PUBLIC LAW BOARD NO. 6525

In the Matter of the Arbitration Between:
CSX TRANSPORTATION, INC.,
Carrier

and

BROTHERHOOD OF RAILROAD SIGNALMEN,
Organization

NMB Case No. 71
Claim of W. E. Dunn
Overtime: Non-Covered Forces Assigned To Property of Claimant

and

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,
Third Party in Interest

STATEMENT OF CLAIM: Claim on behalf of W. E. Dunn for 2 hours and 40 minutes at the signal maintainer's straight time rate of pay, account Carrier violated the current Signalmen's Agreement, particularly the SCOPE Rule, when on August 26, 2002, it allowed a person not covered by the Signalmen's Agreement to remove and install a data radio in a signal bungalow located at N.E. Gay, MP ANB-807.3. Carrier's actions deprived the Claimant of this valuable work opportunity.

FINDINGS OF THE BOARD: The Board finds that the Carrier and Organization are, respectively, Carrier and Organization, and Claimant employee within the meaning of the Railway Labor Act, as amended; that the Board is duly constituted and has jurisdiction over the parties, claim and subject matter herein,[1] and that the parties were given due notice of the hearing which was held on April 12, 2004, at Jacksonville, Florida. Claimant was not present at the hearing.

---

[1]The operational rules of Public Law Board No. 6525 (Car. Ex. 1) make clear that the Board has jurisdiction over this dispute. Paragraph 9 provides:

> "The determination that a third or additional party may have an interest in the dispute shall be made by the Neutral Member. Should the determination be made by the Neutral Member that a third or additional party may have a possible interest in the dispute, the Board shall give due notice of such possible interest to such other party or parties and an opportunity to be heard."

The Neutral Member of the Board determined IBEW to have an interest in this dispute and the Board gave IBEW notice and opportunity to participate.

The Agreement which established the Board provides for notice by the Board to third parties in interest in particular disputes presented to the Board. *See* fn. 1.Pursuant to that provision the Board gave notice to the International Brotherhood of Electrical Workers ("IBEW") of the instant dispute, offering it an opportunity to be heard. The Carrier and IBEW are Parties to a collective bargaining agreement which has been in effect at all times relevant to this dispute, covering the Carrier's employees in the Communication craft. IBEW protested the Board's jurisdiction over the dispute and made a written submission and made oral arguments at the hearing under protest.

The Board makes the following additional findings:

The Carrier and Organization (sometimes "BRS") are Parties to a collective bargaining agreement which has been in effect at all times relevant to this dispute, covering the Carrier's employees in the Signalmen's craft.

At the time of this dispute, Claimant was employed by the Carrier, CSX Transportation, Inc. (by the former Seaboard Coast Line Railroad Company ["SCL"]), assigned to the position of Signal Maintainer with headquarters at Senoia, Georgia.

Historically, employees represented by BRS exclusively performed all maintenance work associated with the former pole line control circuits that transmitted and received signals from train dispatcher control. In the mid-1990s Carrier began to replace pole line control circuits with data radios that perform the same tasks and to replace the function of the line circuits which were previously maintained by Signalmen. The Mobile Communications Package ("MCP") unit replaces the code line and is part of the signal system which is used to control the routing and movement of trains. The MCP portion of the system is the link that allows the train dispatcher to control the signals from the control panel at a remote location. The signal information that was formerly transmitted by a pair of line wires (and maintained by Signalmen) is now carried by airborne transmission from the MCP at the control

point. Employees in the Signal Craft have continued to maintain the wireless signal system.

When MCP radios used in the field become defective, the usual procedure is to replace the unit with a unit in good repair, (a "swap-out") rather than to repair it in place. Communication Employees represented by both the IBEW and TCU have exclusively performed all repair of defective radios in the past once they are sent to the system radio shop in Louisville, Kentucky. When a new MCP radio is installed, it must be tested to ensure that it is operating properly as part of the Signal System. It is not disputed that BRS employees, and only BRS employees, perform those tests.

There came a time when IBEW-represented employees protested the assignment of BRS employees to swap out radios. On February 2, 2002, PLB 6174 (CSX and IBEW) Award No. 13 (Car. Ex. 6a) held that Signalmen were excluded from exchanging MCP radios under any circumstances. The Board's Award was rendered without any notice to or participation from BRS; it does not appear that the Agreement establishing PLB 6174 provided for Third Party notice and participation. The Organization has petitioned to have that decision remanded to PLB 6174 with instructions to give BRS an opportunity to be heard and to resolve the entire dispute.[2] By email dated April 15, 2003 (IBEW Ex. V), Carrier Senior Director John Cosenza issued instructions to field personnel that the work of replacing Carrier-owned data transmission equipment - MCPs - accrues to its Communication employees rather than to Signalmen.

On August 26, 2002, Carrier's Operations Center in Jacksonville, Florida, dispatched Communication Maintainer Bill Sanford, an employee covered by the CSX-IBEW Agreement, to the Signal Control Point N.E. Gay at M.P. 807.3 near Roanoke, Alabama, where an inoperative MCP data radio caused signal trouble that resulted in the train dispatcher's inability to pull in a signal at

---

[2] *BRS v. CSXT and IBEW*, Civil No. 04C 0622, U.S. District Court for the Northern District of Illinois (Eastern Division), filed January 27, 2004. That litigation was pending at the time of the hearing in this dispute.

N.E. Gay Signal Control Point. In order to correct the problem Communication Maintainer Sanford removed the defective MCP unit and replaced it with a fully functional one.

Claimant protested the use of an IBEW-represented employee to perform the work as violative of the Scope Rule of the CSX-BRS Agreement. The instant claim for 2 hours and 40 minutes at Claimant's straight time rate of pay for the lost work opportunity was presented in due course and progressed on the property in the usual manner,[3] but without resolution; and it was submitted to this Board for disposition.

POSITIONS OF THE PARTIES: The Organization argues that Carrier violated the Agreement, particularly Rule 1 ("Scope Rule") allowing non-covered forces - Communication Maintainer Sanford, an IBEW-represented employee - to remove a defective MCP unit and replace it with a fully functional one, instead of allowing Claimant to perform the work.

The Organization further argues that the code line circuits, which are used to transmit and receive vital control information to operate the signals, switches and associated apparatus safely, are the foundation for signal-based train control, are covered by the Organization's Scope Rule, and have always been installed and maintained by Signal employees. It contends that, in an attempt to modernize the control circuits of the signal system, Carrier began to replace signal control circuits that were transmitted and received by open line wires on poles (code line).

The Organization argues that the new technology that emerged to modernize these code circuits - MCP units - is simply a technological advance which performs the same function as the former signal code transmission system that was installed and maintained by Signalmen. It maintains that the only function of MCP units is to control the vital control information to operate

---

[3]Although the District Signal Engineer failed to respond to the Organization's initial claim, the parties agreed in the circumstances of the dispute to waive procedural disputes and decide the claim on the merits.

the signals, switches and associated apparatus safely and that they do not handle voice communication or perform any other function except signal code.

The Organization further argues that the record establishes that MCPs are an intricate and vital part of the signal system, without which the signals would not function. BRS contends that, when Communication Maintainer Sanford removed an MCP and replaced it with a different one, the signal location failed to operate several times, causing train delays and unsafe conditions for the proper operations of trains. It maintains that those failures illustrate that, because they are not trained or experienced on signal equipment, communication employees are not permitted to work on such vital equipment.

The Organization argues that it is undisputed that BRS Signalmen have, from the inception of MCP units on Carrier's property, constructed, installed, replaced, inspected, tested and maintained this equipment in accordance with the Scope Rule. Citing Carrier documents (Org. Ex. 4), BRS contends that it is Carrier's own policy to have this vital signal equipment be the total responsibility of BRS-covered employees. It maintains that, under the signal code line system, the signal/communication demarcation line was clearly identified and that the only equipment that IBEW-represented employees maintained were the telephone lines, while all other equipment was within the jurisdiction of the Signal Department. It points out that, under the new system, the Carrier's own instruction, the CSXT Train Control "Radio Repair Procedure" (TCR 1070-01), provides for Signal Maintainers to perform the work of replacing and installing all MCP, Spread Spectrum, Data, and Defect Detector radios.

The Organization further argues that the basis for Carrier's denying the instant claim was the decision of PLB 6174 Award 13, which determined the work at issue accrued to IBEW-represented employees. However, the Organization notes that it and the Carrier both objected to the procedure used in that case because it was held without the involvement of the BRS, clearly a Third Party in Interest in the dispute, even though the Carrier formally requested

BRS participation, and the Board had therefore ruled without the full benefit of all the facts. It maintains that the affidavits from Signal Department employees (Org. Ex. 7) conclusively demonstrate the exclusivity of installing, repairing, replacing and maintaining the signal code data radios to signal department employees. It contends that the affidavits show that, when MCP equipment needs attention in the field, Signalmen provide the servicing.

The Organization further argues that the decision reached in PLB 6174 Award 13 was based on decisions from NRAB Second Division Award No. 7774 and PLB 6174 Award Nos. 1-5 and does not establish precedent for this dispute. It contends, for instance, that Award No. 7774 concerned removing a "wireless voice communication device" from a journal defect detector, not a data communications unit that controls the signal system. It maintains that the Board in Award No. 13 never addressed the fact that an MCP is a data only radio that does not have any application in voice communication.

The Organization further argues, citing authority, that the issue has been decided in its favor on other properties in the exact same circumstance as the instant case, even where IBEW has participated, as in the instant case, as a Third Party in Interest. It contends that, in both PLB 4716, Award No. 79 (Wesman, Arb.) (Org. Ex. 9), and PLB 5622, Award No. 51 (Wallin, Arb.) (Org. Ex. 10), it was determined that, when the sole purpose of the equipment is the transmission and reception of signal data used for the operation of the signal system, the work of replacing them accrues to Signalmen. It maintains that these awards constitute precedent to sustain the claim.

Finally, the Organization argues that Claimant suffered a loss of work opportunity as a result of the violation and that the Carrier should be required to compensate him in the amount of two hours and forty minutes at his straight time rate.

The Organization urges that a sustaining Award be issued.

The Carrier argues that the work at issue - removing and

installing data radios - is not exclusively reserved to Signal employees or communication employees, either by agreement or practice. It argues in specific that, while Signalmen should not be excluded from the task of exchanging MCP radios, the Organization's position that an Agreement-covered employee occupying the position of Signal Maintainer must provide all removal and installation of MCP data radios is without contractual support. Similarly, it argues that IBEW's contention that an employee occupying the position of Communication Maintainer must provide all removal and installation of data radios is also without contractual language support and the Public Law Board awards that grant such exclusive jurisdiction are erroneous.

The Carrier further argues that the exclusion of BRS from participation in PLB 6174 Award No. 13 (Car. Ex. 6a), despite its request that BRS participate, resulted in the Board deciding the case without the benefit of all pertinent facts. It contends, in addition, that PLB 6174 Award No. 1 (Car. Ex. 6b) premised its conclusion on the erroneous assumption that Second Division Award No. 7774 (Car. Ex. 6c) had decided the jurisdictional issue in the instant case. The Carrier maintains that Second Division Award No. 7774 and PLB 6174 Award No. 1 have no connection to exchanging MCP units at signal locations and that those Boards never considered the fact that an MCP is a data only radio that has no application in voice communication.

The Carrier further argues that there is a divergence of opinion concerning which craft, if any, has exclusive jurisdiction over the work at issue. It asserts that Second Division Award No. 7774 and PLB 6174 Award Nos. 1-5 (Car. Exs. 6d-g) are not controlling in the instant case. It contends that Award No. 7774 concerned a "wireless voice communication device" from a journal defect detector radio that was not part of the signal system and was not exclusively for signal circuits and is, therefore, not applicable to a case where the MCP is an essential part of the signal system and whose only function is connected with the signal system. Citing PLB 4716 Award No. 79, where it was held that "installation of data radios transmitting only signal information" should have been performed by BRS-covered employees, and PLB 5622

Award No. 51, where it was held that "the use of the radio equipment was limited to serving exclusively as signal circuitry" and was within the coverage of the BRS Scope Rule, the Carrier contends that the assignment of exchanging MCP radios should be considered shared work not exclusive to any particular craft.

Finally, the Carrier argues that the work of exchanging radios is not within the coverage of the Agreement's Scope Rule but is merely an ancillary function of the trouble shooting procedure. Citing authority it contends that, like in the instant case, supplementary portions of certain tasks do not belong to any particular craft and neither BRS nor IBEW can lay exclusive claim to such shared work.

The Carrier urges that the claim be denied.

Third Party in Interest IBEW, argues, as an initial matter, that the Board lacks jurisdiction in this case and, should it proceed, will violate the requirements of Section 3 of the Railway Labor Act and its award will be of no force and effect. It further argues that the issue in this case is not whether the work of exchanging a defective radio with a functional one is exclusive to Signalmen or IBEW-represented employees. It argues, instead, that the issue is whether the BRS will be permitted to gain, through arbitration, work it has failed to gain through negotiations with Carrier and whether the Carrier will be permitted to void its agreements with IBEW. It contends that the BRS position is not supported by documentation and that there exists unambiguous documentation that the assignment of installing and removing Carrier-owned data transmission equipment, including MCPs, on the former SCL property has historically and continues to be performed by IBEW-represented Communication employees.

The Third Party in Interest further argues that, in recognition that the work of Communication Maintainers had changed, Carrier and IBEW amended their collective bargaining agreement in 1991 to provide that "Communications work shall include constructing, installing, repairing, maintaining, inspecting,

testing and removing of Carrier owned . . . data transmission equipment." It contends that the installation of MCP data radio equipment has historically been and currently is being performed by IBEW-represented Communication employees on the former SCL property, not by Signalmen. It points out that the Agreement between Carrier and BRS does not refer to data transmission equipment and, therefore, BRS-represented employees have no contractual right to remove or install Carrier-owned data transmission equipment such as MCPs.

The Third Party in Interest further argues that the diagrams contained in Carrier's "Radio Code Line Installation Manual" (IBEW Ex. D, p. 2) and "Radio Code Line Installation Manual" (IBEW Ex. E, p. 2) clearly identify the demarcation point between Communications Department equipment and Signal Department equipment and indicate MCPs as Communications Department equipment. It contends that the Carrier has never denied that installation of the equipment described therein, including MCPs, is reserved to IBEW-represented Communication employees on the former SCL property. It maintains, similarly, that the cited Project Detail Tracking Reports (IBEW Ex. F-U) support its position that installing and removing data transmission equipment, including MCP radios, is reserved to IBEW-represented Communication employees. IBEW argues that BRS's claims that Communication employees "maintain only the coaxial cable from outside the signal enclosure" are without merit and the documents cited by BRS to support its claims (Org. Ex. 4, pp. 9-10) involve old technology and are unconnected to the instant case.

The Third Party in Interest further argues that the "Radio Repair Procedure" (Org. Ex. 4, pp. 4-8) cited by the Organization does not support its contention that it now maintains and repairs or should maintain and repair MCPs. It contends that, in any case, the document is outdated as a result of the findings of PLB 6174 Award Nos. 1-5 and 13 which address the work connected with removing and installing MCP radios. It maintains that Carrier, through Senior Director Cosenza's email issued April 15, 2003 (IBEW Ex. V), along with the creation of forms (IBEW Exs. W-Z) to implement the instructions contained in the email, recognized its position that the replacement of Carrier-owned data transmission

equipment - MCPs - accrues to its Communication employees rather than to Signalmen.

The Third Party in Interest further argues, citing authority, that work embraced within the scope of the controlling Agreement - the IBEW agreement with Carrier - cannot be removed and assigned to or be performed by anyone other than Communication employees without Carrier clearly violating the Scope Rule contained in the IBEW agreement.

The Third Party in Interest argues, in addition that, while it recognizes that Second Division Award No. 7774 concerned removal of a "wireless voice communication device," PLB NO. 6174, Cases 1-5 (IBEW Ex. E) specifically addressed removing and reinstalling MCP data radios at signal locations and serve as precedent for exclusive jurisdiction of Communication employees. It contends that, in response to Award No. 13, the Carrier entered into an agreement with IBEW, and that understanding was issued to the field via Senior Director Cosenza's email (IBEW Ex. FF) and issued instructions to make a penalty payment to a Communication Maintainer whenever a Signal Maintainer replaced an MCP radio. It maintains that, since the inception of this agreement, Signalmen have removed and reinstalled some 300 MCP radios, the performance of which work would have been violations of IBEW's agreement, and that this represents Carrier's recognition that the work accrues to Communication employees and does not constitute an undue burden on the Carrier's operations. It contends that Carrier's recent proposal, during negotiations, to provide additional sick days in exchange for IBEW giving up its exclusive right to perform the work of installing and removing MCP devices is further recognition that this work properly accrues to IBEW-represented employees (IBEW Exs. HH-II).

The Third Party in Interest further argues that Carrier's contention that Signalmen should not be excluded from removing or installing MCP radios is unfounded. It contends that, in 1999, it reached agreement with the Carrier that Communication employees should be called upon to "change out radios in defect detectors/MCP sites" (IBEW Ex. JJ) and that Carrier does not deny the existence

of that agreement. It maintains that Carrier is now ignoring the clear and unambiguous instructions given by the Carrier's highest designated officer to assign such work to Communication employees rather than Signal employees.

The Third Party in Interest further argues that Carrier's contention that Award Nos. 1-5 and 13 are defective because BRS was not invited to participate is similarly without merit. It contends that Carrier did not request that BRS be included as an interested third party. It points out that Awards 1-5 are more than five years old, maintains that the Carrier did not object during oral argument on those disputes to proceeding without BRS and points out, further, that the Carrier Member of the Board did not dissent from their holdings. IBEW argues that Carrier's claim that Public Law Board 6174 completely ignored the evidence it presented in Award 13 is not supported by the record, since the Award held that "[t]he Carrier's advocate has argued with great skill and vigor" and it "appreciated" the Carrier's efforts.

Finally, the Third Party in Interest argues, citing authority, that the function of this Board is limited to interpreting and applying agreements as agreed to between the parties and that, since, in accordance with the Agreement between IBEW and the Carrier, the disputed work accrues to IBEW-represented Communication Maintainers, this Board must hold accordingly.

The Third Party in Interest urges that the claim be denied.

DISCUSSION AND ANALYSIS: It was the burden of the Organization to establish that the Carrier's application of the governing Agreement between CSX and BRS was in error. For the reasons which follow, the Board concludes that the Organization has met its burden.

Rule 1, the Scope Rule, between the Organization and Carrier, states, in pertinent part, as follows:

> (a) This Agreement governs the rates of pay, hours of service and working conditions of all employees engaged in the construction, installation, reclaiming,

> renewal, repair, inspecting, testing and maintenance, either in the shop or in the field, of all interlocking systems and devices; signals and signaling systems; wayside devices and equipment for train stop and train control systems; . . . together with all appurtenances pertaining to the above-named systems and devices, as well as any other work recognized as signal work.
>
> (b) No employee of other than those classified herein will be required or permitted to perform any of the work covered by the scope of this agreement.
> . . .
> (d) When signal circuits are superimposed or handled on systems not covered by this agreement, the employees covered by this agreement shall install and maintain superimposed on other circuits. (Car. Ex. 5a)

Rule 1(a), the Classification of Work Rule covering former SCL property, between IBEW, the Third Party in Interest, and the Carrier, states, in pertinent part, as follows:

> Communications work shall include constructing, installing, repairing, maintaining, inspecting, testing and removing of Carrier owned: communications lines and their supports, wires and cables, telephone, telegraph, teletype, switchboards, communication, communication plant equipment, including radio, fiber optic, microwave and data transmission equipment and circuitry and all other work generally recognized as work of Communication Employees.
> . . .
>
> No employee other than those classified herein will be required or permitted to perform any of the work covered by this Agreement. (Car. Ex. 5b)

It is undisputed that, as required under the provisions of the Signalmens' Scope Rule, paragraph (a), Signalmen exclusively performed all maintenance work associated with the former pole line control circuits, which the data radios (MCPs) replaced, including installing and replacing them. The record indicates that such equipment is used to transmit and receive information for the operation of the signal system to control the movement of trains. The equipment transmits control codes, which are received at the

field locations and then used to initiate various signal functions in the centralized traffic control system. The record provides no indication that there was any communication equipment operated through this equipment, or that there were any vital functions other than the signal operations controlled through this equipment.

The evidentiary record also establishes that the change in technology, from pole line control circuits to MCPs, affected only signal work. The data radios now used in the signal system perform only signal system functions, acting as the link that allows the train dispatcher to control the signals from the control panel at a remote location. The radios are not used for and, as configured, are not capable of performing any communication functions and they do not take the place of equipment that performed communication functions. Furthermore, when employees make changes to any part of the signal system, tests must be made to ensure the integrity of the entire signal system. Communication employees are not trained to perform those tests of the signal system.

Under IBEW Rule 1(a), Communications work includes installing and removing "communication [and] communication plant equipment, including radio, fiber optic, microwave and *data transmission equipment* and all other work *generally recognized* as work of Communication Employees." (Emphases added.) Typically, such equipment is used to handle wireless voice communication. Neither the pole lines which the data radios replaced nor the data radios themselves constitute such work. Defective MCPs are now sent to a repair shop in Louisville, Kentucky, where Communication employees perform all repairs of defective radios.

The evidence establishes that MCP units can carry several discrete channels of communication simultaneously and can serve multiple purposes, depending upon where they are located within the Carrier's operations. Some are used exclusively to perform communication functions, some are used exclusively to perform signal functions, and some are used to perform both simultaneously. In accordance with paragraph (d) of the BRS Scope Rule, when signal circuits are superimposed on systems not covered by BRS employees,

they still install and maintain the signal work that has been superimposed on the non-covered system.

Although the MCP at issue in this case is surrounded by systems covered by Communications employees, the evidentiary record shows conclusively that the MCP is an essential part of the signal system, that its only function was to transmit signal code information and that it served no communication function. The Carrier emphasized that the disputed MCP is exclusively used for transmittal of control circuit signals. The Board concludes that the disputed work, therefore, falls within the coverage of the BRS Scope Rule. Although removing and installing MCPs is not specifically listed in the Scope Rule, such work is a part of the interlocking signal system, is generally recognized as signal work and clearly falls within the meaning of paragraphs (a) and (d).

The Board is not persuaded that the series of awards presented by IBEW as support for its position that the issue of work jurisdiction has already been decided and that the disputed work is Communication work, and the Awards cited by the Carrier to conclude, in conjunction with other cases, that there is no exclusivity for either BRS- or IBEW-represented employees, is anything more than a legal "house of cards" that cannot serve as precedent for the instant case. PLB 6174 Award No. 13 is based upon the holdings in PLB 6174 Award Nos. 1-5, Award Nos. 2-5 are based on the holding of No. 1, which itself was based on the holding of Second Division Award No. 7774. Each is reviewed in reverse order below.

In Second Division Award No. 7774 (Car. Ex. 6c; IBEW Ex. OO) (Franden, Arb.) Carrier, on a former SCL property, permitted a Signal employee to change out a portable radio in a journal defect detector. The Award states, in pertinent part:

> There is no question but the wireless radio device in question transmits a voice communication. We are asked, however, to find that because a radio is part of a journal defect detector it loses its character as a piece of wireless voice communication equipment. This we cannot do.

It is clear that Award No. 7774, which serves as the basis for all the subsequent IBEW precedents, is premised on the fact that the disputed device is a piece of "wireless *voice* communication equipment." (Emphasis added.) There is no dispute, however, that in the instant case, the MCP device is *not* a voice communication device, but is strictly a device integrally involved in the signal system. Thus, Award No. 7774 *cannot* serve as precedent for the instant case.

In PLB 6174 Award No. 1 (Car. Ex. 6b; IBEW Ex. QQ, pp. 1-2) (Muessig, Arb.) Carrier, on a former SCL property, permitted a Signal Maintainer to remove a "defective radio" and install an operating unit. The Board provided no evidence or analysis for its conclusions; rather, it essentially repeated the major findings of Second Division Award No. 7774, stating that it found "no reason" to deviate from that holding. Award Nos. 2-5 (Car. Ex. 6d-g; IBEW Ex. QQ, pp. 3-6) (Muessig, Arb.) simply adopted the holding in Award No. 1, stating that, except for the dates, the relevant facts and circumstances were identical.

In PLB 6174 Award No. 13 (Car. Ex. 6a; Org. Ex. 4, pp. 11-14; IBEW Ex. RR) (Muessig, Arb.) Carrier, on a former SCL property, permitted a Signal Maintainer to remove and reinstall an MCP data radio, allegedly violating the IBEW agreement. Stating that the "question presented in this case does not raise a new issue," the Board provided little evidence or analysis. It quoted at length the findings of PLB 6174 Award No. 1, which repeated the findings of Second Division Award No. 7774, and cited the similarly sustained companion Award Nos. 2-5 and Second Division Award No. 7774. In addition, the Board cited the June 15, 1999, letter referenced by IBEW (IBEW Ex. JJ) regarding the use of Signalmen, which states, in pertinent part:

> . . . Prior Awards of the Second Division [Award No. 7774], as well as PLB 6174 [Award Nos. 1-5] support [IBEW's] position and renders defense of the continuation of this practice defenseless. Communication employees should be called upon to perform this work.

Thus, Award No. 13, which does, in fact, involve an MCP device, rests first on the prior cited Awards, which are all tainted by the original Second Division Award 7774 that involved "wireless voice communication equipment" which the MCP radio, in the instant case, is not, and, second, on the actions of the Carrier, which were themselves precipitated by the very same suspect Awards. In addition, the Organization protested Award No. 13 (and has a case currently pending in Federal District Court arguing that the Public Law Board should be required to re-hear that case) because, despite Carrier's request to bring BRS into the dispute as a third party participant, BRS was never advised with a Third Party Notice and did not have an opportunity to present its side of the jurisdictional dispute.

The Board is persuaded by the authorities cited by both the Organization and Carrier, albeit for different purposes. Both cases, which occurred on different properties, protested Carrier's use of Communication employees instead of Signalmen to install radio equipment for the signal system. In both, the relevant Scope Rule incorporates the "common terminal concept"[4] which is not contained in the BRS Agreement in the instant case. However, the "superimposing" language contained in paragraph (d) is similar to, if not broader, than the more specific "common terminal concept." PLB 4716 Award No. 79 (Org. Ex. 9; Car. Ex. 7a) (Wesman, Arb.) involved dedicated radios "used exclusively to regulate signals."

> . . . Nothing on the record before this Board suggests that other than signal data are received by the several [Control Points], or that other than signal data is transmitted from [them] . . .
>
> . . . Carrier's response to this assertion was that 'installation of the radio equipment in question is not for the primary purpose of controlling signal systems.'

---

[4]See, *e.g.*, BRS Scope Rule in PLB 5622 Award No. 51: "When signal circuits are superimposed on radio, radar or microwave systems, the employee covered by this agreement shall install and maintain the signal circuits *leading up to a common terminal* where signal circuits are interconnected with or superimposed with other circuits and will *take off at a common terminal* where signal circuits are again separated from other circuits." (Emphases added.)

> . . . Yet nowhere on this record has Carrier or the IBEW offered any evidence concerning non-signal data passing through the specific equipment in question . . . Accordingly, . . . the specific work at issue (installation of data radios transmitting only signal information) should have been performed by BRS-covered employees.

PLB 5622 Award No. 51 (Org. Ex. 10; Car. Ex. 7c) (Wallin, Arb.) involved the installation of antenna towers and data radio equipment for the signal system:

> . . . The BCP [Base Communications Package] and MCP components can carry several discrete channels of communication. . . . With an MCP at a control point, therefore, the signal information that was formerly carried by the hardwired code line is now input to one of the MCP client ports where it is processed and passed to the antenna for transmission . . . It is undisputed that the MCP/BCP equipment can simultaneously transmit signal data as well as other communication information, such as voice and teletype.
>
> In its initial denial of the Claim, Carrier asserted that the radio equipment was a '. . . common communications medium . . .' not covered under the BRS Scope Rule. As the record developed on the property, however, it became clear that the . . . radio equipment replaced hardwired signal code line over the territory in question. Despite the capability of the equipment to simultaneously carry other forms of communication, *it has only carried signal information*. . . . [Emphasis added.]
>
> Given the foregoing facts . . . the Board finds that the BRS has established a *prima facie* case of scope coverage. In our view, the BRS Scope Rule is clear and unambiguous regarding its coverage in this matter. . . . [T]he evidence shows that the usage of the radio equipment, despite its greater capability, has been limited to serving as a signal circuit.

The key to the Board's finding in the quoted case that the disputed work fell within the coverage of the BRS Scope Rule was the fact that the use of the radio equipment, like in the instant case, was limited to serving exclusively as signal circuitry.

The Carrier contends that these two Awards that favor Signal employees, when combined with the series of cases that favor Communication employees, indicate a divergence of opinion concerning which craft has exclusive jurisdiction over the work at issue. The Board is not persuaded by Carrier's conclusion that the disputed work should be considered shared work not exclusive to any particular craft. The series of cases favoring IBEW are all based, as previously discussed, upon Second Division Award No. 7774 which involved "wireless voice communication equipment" and the subsequent actions of the Carrier which adopted procedures to implement these suspect awards. The Board concludes that those awards do not constitute appropriate precedent for the non-exclusivity on which it seeks to rely.

With respect to the issue of remedy, it is well settled that the moving organization bears the burden of proof to establish each element of the claim. While the BRS successfully established the merits of the violation, it has failed to prove the merits of the damages claimed. There is insufficient evidence on the record for the Board to determine whether the Claimant was, in fact, the employee qualified and available to perform the work in question. The Board declines to grant monetary compensation in the absence of evidence that Claimant was actually deprived of a work opportunity. Accordingly, the Board cannot sustain that portion of the Organization's claim. The Award so reflects.

In sustaining the Claim, the Board interprets and applies the governing CSX-BRS Agreement. The Board does not interpret or apply the CSX-IBEW Agreement, except to conclude that its terms do not preclude a sustaining award applying the Signalmens' Agreement and do not require a conclusion that the work at issue is shared by BRS and IBEW and thus non-exclusive.

RETURN COPY

AWARD: The claim is sustained in part. The Organization proved that the Carrier violated the governing CSX-BRS Agreement when it allowed a non-covered employee to remove and install a data radio on the assigned property of the Claimant. However, the Organiztion failed to prove Claimant's entitlement to compensation; and the Board makes no award of compensation.

Dated this 10th day of May, 2004.

M. David Vaughn
Neutral Member

Michael Brown
Carrier Member

Charlie McGraw
Organization Member

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,	)	
Petitioner,	)	No. 04 C 5292
v.	)	Judge Robert W. Gettleman
CSX TRANSPORTATION, INC., and BROTHERHOOD OF RAILROAD SIGNALMEN,	)	
Respondents.	)	

MEMORANDUM OPINION AND ORDER

Petitioner International Brotherhood of Electrical Workers ("IBEW") filed a petition seeking to set aside the award of Public Law Board No. 6525 ("PLB 6525") in Case No. 71, arguing that PLB 6525's failure to allow IBEW full participation in the proceedings violated the Railway Labor Act ("RLA"), 45 U.S.C. § 151 et seq., and denied IBEW due process. IBEW filed a motion for summary judgment pursuant to Fed. R. Civ. P. 56, and respondents CSX Transportation, Inc. ("CSX") and Brotherhood of Railroad Signalmen ("BRS") filed cross-motions for summary judgment. The parties agree that no genuine issues of material fact exist.

For the reasons discussed below, IBEW's motion for summary judgment is denied, and CSX's and BRS's cross-motions for summary judgment are granted.

FACTS

The parties agree that the following facts are not in dispute.

Petitioner IBEW is a national labor organization and the duly authorized bargaining representative for employees of CSX in the craft or class of electricians. Respondent CSX is a

common carrier by railroad engaged in interstate commerce and the operation of rail equipment and facilities. Respondent BRS is a national labor organization and the duly authorized bargaining representative for employees of CSX in the craft or class of signalmen. CSX is a party to a collective bargaining agreement ("CBA")with IBEW ("IBEW Agreement") and a separate CBA with BRS ("BRS Agreement").

On August 26, 2002, CSX assigned certain work associated with removing and installing a data radio near Roanoke, Alabama, to an electrician covered by the IBEW Agreement. BRS asserted that this assignment violated the BRS Agreement and filed a claim under the BRS Agreement on behalf of signalman W.E. Dunn to that effect. CSX took the position that it was free to assign the work to either BRS or IBEW members. BRS and CSX were unable to resolve BRS's claim, and agreed to present the dispute to PLB 6525, a special board established by BRS and CSX to resolve disputes arising between them pursuant to Section 3, Second of the RLA. IBEW played no part in the creation of PLB 6525 and did not select voting member of the arbitration panel. PLB 6525 had two partisan members - a CSX officer and a BRS officer - and a neutral member. M. David Vaughn ("Vaughn"), who was selected jointly by the partisan members and acted as chairman of PLB 6525. BRS's claim regarding W.E. Dunn was assigned Case No. 71.

Vaughn notified IBEW by a letter dated March 4, 2004, that BRS's claim had been presented to PLB 6525, that a hearing had been scheduled, and that IBEW could submit its position on the claim and attend the hearing as a third party. On March 20, 2004, IBEW responded with a letter objecting to PLB 6525's proceedings, including denying IBEW the opportunity to: (1) negotiate the establishment of PLB 6525; (2) participate in the framing of the

issues presented to it; or (3) participate in the selection of Vaughn as chairman. Vaughn held an executive session with the partisan members of PLB 6525 regarding IBEW's procedural objections. Vaughn subsequently notified IBEW that PLB 6525 had rejected IBEW's objections, he intended to proceed with the consideration of Case No. 71, and IBEW's role in those proceedings would be limited to that of a third party.

IBEW submitted a position paper to PLB 6525, maintained its objection to PLB 6525's refusal to grant IBEW full participation in the proceedings, and incorporated its March 20, 2004, letter into its submission. IBEW presented oral argument to PLB 6525 at a hearing on April 12, 2004. Three weeks after the hearing, Vaughn sent a draft award to the members of PLB 6525, with a cover letter instructing the two partisan members to "review the language and consult with each other as necessary." The final award in Case No. 71 ("Award"), which interpreted the BRS Agreement, accepted BRS's position that CSX violated the BRS Agreement when it assigned the data radio work to an IBEW member, and rejected CSX's position that it could assign the work to either BRS or IBEW.

DISCUSSION

IBEW argues that the Award must be set aside because the proceeding of PLB 6525: (1) failed to comply with the requirements of the RLA; (2) was not confined to matters within the PLB 6525's jurisdiction; and (3) denied IBEW due process of law.

The RLA establishes a system of compulsory arbitration of grievances ("minor disputes")[1], but gives parties a choice of arbitral methods. United Transportation Union v. Gateway Western Ry. Co., 284 F.3d 710, 711 (7th Cir. 2002). One option is arbitration by a

[1]IBEW does not challenge the characterization of the dispute between CSX and BRS as "minor."

three-member panel called a public law board ("PLB"). Id. One member of the PLB is appointed by the union, one by the employer, and a neutral member may be appointed. 45 U.S.C. § 153, Second; Id. A neutral is appointed if the two party-designated arbitrators cannot agree on the resolution of the grievance, and is appointed by the National Mediation Board ("NMB") if the party-arbitrators cannot agree on a neutral. Id.

Section 3, Second of the RLA does not expressly provide for judicial review of PLB awards, but Section 3, First (q), which allows limited judicial review of National Railroad Adjustment Board ("NRAB") awards, has been extended to PLBs. See, e.g., Lyons v. Norfolk & Western Ry. Co., 163 F.3d 466, 469 (7th Cir. 1999). It is well established that the scope of judicial review of a PLB decision is "highly deferential" and "among the narrowest known to the law." Id.; Morin v. Consolidated Rail Corp., 810 F.2d 720, 722 (7th Cir. 1987). Pursuant to the RLA, judicial review of arbitration awards is limited to three specific grounds: (1) failure of the board to comply with the requirements of the RLA; (2) failure of the board to confine itself to matters within the scope of its jurisdiction; and (3) fraud or corruption. 45 U.S.C. § 153, First (q); see also Lyons, 163 F.3d at 469. Several circuits, including the Seventh Circuit, have also recognized due process as a fourth ground for judicial review. See, e.g., Pokuta v. Trans World Airlines, Inc., 191 F.3d 834, 839 (7th Cir. 1999).

I. Requirements of the RLA

IBEW asserts that PLB 6525 failed to comply with the requirements of the RLA by refusing IBEW's request to select a voting member of PLB 6525. CSX responds that the proceeding was in full compliance with the clear statutory language of the RLA, which provides that a PLB "shall consist of one person designated by the carrier and one person designated by

the representative of the employees," and a neutral member either selected by the parties or the NMB. 45 U.S.C. § 153, Second. IBEW does not point to any specific provision of the RLA allegedly violated by PLB 6525. Instead, IBEW asserts that the RLA procedure is not adequate in a "trilateral" dispute such as the instant case, and that case law requires that the statutory procedure be modified.

The Supreme Court held in Transportation-Communication Emp. Union v. Union Pac. R. Co. ("TCU"), 385 U.S. 157, 165-66 (1966), that all interested parties must be notified of an arbitration and afforded a right to "a chance to be heard." The question in the instant case is whether a "chance to be heard" includes the right of a second union to designate a voting member of the PLB, as IBEW asserts, even though the RLA provides for three-member panels.

At first blush, IBEW's argument that it is entitled to a vote on PLB 6525 is not without some intuitive appeal. Although only the BRS Agreement was under consideration, the Award that certain work must be performed by a BRS member is binding on CSX, necessarily dictates that such work may not be assigned to a IBEW member, and therefore affects IBEW. Upon closer examination, however, IBEW's argument is unconvincing. Although IBEW emphasizes in its opposition to CSX's motion for summary judgment that "this case presents a question of compliance with statutory, not contractual, requirements," IBEW does not argue that PLB 6525 violated the statutory language of the RLA. (emphasis in original). Instead, IBEW relies on a line of cases from the Eighth Circuit, which IBEW asserts hold that the RLA "requires that each interested union be given an equal opportunity for full participation in the proceedings." For the reasons discussed below, the Eighth Circuit cases are factually distinguishable from the instant

case, based on precedent unique to the Eighth Circuit, and not binding on the court. Accordingly, the court declines to apply their holdings to the instant case.

In Brotherhood of Locomotive Engineers International Union v. Union Pac. R. Co., 134 F.3d 1325 (8th Cir. 1998)("BLE v. UP"), upon which IBEW rests the bulk of its arguments, the Eighth Circuit upheld the district court's decision to vacate a PLB award. BLE v. UP, however, provides no support for IBEW's argument that PLB 6525 violated the statutory requirements of the RLA. The petitioner in BLE v. UP sought an order vacating a PLB decision prohibiting the railway from negotiating with either the petitioner or another union. Id. The petitioner was provided notice and an opportunity to present argument as an interested party, but was not a member of the PLB. Id. Although the Eighth Circuit vacated the arbitration award, the court agreed that the award conformed to the requirements of Section 3, Second of the RLA. Id. at 1332 ("[O]n its face, the statute anticipates a three-member board which would be upset if a second union with an interest in the dispute were allowed to designate a board member as well."). Moreover, BLE v. UP emphasizes that its ultimate conclusion is required not by the RLA, but by Eighth Circuit precedent, which is not binding on this court. BLE v. UP, 134 F.3d at 1333 ("Our own reading of the statute leaves us somewhat discomforted by this resolution, because the plain language of the second paragraph of 45 U.S.C. § 153 Second seems to envision only a three-person PLB.").

Even if BLE v. UP supported IBEW's statutory argument, it is factually distinguishable because the PLB in that case interpreted identical provisions of each union's CBA with the common employer. The court found that "both unions have a right to representation on the board where the dispute involves a contract provision common to both unions' CBAs with the same

carrier, even if the contract dispute initially arose between the rail carrier and but one of the unions over the contract provision." Id. Here, in contrast, IBEW does not argue that the IBEW Agreement contained identical provisions, and the portions of the CBAs cited in the Award are not identical.

Lastly, CSX suggests that the court in BLE v. UP misread Eighth Circuit precedent, which lead to its erroneous conclusion that both unions were entitled to voting membership on the PLB, a holding that has not been followed by any other court. The Eighth Circuit itself expressed reservations about its conclusion, which it emphasized it believed was compelled by circuit precedent despite its shortcomings. The holding of BLE v. UP was based in large part on two earlier Eighth Circuit cases, United Transportation Union E v. Burlington Northern, Inc., 470 F.2d 813 (8th Cir. 1972)("BN1") and General Comm. of Adjustment v. Burlington Northern, Inc., 563 F.2d 1279, 1284 (8th Cir. 1977)("BN2"). IBEW cites these cases as well, but they are of little weight here for similar reasons as those regarding BLE v. UP. In BN1, the Eighth Circuit noted "that both unions were entitled to participate in any proceedings to determine the meaning of a paragraph common to both collective bargaining agreements." Again, there are no common CBA provisions in the instant case and nothing in BN1 suggests that the right to participate includes the right to have a representative on the arbitration panel. BN2 held that railroad employees could not be compelled to present their grievances to a union-employer arbitration panel on which their own union does not sit. Id. BN2, however, did not involve the interpretation of two separate union contracts. Instead, the issue was essentially whether employees who were members of two unions, due to agreements specific to certain operating crafts, could have the union of their choice represent them on an arbitration panel. The instant

case is factually distinguishable, as it does not involve dual-union membership or operating crafts. In addition, nowhere does BN2 suggest that two unions should be allowed to have representatives on an arbitration panel.

The court, however, need not decide whether BLE v. UP, BN1, and BN2 were rightly decided, because it is not obliged to follow Eighth Circuit case law, even if it were to lead to the conclusion that IBEW urges. IBEW does not point to, and the court is unable to identify, any court citing BLE v. UP, BN1, or BN2 in support of a finding that in a trilateral dispute both unions must be permitted to be a member of the PLB.[2] The court is unpersuaded that the reasoning of BLE v. UP should be extended to override the clear statutory language of the RLA that PLBs be comprised of only three voting members.

The RLA explicitly addresses situations where parties in addition to those represented on the PLB have a stake in the dispute. Section 3, First(j) of the RLA provides that such parties are entitled to notice and an opportunity to participate as an interested party. 45 U.S.C. § 153, First (j).[3] If the drafters of the statute had wanted to provide a procedure for establishing expanded

---

[2]IBEW filed a documented titled "Motion for Leave to File Supplemental Authority" on March 21, 2005. IBEW attached to the motion a copy of a recent PLB award that cites BLE v. UP favorably. Both CRX and BRS responded to the motion. IBEW, however, failed to notice the motion for presentment to the court, as required by Local Rule 5.3(a) ("Except in the case of an emergency or unless otherwise ordered, written notice of the intent to present a motion specifying the date on which the motion is to be presented, a copy of the motion, and any accompanying documents must be served... ."). Accordingly, IBEW's motion to file supplemental authority is stricken and the court does not consider the attached authority. The court also notes that arbitration awards are of no precedential value in a district court.

[3]45 U.S.C. § 153, First (j) states, "Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them."

PLBs in multi-party disputes, of which they were evidently cognizant, it seems likely that they would have done so. Further, four-member boards are likely to deadlock and thereby stymie a fundamental purpose of the RLA, "to provide for the prompt and orderly settlement of all disputes." 45 U.S.C. §151a(5). The court declines to ignore the clear statutory language and congressional intent of the RLA based on a thin line of cases from a foreign circuit. Accordingly, IBEW's motion for summary judgment is denied as to the argument that PLB 6525 failed to comply with the requirements of the RLA.

II. Jurisdiction of PLB 6525

IBEW also argues that PLB 6525 exceeded its jurisdiction, but conflates this argument with its unsuccessful alternative argument discussed above that PLB 6525 did not comply with the RLA. IBEW fails to establish that it is entitled to judicial review on this ground.

Courts consider an award to have failed to conform or confine itself to matters within the arbitrator's jurisdiction only if the award has no rational basis, reflected the arbitrator's own sense of industrial justice, or was contrary to the express terms of the CBA. See Lyons, 163 F.3d at 469. The Seventh Circuit has held that, "To remain within the scope of its jurisdiction, the essence of the PLB's decision must be contained in the terms of the agreement between the union and the employer...In other words, the PLB's decision must be based on the provisions of the CBA." Id. (citing United Transportation Union v. Soo Line R. Co., 457 F.2d 285, 288 (7th Cir. 1971). The Lyons court noted that the focus of a reviewing court is not whether a PLB's decision varied with federal standards, but rather whether it ignored "clear and unambiguous" contract provisions. Id. at 470.

In the instant case, IBEW does not challenge CSX's and BRS's contention that PLB 6525 interpreted the BRS Agreement and fails to point to a single provision of the BRS Agreement that PLB 6525 failed to interpret. PLB 6525's charge was to determine whether the assignment of work to a non-BRS member violated the BRS Agreement. Because PLB 6525 interpreted the BRS Agreement, its interpretation is conclusive and binding on CSX's assignment of data radio replacement work near Roanoke, Alabama.[4] Id. Accordingly, IBEW's motion for summary judgment is denied as to its argument that PLB 6525 exceeded its jurisdiction.

III. Due process

IBEW's final argument is that the proceedings of PLB 6525 did not satisfy fundamental due process requirements. The Supreme Court has held that, "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." Mathews v. Eldridge, 424 U.S. 319, 333 (1976)(*internal citations and quotation marks omitted*). The Seventh Circuit addressed due process in the arbitration context in Generica Ltd v. Pharmaceutical Basics, Inc., 125 F.3d 1123, 1130 (7th Cir. 1997), holding that, "It is clear that an arbitrator must provide a fundamentally fair hearing...A fundamentally fair hearing is one that 'meets the minimal requirements of fairness – adequate notice, a hearing on the evidence, and impartial decision by the arbitrator.'"(internal citations and quotation marks omitted).

It is well-established, and respondents do not dispute, that IBEW had a right to be heard in order to represent its interests. As the Supreme Court held in TCU, the right to disputed work is to be decided by a board that "must bring before it all Unions claiming the same jobs for their

[4]The court notes that if CSX assigns data radio repair work at a different location to a BRS member, IBEW may grieve that assignment as a violation of the IBEW Agreement, and BRS will likely be designated an interested third party pursuant to 45 U.S.C. § 153, First(j).

members." TCU, 385 U.S. at 163. The Seventh Circuit has repeatedly affirmed that an opportunity to be heard is a required to satisfy due process requirements. See, e.g., Generica, 125 F.3d at 1130. IBEW argues that its due process rights were violated because "there was nobody on the PLB who represented their interests." IBEW's argument characterizes the right to vote as included in the opportunity to be heard, but fails to point to any Seventh Circuit precedent in support of this expansion of due process rights. Indeed, IBEW was granted full due process rights. IBEW's objection to the constitution of PLB 6525 was received and carefully considered by the panel, it was permitted to submit a position paper with supporting documents, and it presented oral argument at the hearing. The Award, authored by the neutral arbitrator, includes a full discussion of IBEW's objections to its third-party status, and its position that the work should be assigned exclusively to IBEW members. Finally, the court notes that CSX also represented IBEW's argument, at least in part, because CSX argued that the work could be assigned to IBEW as well as BRS.

In support of its argument that it was denied due process, IBEW cites to only one case, from the Second Circuit. International Ass'n of Machinists and Aerospace Workers v. Metro-North Commuter Railroad, 24 F.3d 369 (2nd Cir. 1994)("IAM v. Metro-North"), considered a work-assignment dispute involving two unions. IAM v. Metro-North set aside an NRAB award, based in part on its finding that the due process rights of one union were violated because it did not have a representative on that arbitration panel. Id. at 372. The Second Circuit vacated the award even though the plaintiff-union had received notice and an opportunity to present its views. Id. The decision, however, lends little if any support to IBEW's arguments for at least three reasons.

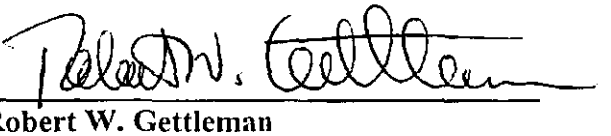
First, IAM v. Metro-North is distinguishable because it involved an arbitration award by an NRAB sub-panel on which one of the two unions could never have a representative because it was not a national labor organization. Id. at 371. Although PLBs can serve as substitutes for proceedings otherwise referable to the NRAB, the RLA sets forth different procedures for each. For example, the NRAB is a permanent board consisting of thirty-four members selected by carriers and national labor organizations, while PLBs are temporary panels consisting of two or three members selected by parties to a particular dispute. 45 U.S.C. § 153, First and Second. Assuming arguendo that IAM v. Metro-North implicitly held that NRAB panels are unconstitutional, this holding is therefore inapposite to PLBs. Second, even if IAM v. Metro-North were applicable, the court agrees with BRS that it is a largely anomalous decision that has not been cited for the holding at issue here by any other court in the more than ten years since it was published, and that its reasoning is unpersuasive. Third, like the Eighth Circuit cases, IAM v. Metro-North is not binding precedent in this court.

For these reasons, IBEW's motion for summary judgment is denied as to the argument that PLB 6525 violated due process.

CONCLUSION

For the reasons stated herein, the court denies IBEW's motion for summary judgment to set aside the arbitration award, and grants BRS's and CSX's cross-motions for summary judgment to confirm that award.

ENTER: **May 13, 2005**



Robert W. Gettleman
United States District Judge