PROCEEDINGS PURSUANT TO PUBLIC LAW 89-456

Matter of LOUISVILLE & NASHVILLE RAILROAD COMPANY and BROTHERHOOD OF LOCOMOTIVE FIREMEN & ENGINEMEN	Procedural Opinion and Award

OPINION AND AWARD ON JURISDICTION AND PROCEDURES
OF PUBLIC LAW BOARD NO. 265

BOARD MEMBERS:

W. C. Moore	Assistant Director of Personnel, Louisville & Nashville Railroad Company, Member designated by the Carrier
R. L. McCollum	Vice President, Brotherhood of Locomotive Firemen and Enginemen (now United Transportation Union), Member designated by the Organization
John E. Dietz	Procedural Neutral Member, appointed by National Mediation Board

APPEARANCES AT HEARING:

For the Carrier:

W. C. Moore, Carrier member Public Law Board No. 265

C. D. Epperson, Assistant to Director of Personnel

E. W. Heide, Assistant General Solicitor

For the Organization:

R. L. McCollum, Organization member, Public Law Board No. 265

R. L. Deason, General Chairman

D. W. Bennett, Attorney, United Transportation Union

INTRODUCTION

Public Law Board No. 265 convened at Louisville, Kentucky, on January 14, 1969, and continued in session on January 15, with all members present. Each party submitted a written statement on the procedural issues in dispute and its position thereon. The persons listed above discussed these issues and, at the request of the neutral member, post-hearing briefs were exchanged. The pertinent facts presented and the positions taken by the parties are discussed hereinafter. Thereafter, on May 27, 1969, the Public Law Board met again in Louisville for the purpose of reviewing this procedural opinion and award, as well as the proposed Agreement.

For purposes of this report, the Louisville and Nashville Railroad Company will be referred to as the Carrier or the L&N.

Effective January 1, 1969, the Brotherhood of Locomotive Firemen and Enginemen (BLF&E) merged with three other standard railway labor organizations to form the United Transportation Union (UTU). The UTU has succeeded to the representation rights formerly held by the BLF&E, but for purposes of simplicity the designation used prior to and at the hearing will be continued and the union will be referred to as the Organization or the BLF&E in this report.

The sequence of events culminating in establishment of Public Law Board No. 265 may be described as follows:

April 29, 1968 - R. L. Deason, General Chairman, BLF&E, General Grievance Committee, L&N, addressed a letter to W. S. Scholl, Director of Personnel, L&N, stating:

> "Pursuant to Section 3, second, of the Railway Labor Act, as amended by Public Law 89-456, this request by the Brotherhood of Locomotive Firemen and Enginemen for the establishment of a special adjustment board, PL Board, on the Louisville and Nashville Railroad Company.
>
> "The BLF&E proposes the enclosed agreement to be entered into to establish this PL Board. The disputes to be resolved by the PL Board are listed on attachment A to the Agreement and are cases otherwise referable to the First Division, NRAB.
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> "Pursuant to Paragraph (d) of the Agreement, the BLF&E has designated R. L. McCollum to be the employee member of the Board. The Carrier is requested to designate its member of the Board, and to advise of the time and place for the board to meet to join in an agreement establishing the Board, all within thirty days as required by the Act and the rules of the National Mediation Board." (BLF&E Exhibit "A").

May 28, 1968 - BLF&E and L&N representatives conferred on the above request, but without reaching agreement. The Carrier

presented its proposed agreement for establishment of a special board of adjustment. (BLF&E Exhibit "B").

June 21, 1968 - R. L. McCollum, BLF&E designee as member of the proposed board, wrote to Mr. Scholl, L&N, defining the main points of difference between the BLF&E's and the Carrier's proposed agreements. (BLF&E Exhibit "C").

June 25, 1968 - The BLF&E filed Form NMB-5 requesting the National Mediation Board to name a partisan member for the Carrier pursuant to NMB Rule 1207.1(a) because the "Carrier refused to appoint their member of the proposed Board."

July 6, 1968 - Mr. Scholl, L&N, addressed a letter to the Executive Secretary, National Mediation Board, summarizing the developments in this case and designating W. C. Moore, Assistant Director of Personnel, as the Carrier member "if and when a public law board is established in accordance with the law." (BLF&E Exhibit "D").

August 21, 22 & 27, 1968 - Representatives of the BLF&E and L&N met without agreeing on procedures to establish the proposed board.

September 16, 1968 - The BLF&E requested the National Mediation Board to appoint a neutral pursuant to NMB Rule 1207.1(b) "to assist the parties in determining procedural issues not otherwise agreed to."

October 30, 1968 - The National Mediation Board announced the appointment of John E. Dietz as the procedural neutral member of Public Law Board No. 265.

A comparison of the agreements proposed by the BLF&E and the L&N for establishment of the special board of adjustment pursuant to Public Law 89-456, reflects numerous points of difference which vary from minor procedural matters to basic principles. The fundamental question, however, is what claims or grievances should be presented to the Public Law board for resolution on the merits.

The BLF&E submitted a docket of 27 cases with its letter, dated April 29, 1968, addressed to the Carrier requesting establishment of a Public Law board. During the course of the hearings, both the Carrier and the BLF&E stated that only nine cases remain for disposition. They indicated that the 18 other cases on the BLF&E list had been either settled (four), disposed of by the parties (12), withdrawn and submitted to the NRAB (one), or dropped (one), during the time since April 29, 1968. The nine cases which remain for disposition were described as follows by the BLF&E in the above mentioned original docket:

Case No.

332 Claim of Hostler R. L. Vossels, LC&L Division, for an additional day at outside hostler-helper rate, required to throw switches, fuel and water diesel locomotives at the 10th Street Roundhouse Hostling Job #525, 3:00 p. m. to 11:00 p. m., November 4, 1966. Also other subsequent claims listed in this case.

282 Claim of Hostler E. A. Hockel, Main Stem First Division, for an additional day at outside hostler-helper rate, required to perform the duties of an outside hostler-helper on outside hostler Job $425, October 26 & 27, 1966. Also other subsequent claims listed in this case.

55 Claim of Hostler D. L. Pierce, Nashville Terminal for an additional day at outside hostler-helper rate, required to perform outside hostler-helper duties, Job #225, December 30, 1966.

392 Claim of S&NA Division Engineer H. E. Anderson and Fireman B. R. Harbin for one outside hostling day each in addition to their tour of duty on Train 72, February 11, 1967.

390 Claims of M&NO Division Fireman R. A. Green for round trips in Freight Service Trains 79 & 76, March 6; Trains 71 & 72, March 24; Trains 73 & 74, March 28; Trains 73 & 74, April 4; Trains 71 & 72, April 7; Trains 79 & 76, April 9; Trains 73 & 74, April 11; Trains 71 & 72, April 14; Trains 79 & 76, April 17, 1967.

391 Claims of M&NO Division Fireman E. Clark for round trips in Through Freight Service, Trains 73 & 74, March 25; Trains 71 & 72, March 27; Trains 79 & 76, April 6; Trains 79 & 76, April 20; Trains 71 & 72, April 22, 1967.

17 Claim of Fireman D. W. Palmer, Henderson Division, for 159 miles at freight rate, Howell to Radnor, Train Extra Engines 309-138-1820, May 27, 1964. Also other subsequent claims listed in this case.

18 Claims of pool firemen, St. Louis Division, for straight-away mileage, Howell to East St. Louis, 161 miles and straight-away mileage, East St. Louis to Howell, 163 miles when called to protect freight service between Howell, Indiana, and Carmi, Illinois, on various dates following May 7, 1964. Also other subsequent claims listed in this case.

D-100993 Claim of Fireman R. L. Perry, Cincinnati Division, for restoration to service with seniority unimpaired, with pay for all time lost. Dismissed April 29, 1967, for alleged violation of second paragraph of Rule P, April 10, 1967.

The position of the BLF&E is that these nine cases, in their present form, should be presented to the Public Law board for disposition on the merits.

The position of the Carrier appears to be that none of these nine cases, in its present form, should be submitted to the Public Law Board because each is either (1) barred by the time limits rule of the schedule agreement, or (2) is inadequately described for purposes of processing, or (3) presents an inter-union jurisdictional dispute which only the National Railroad Adjustment Board can handle.

In addition to the fundamental question as to which of the above described cases may be presented to the board for disposition on the merits, the BLF&E and the L&N are in dispute over certain procedures for the board to follow. For purposes of clarity, these disputed matters will be discussed under these headings:

I CLAIMS AND BOARD PROCEDURES

II THE TIME LIMIT RULE

III CLAIM OF ENGINEER ANDERSON

I CLAIMS AND BOARD PROCEDURES

CLAIMS - IDENTIFICATION

The basic differences between the parties on the selection of cases to be presented to the Public Law board for resolution on the merits is illustrated by the proposed agreements exchanged by the BLF&E and the Carrier for establishment of the special board of adjustment, pursuant to Public Law 89-456. The Carrier proposed, in substance, that the list of cases to be submitted shall be prepared by mutual agreement (para. 8), whereas, the BLF&E proposed that the board shall have jurisdiction of the cases listed on its Attachment "A" (para. B). Similarly, the Carrier proposed that cases could be withdrawn only by joint request of the parties (para. 13), whereas, the BLF&E proposed that cases may be withdrawn by the party submitting the case (para. I).

Carrier Position

The Carrier takes the position that both parties are entitled to know the specific claims to be involved in the proceedings before the Public Law board; that the Railway Labor Act requires a procedural neutral to define the jurisdiction of the board and to list the claims to be arbitrated. The Carrier contends that the BLF&E list of cases (Attachment "A") does not meet the requirements. Specifically, the Carrier takes exception to the four cases which describe a specific claim with the added statement, "also other subsequent claims listed in this case" (Cases No. 332, 282, 17 and 18, supra).

The Carrier submitted with its post-hearing brief, a complete abstract prepared from L&N records, of each case docket listed by the BLF&E for resolution by the board, including each "additional similar" claim. The Carrier states that these nine basic case dockets include approximately 4,171 individual claims and that, as to the "additional" claims, some contain no information concerning the facts upon which the claim is based, and many do not contain adequate information upon which the Carrier could investigate and prepare its response.

The position of the Carrier is that the statutory mandate requiring a listing of claims to be arbitrated clearly contemplates that each claim and each "additional similar" claim be specifically listed so that both parties will be aware of the exact cases to be resolved by the Public Law board. The Carrier believes, however, that the procedural neutral does not have the duty to draw up a list of these claims; rather, it is his duty to call upon the BLF&E to prepare the list in the detail suggested by the Carrier, withdrawing unsupported claims. The neutral should then call upon the L&N to respond to the submission made by BLF&E.

In regard to the "detail" suggested, the Carrier asks for the following claims data in writing:

I Claims. Opinion and Award

The Railway Labor Act, as amended by PL 89-456, provides that "If written request is made upon any individual carrier by the representative of any craft or class of employees to resolve disputes otherwise referable to the Adjustment Board... the carrier... upon whom such request is made shall join in an agreement establishing such board... the cases which may be considered by such board shall be defined in the agreement establishing it... " (underscoring added). (Section 3, Second).

The clear intent of this language is to provide the moving party with a procedural avenue leading toward ultimate settlement of disputed matters by a tri-partite board without imposing as a condition precedent the requirement that the parties in interest mutually agree as to which cases are to be submitted for resolution. There are two conditions, however, which must be met before a dispute case may be submitted to a Public Law board. The Act requires that such dispute must be "otherwise referable to the (National Railroad) Adjustment Board." And, pertinent to the instant matter, the claimant must have his dispute or claim processed in accordance with Article 30 of the current BLF&E - L&N craft agreement, including a decision thereon by the Director of Personnel, the highest officer designated to handle such claims. Evidence presented in this case indicates that these two conditions have been met for all nine case dockets.

The Carrier takes exception to the descriptive listing by the BLF&E of the four case dockets which have the inclusive statement, "also other subsequent claims listed in this case." The Carrier states that, in order to establish what is actually involved in these four cases, abstracts thereof were prepared and submitted with the post-hearing brief which reflect the following:

> Case No. 332 (Carrier's Ex. A). The abstract lists about 83 "additional similar" claims for six employees by name and date of claim. In 80 of these the work on which the claim is based is identified as fueling and/or throwing switches, in varying degrees of detail. Three claims list "no information".
>
> Case No. 282 (Carrier's Ex. E). The "additional similar" claims total about 517 for 12 employees, with date of claim listed. Nineteen claims list "no information" as to the work involved. The work description on the remainder includes performing helper duties, throwing switches and watering engines, in varying degrees of detail.
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> Case No. 17 (Carrier's Ex. F). The "additional similar" items consist of about 2430 claims on behalf of 28 employees. Listed are claimant, date of claim, train #, and mileage performed.
>
> Case No. 18 (Carrier's Ex. G). The "additional similar" items are covered by 16 letters from the General Chairman to the Director of Personnel listing about 1453 claims of pool firemen. Listed is the claimant's name, date of work, and the "decline No.".

(1) Identification of each claim covered by each docket, including each "additional similar" claim, by name of claimant, date of claim, nature of alleged violation, and rules allegedly violated; and

(2) A statement on each docket setting forth the general circumstances of all the claims listed thereon, including nature of alleged violation, the portion of the rules allegedly violated, the BLF&E's interpretation and application of those rules, and the probative evidence upon which the employees rely.

The abstracts of the claims (Carrier's Exhibits "A" through "I" attached to the post-hearing brief) represent the Carrier's understanding of all claims on file involving the docket numbers pending before this board, including the "additional similar" claims. The Carrier is of the opinion that BLF&E should be required (1) to state to this board whether these abstracts are a complete listing of all claims it contends should be arbitrated by the board; and (2) to supply all additional information on each individual claim that is now deficient or to withdraw the unsupported claims from further consideration. According to the Carrier the BLF&E is the moving party on all of these claims and the burden is upon it to show that each claim is entitled to payment.

The Carrier also refers specifically to Docket No. 282 which includes a claim declined January 14, 1969, and states that the procedural neutral must specifically limit the "additional similar" claims which may be included within the claim dockets; otherwise the BLF&E will be free to add to its list until a final award is made by the Public Law board. The question presented here is as to what point in time "additional similar" claims can no longer be included in the basic claim docket.

Organization Position

The BLF&E takes the position that the Organization has the right, as the moving party, to designate the cases which it desires to have considered by a Public Law board, so long as (1) the cases were otherwise referable to the National Railroad Adjustment Board, and (2) decisions had been rendered by the highest officer designated to handle such claims, pursuant to Art. 30(a)6 of the collective bargaining agreement between the BLF&E and the L&N, in this case the Director of Personnel.

The BLF&E states that the Railway Labor Act permits an ex parte submission without any concurrence by the carrier and, if the carrier feels that a case is not a proper subject for the Public Law board, it can advance those arguments to that board in the same manner that the carrier attempts to influence the First Division, National Railroad Adjustment Board (NRAB), that it should not accept jurisdiction of a specific case. The BLF&E asserts that all claims included in the dockets listed by the Organization were otherwise referable to the First Division. The Act does not require agreement of the parties on cases to be referred to the NRAB and either

party may refer cases or demand establishment of a Public Law board to consider such cases and all the Act requires is that "the cases to be considered by such (PL) board shall be defined in the agreement establishing it."

The BLF&E also insists that the nine grievance claims listed for this Public Law board conform to the established practices on this Carrier for grievance handling and therefore, the Carrier's assertion that it could not determine the identity of the claimants is frivolous and without merit. Each of those claims identified the claimant by name, the date of the occurrence, and usually the rule of the agreement relied upon. The BLF&E states that each claim was handled on a lower level of the Carrier before being referred to the Director of Personnel; that when they were appealed to this highest officer they were listed by claimant and date of occurrence and the applicable rule of the agreement was cited, and that it is customary to group claims for purposes of appealing in the same appeal letter.

In support of the position that the claims were adequately identified, the BLF&E pointed to the fact that 16 of the 27 claims cases which it originally listed on Attachment "A" had been settled or otherwise disposed of by the parties through the process of negotiation and conference. One of the cases settled had 17 letters of appeal with over 500 individual claims and there was no difficulty in identification of the claimants.

The BLF&E cited the finding of the procedural neutral in Public Law Board No. 4 that "when the Organization submitted a list of claims whose subject matter was such that it was referable to the National Railroad Adjustment Board, and this list of claims contained the file number, the name of the claimant, and a brief description of the claim or grievance, the Organization was then following the standard procedure used by parties in establishing a consensual board of adjustment. The Organization in the instant case followed the normal and usual procedures utilized by parties who have established a special board of adjustment, be it by voluntary agreement or by law... "

In regard to the Organization provision in the proposed agreement that cases may be withdrawn by the party submitting the case (para. I), the BLF&E cites award #1 of the procedural neutral in Public Law Board No. 46 holding that the Organization could withdraw from the National Railroad Adjustment Board deadlocked cases which had been assigned for argument before referees, in order to submit them to a Public Law board. In reaching this decision, the neutral took cognizance of the legislation which gave the parties the right to seek an alternative forum for adjudication of the claims. On the record he found nothing in the Organization's actions that violated any procedural due process vis-a-vis the Carrier.

In summary, the Carrier contends that the BLF&E descriptions of these four cases on Attachment A do not meet the statutory requirements that each claim or case be specifically listed; further, that L&N records do not contain sufficient information on many of these claims to enable the Carrier to respond thereto.

The question here is whether the BLF&E description, "also other subsequent claims listed in this case", satisfies the legislative language that "the cases... shall be defined...". This procedural neutral is compelled to find that, under all of the circumstances attending this dispute, this description does not adequately identify the claims involved for purposes of proceeding before the Public Law board. It is conceivable, of course, that there could be a situation where a carrier and an organization would be in agreement as to the precise claims included in a case docket, so that an "additional similar" description would be meaningful to the parties and would adequately define that case for them. This is not the situation here.

In the instant case, testimony was given that it is customary to group claims for purposes of appealing, and cognizance must be taken of the settlement by the parties of case #398 listed on the BLF&E Attachment A which was identified as involving "additional similar" claims, after April 29, 1968.

This neutral regards the BLF&E description (above) as unprecise under the circumstances and this defect can and should be corrected so that this dispute matter may be processed to a conclusion in an orderly manner. Accordingly, after discussion on May 27, 1969, the parties executed the agreement attached to this report as Exhibit 1, as to which claims are to be considered by the merits board.

As stated above, the Carrier also contends that the company records on the four "additional similar" case dockets do not contain sufficient information on many of these claims to enable the Carrier to respond thereto. The Carrier insists that each claim be identified by name of claimant, date of claim, nature of alleged violation and rules allegedly violated; rules involved and the probative evidence relied upon.

It is appropriate to ask, what is the established practice or standard procedure with respect to the "detail" submitted on time claims presented for resolution by a tribunal?

This neutral finds that the normal and customary procedures followed by parties involved in other Public Law board cases has been to accept as adequate a list of claims containing the file number, the name of the claimant, the date of the claim and a brief description of the claim or grievance.

The negotiations for an agreement to establish a Public Law board, including identification of claims or grievances, constitute a preliminary step to the ultimate resolution of the cases by the board after appropriate procedures contemplating hearings, exchange of briefs, etc. The National Railroad Adjustment Board procedures are distinguishable in that they contemplate a decision based on the written submission, usually without oral testimony. These procedures require a clear statement of the particular question upon which an award is desired, with a statement briefly but fully setting forth the controlling facts involved. The stated position of each party must clearly and briefly set forth all relevant, argumentative facts, including all documentary evidence submitted in exhibit form, quoting the agreement or rules involved (Board Circular No. 1).

Article 30 of the current BLF&E - L&N agreement is also pertinent to this situation. It provides that the claims must be presented in writing and "In making the claim, a sufficient statement of facts upon which the claim is based must be given. The Agreement rule relied upon should be cited" ((a)1.). Further, when claims are not allowed, in declining the claim, "If the division officials do not agree with the facts as submitted by the claimant, they shall advise in detail, as to the variance" ((a)2.). Also, "If the claim is not disposed of by the Director of Personnel, he must decline it with the reasons therefor" ((a)4.). Also, "should the employes fail in the obligations imposed (by Art. 30), the claim shall be barred by default." ((a)5.).

This procedural neutral must assume that there was some compliance by both sides with the above mentioned provisions of Article 30 to the extent, at least, that the L&N records at some level of administration will provide sufficient information to enable the Carrier to respond to the "additional similar" claims. Normal adherence to the steps outlined in Article 30 would have provided the name of claimant, date of claim, a brief description of the claim and the article of the BLF&E - L&N agreement relied on. There was no evidence introduced that any of those "additional similar" claims were either declined or barred for lack of information.

With respect to the withdrawal of cases, this neutral finds merit in the Carrier position that joint agreement should be required for removal of any case from jurisdiction of the Public Law board.

PLB 265

AWARD

This procedural neutral makes these findings:

1. That the BLF&E has the right to designate the cases which it desires to submit to Public Law Board No. 265 without Carrier concurrence.

2. That cases submitted to Public Law Board No. 265 may be withdrawn only upon joint agreement of the Carrier and the Organization.

These determinations are being incorporated in the agreement establishing Public Law Board No. 265, attached hereto.

BOARD PROCEDURES

The proposed agreements exchanged by the BLF&E and the Carrier for establishment of the Public Law board are at variance with regard to operating procedures to be followed by the board. The BLF&E proposed the following, without specifying time limits on each procedural step:

> "(H) The Board shall hold hearings on each claim or grievance submitted to it. At such hearings, the parties may be heard in person, by counsel or by other authorized representatives as they may elect. The parties may present, either orally or in writing, statements of fact, supporting evidence and data and argument as to their position with regard to each case being considered by the Board. The Board shall have authority to request the production of additional evidence from either party."

The Carrier's proposed agreement, in substance, calls for the following procedures to be utilized by the board (paras. 10-12):

(1) An exchange of written submissions to include "all known relevant, argumentative facts and documents as evidence";

(2) Each party to have 90 days within which to answer the other, with an extension of 30 days if requested;

(3) Each party to have 60 days to file a written rebuttal, if desired, with extension of time by mutual agreement;

(4) Oral hearings to be held only if a request is made in the original submission; and

(5) Except as requested by the merits neutral, no new testimony to be introduced at the oral hearings and no written report to be prepared thereon.

Carrier Position

The Carrier states that there are special problems in relation to the handling of grievances between the Carrier and the BLF&E. Beginning in 1955, for various reasons, representatives of the two parties waived the time limit provisions of Article 30(a)4-6; however, on July 15, 1965, the Carrier reinstated these provisions. During that 10-year moratorium on time limits large numbers of claims were progressed to the office of director of personnel, in form only, which were never subsequently examined or discussed by the parties. The Carrier states that the result is a tremendous backlog of unresolved BLF&E grievance claims at the present time, many of which have not yet been investigated by carrier headquarters officials.

The Carrier believes that these circumstances warrant the establishment of special procedural guarantees if the parties are to have a reasonable

opportunity to investigate and argue the claims and if the Carrier is to be afforded due process of law in handling the claims which are to go before the Public Law board.

The Carrier asserts that special boards of adjustment, as legislative vehicles established to augment the procedures required under the Railway Labor Act, must satisfy the mandate of the Fifth Amendment that all parties be accorded due process of law. The Carrier relies on the definition in the Trainmen's Case that the due process clause of the Fifth Amendment "guarantees no particular mode of procedure but does require adequate notice of opposing claims, reasonable opportunity to prepare and to meet them in an orderly hearing adapted to the nature of the case, and a fair and impartial decision." (Brotherhood of Railroad Trainmen v. Chicago M.St.P. & P.R.Co. (237 F. Supp 404)).

The Carrier suggests that these requirements would be satisfied if the procedures adopted by the Carrier and the Trainmen's Union in PL Board #43 were to be adopted in the instant case. The Carrier states that the procedures suggested are not as time consuming nor as formal as the procedures in use before the First Division, National Railroad Adjustment Board.

It will be noted that the memorandum agreement establishing PL Board #43 required a written submission containing "all known relevant, argumentative facts and documents as evidence." The other party "shall have 90 days to answer such submission" and the party making submission "will have 30 days in which to make written rebuttal." Also "it must be so stated in the submission if oral hearing is desired." Further, "no written report of oral hearing will be made and no new testimony may be introduced in such oral hearing... except the neutral member... may request additional proof... ."

The Carrier states that the nine dockets involved in the present proceeding account for approximately 4,171 individual employee claims most for one day's pay, representing considerable monetary value. To insure reasonable protection in the handling of these claims, the Carrier insists that its proposed procedures be adopted for the merits board.

Organization Position

The BLF&E states that the operating procedures relating to written submissions, procedural time limits, et cetera, as set forth by the Carrier in the proposed agreement for establishment of the Public Law board (paras.10-12), are inflexible and would lead to extremely long delays. The Railway Labor Act and the National Mediation Board rules neither require nor contemplate such elaborately defined procedures. The BLF&E points to the fact that the many board agreements it has entered into with other individual carriers did not contain provisions for such delay and rigid requirements for advance exchange of written submissions, including those for Public Law Boards 137 and 226 which are basically the same as proposed by the Organization in the instant case.

The BLF&E contends that board procedures should be flexible and informal, as was recognized in the decision of Public Law Board No. 46

that... "the Procedural Neutral must also take cognisance of an ancillary reason why the parties seek to establish special boards of adjustment, be they statutory or consensual, and that the parties want to avail themselves of the flexibility and the informality that inheres in proceedings before special boards of adjustment which do not prevail at the First Division... ."

I Board Procedures, Opinion and Award

The proposed agreements for board operating procedures differ on three principal bases. First, the BLF&E proposes the use of hearings as the basic approach supplemented by written statements if desired, whereas the Carrier proposes the use of written statements for presentation of evidence, argumentation and positions of the parties, with oral hearings only if a request is made at the outset of the case. Second, the BLF&E proposal places no time table on the procedural steps, which are described only in general terms. The Carrier proposal, however, establishes time minimums, that is, after initial written submissions, there is a 90-day period within which to respond (plus 30-day extension if requested), and a 60-day period within which to file a written rebuttal (plus extension if requested). This sets a possible minimum of five months duration, unless extensions and/or oral hearings are requested, before the merits board goes into executive session. Finally, the BLF&E proposal gives the merits board authority to request additional evidence, whereas this authority is given only to the merits neutral in the Carrier proposal.

The Carrier proposal, with its emphasis on the written presentation, appears to be patterned generally on the procedures of the National Railroad Adjustment Board which charges the parties with "the duty and responsibility of including in their original written submission all known relevant, argumentative facts and documentary evidence." The BLF&E argues that Public Law 89-456 was designed to provide a method of dispute settlement that would be more flexible and informal than required by the procedures followed in cases put to the Adjustment Board. This procedural neutral finds nothing in the law or the legislative history thereof which refutes the contentions of the Organization on this point.

The Carrier expresses some concern that, because of the background problems in this case, the parties should be assured of due process of law which they translate into adequate notice of opposing claims, reasonable opportunity to prepare and meet them in an orderly hearing adapted to the nature of this case, and a fair and impartial decision.

Re adequate notice of opposing claims, it is to be noted that the basic claims in this case were identified on April 29, 1968, by the BLF&E. Prior to that date, however, all of the claims including those identified as "additional similar" must have been the subject of some "litigation" under Article 30 presumably starting within 60 days of the date on which each occurence was based. Also the abstracts prepared from L&N records and submitted January 30, 1969, should have put the Carrier on notice of the precise claims identification which would possibly emerge from those proceedings. This, in the judgment of the procedural neutral would qualify as adequate notice of opposing claims. For the same reasons, it is concluded that the foregoing time spread has provided the Carrier with a reasonable opportunity to prepare and meet these claims.

Finally, it is the judgment of this procedural neutral that the members of Public Law Board No. 265, including the neutral member to be selected or appointed, are the appropriate persons and should have the latitude to establish operating procedures that will provide an orderly hearing with dates that will be tailored to the circumstances in this case, as it evolves. Therefore, the finding on this phase of the dispute is that the BLF&E proposal on Board operating procedures, Paragraph H, shall be incorporated into the agreement establishing Public Law Board No. 265, attached hereto.

AWARD

That the agreement which establishes Public Law Board No. 265, shall have incorporated therein Paragraph H from the agreement proposed by the BLF&E.

OTHER PROCEDURAL DIFFERENCES

The proposed agreements exchanged by the Carrier and the Organization for establishment of the Public Law board were also at variance on the time table for selecting board members and for holding the first meeting.

The Carrier proposed that the board members shall be named by the carrier and the labor organization "within 60 days after the effective date" of the agreement (para. 4). The BLF&E proposed that these members shall be designated on the effective date of the agreement (para. D).

The Carrier proposed that within 30 days after the partisan board members had been selected, they shall meet to select the neutral member and, if unable to agree within 15 days thereafter, they shall jointly request the National Mediation Board (NMB) to appoint the neutral (para. 5). The BLF&E proposed that within 10 days after execution of the agreement the board members shall select the neutral member and, if unable to agree within 10 days thereafter, either member may request the NMB to appoint the neutral (para. E).

At the hearing, the BLF&E cited the Railway Labor Act and Rule 1207.1(a) and (c) of the National Mediation Board and stated that its proposals (above) conform to the law and these rules. The Carrier expressed no opposition and agreed that the law should prevail.

Finally, the Carrier proposed that the full board shall meet "as soon as practicable" after the neutral is selected (para. 6). The BLF&E proposed that the parties should establish a specific time limit for the first meeting of the full board (para. F).

At the hearing, the Carrier expressed no objection to the BLF&E proposal for establishing the first meeting date within 30 days from the date the agreement is executed.

The Carrier also proposed that nothing in the agreement shall be construed to change existing rules or practices between the parties with respect to time limit of claims and/or grievances (para. 15). The BLF&E states that the inclusion of this could lead to unnecessary arguments about "existing practices". This provision, in the opinion of this procedural neutral, is unnecessary and redundant. The agreement has a provision to the effect that the board shall not have authority to change existing agreements governing rates of pay, rules and working conditions, nor to establish new rules.

x x x x

The foregoing conclusions are reflected in the wording of the agreement for establishment of Public Law Board No. 265, attached hereto.

II THE TIME LIMIT RULE

This relates to the contention of the Carrier that most of the claims included in the nine case dockets which remain to be resolved by the Public Law Board are barred by the time limit provisions of Article 30(a)6.

Article 30(a)6 of the current collective bargaining agreement between L&N and the BLF&E provides as follows:

> "6. Should a claim which is finally declined by the director of personnel within the time specified above not be appealed within 12 months of the date of such declination, further action on the claim is barred and the files covering it will be closed."

It is to be noted that the parties have waived this time limit rule for the claims in two of the nine case dockets, namely Case No. 17 and Case No. 18.

Carrier Position

The Carrier takes the position that most of the pending claims involved in this dispute are barred by the time limit provisions of Article 30(a)6 of the agreement between the Carrier and the employees represented by the BLF&E.

The Carrier states that there are three elements requiring consideration in this issue. One of these is the time limitation for appeal from the declination. The second is the statutory jurisdiction of the appellant board. And the third element is the form in which the appeal is made. The Carrier asserts that a time claim has not been appealed until it is (1) appealed within the 12-month period permitted for such action under Article 30; (2) appealed to a tribunal having jurisdiction thereof; and (3) appealed in the proper form.

The Carrier states that the parties have consistently construed Article 30(a)6 to mean that written submissions must be filed with the National Railroad Adjustment Board within the 12-months limit from date the claim is declined.

This construction of the rule, according to the Carrier, is supported by many awards of the NRAB and in particular Award No. 20015 of the First Division which dealt with the construction of Article 30(a)6 of the agreement between the L&N and the BLF&E. In that case, the employees advised the carrier before the expiration of the 12-months time limit of their intent to appeal, but the appeals were submitted to the First Division more than 12 months after they had been declined by the Carrier's

director of personnel. The Board dismissed the claims as having been over by the time limit rule.

With respect to the question of statutory jurisdiction, the Carrier points to the Railway Labor Act, as amended, which provides that a Public Law board does not come into existence until such time as the Carrier and the employee representative reach agreement "establishing such a board". Where, as in this case, the parties are unable to agree concerning procedural aspects, including the jurisdiction of the board, the board does not come into existence until the procedural neutral has resolved those questions in his award. The conclusion of the Carrier is that the claims in question have not been appealed to an established statutory adjustment board as required by Article 30 of the agreement.

The Carrier asserts that the employee claimants were not left without an adequate remedy. All of the claims listed could have been referred at any time to the National Railroad Adjustment Board (NRAB).

The Carrier also refers to Award #2036, Fourth Division, NRAB, in which that Board decided that a claim is appealed only when it has been submitted to the proper division of the Board. Submission of a claim to another division does not toll the time limit rule, and if the claim expires while pending in the wrong jurisdiction, it is barred or dead and no longer appealable to another division.

Finally, the Carrier contends that no claim has been appealed until it is appealed in the proper form. The Organization's letter, dated April 29, 1968, requesting establishment of a Public Law board does not constitute an appeal as contemplated by Article 30. Possibly the letter might be construed as an intent to appeal certain time claims; however, the BLF&E has not yet identified all of the claims they intend to appeal.

The Carrier states that where, as here, the parties fail to agree upon the cases to be assigned to the Public Law board, the procedural neutral has the responsibility, by statute, of determining the board's jurisdiction including the identification of cases which will be assigned. The claims which are barred by the employees' failure to appeal the Carrier's declination of the claim within the time required by Article 30 should not be assigned. The barred claims are no longer contestable because of the employees' failure to proceed in accordance with the agreement.

Organization Position

With regard to the issue raised by the Carrier that the case dockets are barred under the provisions of the time limit on claims rule in Article 30, the BLF&E takes the position that this procedural board does not have the authority to decide the proper interpretation of Art. 30, nor can it resolve the merits of these disputes. The BLF&E states, however, that this board does have the authority to decide that these claims were submitted (appealed) to a tribunal (PL board) having jurisdiction, on April 29, 1968, and therefore the running of time under Art. 30 was held in abeyance (or tolled).

The BLF&E submitted data concerning the nine case dockets in question which reflects the following:

1. Two of the nine cases (#27 & #28) have been exempted by the parties from the contract rule that a claim is barred if it is not appealed within 12 months of the date on which it is finally declined by the director of personnel (Art. 30(a)6).

2. One case is a discipline matter (#DR00993) and, pursuant to Art. 30(a)6, the time limit rule does not apply.

3. For the remaining six cases (#332, #282, #55, #392, #390 and #391) the 12-month period within which an appeal must be made had not expired as of April 28, 1968, but would have expired between 7/28/68 and 11/1/68.

The only "time" question for this procedural board to decide according to the BLF&E, is did the time cease to run on these case dockets when the Organization submitted the letter, dated April 29, 1968, requesting establishment of a Public Law board to resolve those claims? The BLF&E answers the foregoing in the affirmative and contends that these cases were not barred by the time limits rule contained in Art. 30(a)6 of their collective bargaining agreement with the L&N.

In support of this position, the BLF&E relies on the decisions reached by Public Law Boards #64 and #71. The procedural award of Public Law Board No. 64 held that the Organization's written request to establish a Public Law board, listing the cases to be heard by the board, and the Carrier's reply that it would join in establishment of the board, served to satisfy the time limits for filing cases in accordance with the schedule rule. The award held:

> "The record here reveals that a proper party in interest made a timely request upon the other party in interest for the establishment of a statutory special board of adjustment and attached to its request a list of claims otherwise referrable to the National Railroad Adjustment Board. The other party, despite its announced and declared reservations and objections, replied that it would join in the establishment of such a board and at the same time designated the individual who would be its representative on the board. The Neutral must hold that these actions are sufficient under the Statute to at least halt the running of the time limits on the claims in question. * * *"

The award of Public Law Board No. 71, held that:

> "* * * It would appear that the Time Limit Rule was complied with thereby but, in any event, the letter seeking establishment of this Law Board constituted timely proceedings for final disposition of the claim. The letter requesting the establishment of this Law Board dated March 5, 1966, was

within one year from the date of the highest officer's decision and satisfied the requirement of the rule."

In conclusion, the BLF&E contends that the cases to be considered by the Public Law board are not barred by the time limits applicable to such claims.

II Opinion and Award

The issue here is whether six cases identified as Nos. 332, 282, 55, 392, 390 and 391 (supra) are barred by the time limit provisions of Article 30(a)6. This Article provides that should a claim not be appealed within 12 months of the date of declination by the director of personnel, further action on the claim is barred. In all six cases the 12-month period was due to expire during the period July 18, 1968 to Nov. 1, 1968.

The Carrier contends that these cases are barred because they were not appealed in the proper form to an existing tribunal having jurisdiction thereof within the 12-month period permitted for such action. The Organization contends that the time ceased to run on these case dockets under Article 30(a)6 as of April 29, 1968, the date upon which the BLF&E requested the Carrier to agree to establish the Public Law Board.

Pertinent language in the Railway Labor Act, as amended by Public Law 89-456, on this subject, is as follows:

> "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, ... the carrier... upon whom such request is made shall join in an agreement establishing such 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... " (underscoring added). (Section 3, Second).

One contention of the Carrier is that, inasmuch as the parties are unable to agree concerning procedural aspects, including board jurisdiction, the board will not come into existence until the procedural neutral issues his award. This neutral finds nothing in the Railway Labor Act, as amended, or in the legislative history which would warrant the conclusion that a formally executed agreement would be required before a Public Law board may be considered as being in existence, at least for the limited purpose of stopping the running of time limits on claims.

The right spelled out in the Railway Labor Act to invoke the special board of adjustment procedure for resolution of disputes is not conditioned upon the consent of the other party, in this case the Carrier. Basically, the Act provides that when one of the parties serves a written

request on the other party to establish such a board, the Board shall (not may) come into existence. True, there are certain time elements and procedural requirements when the parties do not agree, but the significant import of this legislation is that a statutory right accrues, in this case to the Organization, to have a Public Law Board. The only uncertain aspect and one that is not under the exclusive control of the moving party, is as to the precise date that an agreement will be consummated for establishment of the board.

The evidence presented in this case reflects that on April 29, 1968, the BLF&E made a written request on the L&N "for the establishment of a special adjustment board" for the purpose of resolving the disputes listed on Attachment A. There is no evidence that the Carrier opposed the establishment of such a board. In fact, on May 28, 1968, the Carrier presented its proposed agreement for establishment of the special board, and on July 6, 1968, the L&N designated the Carrier Member. Negotiating sessions were also conducted from time to time. The evidence is clear that the only obstacle to an executed agreement for establishment of the board was the differing views as to the contents thereof and the assumption is inevitable that there will be a written agreement giving formal recognition to the existence of a Public Law board in this case.

This procedural neutral finds from all of the evidence before him that there existed a de facto Public Law board as of April 29, 1968, for the limited purpose of stopping the running of time limits on those claims listed by the BLF&E on its Attachment A. It is concluded, therefore, that the request of the BLF&E, dated April 29, 1968, for establishment of a Public Law board complies with the requirements of the time limit rule of Article 30 in the current agreement between the L&N and the Organization.

AWARD

That Article 30 (time limit rule) of the current craft agreement between the parties does not bar the claims which the BLF&E listed for resolution by Public Law Board No. 265.

III CLAIM OF ENGINEER ANDERSON

This issue arises out of the following claim which the Brotherhood of Locomotive Firemen and Enginemen (BLF&E) included in the nine cases remaining for disposition by the Public Law Board to be established by agreement:

> "Case No. 392... P.L.B. #6. Claim of SCNA Division Engineer H. E. Anderson... for one outside hostling day... in addition to... tour of duty on Train 72, February 11, 1967."

The issue is raised by the definition of board jurisdiction contained in the Carrier's proposed agreement, that "2. Such board shall have jurisdiction over claims and grievances submitted to it under this agreement arising out of the interpretation of agreements covering wages, rules or working conditions between the carrier and the employes of said carrier represented by the Brotherhood of Locomotive Firemen and Enginemen." (underlining added).

The BLF&E comparable proposal on board jurisdiction is that "(B) Such board shall have jurisdiction of claims and grievances, submitted to it under this agreement, arising out of the interpretation of agreements governing rates of pay, rules or working conditions."

Carrier Position

The Carrier takes the position that the claim of Engineer Anderson should not be submitted to the Public Law board for resolution. The Carrier maintains that all service performed by a locomotive engineer during his day or tour of duty is subject to the rates of pay and working conditions set forth in the current collective bargaining agreement between the carrier and the organization which represents its engineers, the Brotherhood of Locomotive Engineers (BLE). Specifically, while performing duties as an engineer, Engineer Anderson is entitled to compensation only under the terms of the BLE agreement. For this reason it is improper for the Firemen's union (BLF&E) to file and/or progress a claim for compensation of an engineer under the provisions of the current bargaining agreement covering firemen and hostlers.

The issue raised by this claim, according to the Carrier, is whether work being performed by a locomotive engineer in the course of duties assigned him by the carrier as an engineer is governed by the agreement between the carrier and the BLE, or by the agreement between the carrier and the BLF&E. This is in reality a jurisdictional dispute involving the interpretation and coordination of the collective bargaining agreements of the two crafts and only the National Railroad Adjustment Board has the statutory jurisdiction to make a binding determination thereof.

The Carrier states that it has a right to a final and binding determination as to which of the two agreements governs the claim of Engineer Anderson. A Public Law board does not have the statutory power to make this determination and no amount of notice to the third-party union can increase the statutory jurisdiction of such a board. Further, because

of the way in which these boards are established under the statute, with each party appointing one member of the board, it is never possible for the interests of the third-party union, not having a board member, to be adequately represented.

The Carrier refers to the statute, 45 U.S.C.A. Sec. 153, to illustrate the difference between the purposes and organizational structure of the National Railroad Adjustment Board (NRAB) and those of Public Law boards. With respect to disputes referable to the NRAB the statute states "disputes between an employee or group of employees may be referred by the parties or by either party to the appropriate division of the adjustment board". (underscoring added). The emphasis here is upon disputes between individual employees and the carrier. Since the NRAB is composed of representatives of such individuals who function on a national level, rather than the individuals actually involved in the dispute, the NRAB can handle those complaints fairly and expeditiously.

On the other hand, the statutory provision dealing with special boards of adjustment makes reference to disputes between the carrier and "the representative of any craft or class of employees of such carrier". The emphasis here is on disputes between the carrier and the representative of the craft or class. It is obvious that Congress was creating a specialized vehicle for the arbitration of great numbers of disputes between carriers and the bargaining agent of each of the crafts, with whom the carrier had a bargaining agreement. The Carrier asserts that it was Congress' purpose that only those disputes which clearly involve the interpretation and application of a single collective bargaining agreement for a single craft would be referable to Public Law boards.

The Carrier takes the position that this case falls clearly within the holding of the U. S. Supreme Court in Transportation-Communication Employees Union v. Union Pacific Railroad (385 US 157 (1967)), namely that inter-union jurisdictional disputes can be resolved only by the National Railroad Adjustment Board. It is only before the NRAB, under procedure required by the T-CEU case, that the interests of all parties can be adequately protected and that the carrier can be assured of a uniform interpretation where the interests of two crafts are involved.

The Carrier also cites the decision of Public Law Board #87, in support of its position that inter-union disputes are beyond the statutory jurisdiction of Public Law boards and must be submitted to the National Railroad Adjustment Board (NRAB). In #87, the procedural neutral concluded that a Public Law board lacks the power to render a fair and binding decision conclusive of the rights of all parties to an inter-union dispute over work assignments and, therefore should leave such questions to NRAB which, pursuant to the Supreme Court decision in the T-CEU case, has both the power and the duty to render decisions binding both crafts and organizations.

Exhibit E submitted by the Carrier is a copy of a letter dated January 10, 1969, four days before the hearings, addressed to the Carrier from the General Chairman of the Brotherhood of Locomotive Engineers, stating:

"This will confirm our previous oral objections to the establishment of a special board of adjustment, pursuant to Public Law 89-456, by the Brotherhood of Locomotive Firemen & Enginemen on the Louisville & Nashville Railroad for the purpose of handling claims filed by or in behalf of locomotive engineers.

"In the event our objections are overruled, this is to advise we desire to be notified when neutral is selected, so that the interest and contractual rights of locomotive engineers can be protected, and proper interpretation of agreement rules between the Carrier and the Brotherhood of Locomotive Engineers may be assured."

In conclusion, the Carrier contends that the claim of Engineer H. E. Anderson is not within the statutory jurisdiction of the Public Law Board and should not be included in the list of cases to be handled by the board on the merits.

Organization Position

The Organization (BLF&E) describes this issue as a question of jurisdiction of the Public Law Board to hear claim #8 of Engineer Anderson which involves an interpretation of their collective bargaining agreement relating to hostling work.

The BLF&E states that there is a well established practice that employees of the Carrier begin their employment in engine service by working as locomotive firemen. Following training and experience while working as firemen and the taking of promotional examinations, firemen are qualified as locomotive engineers. Firemen are called in the order of their relative standing on the firemen's seniority roster to work as locomotive engineers and they thus acquire a seniority date as engineers. Engineers and firemen who have been promoted to engineers hold seniority concurrently in both crafts.

This is true in the case of claim #8, according to the BLF&E. Engineer Anderson holds seniority concurrently in the craft of firemen and in the craft of locomotive engineers. The claim was made by him as an individual and under the collective bargaining agreement negotiated by the BLF&E with the Carrier, which defines and covers hostling. Specifically, this claim was filed under Article 42 of that agreement. This claim, it is asserted, does not involve the interpretation of the Engineer's agreement.

The BLF&E states that Article 32 of this BLF&E agreement recognizes that (1) the right to interpret the agreement is vested in the officials of the BLF&E and the Carrier; and (2) any engineer or fireman has the right to have the regularly constituted committee of his organization represent him in the handling of his grievances.

To demonstrate that the Carrier recognizes that the BLF&E interprets Article 42 when an engineer files a claim thereunder the BLF&E written

statement presented at the hearing quotes two letters reflecting that the Carrier had written to the BLF&E General Chairman for interpretation of Article 42 where the Engineers' union (BLE) was handling hostling claims for engineers under Article 42.

Further, it is pointed out that the original list of 27 cases for this Public Law Board included other similar claims handled by BLF&E on behalf of engineers under Article 42. Since April 29, 1968, when the list was prepared, five listed cases involving claims of engineers performing hostling work were settled by the Carrier. A specific illustration is the claim of Engineer Witt (Case PLB #4) "for an additional day's pay at the hostling rate... ." This involves the same principle as the disputed claim, and the Carrier and BLF&E settled the Witt claim. Four of the other listed claims submitted on behalf of engineers, but not involving hostling, were also settled by the parties.

The BLF&E points to a long history of handling engineers hostling claims through its organization and, therefore, the Carrier is inconsistent in now asserting that claims for compensation under the BLF&E agreement should not be submitted to this Board.

The BLF&E cites the decisions of procedural neutrals establishing the jurisdiction of Public Law Boards Nos. 137 and 226 in support of its position. In No. 226 it was held that a Public Law board composed of the BLF&E and a carrier had jurisdiction to dispose of grievance disputes submitted by the BLF&E on behalf of employees working in the craft of locomotive engineers which involve interpretations of the engineers' agreement, obtained by the board from the BLE. This established principle, it is asserted, would certainly enable a BLF&E Public Law Board to consider a claim of an employee, working as an engineer, but which involves an interpretation of the BLF&E agreement for the craft of firemen and hostlers. The decision of Board No. 226 discusses about 18 Public Law boards established by agreement between the BLF&E and various carriers which provide for the handling of claims submitted by that organization on behalf of engineers.

The BLF&E notes the conclusion of Public Law Board No. 137, that members of the BLF&E can designate it to represent them before the carrier and before the National Railroad Adjustment Board with reference to time claims and grievances occurring while these employee members performed the services of locomotive engineers under the BLE engineers agreement. This decision, according to the BLF&E, was based in part on the statutory (Railway Labor Act) guarantee to an individual employee of the right to prosecute his grievance through any representative he may designate.

The BLF&E also relies on the appellate court decision in the McElroy case which declared invalid an agreement between BLE and a railroad that provided that employees working as locomotive engineers must be represented exclusively by the BLE as to grievance disputes. These employees had seniority status both as firemen and as engineers. The holding of the court was that "these plaintiffs, already members of the Firemen's union can designate that union to represent them on the Terminal property and before the National Railroad Adjustment Board with reference to time

claims and disciplinary investigations occurring while plaintiffs performed the services of locomotive engineers." (McElroy v. Terminal RR Ass'n - 392 F. 2d 566. (1968)).

Finally, the BLF&E insists that this claim does not involve a "third party" dispute nor is there anything jurisdictional about this case, as the carrier contends. In conclusion, the position of the Organization is that the BLF&E has undisputed right to interpret Article 42 of its agreement with the Carrier before the proposed Public Law Board regardless of who filed the claim and, therefore the claim of Anderson is a case that is properly before that board.

III Opinion and Award

The issue presented here is whether this procedural neutral shall include the claim of Engineer Anderson in the cases to be considered on their merits by the Public Law Board.

Engineer H. E. Anderson has selected the BLF&E to prosecute a claim "for one outside hostling day", in addition to his tour of duty as locomotive engineer on Train 72, February 11, 1967, said claim being filed under Article 42 of the current BLF&E-L&N agreement which defines and covers hostling. He holds seniority concurrently in both the BLF&E, representing the craft of locomotive firemen and hostlers, and the BLE, representing the craft of locomotive engineers.

The right of Engineer Anderson, as an individual employee of the L&N, to select the BLF&E as his representative for the purpose of prosecuting a claim appears to be well established.

The Railway Labor Act, Section 2, Second, provides that all disputes between a carrier and its employees shall be considered in conference between representatives designated and authorized so to confer, respectively, by the carrier and by the employees thereof interested in the dispute. This provision guarantees to an individual employee the right to prosecute his grievances through any representative he may designate. Further, the Act provides that the parties may be heard either in person, by counsel, or by other representatives, as they respectively elect (underscoring added) Section 3, First (j). Thus, it appears that Congress granted employees the right to choose any representatives to act on their behalf in handling minor disputes before the National Railroad Adjustment Board, and before special boards of adjustment under Public Law 89-456. In addition, the current agreement between the L&N and the BLF&E provides that, "the right of any engineer, or fireman to have the regularly constituted Committee of his organization represent him in the handling of his grievances, under the recognized interpretation placed upon the schedule involved by the officials of the Railroad and the General Committee making the same, is conceded." (Article 32(b)).

The Organization has presented substantial evidence that it has been a common practice for the BLF&E to handle claims for engineers, and that Public Law boards composed of the BLF&E and the respective carriers have assumed jurisdiction of claims involving engineers. In support of this, the BLF&E relies primarily on the decisions of procedural neutrals establishing Public Law Boards Nos. 137 and 226, as well as the Federal court decision in the McElroy case. The similarity between the three cases and the Anderson claim is that in each the engineer claimants chose the BLF&E to represent them. The significant difference is as to what craft agreement should apply. In all three cited cases the disposition of the claims for engineering work required an interpretation of the agreement between the BLE and the carrier. Engineer Anderson's claim, on the contrary, is founded on Article 42 of the BLF&E agreement and the Organization contends that the Engineers' craft agreement is not pertinent.

The issue raised by the Anderson claim, according to the Carrier, is whether work being performed by a locomotive engineer in the course of duties assigned him by the carrier as an engineer is governed by the agreement between the carrier and the BLE, or by the agreement between the carrier and the BLF&E. This, the Carrier argues, constitutes a jurisdictional dispute involving the interpretation of two craft agreements and only the National Railroad Adjustment Board has the statutory jurisdiction to make a binding decision.

Two cases cited by the Carrier in support of this position are (1) the U. S. Supreme Court decision in the T-CEU case that inter-union jurisdictional disputes can be resolved only by the National Railroad Adjustment Board (NRAB) and (2) the decision of the procedural neutral of Public Law Board No. 87, that PL boards lack the power to render a fair and binding decision conclusive of the rights of all parties to an inter-union dispute and, therefore, should leave such questions to the NRAB, which has both the power and the duty to render decisions binding both crafts.

It is appropriate to observe that the two cases on which the Carrier relies were work assignment disputes. The T-CEU case involved conflicting claims of two unions under their respective agreements to have new jobs created by automation assigned to their members. The claim involved in Board 137 was classed as a typical third party claim in that it resulted from work being assigned to employees represented by other labor organizations, which work the BRT claims should have been assigned to an employee in the classification it represents.

The Carrier insists that it has a right to a final and binding determination as to whether its agreement with the Engineers' union or its agreement with the Firemen's union governs the claim of Engineer Anderson. Regardless of any logic which may be reflected in this position, this procedural neutral is not confronted with a question of which of two craft agreements is applicable. Rather, the Organization has put to this procedural board the narrow issue, is Engineer Anderson entitled to compensation "for one outside hostling day" under the provisions of Article 42 of the current agreement between the Carrier and the BLF&E?

This is a question which the Public Law board can answer by the interpretation and application of the L&N-BLF&E craft agreement. The right to interpret this craft agreement is clearly vested in officials of the L&N-BLF&E, pursuant to Article 32 and inasmuch as the Public Law board is composed of representatives of those officials, there should be no compelling reasons for interjecting any problems with respect to the so-called "third party" interests. The BLF&E insists that the BLE agreement is not pertinent and this case does not present any dispute over work assignments.

Finally, cognizance must be taken of the fact that five of the 27 cases on the original list intended for disposition by this Public Law board involved claims for engineers performing hostling work and, according to the Organization, those have since been settled by application of Article 42, (whether or not compromises were involved).

The reasons set forth above, in the judgment of this procedural neutral, warrant the conclusion that the claim of Engineer Anderson "for one outside hostling day" shall be processed by the Public Law board under Article 42, of the current BLF&E agreement.

AWARD

That Public Law Board No. 265 has jurisdiction over the hostling claim of Engineer H. E. Anderson, for processing under Article 42 of the BLF&E agreement.

* * * * * * * * * * *

For the Organization:

R L McAbee
Name

Vice President UTU
Title

For the Carrier:

Name

Title

Approved:

John E. Dietz
John E. Dietz
Procedural Neutral

May 27, 1969
Date