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September 21, 2004

Mr. Roland Watkins
Director of Arbitration
National Mediation Board
1301 K Street NW, Suite 250 East
Washington, DC 20005-7011

Re: NMB Docket No. 2003-01N (NPRM)

Dear Mr. Watkins:

Enclosed a corrected copy of page 6 from my correspondence of yesterday September 20, 2004 for insertion in the official copy. Sorry for the inconvenience.

Very truly yours,

BAPTISTE & WILDER, P.C.

By: 
Roland P. Wilder, Jr.

The stated reason for the fee schedule is "to encourage the parties to make the most efficient use of the NMB's program of arbitration services." 69 Fed. Reg. 48179. The greater "efficiency" presumably will result from the filing of fewer cases due to cost considerations. The problem with this approach, of course, is that it conflicts with the statutory purpose of assuring that all grievances and other minor disputes are subject to a mandatory dispute resolution process. In 1934, over this organization's "vehement objection," *BRT v. Chicago, R. & I. R.R.*, 353 U.S. 30, 39 (1957), rail labor yielded its right to strike over minor disputes in return for compulsory arbitration. Id. The cost of proceedings before the NRAB and the regional adjustment boards was to be borne by the Government. [2]/

It was well understood by the supporters and opponents of compulsory arbitration that disputes could "pile up" at both the national and regional adjustment boards. But, that was considered a worthwhile price for assuring the resolution of minor disputes without the threat of rail strikes. The trade-off represented by § 3 would not have occurred if the cost of progressing disputes before the NRAB and the compensation of referees had to be paid by the organizations. Then, as now, the much greater financial resources of rail carriers would have afforded management an enormous advantage over rail labor in any method of dispute resolution calling for decisions by neutrals after adversary hearings. Even today, in the airline industry, organizations are often strained to halt a series of contract violations committed by a determined carrier because of the costs of proceeding to one arbitration after the next.

The language of the Act is plain in showing that Congress did not intend to risk breakdown of the adjustment board by saddling the organizations with penalties or costs for using § 3's procedures. To the contrary, it was Congress' intention to funnel all minor disputes into that procedure. So adamant was Congress to assure that the costs of dispute resolution would not frustrate the orderly adjustment of minor disputes that it even prescribed in § 153(p) the very first fee-shifting provision in labor legislation. Payment of the costs of arbitration was revisited in 1966 when Congress created public law boards to alleviate the NRAB's congested docket and, rebuffing the carriers' opposition, again required the NMB to pay for referee compensation.

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[2] That the Government was to pay the entire cost of arbitration is made clear by the legislative history of the 1934 amendments, especially the testimony of Commissioner Eastman, which is detailed in the comments of TTD's Rail Labor Division and need not be restated here.

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