

PUBLIC LAW BOARD NO. 251

THE NEWBURGH AND SOUTH SHORE RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION (former BLF &E)

The members of this Board representing the Carrier and the Employees having been unable to agree upon the establishment and jurisdiction of the Board, Paul D. Hanlon was then duly appointed a neutral member of the Board by the National Mediation Board for the purpose of determining said procedural matters under the provisions of Public Law 89-456.

STATEMENT OF THE ISSUES

The issues as raised by the Carrier in its submission are as follows:

- "1. Does a Public Law Special Board of Adjustment, created under Public Law 89-456, have jurisdiction of disputes involving time limits established by the August 11, 1948 Rules Agreement and, if so;
- "2. Did the Organization comply with the provisions of Section 2 First and Second under General Duties of the Railway Labor Act, as amended, in the handling of all claims listed in their letter dated August 8, 1968, requesting the establishment of a Public Law Special Board of Adjustment and, if so;
- "3. Did the Organization's request dated August 8, 1968 for a Public Law Board comply with the requirements of Rule 26 (c) of the current Schedule Agreement."

STATEMENT OF FACTS

On August 8, 1968 the Organization directed a letter to the Carrier, the body of which reads as follows:

"Pursuant to Section 3, Second of the Railway Labor Act as amended by Public Law Board 89-456, written request is hereby made by the Brotherhood of Locomotive Firemen and Enginemen for the establishment of a Special Adjustment Board, PL Board on the Newburgh and South Shore Railway Company.

"The BLF&E proposes the enclosed agreement to be entered into for the establishment of the PL Board. The disputes to be resolved by the PL Board are listed on Attachment A to the agreement and are cases otherwise referable to the First Division, NRAB (and/or) (cases that have been pending before the First Division, NRAB for more than twelve months).

"Pursuant to Paragraph (D) of the agreement the BLF&E has designated E. F. Brehany to be the employee member of the board. The carrier is requested to designate its member of the board, and to advise of the time and place for the board to meet to join in an agreement establishing the board, all within thirty days as required by the Act and the rules of the National Mediation Board."

As indicated in the body of the letter quoted above, there was attached thereto a proposed form of agreement and also an Attachment A listing twenty claims which were identified by claim number and a brief statement of claim in each instance. As of the date of the letter, August 8, 1968, three of the claims listed were pending before the First Division and had been pending therein for more than twelve months. The other seventeen claims had been previously presented on the property and denied by the highest designated officer of the Carrier and the time limit for further handling of all of these claims under the provisions of Rule 26 (c) of the Agreement had been previously extended to August 26, 1968.

On August 13, 1968, the Carrier directed a letter to the Organization responding to the Organization's letter of August 8, 1968 and proposed a meeting on September 3, 1968 to discuss the subject matter.

On August 30, 1968 the Carrier directed another letter to the Organization stating that the claims listed on Attachment A were now outlawed under the time limit on claims under Rule 26 (c). The carrier agreed in the letter, however, to meet as previously agreed upon on September 3, 1968. At the meeting of September 3, 1968, the Carrier adhered to its position that the claims were time-barred and the parties were unable to enter into any agreement for a Public Law Board.

On September 9, 1968, the Carrier directed a letter to the Organization referring to the conference held on September 3, 1968 and in that letter referred to the fact that the three claims listed as pending before the First Division were not outlawed under the time limit on claims rule.

Subsequently, this Board was formally established and the procedural neutral appointed through the auspices of the National Mediation Board.

OPINION AND FINDINGS

Issue No. 1

In the first issue raised by the Carrier, it is contended that this Public Law Board has no jurisdiction over the claims in question due to the fact that Carrier has raised a question of time limits which disputes it is contended lie exclusively within the jurisdiction of the Disputes Committee created by a National Agreement of June 29, 1949. In the opinion

of the neutral, this contention is without merit. Public Law 29-456 supercedes the National Agreement of June 29, 1949 and must be construed to confer jurisdiction upon a Public Law Board to decide all procedural issues essential to the establishment of the Board, including disputes as to time limits on the claims presented.

Issue No.2

In its second issue, the Carrier contends that certain of the claims listed should not be heard by this Public Law Board on the grounds that the Organization has not previously "exerted every reasonable effort" to settle the disputes and has failed to confer or arrange to confer with the Carrier concerning the alleged rules violations. This, the Carrier contends, constitutes a failure on the part of the Organization to live up to the general duties set forth in Section 2 of the Railway Labor Act. An exploration of the facts behind this issue indicates that all of the claims involved have been considered in conference on the property between a representative of the Organization and a representative of the Carrier, but certain of these claims have not been handled in conference with the highest designated officer of the Carrier and due to time limitations, those claims were denied by said officer without conference. While there does appear to be a regrettable breakdown in the grievance process on this property, there is no provision in the Railway Labor Act requiring a conference with the highest designated officer of the Carrier as a prerequisite to appeal to the First Division of the NRAB or to a Public Law Special Adjustment Board and the complaint raised by the Carrier in its Issue No. 2 does not constitute grounds for preventing the consideration of these claims by this Public Law Board.

Issue No. 3

In its Issue No. 3 Carrier contends that all of the claims listed, other than those pending before the First Division, are time-barred under Rule 26 on the grounds that proceedings were not instituted on those claims before a tribunal having jurisdiction prior to the expiration of the time limit as extended to August 26, 1968. It is the position of the Organization that its letter of August 8, 1968, requesting the establishment of a Special Adjustment Board pursuant to Public Law 89-456 and attaching thereto a list of the claims to be presented, constituted the commencement of proceedings before a tribunal having jurisdiction. It is the position of the Carrier that proceedings were not and could not be instituted before a Public Law Board prior to establishment of said Board by agreement with the Carrier. Thus, it is contended the time limit expired on August 26, 1968 prior to the time when this Public Law Board was established.

To anyone with the slightest familiarity with Public Law 89-456 and its legislative history, it must be immediately obvious that the position of the Carrier on this issue is directly at odds with the basic purpose of the Act. The intent of the Act was to expedite the handling of claims such as those presented here. To achieve this end it granted to either the Carrier or the representative of the Employees the option of avoiding the intolerable delays encountered in the NRAB by exercise of a unilateral right to refer such claims to a special adjustment board. The detailed mechanics set forth for dragging a reluctant or unwilling party to a hearing before a Public Law Board make it crystal clear that neither party is intended to have any opportunity to frustrate the prompt establishment of such a Board

and the expedited hearing of claims before it. There is no evidence in the present case of any undue delay on the part of the Carrier, but to accept the theory that the time limit on claims can be allowed to run out during the interval between request for a Public Law Board and the formal establishment thereof would invite strategic delaying tactics and would place in the hands of all carriers a roll of red tape with an invitation that it be wound around the machinery of Public Law 89-456 in complete mockery of the intent of the drafters.

In short, the only logical and reasonable way to interpret the Act is to hold that a written request by either party for the establishment of a Public Law Board, setting forth therein a dispute or disputes to be resolved by the Board, constitutes the institution of proceedings before a tribunal having jurisdiction thereof for purposes of stopping the running of any time limits on said claims or disputes.

AWARD

Public Law Board No. 251 shall be established and shall be governed by the "Agreement" attached hereto. The Board shall have jurisdiction over all of the claims listed on "Attachment A" to the Agreement.

Dated at Boston, Massachusetts this 6th day of June, 1969.

S/ Paul D. Hanlon
Procedural Neutral Member