

Public Law Board No. 4807 (Procedural)

Parties: Southern Railway Company

and

American Train Dispatchers Association

Procedural Issues: What shall be the appropriate terms and provisions of an agreement establishing a public law board to cover a wide variety of disputes?

Background: The current dispute has been pending since November 22, 1988 when the Carrier served notice on the General Chairman of the Organization to join with it in establishing a public law board to adjudicate pending disputes.

The Organization replied on December 9, 1988 that it was agreeable to establishing such a board, but found unacceptable the draft of the proposed agreement which the Carrier had forwarded to it with its initial request.

The parties continued to discuss the matter and exchange counter proposals, but were unable to reach a meeting of the minds. Ultimately the Carrier on October 22, 1988 wrote to Mr. R.J. Carvatta, Staff Director/Grievances, National Mediation Board, requesting the National Mediation Board to appoint a Procedural Neutral to resolve the pending dispute, namely, to draft an agreement to establish a public law board that met the criteria for such agreements under the Railway Labor Act, as amended.

-2-

On November 6, 1988, the National Mediation Board appointed the undersigned to be the Procedural Neutral of the established Public Law Board No. 4807. On November 20, 1988 the parties accepted the proffered date of January 8, 1990 for the initial meeting of the Board. But on December 20, 1989, the parties, by joint letter dated December 20, 1989, requested a postponement of the scheduled January 8, 1990 Board meeting in order that they might further discuss the matter.

On October 3, 1990, the parties agreed to convene the Procedural Board on December 4, 1990 to present their respective positions as to what would be the appropriate provisions of an agreement establishing a merits public law board.

The Board met on December 4, 1990 and the parties presented oral and written arguments in support of their respective positions. In the course of this hearing, the Organization stated that it had no compelling need for a public law board inasmuch as the administrative machinery of the National Railroad Adjustment Board satisfactorily adjudicated the disputes it had with this and other Carriers. It added its limited staff resources made it more feasible to use the NRAB facilities rather than the public law board machinery. It agreed, however, to cooperate fully with the public law board

-3-

that would be established by the promulgated agreement of this procedural public law board.

At the December 4, 1990 hearing, it was apparent that the parties were in substantial agreement on many of the provisions that should be included in the agreement, but there were also marked sharp differences between them on a number of significant issues.

The attached agreement to this Decision represents the Neutral's judgment and findings as to what should be the appropriate contract provisions on those issues on which the parties disagreed.

The Neutral's findings are the following:

(1) Meeting Place of Board Meetings

The Neutral Member finds that the Carrier's proposal that the Board meet at its Norfolk, Virginia offices is more reasonable than the Organization's proposal that the Board meet at a location agreed to by a majority of its members. If at a meeting of the partisan members for the purpose of establishing a public law board, there was no concurrence as to the location of the meeting place, the parties would then have to invoke a procedural neutral to resolve this threshold issue. The Neutral finds it is more practicable to have "fixed" place for

-4-

a Board meeting so that there would be no obstacle or hindrance to convening this Board, and at that meeting the parties could among themselves, and later with the concurrence of the Neutral Member, agree on a different meeting location if the exigencies of the situation warranted it. The record of public law board meetings reveals that they occur at many other locations than the Carrier's offices because the circumstances so warrant. However, the purpose of Section 2 of the attached agreement is to ensure that there will be no initial dispute arising as to the place for convening the Board. However, Sections 2 and 3 also permit Board meetings to be held at other mutually acceptable locations when the Board determines that it is either necessary or desirable. Sections 2 and 3 provide both stability and flexibility with respect to convening Board meetings.

While the Neutral is not unsympathetic to the Organization's plea about the financial costs involved in extensive travel for Board meetings, he must take cognizance that almost any location, other than Berwyn, Illinois, for a Board meeting, would entail substantial travel costs for the Organization. This is a cost that the Organization must bear in order to meet its responsibilities to those whom it represents.

(2) Post Hearing Rebuttals

The Neutral Member finds that with the exchange of Submissions 15 days prior to the date of Board hearing, each party can adequately prepare its rebuttal by the time of the Board hearing. However, if either party really believes that it needs to file a post hearing statement in order to adequately and fully develop its position and answer the contention of the opposing party, then it must assume the responsibility to convince the Neutral Member that such a rebuttal Submission or post hearing statement is necessary. To permit post hearing Rebuttals pro forma to be filed, is to guarantee that there will be one filed in every case and this would clutter the record and delay already protracted proceedings. The Neutral finds that giving a party the opportunity to review 15 days in advance the opposing party's Submission, offers it adequate protection. In rare cases where a post hearing Submission is believed to be necessary, the party requesting it should be able to convince the Neutral Member of the Board of this necessity. Sections 9 and 10 of the agreement respond to the needs for post hearing statements or rebuttals.

(3) Withdrawal of Cases

The Neutral Member finds the Carrier's proposal to limit withdrawal of cases after Submissions have been

-6-

exchanged, to withdrawals with prejudice, to be incompatible with the expeditious and voluntary settlement of disputes. It may well be that the Organization, in good faith, based on the facts it has gleaned from the Carrier's Submissions, may determine that it should not go forward with the case. The Neutral finds that the Organization should not be prejudiced for all time, for all seemingly comparable cases. The Neutral finds that the Carrier is not materially or adversely affected by such withdrawal, but the Organization would be, if the Carrier's proposal was accepted.

The Neutral Member finds, however, after a case goes to hearing, the moving party should be permitted to withdraw it only by mutual consent.

The Neutral Member finds that Section 12 of the agreement is fair to both parties.

(4) Contents of Submission

The Submissions should accurately reflect the claim or grievance handled on the property. While the parties may dilate on the claims in their roles as advocates, while presenting their case, but they are not at liberty to surprise the other party, by presenting a claim or grievance that is materially different than the case that was handled on the property.

-7-

The parties are also at liberty to present all relevant data and material to the Board that the Board is legally bound to take judicial notice thereof. Section 11 responds to this problem.

(5) Exchanges of Submissions

The Neutral Member finds that 15 days is a reasonable period for the exchange of Submissions prior to the date of a given Board hearing. As stated in Section (2) an adequate review period obviates the necessity for filing rebuttal Submissions. The Neutral finds the 10 day period suggested by the Carrier is not long enough a time period for this purpose.

(6) Description of Disputes for Appendix A

The Neutral Member finds the Carrier's proposal is too restrictive. Appendix A is merely an administrative device to enable the NMB to maintain a count of cases pending before public law boards. The Appendix should have no substantive purport and should not be a mechanism for rejecting claims for technical reasons. The Neutral Member, however, does not intend to suggest that claims listed on Appendix A not bear reasonable relationship to cases handled on property. Appendix A should, in a general but accurate way, describe the case that was handled on the property. Section 5 responds to the problem.

-8-

(7) Notice to Third Parties

It is the duty and responsibility of the Board to determine whether a given dispute involves a third party as well as determining the actual notice and data to be given to the third party or parties.

(8) Notice of Hearing to Certain Employees

It is the sole responsibility of the Organization to ensure that notice is sent of the Board hearing to those employees who have been deprived of pay for 30 days or more. Since it is the Organization who is progressing the claim, the duty devolves upon it, and not the Carrier, to furnish the requisite notice to the affected employee. In the event the Organization does not the necessary data concerning the employee's whereabouts, the Carrier, to the extent possible, should assist the Organization with supplying the needed information.

(9) Interpretation

The Neutral Member finds that the Organization's proposal for a two year limit in which to render an interpretation on an issued award is an unreasonable length of time. Within such a time span, parties can disappear, records

-9-

go astray, and memories fade. The Neutral Member finds that 120 days from the date the award was rendered is a more reasonable time within which the partisan members can request an interpretation of a given award.

(10) Rules of Procedures and Practice

The Neutral Member finds there is no merit to the Carrier's proposal to include in the agreement its suggested Rules of Procedure and Practice. These rules are redundant because the agreement promulgated by the Neutral insures that awards will be rendered only by those Board members who participated in the hearing of the case and voted on those cases in which they participated. See Section 12 of the attached Agreement which complies with the requirements of the Federal Circuit of Appeals Court for the Sixth Circuit in Jones v. St. Louis - San Francisco Railway Co. It is expected that all public law boards will be conducted in accordance with the concepts of due process and basic fairness, and the Jones case is a singular exception to the way public law boards operate in rendering awards. In the ordinary course of Board business it is not necessary to include the Carrier's proposal for the governance of the Board.

-10-

(11) Executive Session

The Neutral finds no persuasive need to include a provision for mandatory executive sessions to be held by the Board for the adoption of awards. In the overwhelming number of cases, executive sessions are utilized by the partisan member who did not prevail, in order to reargue the case. This adds nothing to the proceedings except to repeat the arguments originally advanced, but rejected by the Board. In these days of limited NMB funds, executive sessions do not represent the most economical use of these limited funds.

In those situations where a rendered award may appear to be unclear or ambiguous, these matters can be handled by correspondence or a conference telephone call. In those rare situations when there is genuine need for a Board executive session, the Board Member can convene such a session as a matter of parliamentary rules of order or procedure. But the Neutral finds no merit to including a mandatory requirement to hold executive sessions to adopt awards. The Board Chairman sends in due course his awards to the parties considerably after the Board hearing on the cases. The parties review the awards and accept them or dissent to them, and, with rare exception, there is no valid reason for convening an executive session except for the losing party to register his

-11-

dissatisfaction or disappointment with the award. Such sessions are not necessary for the effective operations of the Board.

Award: The Procedural Issue has been answered by the attached Agreement.

Order: The parties are directed to comply with the Award on or before February 1, 1991.

Jacob Seidenberg
Jacob Seidenberg, Procedural Neutral

T.H. Mullenix, Jr.
Carrier Member

H.E. Mullinax
Employee Member

December 24, 1990