Public Law Board 7022

Procedural Board

Parties to the Dispute:

Canadian Pacific Railway - Soo Line

and

Brotherhood of Maintenance of Way Employees

ISSUE

There were two issues presented to this Procedural Board. First, should a Public Law Board ("PLB") be established pursuant to Section 3 of the Railway Labor Act and Part 1207 of the National Mediation Board Rules, and second, if so, what shall be the jurisdiction of that Public Law Board.

POSITIONS OF THE PARTIES

The Organization maintains that it has availed itself to the rights given it under Section 3 which allows for cases pending more than twelve months before the NRAB to be placed before a PLB. The Organization notified the Carrier of the Organization's intent to remove certain cases to a PLB and the Carrier did not respond within the ten day requirement of Section 3. The Organization notified the NMB and requested the appointment of a procedural neutral.

The Organization continues that the parties do not agree on the language of the agreement establishing the PLB to hear the removed cases. According to the Organization, the issue before this Procedural Board involves ascertaining the terms of the PLB agreement between the Carrier

and the Organization. The record includes examples of PLB agreements that the Organization has entered into with other Carriers as well as the instant Carrier. The normal and customary language of those agreements should govern the establishment of this PLB.

The Carrier maintains that this Procedural Board was established in error and that the instant matter is therefore not properly before this Board. The Carrier responded to the Organization within ten days and the NMB should not have established a procedural Board and appointed a procedural neutral. Further, even if the matter is properly before this Board, the Organization's other arguments still are not persuasive. Section 3 does not require any specific language for the agreement to establish a PLB and the NRLA requires that the parties agree on the class of cases to be heard by the Board. There has also been no agreement on the cases to be heard. At most, the parties have six cases in common between their respective proposals for cases to be heard.

The Carrier continues that its proposed PLB agreement is justifiably more specific than other agreements because of the nature of the cases that will be before the PLB under the Organization's proposal. The Organization's list of cases is almost exclusively subcontracting matters. Because of the nature of the issues, and the desire to preserve the continuity of NRAB decisions on subcontracting cases, the Carrier wants only experienced neutrals to hear the matters. Further, the Carrier wants to exhaust all opportunities to resolve the matters and mediate them prior to docketing for hearing.

The record establishes the following: Organization President Freddie Simpson sent a letter to the NRAB dated October 13, 2006, requesting that the Third Division take no further action on fifteen specific cases because the cases were more than twelve months old. The letter

continues that the Organization was notifying the Carrier of its intent to refer fifteen matters to a newly established Public Law Board. Mr. Simpson sent a letter to the Carrier dated October 13, 2006, notifying the Carrier of its intent to refer fifteen matters to a newly established Public Law Board. He included a copy of the above-mentioned letter and a Public Law Board agreement for the cited cases. The letter listed Roy Robinson as the Organization contact for the PLB.

Carrier Vice President for Labor Relations and Human Resources Cathryn Frankenberg sent a letter to Mr. Simpson dated November 13, 2006 in which she stated that the Carrier did not agree to submit the fifteen cases to a Public Law Board because they were already docketed and might be assigned to a neutral.

Mr. Simpson sent a letter to the NMB's Director of Arbitration Services dated November 20, 2006, in which he requested that the NMB designate a Carrier Member to the PLB. He continued that the designation was necessary because the Carrier was "not agreeable to submit the listed cases to a Public Law Board." A copy of the parties' correspondence and a list of the fifteen cases at issue was included.

NMB Director of Arbitration Service Roland Watkins sent a letter to Mr. Simpson dated December 20, 2006, designating Ms. Frankenberg as the Carrier member. Ms. Frankenberg was copied on the letter as notification of her designation.

Organization Assistant to the Vice President Steven Powers sent a letter to the NMB's Director of Arbitration Services dated January 16, 2007, requesting the appointment of a Procedural Neutral to resolve the procedural matters for establishing the Public Law Board. In the letter, he stated that the Organization's representative, Roy Robinson, had attempted to

contact the Carrier member on January 9 and January 12 regarding the proposed Public Law Board Agreement that had accompanied the October 13, 2006, letter to the Carrier.

Ms. Frankenberg sent a letter to the NMB's Director of Arbitration Services dated January 19, 2007, in which she stated that she had received Mr. Robinson's message and intended to contact him as soon as possible. On January 16, she was notified of the death of Mr. Robinson's father and that the funeral would be held on January 20, 2007. She further stated that she felt it more appropriate to contact Mr. Robinson upon his return to work following the funeral. She closed by stating that, in light of the Organization's letter, she would immediately contact Mr. Robinson. Mr. Robinson was copied on the correspondence and it was faxed to the Organization.

NMB Director of Arbitration Service Roland Watkins sent a letter to Steven Powers dated January 19, 2007, in which he stated that the request was docketed as Public Law Board 7022 and that the undersigned was appointed as the procedural neutral.

Ms. Frankenberg sent a letter to the NMB Director of Arbitration Services dated January 22, 2007, in which she stated that she attempted to contact Mr. Robinson on January 18, and was advised that he was out of the office until the following week. There was no voice mail available and she left a message with the receptionist that she had returned his call. Mr. Robinson was copied on the correspondence and it was faxed to the NMB.

Ms. Frankenberg sent a lengthy letter to the NMB Director of Arbitration Services dated February 9, 2007, in which she expressed her displeasure at how the NMB handled the instant matter. Specifically, she cited the NMB's historical practice and role in facilitating disputes and how the current situation was patently unfair to the Soo. She continued that the Soo has a history

and reputation for integrity and cooperation that should have been considered rather than relying solely on the Organization's perspective without Soo input. She detailed the timeline of events to illustrate how Soo had not been fairly treated by the NMB.

Ms. Frankenberg's letter continued that the Organization never contacted the Carrier to confer about the cases identified for referral to a PLB although this was their obligation under the statute. Further, the Carrier notified the Organization and the NMB that it did not agree to submit the listed cases to a PLB because of them being already assigned to a neutral by the NRAB. The Carrier expected that the Organization would contact the Carrier for a conference or discussion. However, the Organization never made a request. Instead, the Organization requested the appointment of a procedural neutral.

Ms. Frankenberg's letter further stated that the NMB deviated from the usual procedure of requesting comments or input from the other party affected by the request. Instead, the NMB acquiesced to the Organization request, despite the failure of the Organization to request conference or discussion from the Carrier. The Carrier did not learn of NMB's December 20, 2006 request for appointment of a Carrier representative until January 8, 2007 due to the holidays. It appears to the Carrier that the NMB accepted the Organization's claim in the January 16, 2007 letter, without Carrier input, that an Organization representative it attempted contact with the Carrier on two occasions in January, to no avail.

Ms. Frankenberg continued that the Carrier received a copy of Mr. Powers' request for a procedural board and appointment of a procedural neutral on January 18. Upon receipt of Mr. Robinson's January 16 letter to the NMB, the Carrier wrote to NMB about the facts and circumstances surrounding the desire to contact Mr. Robinson upon his return from the funeral.

Nonetheless, Mr. Frankenberg attempted to contact Mr. Robinson on January 18, but was unable to reach him and there was no voicemail. Given her responsibilities for the Soo and the Delaware and Hudson, a one week delay in responding to the Organization should not be seen by the NMB as recalcitrant. The immediacy of NMB's actions in the instant matter is questionable given the normal timeframes under the NRLA and collective bargaining agreements. The Carrier did not learn of the NMB's January 19, 2007, letter appointing the procedural neutral until receipt of that letter on January 25, 2007 and consequently attempted to contact Mr. Robinson.

Ms. Frankenberg also discussed a conversation that occurred between Mr. Powers and Carrier's Director of Employee and Labor Relations, Robin Mullaney. Ms. Mullaney returned a call to Mr. Power's in order to discuss the Carrier's letter of January 22, 20007. As mentioned above, the Carrier was not aware of the appointment of a procedural neutral and Mr. Powers did not mention it during the discussion. During that conversation, Ms. Mullaney did point out that the Carrier had certain concerns about a PLB for the cases and why the NRAB was the appropriate venue for these cases. Ms. Mullaney cited the significance the subcontracting issue and the importance of historic arbitral principles, precedent and continuity. She further expressed a concern that the NMB might appoint an inexperienced neutral who did not fully understand the industry or the issues. Moreover, there were older cases pending at the NMB than the Organization listed and that she would review the Organization's listed cases and get back to Mr. Powers. The Organization's proposed cases were under review by the Organization at the time of this conversation in order to determine what could be resolved. The parties then participated in Section 6 mediation on January 23 and 24.

Ms. Frankenberg stated that the above information would have been available to NMB, had they followed the usual practice of asking the Carrier for comment. Further, she states that not only was the procedural neutral improperly and inappropriately appointed, but also the Carrier is dismayed because the NMB appointed a new neutral to a matter involving subcontracting - the most significant issue facing the Carrier and the Organization.

In conclusion, Ms. Frankenberg summarized the Carrier's position that the NMB's decision to appoint a procedural neutral should be reversed. The appointment was made without seeking the normal Carrier comment, the parties did not confer and therefore could not be found to be in disagreement, and the NMB's failure to seek comment pre-empted the good faith requirement of the NRLA. Only when the Organization had conferred with the Carrier on the property, would the NMB be able to determine whether there was disagreement. Moreover, the Carrier would be willing to explore mediation of the cases and avoid the instant situation.

NMB Director of Arbitration Service Roland Watkins sent a letter to Steven Powers dated March 9, 2007, giving the Organization until March 30, 2007 to respond to Ms, Frankenberg's letter of February 9, 2007.

The Carrier sent a letter to the undersigned Procedural Neutral dated March 28, 2007. Ms. Frankenberg enclosed a copy of the Carrier's proposed PLB Agreement, with the request that the hearing date be chosen after Mr. Powers responded to her prior letter to the NMB.

Mr. Powers sent a lengthy letter to the NMB's Director of Arbitration Services dated March 30, 2007, with fax copies to the Carrier and the undersigned, in which he discussed how the Organization had exercised its right to refer the cases to a Public Law Board because they had been at the NRAB for more than twelve months. He cited the relevant statutory section of

the RLA dealing with referring cases to a special board and stated that the referred cases meet the statutory criteria for length of time before the NRAB.

Mr. Powers continued that the cases have been before the NRAB for more than twelve months because they were filed in either 2003 or 2004. The language of Section 3 is clear that the non- Carrier requesting party shall join in an agreement to establish a Board within thirty days of the initial request. The Carrier did not contact the Organization until November, and then indicated that is did not agree to submit the cases to a Public Law Board. According to Mr. Powers, the Organization assumed that it would not comply with the Organization's notice. The Organization then requested that the NMB appoint a Carrier Member.

Mr. Powers stated that the request for a Carrier Member included all correspondence and was copied to the Carrier. The Carrier did not responded and the NMB appointed a Carrier Member after thirty days had passed.

Mr. Powers also discussed the attempts by Mr. Robinson to contact Ms. Frankenberg on two occasions in January 2007, to discuss the language for the proposed PLB. Those calls went unreturned. The Organization requested appointment of a procedural neutral on January 16, 2007. Ms. Frankenberg was copied on the request.

Mr. Powers continues that the Carrier cannot challenge the essential fact that the cases at issue have been pending before the NMB for more than a year and are therefore eligible to be referred to a PLB. The language of the statute obligates the NMB to appoint a procedural neutral.

Mr. Powers further stated that the evidence suggests that the NMB did not comply with the requirements of Rule 1207.1 that the party that failed to designate a partisan member be

notified prior to the NMB designating a representative. However, these should not be seen as fatal to the creation of the PLB because the Carrier was put on notice by the Organization's request. Further, the Carrier has had been afforded time to respond and those responses do not change the fact that the NMB had an obligation to appoint a neutral member and a procedural neutral.

Mr. Powers concluded by stating that the Carrier had been fairly treated and cannot dispute that the referred cases have been pending at the NRAB for more than one year. The Carrier refused to designate a Carrier Member and did not reach agreement on the terms of the PLB Agreement. Accordingly, NMB was obligated to appoint a Carrier Member and a procedural neutral.

The remainder of the correspondence between the parties concerned scheduling of the hearing. There was no further correspondence from the NMB. The matter was heard on June 29, 2007, and the parties presented evidence and arguments on the issues before the procedural board.

FINDINGS

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier or employee within the meaning of the Railway Labor Act as approved June 21, 1934. Public Law Board 7022 has jurisdiction over the parties and the dispute involved herein.

Whether a Public Law Board should be established:

The Organization claims that it availed itself to the rights afforded under Section 3 when in notified the NMB and the NRAB of the referral of certain cases to a PLB. The Organization claims that this right is available to either party when the cases have been before the NRAB for more than twelve months. Because the Carrier indicated that it did not agree that the cases should be referred and the calls to the Carrier about the language for the Agreement went unanswered, the parties did not agree upon the language of a PLB agreement. The NMB properly appointed a Carrier Member and a Neutral Member.

The Carrier claims that that the instant Public Law board was not properly established. The NMB did not seek appropriate Carrier comment and the decision to appoint the Procedural Neutral was in error.

Rule 1207.1(a) provides:

> Section 1207. *Designation of party member of PL Board.* Pub. L. 89-456 provides that within thirty (30) days from the date a written request is made by an employee representative upon a carrier, or by a carrier upon an employee representative, for the establishment of a PL Board, an agreement establishing such a Board shall be made. If, however, one party fails to designate a member of the Board, the party making the request may ask the Mediation Board to designate a member on behalf of the other party. Upon receipt of such request, the Mediation Board will notify the party which failed to designate a partisan member for the establishment of a PL Board of the receipt of the request. The Mediation Board will then designate a representative on behalf of the party upon whom the request was made. This representative will be an individual associated in interest with the party he is to represent. The designee, together with the member appointed by the party requesting the establishment of the PL Board, shall constitute the Board.

The evidence before this Board establishes that the Organization notified the NRAB, NMB and the Carrier of the referral of fifteen cases to a PLB pursuant to Section 3. The Carrier sent a proposed PLB Agreement to the Carrier and indicated that Roy Robinson was the Organization member. When notified of the Organization's notice that fifteen cases before the NRAB were going to be referred to a PLB, the Carrier indicated that it did not agree with the cases being referred to a PLB. The Carrier did not designate a Carrier member of the PLB. The parties did not reach agreement on the language of the PLB within thirty days. The party requesting the PLB, the Organization, then requested the appointment of a Carrier Member on November 20, 2006, and the NMB appointed a Carrier Member on December 20, 2006. The Organization requested the appointment of the Procedural Neutral on January 16, 2007 and the undersigned was appointed on January 19, 2007.

The evidence before this Board establishes that the fifteen cases at issue, those referred by the Organization to a PLB, were pending before the NRAB for more than twelve months and that the Organization properly referred the fifteen cases to a PLB by notifying the NMB, the Carrier and the NRAB of the referral. The Carrier's claim, that some of the Organization's referred cases might have been docketed before the NMB when then notice was sent, is unsupported by the evidence before this Board.

It is clear that the intent of this provision of Section 3 was to expedite the handling of claims such as those presented here. To achieve this end, it granted to either the Carrier or the Organization the option of avoiding the delays encountered in the NRAB by exercise of a unilateral right of referral. This unilateral right allows either party to refer appropriate claims to a special adjustment board. The provisions for compelling an unwilling party to a hearing before a Public Law Board make it clear that neither party is intended to have any opportunity to delay

the prompt establishment of such a Public Law Board and the expedited hearing of claims before it.

Further, the language of Section 1207.1 states that a party who did not designate a PLB member be notified and that the NMB appoint the party member. It also states that the NMB will notify the non-moving party to a request for a Procedural Neutral and then appoint a Procedural Neutral. While it is arguably desirable for the NMB to seek a party's input, contrary to the Carrier's argument, there is nothing in Section 1207.1 which requires that the NMB seek comment from the non-requesting party. There is also nothing in Section 1207 or the evidence before this Board which establishes when the notice to the appointed member should be sent. The NMB chose to use the letters indicating the appointment of the Carrier Member and the Neutral Member as contemporaneous notices to the Carrier.

Section 1207.1 (b) provides:

> When the members of a PL Board constituted in accordance with paragraph (a) of this section, for the purpose of resolving questions concerning the establishment of the Board and/or its jurisdiction, are unable to resolve these matters, then and in that event, either party may ten (10) days thereafter request the Mediation Board to appoint a neutral member to determine these procedural issues

Accordingly, a party may request appointment of a Procedural Neutral after ten days have elapsed since the parties were unable to resolve questions involving establishment or jurisdiction. The evidence shows that the members were unable to agree and a timely request for a Procedural Neutral was made.

The record before this Board also shows that the NMB was fully aware of the positions of the parties, in fact, giving the Organization time to respond to Ms. Frankenberg's February 2007

letter that detailed the timeline and the Carrier's position and requesting reversal of the NMB's decision. The NMB did not reverse its decision to name a Carrier Member and appoint a Procedural Neutral. The record establishes that over ninety days passed from the Organization's initial notice referring the fifteen cases to a PLB until the naming of the Procedural Neutral.

The evidence before this Board establishes that the fifteen cases were properly referred by the Organization to the PLB, the Carrier Member was properly appointed and the Procedural Neutral was properly appointed.

Terms of the Public Law Board Agreement:

Given that the Public Law Board was properly established, the question turns to jurisdiction of the Board. The Organization notes that PLB agreements are common in the railroad industry and that the respective parties have entered into PLB Agreements both between themselves and with other parties. The Organization maintains that the proposed PLB Agreement that was sent to the Carrier is both a reasonable and customary PLB Agreement. In support, the Organization included a number of similar PLB Agreements that are similar in terms to the proposed agreement for the instant PLB.

According to the Organization, the instant issue is similar to an interest arbitration - with the Procedural Neutral possessing the authority to define the terms of the PLB Agreement when the parties do not agree. Further, the Organization maintains that the Carrier's criteria for eligible neutral members are so demanding that few neutrals would qualify.

The Carrier points out that the fifteen cases referred to the PLB by the Organization mostly involve the issue of sub-contracting. According to the Carrier, this issue is of paramount importance to not only the Carrier, but also to the entire railroad industry. Because of this

importance, the Carrier seeks to have the list of eligible neutrals comprised only of neutrals with significant sub-contracting experience.

The Carrier seeks to maintain the precedents of the NRAB, where sub-contracting matter have previously been heard, as well as the institutional knowledge of the neutral who have repeatedly addressed subcontracting issues. According to the Carrier, newer NMB neutrals should not be on the list of NMB potential neutral members because of possible lack of industry knowledge and experience with the subcontracting issue. Further, the Carrier suggested a list of cases for the PLB that were older than the instant cases, but did not deal with subcontracting issues. The Carrier did not have any examples of similar PLB agreements that had been used.

As stated above, the fifteen cases referred to the PLB by the Organization are the cases that will be heard under the PLB in the instant PLB agreement. While the Carrier does offer some older cases to be heard by the Board instead of the Organization's referred cases, there is no authority to substitute the Carrier's cases for the Organization's referred cases. The Carrier is certainly free to invoke its unilateral right to refer the cases to a PLB; however, that process has not been initiated for the Carrier's proposed cases.

While, the PLB Agreement offered by the Carrier recognizes the seriousness of the subcontracting issue, it is overly demanding on the criteria for eligible neutrals. Further, in the Organization's proposed PLB Agreement, the neutral panel will be issued by the NMB. An NMB neutral panel will only be comprised of neutrals who meet NMB's standards for inclusion on the Neutral Roster. Moreover, the parties will have the opportunity to strike undesirable or newer neutrals from the panel. The Carrier fears that an undesirable neutral might remain as the Neutral Member of the PLB, however, this is not controlling.

The PLB Agreement offered by the Organization is reasonable and the evidence before this Board suggests that substantially similar agreements have been utilized by Carriers and Organizations. Accordingly, this Board finds that the Organization's proposed PLB Agreement will be the PLB Agreement for the instant matter. The PLB Agreement is attached as Exhibit A.

DECISION:

A Public Law Board shall be established to arbitrate the cases presented by the Union. The Carrier and the Organization shall sign the attached agreement establishing said PLB within thirty days of receipt of this Award. The PLB shall have jurisdiction over the following cases listed in the PLB Agreement attached as Exhibit A.

Brian Clauss, Chairman and Neutral Member

Roy Robinson, Organization Member

Michael Kluska, Carrier Member

Dated this 11th day of January 2008.

EXHIBIT A

MEMORANDUM OF AGREEMENT

BETWEEN THE

SOO LINE RAILROAD COMPANY

(FORMER CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY)

AND ITS EMPLOYES REPRESENTED BY THE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION - IBT RAIL CONFERENCE

It is Agreed:

(A) There is established a Special Board of Adjustment under the provisions of the Railway Labor Act, as amended, which is designated as a Public Law Board. This Public Law Board shall have jurisdiction over the original list of cases and subsequent cases which are added by agreement of the parties as set forth in Section (F) hereof. The original list of cases to be submitted to the Public Law Board is attached hereto.

(B) The Board shall consist of three (3) members. One shall be selected by the Carrier and shall be known as the "Carrier Member". One shall be selected by the Organization and shall be known as the "Employe Member". The Carrier Member shall be _____. Employe Member shall be Roy C. Robinson. The third member, who shall be Chairman of the Public Law Board, shall be a neutral person unbiased between the parties. Members of the Board, other than the Chairman, may be changed from time to time and at any time by the respective parties designating them.

(C) The Carrier Member and the Employe Member shall confer within ten (10) days after designation of the initial party members for the purpose of trying to select the Neutral Member of the Board. If the party members can agree upon the Neutral Member and the person so selected accepts the appointment, then such person shall serve on the Board. If, within ten (10) days after such first meeting, the party members are unable to agree upon the Neutral Member, they shall jointly request the National Mediation Board (NMB) to provide a list of ***eleven (11)*** potential Arbitrators from which the parties shall choose the Arbitrator by alternately striking names from the list, which first strike to be allocated to a party by a coin toss. Neither party shall oppose or make any objection to the NMB concerning a request for such a panel nor shall they do anything to delay the striking process. In case of a permanent or temporary vacancy on the Board, with respect to either party members or the neutral, the vacancy shall be filled in the same manner as the original selection.

(D) The Public Law Board shall meet in St. Paul, Minnesota, Chicago, Illinois or other mutually agreed to location, at the mutual convenience of the members thereof. In the event the parties cannot agree upon the location of the hearing the Neutral Member shall choose the location. The Board shall continue in session until all cases listed in this Agreement are disposed of.

(E) The compensation and expenses of the Carrier Member shall be borne by the Carrier. The compensation and expenses of the Employe Member shall be borne by the Brotherhood. The compensation and expenses of the Neutral Member shall be set and paid by the NMB. All other expenses of the Board shall be borne half by the Carrier and half by the Brotherhood.

(F) This Board shall have jurisdiction only of the claims in the "Original List". In addition, there may be submitted to the Board one or more "Supplemental Lists" of cases, provided that such "Supplemental Lists" shall be presented to the Board only by mutual agreement of the Carrier and the Brotherhood.

(G) The Board shall not have jurisdiction of disputes growing out of requests for changes in rates of pay, rules and working conditions, and shall not have authority to change existing agreements governing rates of pay, rules and working conditions nor to grant new rules.

The record and submissions in the cases transferred from the NRAB will be the record and submissions at the Board. In the event either party asks the arbitrator to allow additional material to what was submitted to the NRAB, the arbitrator may only allow such material if it is in accordance with NRAB precedent and policy that would permit inclusion of the material submitted after the record is closed.

Withdrawal of any case can only be made by mutual consent of the parties.

(H) The party members shall mail their ex parte submissions to the Neutral Member and to one another at least two (2) weeks (fourteen calendar days) prior to the date set for hearing in each case, unless otherwise agreed to.

The Board shall hold hearings on each claim or grievance submitted to it. Due notice of such hearing shall be given the parties. At such hearings, the parties may be heard in person, by counsel or by other representatives as they may elect. The parties may present orally, statements of facts, supporting evidence and data, and argument of their position with regard to each case being considered by the Board.

The parties will comport to NRAB Circular No. 1 instructions. The Board shall have the authority to require the production of such additional evidence, either oral or written, as it may desire from either party.

(I) No claim or grievance will be submitted to the Board under the provisions of this Agreement which involves the interpretation or application of an agreement other than the agreement between the Carrier and the Brotherhood of Maintenance of Way Employes in whole or in part.

(J) The Board shall make findings and render an award in each case submitted to it within sixty (60) days from the date initially considered by the Board, with the sole exception of a case withdrawn from the Board. Such findings and award shall be in writing and a copy shall be furnished the respective parties to the dispute and, if in favor of the petitioner, shall direct the other party to comply therewith on or before the day named. Such awards shall be final and binding upon both parties to the dispute. Each member of the Board shall have one vote and a majority of the Board shall be competent to render an award or make such other rulings and decisions necessary to carry out the functions of the Board.

In case a dispute arises involving an interpretation of an award, the Board, upon request by either party, shall interpret the award in light of the dispute in accordance with Section 3. First (m) of the RLA.

(K) The Board hereby established shall continue in existence until it has disposed of the cases submitted to it in the "Original List" and/or any other claims or grievances mutually agreed to and submitted to this Board under Section (F) of this Agreement, after which it shall cease to exist except for interpretation of its awards as above provided.

This Agreement is effective this 13th day of October, 2006.

FOR:

BROTHERHOOD OF MAINTENANCE WAY DIVISION - IBT RAIL CONFERENCE:

Mark S. Wimmer
General Chairman

FOR:

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY:

APPROVED:

Freddie N. Simpson President,
Brotherhood of Maintenance of Way
Employes Division - IBT Rail Conference

ATTACHMENT "A"

Claimant(s)	Chicago File	NRAB Case No.	NRAB Code
Hansen	19-30-13379	03-3-92	177
Hansen	19-30-13397	03-3-128	138
Kruser	19-30-13454	03-3-256	81
Rueda	19-30-13533	03-3-386	177
Pedro	19-30-13531	03-3-380	68
Gallagher	19-30-13545	03-3-415	177
Dejarlais	19-30-13706	04-3-102	177
Bowers	19-30-13737	04-3-152	177
Arnold	19-30-13757	04-3-194	138
Arnold	19-30-13802	04-3-252	138
Arnold	19-30-13818	04-3-276	138
Davis	19-30-13978	04-3-497	177
Martinez	19-30-13986	04-3-505	177
Gresk	19-30-14023	04-3-552	177
McDonald	19-30-14031	04-3-572	92

CANADIAN PACIFIC RAILWAY

Labor Relations

Suite 1715
501 Marquette Avenue
Minneapolis Minnesota 55402

In Response Please Refer to File:

Tel (612) 904-6183
Fax (612) 904-6184

0-0037-100

January 18, 2008

Mr. Brian Clauss
Arbitrator, Mediator, Attorney
310 Busse Highway, #291
Park Ridge, IL 60068

Mr. Roy Robinson
Member – Third Division
National Railroad Adjustment Board
150 S. Wacker Drive, Suite 300
Chicago, IL 60606-4101

RE: Public Law Board 7022
(Procedural)

Dear Gentlemen:

I am in receipt of decision in procedural Public Law Board 7022 attached with Mr. Clauss' January 9, 2007 letter. This is to advise that Carrier has serious concerns related to such decision and requests an Executive Session to discuss, prior to the Award being placed into effect. Please advise of dates your available to discuss after February 18, 2008.

Sincerely,

Michael R. Kluska
Labor Relations Officer

Brotherhood of Maintenance of Way Employes Division
of the International Brotherhood of Teamsters

Freddie N. Simpson
President

Perry K. Geller, Sr.
Secretary-Treasurer

January 24, 2008

Mr. Brian Clauss
Arbitrator, Mediator, Attorney
310 Busse Highway, #291
Park Ridge, IL 60068

Re: Public Law Board No. 7022 - Procedural

Dear Mr. Clauss:

This is in reference to Mr. Kluska's letter to you dated January 18, 2008. I received your decision on January 11, 2008 and thereafter I signed and forwarded said Award to the Carrier. As you are aware, this Board was convened because the Carrier refused to enter into a Public Law Board (PLB) Agreement in accordance with Section 3 Second of the Railway Labor Act (RLA). Section 3 Second reads in pertinent part:

> "If written request is made upon any individual carrier by the representative of any craft or class of employees of such carrier for the establishment of a special board of adjustment to resolve disputes otherwise referable to the Adjustment Board, or any dispute which has been pending before the Adjustment Board for twelve months from the date the dispute (claim) is received by the Board, or if any carrier makes such a request upon any such representative, the carrier or the representative upon whom such 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. Such board shall consist of one person designated by the carrier and one person designated by the representative of the employees. If such carrier or such 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 representative making the request for the establishment of the special board may request the Mediation Board to designate a member of the special board on behalf of the carrier or representative upon whom such request was made. Upon receipt of a request for such designation the Mediation Board shall promptly make such 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. ***"

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Mr. Brian Clauss
January 24, 2008
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The above-quoted portion of Section 3 Second of the RLA reflects the portion of the Act we relied on when we first requested to establish a PLB. That portion of the RLA is crystal clear, in that either party has a demand right to move cases to a PLB if those cases have been listed to the National Railroad Adjustment Board (NRAB) for more than twelve (12) months. That is exactly what happened in this instance when we notified the Carrier on October 13, 2006 of the BMWED's intention to move the cases to a PLB. Since that time we have been met with nothing but roadblock after roadblock from the Carrier. Indeed, the record reflects that because of the Carrier's intransigence the National Mediation Board (NMB) was required to appoint Ms. Cathryn S. Frankenberg as Carrier Member on December 20, 2006.

The Carrier and Employe Members of the Board were unable to agree on the establishment and jurisdiction of a PLB and, therefore, on January 19, 2007 the NMB appointed you to sit as neutral member of the procedural board to make an Agreement establishing a PLB. On February 23, 2007 you notified the parties of your appointment and requested dates that the parties would be available to meet and convene PLB No. 7022 - Procedural. Eventually, we met and convened PLB No. 7022 - Procedural on June 29, 2007, wherein the parties argued their respective positions. Because funding from the NMB was severely restricted for most of the year you were unable to render your decision until January 9, 2008 and it was received in this office on January 11, 2008. In accordance with the clear terms of the RLA your role as neutral member of PLB No. 7022 - Procedural ended when you issued your decision. The applicable provision of the RLA states:

> "*** The members of the board so designated shall determine all matters not previously agreed upon by the carrier and the representative of the employees with respect to the establishment and jurisdiction of the board. If they are unable to agree such matters shall be determined by a neutral member of the board selected or appointed and compensated in the same manner as is hereinafter provided with respect to situations where the members of the board are unable to agree upon an award. Such neutral member shall cease to be a member of the board when he has determined such matters. ***"

Pursuant to the above-quoted language, you, in your capacity as Neutral Member, were the sole decision maker with respect to the terms necessary for the establishment and jurisdiction of the PLB and your jurisdiction ended when you rendered your findings on January 9, 2008. Therefore, the Carrier's request for an executive session is without merit and should not be considered by you in your capacity as the former Neutral Member. The award is final and binding and your jurisdiction over this matter has concluded.

Mr. Brian Clauss
January 24, 2008
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I urge you to deny the Carrier's request for an executive session as it is not in conformity with the clear and unambiguous provisions of Section 3 Second of the RLA.

Sincerely,

Roy C. Robinson
Labor Member

RCR/tml

cc: Mr. M. Kluska
Mr. R. Watkins

CANADIAN PACIFIC RAILWAY

Labor Relations

Suite 1715
501 Marquette Avenue
Minneapolis Minnesota 55402

Tel (612) 904-6183
Fax (612) 904-6184

In Response Please Refer to File:

February 19, 2008 0-0037-100

Mr. Brian Clauss
Arbitrator, Mediator, Attorney
310 Busse Highway, #291
Park Ridge, IL 60068

RE: Public Law Board 7022 – (Procedural)

Dear Mr. Clauss:

This is in response to BMWED's letter of January 24, 2008.

We understand that the Board has an obligation to honor the request of either party for an interpretation session based on the holding of the United States Court of Appeals in United Transportation Union v. Soo Line Railroad Company, 457 F.2d 285 (1972)(copy attached).

We respectfully ask that you honor judicial precedent within this jurisdiction. We again request that you arrange a time and place mutually convenient for the parties so that we may interpret the award in the manner consistent with the majority's intentions. We are amenable to making space available for our session at our facilities in Bensenville, IL, Minneapolis, MN, or at such other location upon our line of road that is convenient to the parties. We are also amenable to holding such session at the NRAB's offices in Chicago, IL.

We believe that our concerns could be heard, and quite possibly resolved, in one session. As the parties are both interested in progression of the associated claims to resolution, we look forward to hearing from you at your earliest convenient opportunity.

Sincerely,

MRK

Michael R. Kluska
Labor Relations Officer

Attachment

Cc: Roy Robinson

Westlaw

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457 F.2d 285, 79 L.R.R.M. (BNA) 2727, 67 Lab.Cas. P 12,512
(Cite as: 457 F.2d 285)

C
United Transportation Union v. Soo Line Railroad Co.
C.A.7, 1972

United States Court of Appeals,Seventh Circuit.
UNITED TRANSPORTATION UNION, a voluntary unincorporated labor association, Plaintiff-Appellee,
v.
SOO LINE RAILROAD COMPANY, a corporation, Defendant-Appellant.
No. 71-1271.

March 6, 1972.

Action by union to enforce award of Special Board of Adjustment No. 678. The United States District Court for the Northern District of Illinois, William J. Lynch, J., granted enforcement and railroad appealed. The Court of Appeals, Hastings, Senior Circuit Judge, held that interpretation of award by chairman of Special Board of Adjustment No. 678 did not exceed Board's jurisdiction and award of one-hour arbitrary to roadmen was proper.

Affirmed and remanded with directions.

West Headnotes

[1] Labor and Employment 231H ⟹1600

231H Labor and Employment
231HXII Labor Relations
231HXII(H) Alternative Dispute Resolution
231HXII(H)4 Proceedings
231Hk1600 k. Reconsideration, Modification, or Clarification. Most Cited Cases
(Formerly 232Ak455 Labor Relations)
Request for interpretation of award is merely for clarification, a matter, on which railroad and union could not shed any additional light. Railway Labor Act, §§ 2, 3, subd. 1(m), 8, 45 U.S.C.A. §§ 152, 153, subd. 1(m), 158.

[2] Labor and Employment 231H ⟹1600

231H Labor and Employment
231HXII Labor Relations
231HXII(H) Alternative Dispute Resolution
231HXII(H)4 Proceedings
231Hk1600 k. Reconsideration, Modification, or Clarification. Most Cited Cases
(Formerly 232Ak455 Labor Relations)
Action of chairman of Special Board of Adjustment No. 678 in issuing interpretation of award was proper. Railway Labor Act, §§ 2, 3, subd. 1(m), 8, 45 U.S.C.A. §§ 152, 153, subd. 1(m), 158.

[3] Labor and Employment 231H ⟹1600

231H Labor and Employment
231HXII Labor Relations
231HXII(H) Alternative Dispute Resolution
231HXII(H)4 Proceedings
231Hk1600 k. Reconsideration, Modification, or Clarification. Most Cited Cases
(Formerly 232Ak455 Labor Relations)
Interpretation of award by chairman of Special Board of Adjustment No. 678 did not exceed Board's jurisidiction and award of one-hour arbitrary to roadmen was proper.

[4] Federal Civil Procedure 170A ⟹2737.11

170A Federal Civil Procedure
170AXIX Fees and Costs
170Ak2737 Attorneys' Fees
170Ak2737.11 k. Labor Issues. Most Cited Cases
(Formerly 170Ak2737.5, 170Ak2737)
Question of award of attorney's fees to prevailing party in action against railroad by union seeking to enforce certain award lies within special competence of district court. Railway Labor Act, § 3, subd. 1(p), 45 U.S.C.A. § 153, subd. 1(p).

***285** Marvin F. Metge, Chicago, Ill., C. Harold Peterson, Minneapolis, Minn., Gorham, Adams, White & DeYoung, Chicago, Ill., for defendant-appellant.
John J. Naughton, Chicago, Ill., for plaintiff-appellee.

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(Cite as: 457 F.2d 285)

Before HASTINGS, Senior Circuit Judge, and FAIRCHILD and KERNER,[FN*] Circuit Judges.

FN* Judge Kerner heard oral argument, but did not participate in the adoption of this opinion.

HASTINGS, Senior Circuit Judge.

This is an action by United Transportation Union (union), a voluntary labor organization, against Soo Line Railroad Company (railroad), to enforce certain awards rendered by Special Board of Adjustment No. 678 on July 23, 1969. After the awards were issued a dispute arose between the parties concerning the meaning thereof. In a series of letters to UTU the railroad stated its position. These letters were forwarded by the union to the chairman of the Special Board requesting an interpretation of the awards. The Board chairman issued an interpretation on September 5, 1969. The railroad refused to apply the awards as interpreted by the chairman member of the Board. The union thereupon filed the instant suit for enforcement. There being little factual dispute in the pleadings filed by the parties, the union moved for judgment on the pleadings and the railroad moved for summary judgment. After briefing, the district court in a short memorandum decision, followed by order and judgment, granted the union's motion for judgment on the pleadings and denied the railroad's motion for summary judgment. The railroad appealed. We affirm.

***286** The Special Board was acting under authority granted pursuant to the Railway Labor Act, Title 45, U.S.C.A. § 153. However, Board 678 was established by a memorandum of agreement between the railroad and the union on May 4, 1966, prior to the effective date of the 1966 amendments to section 3 of the Act. The awards were entered July 23, 1969. The petition for enforcement was filed on March 17, 1970, under section 3, First (p) of § 153 of the Act. A board of special adjustment is authorized to interpret its awards as provided in section 3, First (m) of § 153 of the Act.

The undisputed facts underlying this litigation concern a work rule disagreement over conflicting claims of certain railroad employees designated as yardmen and roadmen, both of such classes being represented by the union. At issue was a challenged practice of the railroad that required roadmen to perform certain yard switching operations claimed to be in violation of the applicable labor agreement.

The Special Board denied all claims made on behalf of the yardmen and in Awards Nos. 56, 57, 58, 62, 63, 64, 65 and 66 it found that the labor agreement had been violated as to the roadmen. These 8 awards are the subject of this litigation. In so ruling the Board held that Article V of the National Agreement of June 25, 1964 permitted the use of roadmen for the yard switching operation in question. This ruling resulted from reading Article V together with the prior basic labor agreement (Agreement No. 2) and concluding therefrom that Article V removed the restrictions contained in Agreement No. 2 which prohibited the use of roadmen to perform yard switching except on Sunday, or because of emergency conditions, or because of a bad order car or cars. In reading the agreements, the chairman of the Special Board found that the road brakemen, who performed such switching, should have their claims sustained but limited their payments to "payment of the constructive allowances provided in Agreement No. 2(e) for road Brakemen switching while no yard crew is on duty * * * namely, 'one (1) hour at the yard rate.'"

Each of the awards was signed by the railroad carrier member of the Board. Only 2 of the 8 subject awards were concurred in by the union member, the remaining 6 having been signed by him in dissent. However, the railroad subsequently took the position that there was nothing due and payable to the road brakemen under the 8 awards and wrote separate letters to the union denying further payment of each of such separate awards. It was these letters that the union forwarded to the chairman of the special Board, with copies to the other two Board members, requesting an interpretation as to whether or not the roadmen were entitled to "one (1) hour at the yard rate" in each instance. The railroad paid all other claims which it conceded to be

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covered by the awards.

The chairman of the Special Board sent his interpretation by covering letter to the carrier and union members of the Board, in which he disagreed with the railroad's contention, stating, *inter alia:*"The findings * * * that the claimants are entitled to the constructive allowance provided in Agreement No. 2(e), * * * mean that such payments are to be allowed regardless of the day of the week, the type of switching, or the road train involved, as long as the switching was performed during the second twelve-hour period."The chairman explained his reasoning and applied it to each of the awards interpreted. As above stated, the railroad refused to pay the awards as interpreted and the present litigation resulted.

I

The railroad first contends that the Special Board did not issue a valid interpretation of the awards in question for the reason that the interpretation was issued by the referee (the chairman member) rather than by the three members of the Board and that it was therefore "a nullity and is not judicially enforceable."It argues that the memorandum*287 of agreement of May 4, 1966, pursuant to which the Board was established, provides in Section 2 that the Board shall consist of 3 members; that Section 8 provides that the Board shall interpret awards upon the request of either party to a dispute; that section 3, First (m) of § 153 of the Act provides that such interpretation of an award under dispute shall be made by the Division of the Board; and that therefore the chairman of the Board "had no more authority or jurisdiction to issue an interpretation on an ex parte basis than did the carrier member, the employee member or, for that matter, the Sheik of Araby."Reserving judgment on participation by the Sheik of Araby, we think the railroad overreaches in its contention concerning the chairman of the Board.

[1] The railroad would have a formal convening of the Special Board to interpret its own awards. There is no continuing dispute between the parties. In reality a request for an interpretation of an award is merely for a clarification, a matter on which the parties cannot shed any additional light. *See*Brotherhood of Railroad Trainmen v. Central of Ga. Ry. Co., 5 Cir., 415 F.2d 403, 417-418 (1969), cert. denied, 396 U.S. 1008, 90 S.Ct. 564, 24 L.Ed.2d 500 (1970).

[2] In the case at bar, the author of the railroad's letters refusing payment, which precipitated the union's request for interpretation, was the carrier member of the Board. He concurred in the awards in the first instance, which the railroad now considers to have been a mistake. Although we need not pass upon the matter of waiver in the resolution of this appeal, the railroad never at any time prior to the chairman's interpretation requested a formal convening of the Board for that purpose. Indeed, it does not now request a remandment to the Board for an interpretation. With the chairman who wrote the awards sitting in the swing seat, the result of such a remand is obvious. It is further significant that the chairman kept the other two Board members fully advised of his actions and there appears to have been no dissent. Considering the inherent informality of arbitration proceedings and particularly as specifically related to interpretations subsequently requested and made, and having in mind that the only relief requested on this appeal is that we should now refuse to enforce the awards, we find no error in the common sense approach of the district court when it concluded that it could "perceive no difficulty with a chairman issuing such an interpretation for the Board," pursuant to the authorization of interpretations by the Special Board in section 3, First (m) of § 153 of the Act.

II.

[3] The railroad next raises a dual jurisdictional issue. It first contends the awards as interpreted exceeded the Board's jurisdiction because "they purported to revise the express terms of the collective bargaining agreement in effect between the parties."It further contends the Board "did not have jurisdiction to award damages which were neither

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pleaded, argued or proved by claimants."

We have already noted the Board's holding that Article V of the National Agreement of June 25, 1964 permitted the use of roadmen for the yard switching operation in question. We further noted that this ruling had the effect of reading Article V together with the prior basic Agreement No. 2, thereby concluding that Article V removed some of the restrictions in Agreement No. 2. The chairman's subsequent interpretation sustained the awards to the road brakemen but limited their payments to the "payment of the constructive allowances provided in Agreement No. 2(e) for road Brakemen switching while no yard crew is on duty * * * namely, 'one (1) hour at the yard rate.'"

In seeking to establish a jurisdictional defect the railroad contends that the effect of applying the awards as interpreted amounts to writing a new rule requiring*288 the payment of a one-hour arbitrary to all roadmen performing yard work at the points designated in Agreement No. 2 and that this it cannot do. We do not agree. The railroad fails to take into consideration Article V of the 1964 agreement as the chairman did in his interpretation. No one disagrees with the general principle that the Board is without power to write a new rule for the parties. However, the attempt by the railroad to apply this general rule to the awards in issue goes far astray. We agree with the Board that it is quite proper to read Article V together with Agreement No. 2 and that the result compels the resulting awards and subsequent interpretation. No good reason for not doing so has been advanced by the railroad. There is nothing unusual about the dispute the Special Board was called upon to arbitrate and interpret. We agree with the Board and the trial court that the course taken was practical and proper. It does not rise to the dignity of a jurisdictional defect.

The second alleged jurisdictional defect challenges the jurisdiction of the Board to award the one-hour arbitrary. Such claims were originally made under Agreement No. 2 and were later amended to claim pay for a full eight hours. The railroad agreed to awards permitting the constructive allowance of the one-hour arbitrary. It now argues that in doing so it necessarily assumed that the 1964 agreement would have no application to Agreement No. 2.

It cannot be overlooked that all of the yard claims were rejected by the Board and the road claims were reduced from eight hours to one hour. These rulings by the Board rejected a great bulk of the claims made. We are not now seriously impressed with the present argument that the railroad would not have concurred if it had understood the true meaning of the subject awards.

One of the three statutory grounds for reopening awards to judicial review under the 1966 amendments to the Act is "for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction * * *." Section 3, First (q) of § 153 of the Act.Brotherhood of Railroad Trainmen v. Central of Ga. Ry. Co., 5 Cir., 415 F.2d 403, 411 (1969), cert. denied, 396 U.S. 1008, 90 S.Ct. 564, 24 L.Ed.2d 500 (1970), wherein is also set out the legislative history of the amendments.

We have recently considered the 1966 amendments to the Act in Laday v. Chicago, Milwaukee, St. Paul & Pacific R. Co., 7 Cir., 422 F.2d 1168, 1171 (1970); Great Northern Ry. Co. v. National Railroad Adjust. Bd., 7 Cir., 422 F.2d 1187, 1192-1193 (1970); and Brotherhood of Railroad Signalmen v. Chicago, M., St. P. & P. R. Co., 7 Cir., 444 F.2d 1270, 1273-1274 (1971). Under the rationale of these cases, we find that the awards and the Board's interpretations of them are not so unfounded in reason and fact as to make the awards unenforceable and that a rational foundation existed for the Board's action. It necessarily follows that matters raised by the railroad present no valid jurisdictional question.

III

In light of the foregoing holdings, the railroad's final contention that the district court erred in granting plaintiff's motion for judgment on the

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pleadings and denying defendant's motion for summary judgment falls under its own weight and is without substance.

In sum, we conclude that the subject awards, as issued and interpreted, were procedurally proper and correct, were in reason and in fact shown to rest upon a rational foundation and that no jurisdictional defect was established.

[4] The Act provides that "if the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit."Section 3, First (p) of § 153. An award of attorney's fees lies within the special competence of the district court, in conformity with well ***289** established judicial standards. *See*Laday v. Chicago, Milwaukee, St. Paul & Pacific R. Co., D.C.E.D. Wis., 299 F.Supp. 580, 582 (1969), aff'd422 F.2d 1168 (7 Cir., 1970).*Cf.*Central of Georgia, 415 F.2d at 418, 419.

The judgment appealed from is affirmed. This matter is ordered remanded to the district court for consideration of an award of costs and attorney's fees.

Affirmed and remanded with directions.

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United Transp. Union v. Soo Line R. Co.
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END OF DOCUMENT

Brotherhood of Maintenance of Way Employes Division
of the International Brotherhood of Teamsters

Freddie N. Simpson
President

Perry K. Geller, Sr.
Secretary-Treasurer

February 27, 2008

Mr. Brian Clauss
Arbitrator - Mediator - Attorney
310 Busse Highway, #291
Park Ridge, IL 60068

Dear Mr. Clauss:

This is in reference to Mr. Kluska's letter dated February 19, 2008 concerning the determinations you made as to the Procedural Neutral of Public Law Board No. 7022. Apparently, Mr. Kluska has recognized that you have no jurisdiction to convene an "Executive Session" as requested in his letter dated January 18, 2008 because he seems to have abandoned that request and is now requesting an "interpretation session". However, just as you had no jurisdiction to convene an Executive Session, you similarly have no jurisdiction to convene an "interpretation session". As I explained in my letter dated January 24, 2008, the findings you rendered on January 9, 2008 are final and binding and your jurisdiction over this matter has concluded pursuant to the clear and unambiguous provisions of Section 3, Second of the RLA.

Apparently, Mr. Kluska has confused the jurisdiction of a Merits Neutral at the NRAB or on a tripartite Public Law Board with your jurisdiction as a Procedural Neutral in the instant case. Section 3, First (m) of the RLA clearly provides the various divisions of the NRAB with jurisdiction to interpret awards of the divisions. Similarly, most PLB Agreements, including Paragraph (J) of the PLB you selected for the parties in this case, provide the PLB with jurisdiction to interpret its own awards. Section 3, Second, which established your jurisdiction as a Procedural Neutral in this case, makes no reference to an interpretation of a procedural determination because no such interpretation was contemplated or necessary, which brings me to my final point.

It is clear that Mr. Kluska's newly minted request for an interpretation is nothing but another effort to delay the resolution of the cases in question. Indeed, while Mr. Kluska has requested an "interpretation session", he has failed to identify precisely what needs to be interpreted. Of course, this is because there is nothing to interpret. You have imposed the terms of a standard PLB Agreement that is common throughout the industry and complying with its terms hardly requires an interpretation.

150 S. Wacker Drive, Suite 300
Chicago, IL 60606-4101
Telephone 312.630.9328 Facsimile 312.630.9438
www.bmwe.org

Mr. Brian Clauss
February 27, 2008
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In sum, it is transparently clear that you have no jurisdiction to schedule an executive session or an "interpretation session". Your award is final and binding and your jurisdiction over this matter has concluded pursuant to the clear and unambiguous language of Section 3, Second of the RLA. We thank you for your service, but that service has now been concluded in this matter.

Sincerely,

Roy C. Robinson
Member - NRAB

cc: Ms. C. Frankenberg
Mr. M. Kluska
Mr. M. Wimmer

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March 7, 2008

Mr. Michael Kluska
Canadian Pacific Railway - Soo Line Railroad
501 Marquette Ave., Suite 100
Minneapolis, MN 55402

Mr. Roy Robinson
Brotherhood of Maintenance of Way Employees
150 South Wacker Drive, Room 300
Chicago, IL 60606-4101

RE: Public Law Board 7022 (procedural)

Dear Gentlemen,

I am in receipt of the following correspondence: Mr.Kluska's request for an executive session in the above procedural board; Mr. Robinson's objection; Mr. Kluska's request for a clarification of the award and Mr. Robinson's objection.

The Carrier and the Organization do not join in the requests for executive session or a clarification session. Rather, the Organization objects to either an executive session or a clarification session. There was no request for executive session prior to the issuance of the award.

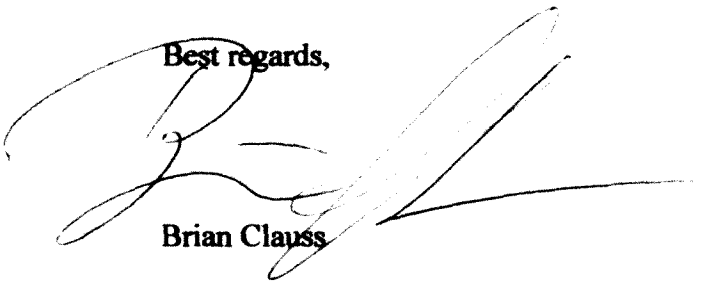
In his objections, Mr. Robinson cites the lack of jurisdiction of the neutral following the issuance and adoption of the award by the Board. The Carrier counters with citation to a case involving a Public Law Board and clarification of awards. The case is inapplicable not only because the Carrier and the Organization have not requested a clarification, but also because the instant matter involves a procedural board.

The Railway Labor Act discusses procedural boards and provides in pertinent part of § 153 as follows:

> The members of the board so designated shall determine all matters not previously agreed upon by the carrier and the representative of the employees with respect to the establishment and jurisdiction of the board. If they are unable to agree such matters shall be determined by a neutral member of the board selected or appointed and compensated in the same manner as is hereinafter provided with respect to situations where the members of the board are unable to agree upon an award. Such neutral member shall cease to be a member of the board when he has determined such matters.

The Railway Labor Act is clear. The procedural neutral loses jurisdiction when the award is issued and adopted by the Board. Accordingly, the undersigned must grant the Organization's jurisdiction-based objection and deny the Carrier's requests for executive session or clarification. The award has been issued by the neutral member and adopted by the Organization member. This procedural neutral now lacks jurisdiction.

Best regards,



Brian Clauss