in turn pays the bills for the NRAB, PLBs and SBAs) are subject to the Congressional budget appropriation process and even government shutdowns. Therefore, if the money flow is cut off or delayed, the arbitration process is directly affected. For example, for the last several years, arbitration has essentially come to a halt for several weeks at the end of the government's fiscal year in October because appropriations for the new fiscal year have not yet been approved by Congress. When that happens, the NMB goes into a holding pattern, with only a few "essential" administrative positions actually working. The arbitration process must then wait until the new budget for the NMB is approved and funding is restored.

TCU continually endeavors to secure appropriate funding for the Section 3 process, which includes helping elect members to Congress that understand the needs of working people who must depend on the NMB for dispute resolution.

CONCLUSION

The NRAB, PLBs and SBAs have over the last 60 plus years provided a successful medium for the peaceful resolution of a multitude of disputes involving discipline and collective bargaining agreement rules.

The system is not perfect but it has served us well. It continues to change and TCU pledges to remain in the forefront to improve the process.