

Comments of Richard K. Radek, Vice President  
Brotherhood of Locomotive Engineers and Trainmen  
Rail Conference - International Brotherhood of Teamsters

Before the National Mediation Board  
January 11, 2005

My name is Richard K. Radek, and I serve as Vice President and Director of Arbitration of the Brotherhood of Locomotive Engineers and Trainmen headquartered in Cleveland, Ohio. I have served as Vice President since 1996, as Director of Arbitration since 1991, and as a Member of the National Railroad Adjustment Board since 1982, making me the senior Member of that Board. I am also a charter member of the Section 3 Committee. I believe my tenure as a Board Member, my activity on the Section 3 Committee and its various working groups, and my experience as a union officer specializing in arbitration all allow me a fairly comprehensive perspective of how the proposed rulemaking may adversely impact the Section 3 process. I would like to briefly discuss some thoughts I have had concerning the rulemaking, and ask you consider them, before the Board would proceed with the rulemaking.

Labor Relations in the railroad industry has been described by interested observers through the years as "unique,"<sup>1</sup> "esoteric,"<sup>2</sup> and sometimes, in somewhat less ingratiating terms. The Railway Labor Act ("the Act"), as you well know, came into being by an agreement of the parties, and, in the estimation of most practitioners working under it, has since its inception accomplished its intended purposes quite reasonably well. With respect to Section 3 in particular, there has been some fine-tuning over the years that has greatly contributed to the Act's longevity, such as the important 1934

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1. Dana E. Eischen, *The Railway Labor Act At 50*, Chapter II, p.23, NMB 1976.

2. Charles A. Powell III, *et.al.*, *The Railway Labor Act*, Foreword, p. ix, BNA Books, 1995.

and 1966 amendments, and, more recently, certain administrative measures formulated to streamline and boost the efficiency of the Section 3 process.

This current National Mediation Board ("Board"), like previous Boards, has taken an active interest in the administration of the process, and such interest, when it is embodied in a spirit of responsible, user-responsive and cooperative custodianship, is commendable. The Section 3 Committee, established at the behest of the Board to explore ways to improve the cost effectiveness of the process, is a good example of the manifestation of that spirit. I will not elaborate further here concerning the Section 3 Committee because other commentators have remarked about the benefits derived from such co-operative approaches, and, moreover, the Board, I am sure, is familiar with the successes the Section 3 Committee achieved in the past.

However, the Board now seems intent upon an abandonment of the co-operative approach and is considering unilaterally imposing user or filing fees on the parties hoping to quell the number of disputes being fed into the Section 3 machinery. I am not going to engage in argument here whether there are too many cases, not enough cases, frivolous cases or unnecessary cases. I simply want to say I don't think the imposition of a fee, assuming for discussion the imposition of such a fee is legal, would, in itself, result in any significant reduction of the number of cases entering the process. The only way to reduce the number of cases coming into the system is to have fewer cases unresolved on the properties, and that is a matter that the parties themselves must address. If the parties are going to substantially reduce the number of unresolved disputes, they must overcome parochial political obstacles and freely infuse their grievance handling with good faith.

This is possible. For example, new grievance handling agreement provisions between this Organization and three CN/US Carriers (Illinois Central, Wisconsin Central and Grand Trunk)

reduced the number of cases reaching arbitration by more than 80 per cent as compared to the time prior to the new agreements. But the opposite can also come true.

Hundreds upon hundreds of cases were filed in 2001 and 2002 involving this Organization and the Union Pacific Railroad Company.<sup>3</sup> All these hundreds of cases turned on the same handful of issues and could easily have become a few pilot or lead cases. Unfortunately, because of the Carrier's refusal to do so, none of the cases were combined into lead cases. Indeed, not even an abeyance agreement, an arrangement where time limits on like claims are waived while one case to control the lot goes forward, could be reached. Not even the good offices of this Board (although things looked promising for an hour or two) could dissuade the Carrier from its recalcitrance.

Now throw filing fees into this stew pot. As we understand the proposal, the Organization would be required to pay a filing fee for each case. Carriers, we have seen, can force many, many claims to be handled as discrete, separate cases regardless of their commonality. This practice could escalate. The cost to the Organization to arbitrate the totality of these cases, even if they were eventually combined after they were filed at the Adjustment Board or a Public Law Board, could be enormous. The Organizations do not have the deep pockets of the Carriers, and large amounts of money going to filing fees could cause undue financial burden or destabilization and impair the Organizations' ability to effectively engage in collective bargaining.<sup>4</sup> This would frustrate an important provision of the Act - - that the Organizations be able to carry out the Act's purposes.<sup>5</sup>

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3. See chart attached to the transcription of these comments : "UP Dockets On Hand," and note First Division Awards Nos. 25477 and 25916, also attached, the first and last of 439 identical cases filed and later withdrawn for submission to a public law board.

4. I.B.E.W.et.al. V Foust, 442 U.S. 42 (1979).

5. 45 U.S.C. § 151a.

We do not believe that the Board intended to propose a fee that could lead to financial overburdening of the Organizations, but as you can now see from the example of the Union Pacific cases, the necessary elements for such an eventuality have already occurred.

Filing fees could create another problem of a practical nature for the Organizations, but with legal (duty of fair representation) implications. Many of the claims handled for our membership involve bonafide contractual violations, but relatively small monetary claim amounts. General Committees could be placed in a position where filing a case could cost ten or fifteen times the amount of the claim. For example, a claim might involve a \$5.00 shortage for an engineer certification payment. Is the Organization correct to decline handling of the claim because it would be fiscally damaging or irresponsible to do so? How does the Organization balance its responsibility to protect individual members' rights under the collective agreement against the need to have sufficient resources to represent its membership collectively?

There are times that procedures enacted to accomplish something that might be viewed as desirable have unexpected or unintended consequences that are not desirable at all or cause more damage than they do good. I believe this would be true of the imposition of user or filing fees for Section 3 arbitration cases. While I would echo the concerns of others opposed to the imposition of fees on a variety of grounds, I strongly urge the Board to think about the potential for deleterious practical effects upon the process that the fees will likely provide. Please consider prevention of such consequences by abandoning the notion of imposing filing or user fees for Section 3 arbitrations.

Thank you for extending me the opportunity to speak and for your attention.

UP DOCKETS ON HAND  
1/4/2005

11802	45511	UP(CNW)	Y RULES	Not awarded CORE Trainer position
11802	45512	UP(CNW)	Y RULES	Not awarded CORE Trainer position
20102	45538	UP(CNW)	Y RULES	Not furnished lodging within twenty minutes of arriving at AFHT
20102	45539	UP(CNW)	Y RULES	1ST OF 12 SEQUENTIAL DOCKETS - Failure to implement work/rest cycle extra board
20102	45580	UP(CNW)	Y RULES	LAST OF 12 SEQUENTIAL DOCKETS - Failure to implement work/rest cycle extra board
30802	45589	UP(CNW)	? RULES	Work not in connection with own assignment - inbound engr turning power for outbound
30802	45570	UP(CNW)	? RULES	Work not in connection with own assignment - inbound engr turning power for outbound
30802	45571	UP(CNW)	? RULES	Work not in connection with own assignment - inbound engr turning power for outbound
30802	45572	UP(CNW)	? RULES	Work not in connection with own assignment - inbound engr turning power for outbound
32902	45579	UP(CNW)	? RULES	Work not in connection with own assignment - inbound engr turning power for outbound
50302	45602	UP(CNW)	Y RULES	1ST OF 112 SEQUENTIAL DOCKETS - Boone water cooler claims
50302	45713	UP(CNW)	Y RULES	LAST OF 112 SEQUENTIAL DOCKETS - Boone water cooler claims
62802	45832	UP(CNW)	Y RULES	No storm window
62802	45833	UP(CNW)	Y RULES	No storm window
62802	45834	UP(CNW)	Y RULES	No storm window
62802	45835	UP(CNW)	Y RULES	No storm window
62802	45836	UP(CNW)	Y RULES	No storm window
62802	45837	UP(CNW)	Y RULES	No storm window
62802	45838	UP(CNW)	Y RULES	No storm window
62802	45839	UP(CNW)	Y RULES	No storm window
72802	45848	UP(CNW)	Y RULES	Denied meal period in pool service
80902	45854	UP(CNW)	? RULES	Not called for relief service
122002	45897	UP(CNW)	? RULES	\$10 allowance in suburban service
31502	45573	UP(E)	Y DISCIPLINE	Level 1 - Missed calls
31502	45574	UP(E)	Y DISCIPLINE	Level 2 - Late reporting P.I. - not readily apparent
31502	45575	UP(E)	Y DISCIPLINE	Level 3 - multiple reverse moves w/o authority
42602	45600	UP(E)	Y DISCIPLINE	Level 4 - occupy main track w/o authority
50302	45714	UP(E)	Y DISCIPLINE	Level 4 - Stop signal
51002	45720	UP(E)	Y DISCIPLINE	Level 4 - stop signal
51002	45721	UP(E)	Y DISCIPLINE	Level 4 - Dark signal efficiency test
51002	45723	UP(E)	Y DISCIPLINE	Level 4 - Dark signal efficiency test
51002	45724	UP(E)	Y DISCIPLINE	Level 4 - Stop signal
51702	45815	UP(E)	Y DISCIPLINE	Level 4 - Train handling
111502	45879	UP(E)	Y DISCIPLINE	Level 4 - Entering joint track/time w/o auth.
121302	45894	UP(E)	Y DISCIPLINE	Level 2 - Absenteeism Same Claimant - Docket 45944
122702	45902	UP(E)	Y DISCIPLINE	Level 2 - Absenteeism
122702	45903	UP(E)	Y DISCIPLINE	Level 2 - Absenteeism

**NATIONAL RAILROAD ADJUSTMENT BOARD  
FIRST DIVISION**

Award No. 25477  
Docket No. 45136  
03-1-01-1-U-2276

Award No. 25478  
Docket No. 45137  
03-1-01-1-U-2277

Award No. 25479  
Docket No. 45138  
03-1-01-1-U-2278

Award No. 25480  
Docket No. 45139  
03-1-01-1-U-2279

Award No. 25481  
Docket No. 45140  
03-1-01-1-U-2280

Award No. 25482  
Docket No. 45141  
03-1-01-1-U-2281

Award No. 25483  
Docket No. 45142  
03-1-01-1-U-2282

Award No. 25484  
Docket No. 45143  
03-1-01-1-U-2283

Award No. 25485  
Docket No. 45144  
03-1-01-1-U-2284

Award No. 25486  
Docket No. 45145  
03-1-01-1-U-2325

Award No. 25487  
Docket No. 45146  
03-1-01-1-U-2326

Award No. 25488  
Docket No. 45147  
03-1-01-1-U-2327

Award No. 25489  
Docket No. 45148  
03-1-01-1-U-2328

Award No. 25490  
Docket No. 45149  
03-1-01-1-U-2336

Award No. 25491 ✓  
Docket No. 45150  
03-1-01-1-U-2337

Award No. 25492  
Docket No. 45151  
03-1-01-1-U-2339

Award No. 25493  
Docket No. 45152  
03-1-01-1-U-2340

Award No. 25494  
Docket No. 45153  
03-1-01-1-U-2341

Award No. 25495  
Docket No. 45154  
03-1-01-1-U-2342

Award No. 25496  
Docket No. 45155  
03-1-01-1-U-2343

Award No. 25497  
Docket No. 45156  
03-1-01-1-U-2344

Award No. 25498  
Docket No. 45157  
03-1-01-1-U-2345

Award No. 25499  
Docket No. 45158  
03-1-01-1-U-2346

Award No. 25500  
Docket No. 45159  
03-1-01-1-U-2347

Award No. 25501  
Docket No. 45160  
03-1-01-1-U-2348

Award No. 25502  
Docket No. 45161  
03-1-01-1-U-2349

Award No. 25503  
Docket No. 45162  
03-1-01-1-U-2350

Award No. 25504  
Docket No. 45163  
03-1-01-1-U-2351

Award No. 25505 ✓  
Docket No. 45164  
03-1-01-1-U-2352

Award No. 25506  
Docket No. 45165  
03-1-01-1-U-2353

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Award No. 25477 et al  
Docket No. 45136 et al  
03-1-01-1-2276 et al

Award No. 25912  
Docket No. 45808  
03-1-02-1-U-2919

Award No. 25913  
Docket No. 45809  
03-1-02-1-U-2920

Award No. 25914  
Docket No. 45810  
03-1-02-1-U-2921

Award No. 25915  
Docket No. 45743  
03-1-02-1-U-2853

Award No. 25916  
Docket No. 45527  
03-1-01-1-U-2646

(Brotherhood of Locomotive Engineers

PARTIES TO DISPUTE: (

(Union Pacific Railroad Company

STATEMENT OF CLAIM: As shown in Docket Nos. 45136, 45137, 45138, 45139, 45140, 45141, 45142, 45143, 45144, 45145, 45146, 45147, 45148, 45149, 45150, 45151, 45152, 45153, 45154, 45155, 45156, 45157, 45158, 45159, 45160, 45161, 45162, 45163, 45164, 45165, 45166, 45167, 45168, 45169, 45170, 45171, 45172, 45173, 45174, 45175, 45176, 45177, 45178, 45179, 45180, 45181, 45182, 45183, 45184, 45185, 45186, 45187, 45188, 45189, 45190, 45191, 45192, 45193, 45194, 45195, 45196, 45197, 45198, 45199, 45200, 45201, 45202, 45203, 45204, 45205, 45206, 45207, 45208, 45209, 45210, 45211, 45212, 45213, 45214, 45215, 45216, 45217, 45218, 45219, 45220, 45221, 45222, 45223, 45224, 45225, 45226, 45227, 45228, 45229, 45230, 45231, 45232, 45233, 45234, 45235, 45236, 45237, 45238, 45239, 45240, 45241, 45242, 45243, 45244, 45245, 45246, 45247, 45248, 45249, 45250, 45251, 45252, 45253, 45254, 45255, 45256, 45257, 45258, 45259, 45260, 45261, 45262, 45263, 45264, 45265, 45266, 45267, 45268, 45269, 45270, 45271, 45272, 45273, 45274, 45275, 45276, 45277, 45278, 45279, 45280, 45281, 45282, 45283, 45284, 45285, 45286, 45287, 45288, 45289, 45290, 45291, 45292, 45293, 45294, 45295, 45296, 45297, 45298, 45299, 45300, 45301, 45302, 45303, 45304, 45305, 45306, 45307, 45308, 45309, 45310, 45311, 45312, 45313, 45314, 45315, 45320, 45321, 45322, 45323, 45324, 45325, 45326, 45327, 45328, 45329, 45330, 45331, 45332, 45333, 45334, 45335, 45336, 45337, 45338, 45339, 45340, 45341, 45342, 45343, 45344, 45345, 45346, 45347.