Award No. 1

Public Law Board Number 64

Parties: Brotherhood of Locomotive Firemen and Enginemen
and
Savannah and Atlanta Railway Company

Issues: (1) Where is the appropriate location or place for convening a Public Law Board, established pursuant to the provisions of Public Law 89-456.

(2) Did the Organization's request, dated December 4, 1966, for a Public Law Board comply with the requirements of the time limit rule (Article 21) of the existing Schedule Agreement.

Background: The instant Public Law Board was docketed on June 23, 1967, and the Neutral Member and Chairman was appointed on June 26, 1967, by the National Mediation Board. The Public Law Board was established to resolve the above stated procedural issues which were the subject of a dispute between the Carrier and the Brotherhood of Locomotive Firemen and Enginemen. The National Mediation Board, in creating the Public Board, acted pursuant to Public Law 89-456 (H. R. 706), and in accordance with Regulations it had adopted and published in the Federal Register on November 17, 1966, under the caption "Title 29 - Labor, Chapter X - National Mediation Board, Part 1207 - Establishment of Special Boards of Adjustment," (29 CFR Part 1201). The National Mediation Board established the Board in response to a request and a formal application dated May 25, 1967, received from H. E. Gilbert, President, Brotherhood of Locomotive Firemen and Enginemen

The Carrier, throughout the entire proceedings, has protested the National Mediation Board's action in appointing a Neutral to resolve the procedural issues in controversy. It has contended that these aforementioned issued are not determinable either by a Procedural Neutral or by the National Mediation Board. Notwithstanding its expressed objections, and without waiving these objections, the Carrier has participated in the hearings conducted by the Public Law Board on July 27-28, 1967, at the Offices of the National Mediation Board, Washington, D. C., and together with the Organization has filed a Post Hearing Statement dated August 28, 1967. The Carrier has also entered a caveat noting that there are other procedural issues which could arise if and when it met with the Organization to discuss an agreement establishing a Public Law Board. The Carrier discussed some of these other issues during the July 27-28, 1967 hearings.

The record shows that the Savannah and Atlanta Railway Company operates over 145 miles of trackage in the State of Georgia between the

the points of Savannah and Camak, but does not operate into Washington, D. C. Camak, its most northern point, is approximately 700 miles south of Washington, D. C.

On August 22, 1951, the Central of Georgia Railway, through a wholly owned non-carrier subsidiary, acquired the entire capital stock of the Carrier. On December 3, 1962, the Southern Railway Company acquired control of the majority stock of the Central of Georgia Railway Company. All during this period of time, up to and including the present, the Savannah and Georgia Railway Company has retained its separate corporate identity, although its capital stock, through a devolution of corporate ownership, is now vested in the Southern Railway System, whose corporate and operating headquarters are located in Washington, D. C. The Office of the Vice President, Personnel, of the Carrier is located in Washington, D. C. The Offices of the General Superintendent and Master Mechanic are located in Savannah, Georgia.

The respective detailed positions of the parties on the two procedural issues are as follows, taking them ad seriatim:

ISSUE NO. 1 - Appropriate Meeting Place of Board

ORGANIZATION

The principal thrust of the Organization's position on this issue is that the Railway Labor Act, as amended, in Section 2, Sixth, requires the parties to confer on the line of the Carrier, unless another place is mutually agreed upon, about disputes arising out of the interpretation or application of the collective agreement. The Organization adds that the purpose of a special Board of Adjustment, which is what a Public Board is, is to resolve disputes arising out of the interpretation or application of the collective agreement in effect between the parties.

The cited Section of the Railway Labor Act which the Organization invokes states:

> "In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within 10 days after receipt of notice of a desire on the part of either party to confer in respect to such a dispute, to specify a time and place at which such a conference shall be held: Provided, (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; ..."

The Organization asserts that "upon the line of the Carrier involved" as stated in the Statute means for this particular Carrier a location between the points of Savannah and Camak. It does not include Washington, D. C., approximately 700 miles away and a point on which the Carrier does not operate. It states that by no stretch of the imagination can Washington, D. C., be considered to be "upon the line of the Carrier." The Organization further states that the Carrier is aware of its legal obligation because the representative which it has designated to confer with the representatives of the employees about claims and grievances comes to Savannah, Georgia, for this purpose. It states that on January 6, 1966, and again on July 15, 1966, the Carrier representative made appointments, which he did not keep, to confer in Savannah, Georgia, with the representative of the Organization about the disposition of a docket of claims.

The Organization points out that the docket of claims which were to be the subject of the January and July 1966 discussions in Savannah, Georgia, are the same claims which are to be the subject matter of the Public Law Board.

The Organization concedes that Public Law 89-456 does not specify where a Public Law Board shall convene and meet. But it emphasizes that the purposes and functions of a Public Law Board are to resolve disputes growing out of the interpretation and application of the schedule agreement. This, it submits, is the identical purpose for conferring on a docket of claims under the provisions of Section 2, Sixth, of the Railway Labor Act. The Organization contends that there is no valid reason why the provisions of the Railway Labor Act requiring such a meeting to be on the line of the carrier should not be equally applicable for determining where a Public Law Board should convene, in the absence of a mutual agreement to the contrary.

The Organization states that the equities of the situation militate against requiring it to travel 700 miles in order to participate in the operation of a Public Law Board. It states that the Savannah and Atlanta Railway is a small railroad and has a limited number of employees. These employees do not have the resources to enable them to send a representative on a 1400-mile round trip, with its attendant expenses and costs, to meet Management "off the line" in order to safeguard their contractual rights. The Organization asserts that the rationale of the Railway Labor Act in Section 2, Sixth, was to meet this very sort of situation, namely, to prevent the employees from being victimized by the superior economic power of the Carrier.

The Organization states that if the owner of the Savannah and Atlanta Railway Company, i. e., the Southern Railway System, wants to operate the Savannah and Atlanta Railway Company as a separate corporate entity, it must then hold claim conferences "on the line of the carrier" pursuant to the law, and this logically includes Public Law Boards established for that same purpose.

CARRIER

The Carrier contends that there is no basis in fact or in law for the Organization's position that the Public Law Board must meet in Savannah, Georgia. It states that the Organization's reliance upon the cited provision of the Railway Labor Act is ill founded because it does not determine the meeting place of a Public Law Board. It states that Section 2, Sixth, of the Railway Labor Act pertains only to conferences concerning disputes "arising out of the interpretation and application of agreements concerning rates of pay, rules or working conditions." However, Public Law Boards are not creatures of existing agreements concerning rates of pay, rules or working conditions and therefore offer no guide as to the meeting place of Public Law Boards. It further adds that there is nothing in the Railway Labor Act that confers the authority upon the National Mediation Board, or upon a Procedural Neutral appointed by it, to determine the meeting place for a Public Law Board.

The Carrier maintains that Washington, D. C., is the logical place for a meeting of the Board. Its Vice President, Personnel, is the highest designated officer to handle labor relations for the Savannah and Atlanta Railway Company and 31 other railway and terminal companies, involving 21 different labor organizations. The files involving disputed labor matters of the Savannah and Atlanta Railway Company have been transferred to his office in Washington and are not located in Savannah. The Carrier adds that the National Mediation Board has recognized that the Office of Vice President, Personnel, is the proper place to discuss Section 6 Notices, and Unions have also conceded this in most cases. The parties have recognized that the headquarters in Washington, D. C., is properly considered to be "upon the line of the carrier involved" for most railroad and terminal companies under the jurisdiction of the Vice President, Personnel.

The Carrier also notes that although neither Section 5 nor 6 of the Railway Labor Act stipulates where Section 6 Notice Conferences shall be held or where Mediation Proceedings shall take place, nevertheless, the National Mediation Board for years has recognized that the headquarters of the Chief Operating Officer of the Carrier designated to handle such matters is the proper place for such meetings.

The Carrier stresses that the matter of where a Public Law Board shall meet is not an issue that may properly be determined by a Procedural Neutral, or for that matter by the partisan members of a Public Law Board. It is a matter that must be determined by mutual agreement between the Carrier and the authorized representative of the employees. It states that the Railway Labor Act obligates the parties to meet and attempt to reach an agreement on this issue. The record of this dispute clearly shows that although the Organization is the moving party, it has rejected the Carrier's offer to meet in conference for the purpose of deciding the matter if possible.

The further handling of this matter can only be held in accordance with the provisions of the Railway Labor Act, if at all. But in no event is it a matter for a Procedural Neutral to decide. The National Mediation Board erred in appointing a Neutral for such a purpose. The Carrier contends that a Procedural Neutral, under the applicable Law and Regulations, is restricted to the determination of matters relating to the procedure to be used by a Public Law Board in the administration of its duties within the authority prescribed by the Railway Labor Act. It states that the matters of procedure that the Neutral may properly determine are the way and manner that the Board may conduct its business.

Opinion and Findings - Issue of the Proper Meeting Place of Board

Preliminarily, the Procedural Neutral finds that under the provisions of Public Law 89-456 and the Regulations issued pursuant thereto, he has the authority to determine, because of the inability of the partisan members to do so, the proper place or location for the meeting of a Public Law Board established pursuant to the aforementioned Law. The Procedural Neutral finds that Section 3, Second, of the Railway Labor Act, as amended, provides that the Neutral Member of the Public Law Board shall determine all matters with repsect to the establishment and jurisdiction of the Board which the partisan members have not been able to agree upon. The record is patently clear that the partisan members are in sharp disagreement as to where the Board shall meet. The record is equally clear that the location of the meeting place of the Board is an integral part of the establishment of the Board. If this matter cannot be resolved by the partisan members, the Neutral Member must resolve it, because otherwise it is not possible for the Board to be effectively and functionally established.

The legislative intent on this point is evinced by Report No. 1114 (89th Congress, 1st Session), issued by the Committee on Interstate and Foreign Commerce, House of Representatives, in reporting out H. R. 706, which ultimately and in an unchanged form became Public Law 89-456. The Report states on page 13:

> "If these two persons (partisan members) do not promptly reach agreement, the representative of either side may request the National Mediation Board to appoint a neutral person, who shall constitute a third member of the Board for purposes of determining the cases which may be considered by the Board and all other questions required to be decided in order for such a Board to function." (underscoring supplied)

In light of the express provisions of the Law and the declared legislative intent, the Neutral Member of the Board must hold that the Carrier's objection is not well founded with regard to the Neutral's authority to decide the issue in controversy.

When the Neutral turns to the issue itself in controversy, he finds that there is no express provision in Public Law 89-456 designating where the meeting place is to be of Boards established pursuant to its authority. The Organization argues that Section 2, Sixth, of the Railway Labor Act, is analogous and should be controlling. The Carrier, on the other hand, insists that the aforecited provision is inapplicable, and instead urges that the Neutral should analogize the instant dispute to the Section 6 Notice meetings or mediation proceedings, conducted under Section 6 and 5, respectively, of the Railway Labor Act, where such meetings are almost invariably held at the headquarters of the Carrier. The Carrier also stresses the administrative difficulties confronting it if said meetings of the Board are not held at its headquarters in Washington, D. C.

When the Neutral analyzes the relevant evidence and weighs the respective arguments of the parties, he is compelled to hold that the position of the Organization is sounder and more telling. The Neutral believes that Section 2, Sixth, of the Railway Labor Act is more directly and intimately related to the matter in dispute than are the sections of the Act alluded to and relied upon by the Carrier. The Railway Labor Act now requires the parties to confer on the line of the carrier involved, unless another place is mutually agreed upon, when handling disputes arising out of claims or grievances involving the interpretation or application of agreements involving pay, rules, or working conditions. The sole function of a Public Law Board, when it is not created to settle only procedural disputes, is also to resolve disputes arising out of claims and grievances involving the interpretation and application of the agreement dealing with pay, rules, and working conditions. As a matter of fact, the next logical sequence for the parties to follow is to establish such a Board when one of the disputants declines to accept the final decision of the other party and also chooses not to utilize the machinery of the National Railway Adjustment Board.

The Neutral believes that since the present law requires the conference for handling a docket of claims to be held on the line of the Carrier involved, it is a logical extension to make the same requirement effective for a Public Law Board which is established to handle the same subject matter which is encompassed within the purview of Section 2, Sixth, of the Railway Labor Act. The Board is convinced that the rationale of the Congress, in enacting this requirement into law for the conferences between the parties to claim dockets, is equally applicable to Public Law Boards set up to resolve the same sort of disputes.

The Neutral Member, therefore, finds that the place of meeting for the proposed P. L. Board should be on the line of the Savannah and Atlanta Railway Company, and he further finds that on the line of this Carrier does not include Washington, D. C., unless the parties mutually agreed thereto.

ISSUE NO. 2 - Time Limits

The joinder of the second issue, i.e., whether the specific claims listed in the Organization's revised list, contained in the letters of Vice President McCollum and President Gilbert dated April 24, 1967, and June 9, 1967, respectively, are barred under the terms of Article 21 of the Schedule Agreement, is clearly illuminated by the following correspondence and evidence of record.

> October 28, 1965 - General Chairman Nieustraten wrote in part to Mr. L. G. Tolleson, then Director of Labor Relations for the Savannah and Atlanta Railway Company as follows:
>
> > "Claims listed below have been declined in writing by you. Your decision is not acceptable to the committee, therefore it is requested that you arrange for a conference on the property of the Savannah and Atlanta Rwy. for the purpose of attempting settlement." (Organization Exhibit #7)

The Organization states that Mr. Tolleson did not acknowledge the October 28, 1965, request or suggest a conference date. It further states that a similar letter on November 30, 1965, was mailed to Mr. Tolleson but it was also not acknowledged or a conference date suggested. The Organization states that on 12/6/65 it met in Washington, D. C., with Mr. Glen Certain, an associate of Mr. Tolleson, and who is designated by the S & A RR to handle claims and grievances with the Organization, to discuss other problems. The Organization contends that as a result of the December 6, 1965, conference, Mr. Certain agreed to meet with General Chairman Nieustraten at the Carrier's offices at Savannah, Georgia, on January 6, 1966, but when Mr. Certain came to Savannah, Georgia, on that date, he cancelled his appointment with the General Chairman. The Carrier did agree on August 11, 1966, to grant an extension of time to February 11, 1967, within which to seek a settlement of the claim docket.

> December 4, 1966 - A joint letter, signed by Vice President McCollum and General Chairman Nieustraten, addressed to Mr. Tolleson, stated:
>
> > "Pursuant to provisions of Public Law 89-456, this is a request to establish a Special Board of Adjustment to resolve the twenty-nine claims and grievances in the attached list.
> >
> > We understand that other claims may be added to this list should such claims or grievances be in the proper posture at the time the Special Board Agreement is consummated.

PLB 64 - Awd 1.

We suggest a conference be held in Savannah, Georgia, Thursday, December 15, 1966, to draw up the agreement establishing this Savannah and Atlanta Railway Company Special Board of Adjustment.

Please advise, suggesting another date if December 15, is not advisable." (Carrier Exhibit #2)

December 12, 1966 - Mr. Tolleson replied to December 4, 1966, letter stating in part:

"The Carrier will join in an agreement establishing such a Board and the undersigned will represent the Carrier. Your letter does not name the person who is to represent the employees.

Public Law 89-456 provides that 'the cases which may be considered (sic) by such board shall be defined in the agreement establishing it.' The list of cases attached to your letter includes some that cannot be considered by this Board which will have jurisdiction only of claims and grievances arising out of interpretation of the current agreement governing rates of pay, rules and regulations for locomotive firemen and hostlers represented by the Brotherhood of Locomotive Firemen and Enginemen. The following items on your list must be excluded: ...'

In view of the provisions of Public Law 89-456, I propose that all pending disputes before the First Division, National Railroad Adjustment Board, involving the interpretation of the agreement between this carrier and the Brotherhood of Locomotive Firemen and Enginemen be withdrawn from the First Division and placed on the docket for the Special Board for handling prior to the later cases listed in your letter. Please give me the First Division Docket number of such cases.

....

....

Unless there are some other provisions of Public Law 89-456 not covered by the foregoing, I will draft an appropriate agreement establishing the Special Board and forward to you for approval. Please advise." (Carrier Exhibit #3)

December 24, 1966 - Vice President McCollum replied and stated in part that as far as he knew he would represent the

Employees. He also argued that it was proper to submit engineer claims to this Special Board. (This issue was finally resolved on June 9, 1967, when H. E. Gilbert, President of the Organization, wrote to T. A. Tracy, Executive Secretary, National Mediation Board, that claims for engineers represented by the BLF&E were not now included on a revised docket being submitted relative to the Organization's request for the appointment of a Procedural Neutral.) Mr. McCollum further stated:

> "You propose to withdraw all disputes now pending before the First Division, National Railroad Adjustment Board, involving interpretation of agreement between S & A Ry and BLF&E and include them in this Special Board docket. You ask that we furnish the First Division Docket number of such cases.
>
> We listed claims that the Organization wished to include, if you have claims that you wish to include, please furnish a list.
>
> You may draft a tentative agreement as proposed in the last paragraph of your December 12 letter, but it seems this will be a waste of time because the Organization cannot agree with the objections raised in December 12 letter.
>
> Since the holidays have intervened in the first thirty days, I suggest that we meet in Savannah, Georgia, January 10, 1967, or during the following week to draft the Special Board agreement." (Carrier Exhibit #4)

December 30 - 1966 - General Chairman Nieustraten wrote to Mr. Tolleson stating that Mr. McCollum would represent the Organization on the P. L. Board. He added:

> "This Committee is agreeable to pulling all pending files from the NRAB 1st Div. for handling by the PL Board, however, I have only one (1) file number in my files. The others will have to be gotten from the NRAB. S-5471 is the only number I have. You are free to request the others for handling if you desire. We have no objections.
>
> ....
>
> ....
>
> ....

> Please find attached an agreement to establish a PL Board which is for your consideration. We feel that it covers all the requirements of Public Law 89-456 and will best serve our needs in the settlement of the 29 cases and such others as you may see fit to pull from the files of the NRAB for handling." (Carrier Exhibit #5)

January 4, 1967 - Mr. Tolleson replied to Mr. McCollum's letter of December 24, 1966, and Mr. Nieustraten's letter of December 30, 1966, stating in part:

> "It is noted that you do not agree with me on the jurisdiction of the Special Board and the cases which may be considered by such Board, but I believe that you will find that the matters set forth in my letter of December 12th are in strict accord with Public Law 89-456 and the Code of Federal Regulations concerning the establishment of Special Adjustment Boards. Section 1207.2(c) of the Code provides that the National Mediation Board will not docket an agreement establishing a PL Board unless the agreement meets the requirements of coverage as specified in Public Law 89-456. The proposed agreement attached to Mr. Nieustraten's letter does not meet the requirements.
>
> ....
>
> Prior commitments prevent me from meeting with Mr. McCollum on January 10, but I can meet with him in my office here at 2:00 P.M., Friday, January 20, 1967, to determine all matters with respect to the establishment and jurisdiction of the PL Board. Please advise." (Carrier Exhibit #6)

January 10, 1967 - Mr. McCollum answered Mr. Tolleson in which he stated, inter alia, that the January 20 date for a meeting was agreeable but:

> "if you still refuse to meet in Savannah, please advise prior to January 20. We may then be required to invoke the provisions of Public Law 89-456 to determine the procedural questions you have thus far raised in connection with the establishment of this Board." (Carrier Exhibit #7)

January 16, 1967 - Mr. Tolleson wrote Vice President McCollum that he was not agreeable to meeting in Savannah but:

> ".... as I wrote you on January 4th, I can meet you in my office here at 2:00 P.M., Friday, January 20, 1967, to determine all matters with respect to the establishment and jurisdiction of the PL Board...." (Carrier Exhibit #8)

January 18, 1967 - Mr. McCollum wrote to Mr. Tolleson that since he (Mr. Tolleson) had raised several procedural questions, Mr. McCollum wanted to give consideration to invoking the provisions of Public Law 89-456 and he would advise him after he considered the provisions of the Law. (Carrier Exhibit #9)

February 1, 1967 - General Chairman Nieustraten wrote Mr. Tolleson that:

> "Your office has raised the question as to whether or not this Committee may properly handle cases for Locomotive Engineers before a Special Board. Efforts are being made to get a ruling on this matter but it will probably be some time before it is handed down.
>
> To protect ourselves against the Time Limit rules we respectfully request an extension on the Time Limit on the cases listed for handling before the PL Board, enough to allow an appeal to the First Division if they so rule.
>
> Please advise at your earliest convenience." (Carrier Exhibit #10)

February 3, 1967 - Vice President McCollum wrote Mr. Tolleson in part:

> "Because of your position with respect to procedure, the establishment of this PL Board has been unavoidably delayed. The time limit expires on some of these claims February 11, 1967. Since the Organization requested a PL Board December 4, 1966, I am sure you will agree that the time limit on this docket is preserved until the procedural questions can be settled because this is necessary to establish this Board.
>
> ....
>
> I believe we are in accord that on claims on which there is no disagreement on their being proper subjects for this PL Board are now protected and trust you will grant our request on other claims should they later be considered improper subjects for this PL Board.
>
> Please advise." (Carrier Exhibit #11)

February 6, 1967 - Mr. Tolleson wrote jointly to Vice President McCollum and General Chairman Nieustraten referring to their respective letters of February 1 and February 3, 1967, stating in part:

"As you well know, the delay in reaching an agreement upon establishing a Special Board of Adjustment has been because of the fact that you have insisted that we meet in Savannah....

"As you also know, General Chairman Nieustraten has had almost a year in which to submit any or all of these claims to the First Division, National Railroad Adjustment Board, when he wrote me on December 4, 1966, requesting the establishment of a Special Board.

In the circumstances, I am not agreeable to an extension of the time limit or otherwise waiving the requirements of Article 21 of the Agreement. In this connection, I call your attention to the fact that some of these claims are already barred by the statute of limitation rule.

Your request is therefore declined." (Carrier Exhibit # 12)

April 24, 1967 - Vice President McCollum wrote to Mr. Tolleson stating:

"General Chairman G. L. Nieustraten and I wrote you December 4, 1966, to establish a Special Board of Adjustment to resolve a docket of cases. The establisment of this Board, subject to Public Law 89-456, has been delayed by procedural questions raised by you in your December 12, 1966, reply.

....

A revised list, including claims other than engineer that were in the list furnished December 4, 1966, is enclosed.

....

Will you please advise of a date you can meet us in Savannah, Georgia, at the Savannah & Atlanta Railway headquarters to draw up this Special Board Agreement." (Carrier Exhibit # 13)

April 26, 1967 - Mr. Tolleson replied to Mr. McCollum, stating in part:

"Referring to your letter of April 24, attaching a revised list of claims for a proposed Special Board and requesting that I meet you in Savannah, Ga., on this matter:

As you well know, every claim on your list is barred by the time limit provisions of Article 21 (c) of the Agreement between the Carrier and the Brotherhood of

Locomotive Firemen and Enginemen. In this connection, I remind you that you recognized this would now be so when you wrote me on February 3, asking me to extend the time limit provisions of the rule. In the circumstances, you cannot now legally request that we enter into an agreement to establish a Special Board to decide these claims -- You are barred from submitting them either to a Special Board or to the First Division of the National Railroad Adjustment Board.

....

Your request to establish a Special Board is of course declined, and I am not agreeable to meeting you anywhere concerning this subject. In no event would I be agreeable to meeting you in Savannah." (Carrier Exhibit # 14)

April 29, 1967 - Vice President McCollum wrote to Mr. Tolleson:

"You decline to meet us to establish a PL Board by taking the position that claims are barred by the time limit provisions of Article 21 (c) and, regardless of other circumstances, you decline to meet us on the property at Savannah, Georgia.

We do not agree with you that these claims are barred by the time limit: The time limit on these claims was extended to February 11, 1967. We wrote you on December 4, 1966, attaching a list of twenty-nine claims requesting conference date to establish a PL Board under provisions of Public Law 89-456. You replied December 12, raising several procedural questions and declined to grant a conference. While you did agree to draft an agreement to establish a PL Board and forwarded same to me for approval, your procedural questions prevented us from asking you to draft the agreement at that time. You further proposed that all firemen and hostler claims on the docket with the First Division NRAB be withdrawn and included in this proposed PL Board docket.

The questions were discussed in my December 24, 1966, reply. It was suggested, among other things, that you furnish a list of the claims you desire to include in this docket. You have not yet advised. Our request for a conference date to enter into a PL Board agreement was made

December 4, 1966, and/or seventy-one days before the time limit expired. You cannot arbitrarily delay the establishment of a PL Board and then take the position that claims are barred by the time limit rules. I advised you on January 18 -

> 'Since you also raised three other procedural questions, it seems we will be required to consider invoking provisions of Public Law 89-456 which provides for the appointment of a neutral to determine procedure.'

You say that I recognize the time limit has expired because of my February 3 letter requesting an extension of time: I do not agree that the time limit has expired. The February 3 request was made because I assumed you would agree and this would have forestalled the possibility of disagreement. As far as the Organization is concerned, these claims were referred to a PL Board with our letter of December 4, 1966, requesting a conference to establish such Board. This was seventy-one days before the time limit expired." (Carrier Exhibit # 15)

May 12, 1967 - Mr. Tolleson replied to Mr. McCollum, stating in part:

> "As you well know, the General Chairman could have submitted any of these claims to the First Division, National Railroad Adjustment Board, long before they were barred. The request for a Special Board did not extend the time limit under the provisions of Article 21 (c) of the Agreement. You knew this when you wrote me on February 3, 1967.
>
> As all of the claims are now barred by the provisions of Article 21 (c) of the Agreement, your request that we establish a Special Board is of course declined." (Carrier Exhibit # 16)

May 25, 1967 - H. E. Gilbert, President of the Brotherhood of Locomotive Firemen and Enginemen, filed the requisite forms with the National Mediation Board requesting the Board to appoint a procedural referee to hear the issues in dispute. (Joint Exhibit # 2)

June 5, 1967 - Vice President Tolleson protested to the National Mediation Board the Organization's request for the appointment of a procedural neutral, contending it should be denied. (Joint Exhibit # 4)

June 15, 1967 - Mr. Gilbert replied to the contentions made by Mr. Tolleson in his June 5, 1967, letter. (Joint Exhibit # 8)

June 23, 1967 - T. A. Tracy, Executive Secretary, National Mediation Board, replied to Mr. Gilbert's May 25, 1967, letter of application, with a copy to Mr. Tolleson, stating that his application had been docketed as Public Law Board No. 64. (Joint Exhibit # 9)

June 26, 1967 - Mr. Tracy wrote to the Neutral Member of the Board issuing him an official Certificate of Appointment as the Neutral Member of Public Law Board No. 64, stating that the certificate had been issued as a result of the National Mediation Board appointing him for the purpose of being the Neutral Member of the Board, to sit with the Board and resolve the procedural issues in dispute. (Joint Exhibit # 11)

The respective positions of the parties on the Time Limits Issue may be stated as follows:

Organization

The Organization denies that the list of claims which it submitted for resolution to the Public Law Board have been barred by the time limits provision of Article 21 of the Schedule Agreement. It states that the intent of Congress, when it enacted Public Law 89-456, was that when one of the parties requested that a Special Board of Adjustment be created to resolve a submitted list of undecided claims, the other party had to agree to the establishment of the said Board. The Organization states that the Congress intended it to be a "one way street" and the other party had no choice but to agree. The Organization states that the Congress enacted this law to afford the Organization a remedy because the divisions of the National Railroad Adjustment Board were not functioning effectively, causing a huge backlog of undecided cases.

The Organization maintains specifically that when it filed its December 4, 1966, Notice with the Carrier of its desire to establish a special board under P. L. 89-456, and attached a list of unresolved claims, that a Special Board was created, and further that the time limit requirements for processing these submitted claims was satisfied. It contends that once it filed the claims before a tribunal having jurisdiction to hear these claims, the time limit provisions of Article 21 ceased to toll.

The Organization notes that it filed its December 4, 1966, request with the Carrier seventy-one days before February 11, 1967, the date when the time limit would have expired under Article 21. The Organization states that when the Carrier replied by its December 12, 1966, letter stating "it will join in an agreement establishing such a Board" it was admitting that the Organization had instituted timely proceedings within the meaning of Article 21 (c).

The Organization insists that the Carrier cannot refuse to make an agreement to establish a Public Law Board and then maintain, after a period of time has elapsed, that these claims are now barred by the time limit rule of the Schedule Agreement. The Organization contends that the record shows the Carrier repeatedly refused to meet with its representatives in conference to draft the agreement setting up the special board. It refers to its correspondence from December 4, 1966, to April 24, 1967, as proof that it repeatedly requested the Carrier for a conference to draft the agreement establishing the special board, but in each instance the Carrier, in disregard of the provisisions of Section 2, Sixth, of the Railway Labor Act, refused to meet in conference in Savannah, Georgia. In light of this record, the Organization insists that the Carrier cannot maintain that the claims were barred by the time limit provision of Article 21 (c).

The Organi zation further denies that its letters of February 1 and 3, 1967, were an admission on its part that the submitted claims expired on February 11, 1967. It reiterates that the time limits on these claims were preserved by its timely request of December 4, 1966, for the establishment of a Public Law Board. The February requests were made because, since the delay in establishing the special board was caused by the Carrier, the Organization was certain that the Carrier would grant an extension of time. The Organization states that it only made the request in order to avoid any possible disagreement and to prevent any argument, but not because the request was necessary to preserve the existence or validity of the claims. The Organization notes that although the Carrier objected to certain claims on the submitted list, there were claims on the list to which the Carrier did not object. It certainly must be conceded that, as to those claims to which no objections were taken, and which were timely filed, those claims were preserved.

Carrier

The Carrier denies that the legislative history alluded to by the Organization supports the Organization's position that the Notice of December 4, 1966, satisfied the time limit requirements for processing the claims in issue. The Carrier states that a review of the testimony of the parties in interest before the respective Congressional Committees does not reveal any support for the Organization's theory that a mere request for the establishment of a special board established a Board.

The Carrier states the legislation provides that if the parties constituting the Board do not promptly resolve the dispute between them, then either side may request the National Mediation Board to appoint a neutral member as the third member of the Board. It adds that the record reveals that the parties were in dispute over a number of items as of December 12, 1966. Nevertheless, the Organization chose to delay its request to the National Mediation Board for a procedural neutral until May 25, 1967, long after the submitted claims were barred by the time limit provisions of Article 21 (c) of the Schedule Agreement.

The Carrier denies that there is any basis in fact for the Organization's contention that it was the Carrier's action or inaction that caused the delay in establishing the Public Law Board. On the contrary, it maintains that the real delay in processing the claims was caused by the Organization prior to December 4, 1966. The Carrier notes that it made its final declination of the claims in September 1965 and therefore most of the claims were barred on March 1966 under the terms of the Schedule Agreement. However, it voluntarily agreed on August 11, 1966, to extend the time limits thereon until February 11, 1967. Nevertheless, it was not until December 4, 1966, more than a year after the final declination, that the Organization took any action. The Carrier notes that Public Law 89-456 was approved on June 20, 1966, almost six months prior to the time that the Organization initiated any action under its provisions. The Carrier also notes that from the time the claims had been finally declined in 1965, the Organization could have filed them with the First Division, National Railroad Adjustment Board, to preserve them against the time limit rule.

The Carrier reiterates that the entire tenor of the Congressional testimony concerning P. L. 89-456 was that there must be an agreement to set up a special board as well as to what cases it may hear. The Carrier denies that a board can be created by the unilateral request of one of the parties in interest. It states that the December 4, 1966, request of the Organization did not create any board, and therefore it did not satisfy the requirements of Article 21 (c), namely, that the claims were barred within six months from the date of the Carrier's decision, unless proceedings were instituted before a tribunal having jurisdiction pursuant to law or the agreement of the claims involved. The Carrier emphasizes that until a special board is created by law or agreement, it is not a tribunal having jursidiction over the claims or grievances involved.

The Carrier points out that the Organization realized that the claims would be barred on February 11, 1967, as evidenced by the requests of General Chairman Nieustraten and Vice President McCollum for an extension of time, contained in their letters dated February 1, 1967, and February 3, 1967, respectively.

The Carrier further contends that even if a Public Law Board had been created prior to December 4, 1966, the list of "claims" attached to the December 4, 1966, letter of the Organization would not have satisfied either the requirements of Section 3, First (i) of the Railway Labor Act or the Rules of Procedure of the National Railroad Adjustment Board, because the list of claims did not contain all the supporting data to be attached thereto. Since the claims were not referrable to the National Railroad Adjustment Board, under these conditions they were also not referrable to any Public Law Board.

The Carrier also insists that neither the Public Law Board, the First Division of the National Railroad Adjustment Board, nor a Procedural Neutral have any authority to hear and decide disputes involving time limits. The parties have vested exclusive jurisdiction in this kind of dispute in a National Disputes Committee created by Agrement dated June 29, 1949. It was therefore error for the National Mediation Board to appoint a Procedural Neutral to resolve an issue of time limits.

OPINION AND FINDINGS - Time Limit Issue

Preliminarily, again the Neutral finds that he has appropriate authority under P. L. 89-456 to rule on the time limit issue and must conclude that the Carrier's attack on this authoirty is not well founded. In view of the legislative intent stated in Report No. 1114 of the House Committee on Interstate and Foreign Commerce, previously alluded to, the Neutral finds that he is authorized to determine: (1) what cases may be considered by the Board; and (2) all the other questions that have to be decided in order to enable the Board to function. It would therefore appear, in light of the enactment of P. L. 89-456 on June 20, 1966, that the National Agreement of June 29, 1949, has been modified by operation of law to the extent that the Disputes Committee no longer has exclusive but only concurrent jurisdiction over a time limit issue insofar as it pertains to a procedural issue concerning a special board of adjustment created pursuant to P. L. 89-456.

The Neutral must now turn to determine the issue of whether the Organization's request of December 4, 1966, as well as its subsequent actions, halted the running of the time limit provisions of the Schedule Agreement in view of the specific provisions of Article 21 (c) and the relevant provisions of P. L. 89-456.

Article 21 (c) states in part:

> "All claims or grievances involved in a decision of the highest officer shall be barred unless within six (6) months from the date of said officer's decision proceedings are instituted by the employee or his duly authorized representative before a tribunal having jurisdiction pursuant to law or agreement of the claim or grievance involved."

The relevant language of P. L. 89-456, as an amendment to the Railway Labor Act, Section 3, Second, states:

> "If a written request is made upon any individual by a representative of any craft or class of employees of such carrier for the establishment of a special board of adjustment to resolve disputes otherwise referrable to the Adjustment Board... or if any carrier makes a request upon any such representative, the carrier or the representative upon whom such a request is made shall join in an agreement establishing such a board within thirty days from the date such request is made. The cases which may be considered by such board shall be defined in the agreement establishing it. If such carrier or representative fails to agree upon the establishment of such a board as provided herein, or to exercise its rights to designate a member of the Board, the carrier or the representative may request the Mediation Board to designate a member of the special board on behalf of the carrier or representative upon whom such a request was made. Upon receipt of a request for such designation the Mediation Board shall promptly make such a designation and shall select an individual associated in interest with the carrier or representative he is to represent, who, with the member appointed by the carrier or representative requesting the establishment of the special board, shall constitute the board."

The Neutral finds from the evidence before him that the Organization's December 4, 1966, request for the creation of a Public Law Board, together with the furnishing of a list of claims which would be the subject matter of the Board's deliberations, and the reply of the Carrier on December 12, 1966, that it would join in an agreement to establish such a Board and also designating whom the Carrier's representative would be, is at least a de facto Public Law Board for the limited purpose of stopping the running of time limits on at least those claims which the Carrier itself agreed could be the subject matter of a special board of adjustment between the Organization and it. It can be held from the record that the Carrier, with all its reservations, agreed upon the establishment of a board.

The Neutral finds that to insist that as a condition precedent, the parties execute a formal agreement establishing the Board, before a Board can come into existence to stop the running of the time limit on pending claims, is to imbue the Statute with an intent which is at variance with legislative prupose. The legislative history of this statute makes it clear that the Congress wanted to enact remedial legislation which would mandatorily

establish machinery that would enable the parties in interest to resolve expeditiously claims and grievances arising out of the interpretation and application of their Schedule Agreement, because the Congress had determined that the existing machinery of the National Railroad Adjustment Board was not functioning effectively, as well as the fact that in many cases one of the parties in interest was adverse to establishing voluntarily by agreement a special board of adjustment to dispose of claims and grievances. The Congress had determined that the mounting time lag in disposing of these claims and grievances created undue burdens and hardships on the parties. The whole thrust of the Congressional action was to create a statutory right which would not depend upon the consent of one of the parties. It basically provided that when one of the parties served notice on the other party to establish a special board of adjustment, the Board was to come into being within 30 days. While the Congress also provided for procedural measures to be taken, if one of the parties in interest was reluctant to join in and create a statutory board, nevertheless the overriding and significant aspect of the legislation was that the Congress was creating a statutory right which did not depend on the consent of the party being acted upon. The execution of the agreement setting up a special board of adjustment was not the basic instrument to carry out the Congressional mandate. The Notice or Request for a Board and the acknowledgment of the Request were the prime factors. The written agreement was only the formal recognition of the newly created statutory machinery. It is also for this reason that the Neutral finds that the Organization's rights should not be prejudiced because it chose not to file the claims in issue with the National Railroad Adjustment Board. It was entirely proper for it to insist upon utilizing the alternative statutory machinery that the Congress had established for this purpose. Furthermore, if the Organization had filed the claims with the National Railroad Adjustment Board during December 1966 and April 1967 -- the period of negotiations between the parties -- it would have had to forego for twelve months its right under the Law to withdraw these claims from the National Adjustment Board and submit to a Public Law Board.

The record here reveals that a proper party in interest made a timely request upon the other party in interest for the establishment of a statutory special board of adjustment and attached to its request a list of claims otherwise referrable to the National Railroad Adjustment Board. The other party, despite its announced and declared reservations and objections, replied that it would join in the establishment of such a board and at the same time designated the individual who would be its representative on the Board. The Neutral must hold that these actions are sufficient under the Statute to at least halt the running of the time limits on the claims in question. The Neutral will admit that there might be a question as to whether a special board was established for other purposes or issues which might arise under the Law. However, the Neutral is only faced with this narrow issue and his ruling is confined to this issue. The Neutral finds that P. L. 89-456 was intended by

the Congress to be remedial in nature and therefore it is incumbent upon him to construe liberally the provisions of the Law in order to execute the intent of the Congress.

In this case, the Neutral finds that the parties were in disagreement on certain procedural matters pertaining to the proper meeting place of the Special Board of Adjustment and the appropriateness of submitting certain claims to this Special Board. The record is patently clear that the parties negotiated these differences over an extended period of time. Since one of the avowed purposes of the Railway Labor Act is to encourage the parties to make every effort to settle promptly and orderly all disputes arising out of the interpretation of agreements or otherwise, the Neutral finds that neither the legislative intent nor the public interest would be served by finding that one of the parties had foreclosed or lost some of its contractual rights by virtue of engaging in orderly extended negotiations over legitimate differences regarding the stablishment of a statutory special board of adjustment.

The Neutral is also constrained to state that he finds no merit in the other objections raised by the Carrier. He has already stated his findings regarding the National Dispute Committee under the 1949 Agreement exclusively pre-empting jurisdiction to hear time limit disputes. The Neutral also finds ill founded the Carrier's objections to the Statutory Board undertaking to hear the claims which were not submitted in the form prescribed by the Rules of Procedure of the National Railroad Adjustment Board. The legislative history of this Law indicates that its prime purpose was to create an alternate forum for the parties which would be quicker, less formal, and therefore be less circumscribed by the detailed machinery and procedures of the National Railroad Adjustment Board. There is no evidence in the legislative record that the Congress wanted these newly created statutory special boards to operate and function under exactly the same procedural rules as the National Railroad Adjustment Board. There is evidence to indicate the contrary. The Neutral finds that when the Organization submitted a list of claims whose subject matter was such that it was referrable to the National Railroad Adjustment Board, and this list of claims contained the file number, the name of the Claimant, and a brief description of the claim or grievance, the Organization was then following the standard procedure used by parties in establishing a consensual board of adjustment. This is also the same procedure followed by the parties who have already established statutory boards of adjustment under P. L. 89-456. The Organization in the instant case followed the normal and usual procedures utilized by parties who have established a special board of adjustment, be it by voluntary agreement or by law. There is no basis in law for holding that special boards of adjustment created under Public Law 89-456 must comply with the identical rules of procedure which the National Railroad Board of Adjustment has established pertaining to the docketing of cases filed with it.

In summary the Board must find that the evidence of record and the argument made in support thereof uphold the position of the Organization on both issues submitted to it.

AWARD: Issue No. 1

The Board finds that the proper meeting place for the proposed Statutory Special Board of Adjustment is on the line of the Carrier between Savannah and Camak, Georgia.

Issue No. 2

The Board finds that Article 21 (Time Limit Rule) of the existing Schedule Agreement between the parties did not bar the claims which the Organization listed as the subject matter of the proposed statutory Special Board of Adjustment.

/s/ Jacob Seidenberg
Jacob Seidenberg, Chairman and Neutral Member

L. G. Tolleson, Carrier Member

/s/ R. L. McCollum
R. L. McCollum, Employee Member

October 9, 1967
Washington, D. C.