Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 41846
Docket No. SG-41981
14-3-NRAB-00003-120343

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Union Pacific Railroad Company

STATEMENT OF CLAIM:

"Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Union Pacific Railroad:

Claim on behalf of R. Barragan, J. L. Brock, S. J. Enderson, C. Garcia, D. G. Welch, D. L. York, T. L. Franklin, Jr., J. M. Forsman, G. D. Salazar, S. D. Silva, G. L. Walls, G. L. Reitz, J. R. Prevette, R. N. Dawson, S. A. Brubaker, P. Zarate, H. S. Alcorn, and R. C. Anderson, for compensation of $200.00 per month each, beginning on March 1, 2011, and continuing until this dispute is resolved, account Carrier violated the current Signalmen's Agreement, particularly Rules 29 and 65, when it discontinued paying each Claimant the $200.00 monthly payment stipulated in Rule 29, Note 1, of the Agreement. Carrier's File No. 1553171. General Chairman's File No. UPGC-29-054. BRS File Case No. 14685-UP."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

RULE 29 — RATES OF PAY provides:

"The Carrier will compile a new rate sheet each time the rate of pay changes on the individual positions listed, including the basic rate and the rate including the cost-of-living allowance. A copy of the rate sheets will be furnished to the General Chairman.

NOTE 1: Signal employees holding seniority on the California District and actively working will receive an additional payment of Two Hundred Dollars ($200.00) per month."

The Claimants in this case hold seniority on the California Seniority District; are actively working; do not reside in California; and seek the $200.00 per month payment under Rule 29, Note 1. Although the Carrier previously made the $200.00 per month payments to the Claimants, it discontinued making the payments on the basis the Claimants do not live and work in California. This claim followed.

This is not the first time this dispute has arisen between the parties.

In 2005, this dispute was brought to the Board, but was dismissed in Third Division Award 37525 as an untimely filed claim. While the positions of the parties were stated, the merits of the dispute were not addressed.

However, in 2010, Public Law Board No. 7270, Award 2 addressed the merits of the dispute and denied the claim.

The Carrier relies upon PLB 7270, Award 2 as precedent for denying the instant claim. The Organization argues that Award should not be followed because it was clearly in error.

On its face, PLB 7270, Award 2 appears erroneously decided. Rule 29, Note 1 states in no uncertain terms that "Signal employees holding seniority on the California District and actively working will receive an additional payment of Two Hundred Dollars ($200.00) per month." Therefore, if a signal employee holds

seniority on the California District and is actively working, that employee should receive the $200.00 per month payment. There is nothing in the Rule about the employees having to live in California. The only pre-conditions for payment under Note 1 are that the Claimants be ". . . employees holding seniority on the California District and actively working . . . ."

The Rules of contract construction are straight-forward in this regard. First, clear contract language takes precedence even if the results are harsh or unexpected to one of the parties. Second, if the language is clear, it is improper to use other rules of contract construction – the clear contract language is to be followed. Third, if the language is clear, parole evidence (such as bargaining history or past practice) is irrelevant and cannot be considered, no matter what that parole evidence may show.

It does not appear that PLB 7270, Award 2 followed the rules of contract construction. That Award found:

> "The plain language of Note 1 here unquestionably favors the Organization's interpretation. Note 1 by its terms only requires that an employee hold seniority in the California District and be actively working, in order to receive the $200 allowance. Nowhere does Note 1, or any other part of the Agreement, say that an employee also must reside in California in order to receive the allowance."

That finding of the existence of clear language should have ended the inquiry with a sustaining Award. However, notwithstanding the clear language, the Award went further and disregarded the fact that for nine years, the Carrier had made the payments without regard to whether the employees lived in California, finding ". . . that the allowance payments made by the Carrier to the Claimants prior to August 2008 were merely its unilateral error . . . ." If anything, the Organization has a strong basis to argue that nine years of payments constitutes a past practice which – even though it should not have been considered at all because of the clear language in Note 1 – simply shows that the Carrier was following the clear language in Note 1.

And notwithstanding the clear language in Note 1, PLB 7270, Award 2 then went on to consider bargaining history:

> ". . . [T]he Carrier asserts that the parties intended from the outset that the allowance be paid only to California residents, and that the bargaining history of the provision demonstrates the parties' intention. According to the Carrier, the 'California allowance' was put in place to address the Organization's concerns that the cost of living was higher in California than in other areas of the Carrier's system. The record reflects that the Organization initially cited the higher cost of living in making its initial proposal that UP pay the same $400 monthly supplement that was being paid by another carrier at the time. UP rejected that proposal, and the Organization responded later with a proposed $200 monthly supplement. The Carrier answered that it would agree to the $200 allowance if the Organization would agree to consolidate California into a single seniority district. From this, the Carrier concludes that while the Organization had to pay a price (the consolidation of seniority districts) to achieve it, the purpose of the allowance remained at all times to defray some of the higher cost of living in California."

But because Note 1 is clear, bargaining history should not have been considered.

Further, the parties who put the language together are sophisticated negotiators. If those sophisticated negotiators intended Note 1 to require residence in California, they could have simply crafted language which contained the phrase "reside in California" as a condition for payment of the $200.00 allowance. However, they did not do so.

Therefore, had this dispute been presented to the Board as a case of first impression with this Neutral sitting with the Board, a sustaining Award would have issued based on the clear language of Note 1.

But this Neutral's inclination to have sustained the claim if it was a case of first impression is not the standard of review in this case. This issue between the parties has been previously decided on the merits by a Board of their choosing. Therefore, because the issue has been previously decided, the standard of review in this case is not whether PLB 7270, Award 2 was in error. Instead, the standard of

review is whether PLB 7270, Award 2 was "palpably in error" (Emphasis added). See Third Division Award 34204 (with this Neutral participating):

> "This is, for all purposes, the same dispute that was decided by the Board in Award 33507. We cannot say that Award 33507 is palpably in error. As such, and for purposes of stability, we cannot decide this case de novo, but we are required to defer to that prior Award. To do otherwise would be an invitation to chaos and would result in encouraging parties after receiving an adverse decision to attempt to place a similar future dispute before another referee in the hope of obtaining a different result."

PLB 7270, Award 2 looked to the 1999 Implementing Agreement at Section 13, which provides:

> "Section 13.
>
> The Maintainer working the territory from Portola, California, east on the effective date of this agreement will be eligible for the $200 monthly allowance under Rule 73, Rates of Pay for so long as he/she occupies that position."

According to Public Law Board 7270, Award No. 2 (footnotes omitted):

> "While it is a close question, this Board is ultimately convinced by the inclusion of Section 13 that the Carrier's account of and interpretation of the parties' negotiations is correct. If the parties intended that the Rule 39 Note 1 allowance be paid to all employees holding seniority on the California District and actively working, regardless of where they lived, then there would have been no need to include Section 13 to insure that the allowance would be paid to the employee described. The only reason Section 13 was necessary was that the Rule 39 allowance was limited to California residents, and the employee described lived in Nevada. A contract must be read as a whole, to give meaning to the entire agreement, to the extent possible. The original negotiators' adoption of Section 13

> **demonstrates their contemporaneous and mutual understanding of their agreement in Rule 39 (then Rule 73). For this reason, and having fully considered all of the parties' remaining contentions, the Board finds that the only employees eligible for the $200 monthly allowance are employees who meet the explicit requirements of Note 1 and who reside in California."**

It may be as the Organization argues in its Submission that Section 13 was crafted for that one employee ". . . who held seniority on the newly-formed Nevada District, to collect the $200.00 per month allowance until he left Portola even though he did not hold seniority on the newly-formed California District [and] Section 13 had absolutely nothing to do with where he lived." And that appears to be a strong argument that the parties were merely "red-circling" one employee out of many because that one employee had unique circumstances. On the other hand, as found in PLB 7270, Award 2, if residency in California was not required ". . . then there would have been no need to include Section 13 to insure that the allowance would be paid to the employee described."

PLB 7270, Award 2 was decided in error. And for reasons discussed, were it not for the discussion of Section 13 in that Award, the Board would have sustained the instant claim and found that Award as being palpably in error. The discussion of Section 13 leads to questions which, if considered on a first impression basis, should have been rejected because of the clear language in Note 1. But nevertheless, that discussion still leads to questions.

The bottom line here is that prior Awards are final and binding between the parties. And as discussed in Third Division Award 34204, supra, ". . . for purposes of stability, we cannot decide this case de novo . . . [because t]o do otherwise would be an invitation to chaos and would result in encouraging parties after receiving an adverse decision to attempt to place a similar future dispute before another referee in the hope of obtaining a different result." While the Board disagrees with the result in PLB 7270, Award 2 and finds that Award to be decided in error, the Board is not prepared to find that PLB 7270, Award 2 was palpably in error.

For the Board to sustain the claim in this matter would only be an invitation for the filing of yet another claim by the Organization with the same allegations and

arguments, which would be denied by the Carrier. Then a hunt for another Referee would begin to perhaps give a different result. That is the invitation to chaos and is a two-way street as the Carrier would then be inclined to deny claims that it lost in different cases on different issues with the hope of obtaining a different result from a different Referee. Overriding notions of stability which come about through the parties' claims resolution process would be severely undermined. Under the circumstances in this case, the parties will have to live with the result in PLB 7270, Award 2, which requires that the instant claim be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 16th day of June 2014.

Labor Member's Dissent to Third Division Award No. 41846

Neutral Member: Ed Benn

The Award should have been based on the Neutral Member's interpretation of the Agreement, not on his interpretation of PLB 7270, Award 2.

The Award concedes that, under standard principles of contract interpretation, the claim must be sustained. The Award summarizes these principles as follows:

The Rules of contract construction are straight-forward in this regard. First, clear contract language takes precedence, even if the results are harsh or unexpected to one of the parties. Second, if the language is clear, it is improper to use other rules of contract construction—the clear contract language is to be followed. Third, if the language is clear, parol evidence (such as bargaining history or past practice) is irrelevant and cannot be considered, no matter what that parol evidence may show.

The Neutral Member further concedes, without reservation, that the contract language is clear. The Agreement "states in no uncertain terms" that the claimants must receive the $200/month payment. There is "nothing in the rule about the employees having to live in California." The rule contains exactly two "pre-conditions for payment," namely, "that the Claimants be '. . . employees holding seniority on the California District and actively working.'"

The Award correctly finds that the claimants meet both pre-conditions: They hold seniority on the California District. They are actively working. Using the Neutral Member's own words, this "should have ended the inquiry with a sustaining Award."

After all, the essential duty of an RLA arbitration board is to interpret the agreement. Having interpreted the Brotherhood of Railroad Signalmen's Agreement in the Organization's favor, the Neutral Member should indeed have "ended the inquiry."

The Award further concedes that the prior Award was dead wrong. In fact, the Award finds that PLB 7270, Award 2, was "erroneously decided" on many critical levels:

- "It does not appear that PLB 7270, Award 2 followed" standard principles of contract interpretation.
- Instead of "ending the inquiry" based on the clear contract language, PLB 7270 "went further."
- PLB 7270 went into the parties' bargaining history, even though "bargaining history should not have been considered."
- PLB 7270 failed to consider that, if the "sophisticated negotiators" who drafted the Agreement had "intended Note 1 to require residence in California, they could have simply crafted language which contained the phrase 'reside in California' as a condition for payment of the $200 allowance."
- Compounding its errors, PLB 7270 "disregarded the fact that for nine years, the Carrier made the payments without regard to whether the employees lived in California," thereby providing a "strong basis" for sustaining the claim based on past practice.
- PLB 7270 disregarded the Organization's "strong argument" that the 1999 Implementing Agreement had moved a certain employee's seniority from the California District to the Nevada District; that Section 13 merely preserved the $200/month payment for that one employee (so long as he continued to work the territory east of Portola, CA); and, that Section 13 had nothing to do with the employee's state of residence.

By cloning a defective award, the Neutral Member undermines "stability" rather than fostering it. The Neutral Member recognizes that PLB 7270, Award 2, was riddled with errors. He should have seized the opportunity to overrule that Award and replace it with an Award based on conventional principles of contract interpretation. Instead, he declares that his hands are tied by the prior arbitrator's mistakes. Relying on his own, out-of-mainstream view of arbitral principle, he simply clones the prior Award along with its profound defects.

The Neutral Member's unconventional theory of arbitral precedent is that blind adherence to defective awards is necessary to his notion of labor-management "stability." This theory and notion lie outside the mainstream and are themselves destructive of labor-management peace.

Stability is fostered by affording each party the benefits of its bargain. The $200/month payment emerged from the give-and-take of collective bargaining. The obligation to pay is stated "in no uncertain terms." The BRS has a justified expectation that the Carrier will comply, as to **all actively working employees on the California District roster.**

Stability is not promoted by destroying that expectation. The Carrier engaged in the underhanded game called "gotcha" as to residents of Nevada. The prior Award enabled that behavior, but only by repudiating conventional principles of contract interpretation. The Neutral Member says his only choice is to play monkey-see-monkey-do. What he fails to understand is that, by enabling disruptive behavior, he only encourages more of it. His message to all carriers is: attack clear agreement language by violating the agreement and hope for a careless arbitrator. His message to Organizations is: should the carrier get its way, well, learn to "live with the result."

Stability is fostered by valuing justice over consistency. Railway Labor Act Awards do not establish binding precedent. The heart of the Railway Labor Act is that interruptions to service are avoided by providing a fair and just means of resolving disputes. When a Board issues an erroneous, unjust, outlier Award, such as PLB 7270, Award 2, and the parties can and should expect a future Board to take a fresh look. Take that opportunity away, and the only available avenue of relief is self-help.

The Carrier knows full well that RLA Awards are non-precedential. For example, in Third Division Award 34174, Referee Wesman sustained a claim on a question of overtime pay for fixed-location employees held away from headquarters on their rest days. The Carrier persisted in violating the Agreement. In Third Division Award 37630, Referee O'Brien sustained a claim on the same question. The Carrier still persisted in violating the Agreement. The same question went to yet another Board, this time with Referee Kohn. (Referee Kohn, of course, was the

author of PLB 7270, Award 2.) Referee Kohn ruled that the earlier Awards were "contrary to the plain, clear, and unambiguous language" of the Agreement. She denied the claim.

As expressed by Elkouri and Elkouri in **How Arbitration Works, Sixth Edition**, "*published awards are not binding on another arbitrator, but the thinking of experienced men is often helpful to him.*" (Ch.11.1) Elkouri and Elkouri further write:

> "A number of arbitrators have identified the circumstances under which, and the reasons why, a prior award need not be followed. One arbitrator observed that while 'it is only fair and reasonable to expect an arbitrator's decision to apply to subsequent cases of the same nature,' and that 'the refusal to apply the arbitrator's decision to similar cases leaves unsolved and unsettled the general problem covered by the decision,' nevertheless, the refusal to apply an award to cases of the same nature is justified where it is shown that any one of the following conditions obtains: (1) the previous decision clearly was an instance of bad judgment, (2) the decision was made without the benefit of some important and relevant facts or considerations, or (3) new conditions have arisen questioning the reasonableness of the continued application of the decision." (Ch.11.3.C)

The Neutral Member concedes that PLB 7270, Award 2, is an instance of "bad judgment" in many critical ways. Yet, he falls into the trap of blindly repeating the same mistakes. The late American economist and public servant Leo Cherne stated it this way:

> "The effects of publishing domestic arbitration awards are inevitable and inevitably undesirable. The fact of publication itself creates the atmosphere of precedent. The arbitrators in each subsequent dispute are submitted to the continuous and frequently unconscious pressure to conform. A bad award-and there are such in both the courtroom and the arbitration tribunal-will have the effect of stimulating other bad ones; a good one, by the weight of precedent, may be applied where the subtleties of fact should urge a different award." (How Arbitration Works, Ch.11.1.B)

Elkouri and Elkouri add:

> "Opponents of the publication of awards because of their use as precedents borrow from the criticism directed at the doctrine of precedent in law, that is, the binding force of prior decisions ties the present to the past in such a degree as to stultify progress, and the observance of precedent becomes an end in itself, with the result that justice sometimes is superseded by consistency." (How Arbitration Works, Ch.11.1.B)

As stated above, the Referee's decision to rely on a prior Award he himself acknowledged as seriously flawed is an example of justice being ***superseded by consistency***. A reading of the instant Award subject of this Dissent illustrates this.

Palpably Erroneous

In this Award, the Referee used his wide range of discretion as a cudgel to formalistically raise the standard of palpable error so high that he forced himself to perpetuate a known wrong. This has certainly not been the practice of the members of this tribunal, nor shall it be in the future.

Referring to Black's Law Dictionary, the court said palpable was defined as "easily perceptible, plain, obvious, readily visible, noticeable, patent, distinct, manifest." It went on to observe that, "In A Dictionary of Modern Legal Usage, Second Edition, palpable is defined as 'tangible, apparent.'" (See State v. Department of Public Works, 143 Wash. 67, and Alabama Fuel and Iron Co. v. Minyard, 210 Ala. 299.)

Since this Referee is insistent on tainting the process of the Railway Labor Act with outside legal doctrine we will briefly follow suit simply to educate the Referee and show that his logic is flawed. In (State v. Department of Public Works, 143 Wash. 67) the court ruled:

> "But we cannot conceive that it was in the contemplation of that body that an error committed by the department, when making such valuation, by including property that should be excluded or by excluding property that should be included, should thereafter be perpetuated. Such errors are continuing, and continuously enter into and affect the reasonableness of the rates the utility may exact for the service it renders. If the error has the effect of lessening the value of the property, the utility suffers thereby, as the rate fixed may be too low to give it an adequate return; if the error unduly increases the valuation, then the patrons of the utility suffer, as a rate based thereon may be more than a reasonable exaction for the services rendered. Justice to the utility and to the patrons of the utility alike therefore forbids that errors of this sort be given a permanent effect. This court in the case of State ex rel. Spokane v. Kuykendall, 119 Wash. 107, 205 Pac. 3, recognized that palpable errors made in valuations of the property of a utility could be corrected at a subsequent hearing. The parties dispute the application of the rule to the present case, because of our use of the word 'palpable' in qualifying the meaning of the word 'error.' But 'palpable,' according to its ordinary definition, is synonymous with the terms 'easily perceptible,' 'plain,'

'obvious,' 'manifest,' and in our opinion, notwithstanding the arguments to the contrary, the error here is of this sort."

Even in the court system one can easily comprehend the meaning of "palpable" and recognize the harm caused permitting palpably erroneous decisions to live on. This Referee should have reversed the prior, palpably erroneous decision just as the Court did here.

Conclusion

The Organization feels that after reading the definition of "palpable" that no further discussion is needed to show that the decision in Third Division Award 41846 is itself palpably erroneous and without precedential value. Essentially, the Referee in the instant case knows that Arbitrator Kohn's decision in Award 2 of PLB 7270 was wrongly decided, that she inserted language that was not negotiated by the Parties concerning a residency requirement into the Collective Bargaining Agreement. Nevertheless, despite his obvious awareness that the Kohn Award was itself in error, the Referee found a way to dispense his own brand of industrial justice and perpetuate a known wrong.

At this year's convention of the National Academy of Arbitrators, there was a screening of the recently produced movie "The Art and Science of Labor Arbitration." Awards like this indicate that the movie should have been named "Labor Arbitration—The Art that Masquerades as a Science."

Therefore, I must vigorously dissent.

John Bragg

John Bragg
NRAB Labor Member
Vice President
Brotherhood of Railroad Signalmen

CARRIER MEMBERS' RESPONSE TO LABOR MEMBER'S DISSENT
to
THIRD DIVISION AWARD 41846
DOCKET NO. SG-41981; NRAB-00003-120343

(Referee Edwin H. Benn)

The decision in this case follows the standard principles of arbitration. Following an extremely thorough analysis of the case record and pre-existing precedent between these parties involving the identical issue, the Majority ultimately concluded: "The bottom line here is that prior Awards are final and binding between the parties." There are now three arbitration Awards involving the subject matter presented by the instant dispute. All of them rejected the Organization's assertion that the parties' Agreement provides that all employees who hold seniority on the California District and who are actively working are entitled to a $200 monthly cost-of-living allowance. It appears that the Labor Member's Dissent to this Award is nothing more than a placeholder for what will undoubtedly be a fourth attempt to overturn prior final and binding Awards – a result that would cause chaos for the parties.

The language of Rule 29 is not as straight-forward as the Organization asserts. Different sets of Signal employees who hold seniority on the California District and are actively working are treated differently. Therefore, the undersigned disagree that Rule 29 provides clear and unambiguous contract language. Otherwise, all employees who hold California District seniority and are actively working would be treated the same under the Rule. Specific examples showing this difference include the following:

1. **Some employees who retained dual seniority rights on both the Nevada and California Districts are actively working in Nevada. The Organization does not contend that they are entitled to the $200 monthly cost-of-living allowance because they are working on the Nevada District.**

2. **Some employees who hold seniority on the California District are actively working in the Centralized Dispatching Center in Omaha, Nebraska, (Roster 15). The Organization no longer contends that they are entitled to the $200 monthly cost-of-living allowance. (See Third Division Award 37525, which was adopted on June 23, 2005, with Referee James E. Conway participating. Therein the Board declared: "The matter is properly barred from further consideration . . ." after concluding that the Organization had failed to present its claim within 60 days from the date of the occurrence on which it was based. No dissent was filed and the issue was never again advanced by the Organization.)**

3. Some employees who hold seniority on the California District and work in Zone 3 receive the payment provided they live in California. These employees are similar in nature to the two scenarios discussed above, yet they are treated differently.

These three scenarios demonstrate that the cited contract language is neither clear nor unambiguous; otherwise all three groups would be treated the same. Either they would all receive the payment or none would receive the payment. Because the Agreement language is not clear and unambiguous, arbitral Boards must look to other factors, which they did.

Of particular note is the fact that the Organization never refuted the first-hand statement provided by the author of Rule 29. Stated differently, the Carrier provided a written statement from the person who was at the table when Rule 29 was negotiated. The statement confirmed that the parties' intention was to afford California residents a cost-of-living adjustment. Although the Organization provided a statement from its representative at the bargaining table, that statement never disputed the Carrier negotiator's contention that the purpose of the allowance was to offset higher cost-of-living expenses incurred by California residents.

The purpose of arbitration is to resolve disputes emanating from collective bargaining agreements. Pursuant to the Railway Labor Act, such decisions are final and binding. Although the parties involved may not always agree with the arbitral decisions rendered, such decisions must, nevertheless, be adhered to. Under the doctrine of stare decisis, arbitral Boards must follow past decisions which have resolved identical issues – unless the precedent was "palpable error." During the last decade, the Organization has advanced three cases involving this very issue. The involved Boards – with Referees James E. Conway, Lisa Salkovitz Kohn, and Edwin H. Benn participating, respectively – have consistently dismissed and/or denied the claims submitted by the Organization. As Referee Benn ultimately concluded in the instant Award – despite the Organization's emphatic assertion to the contrary – Award 2 of Public Law Board No. 7270, which denied the Organization's second claim, was not "palpably" erroneous. *(In this regard, it is interesting to note that although the Labor Member's Dissent to Referee Kohn's Award asserted that the decision was "defective and erroneous" and "without precedential value," the Labor Member never asserted that the decision was "palpably erroneous.")* That being the case, Referee Benn properly denied the Organization's claim and thereby maintained the much needed stability that both parties deserve.

As the Board held in Second Division Award 6176 rendered on October 29, 1971 with Referee Jesse Simons participating:

> **"Submission to the Board of basically the same issue, over and over again, requiring the participation of numerous referees, is derogatory of Board procedures, and, if pursued indefinitely, can undermine the purposes and integrity of the Board and its procedures. In addition, such a course does not make good sense, if only for the fact that it is uneconomic. 'Forum Shopping', or utilization of the [B]oard mechanism as if it were an oriental bazaar in which either party may continually re-adjudicate, in the hope of finally finding a referee to satisfy their tastes, is contrary to the spirit and intent of the National Railway Labor Act and third-party participation in resolution of labor-management disputes."**

For the reasons set forth above and in Award 41846 itself, we concur with the Board's final and binding decision.

Katherine N. Novak
Katherine N. Novak

Michael C. Lesnik
Michael C. Lesnik

October 28, 2014