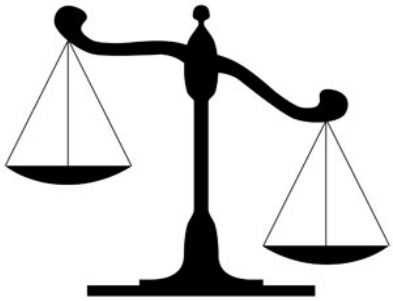
Railway Labor Act

(100 Years Old)

A Source For Practitioners



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Chapter 1

History of the Railway Labor Act

The Railway Labor Act ("RLA") (45 U.S.C. Sections 151-188) is the unique set of labor laws governing airlines, railroads, and their employees. Created in response to violent labor disputes in the 1920's, it forms parameters for dispute resolution. The basic components of the RLA are:

-Granting unions the right to organize.

-Granting unions the right to bargain collectively with the railroad or airline ("carrier").

-Requiring contract disputes be mediated by the National Mediation Board ("NMB").

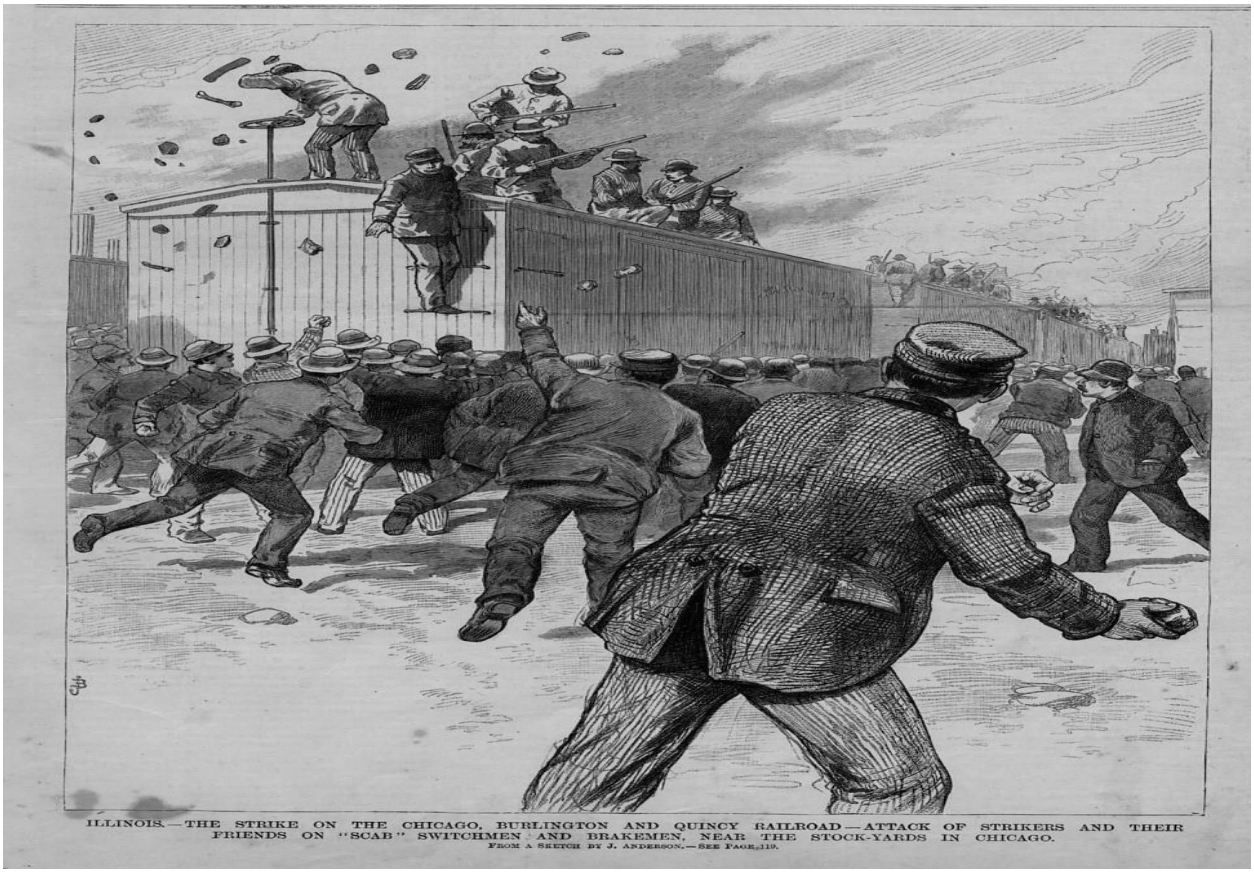
-Creating Presidential Emergency Boards ("PEB") to make non-binding recommendations to resolve disputes, when parties refuse binding arbitration. The PEB may determine which party presents the more reasonable proposal for resolution, and Congress may adopt the PEB's recommendations, which then become binding on the parties. After the PEB issues its Report, its recommendations usually provide a basis for the parties to negotiate further and to resolve their dispute. If a resolution still is not reached, the parties may resort to self-help, subject to the possibility of Congressional action setting the terms of the parties' Agreement.

-Requiring carriers and unions to create boards of adjustment to resolve disputes involving the interpretation or application of their agreements.

The Transportation Act of 1920 did little to control the decades long upheavals and rail yard violence occurring more frequently as nearly 2 million workers were railroad employees by this time in a period where job seekers vastly outnumbered available jobs.

THE CONDITION OF THE LABORING MAN AT PULLMAN.—

MARYLAND.—THE BALTIMORE AND OHIO RAILROAD STRIKE—THE SIXTH REGIMENT, N. G. S. M., FIRING UPON THE MOB, ON THE CORNER OF FREDERICK AND BALTIMORE STREETS, JULY 20TH.—SEE PAGE 371.



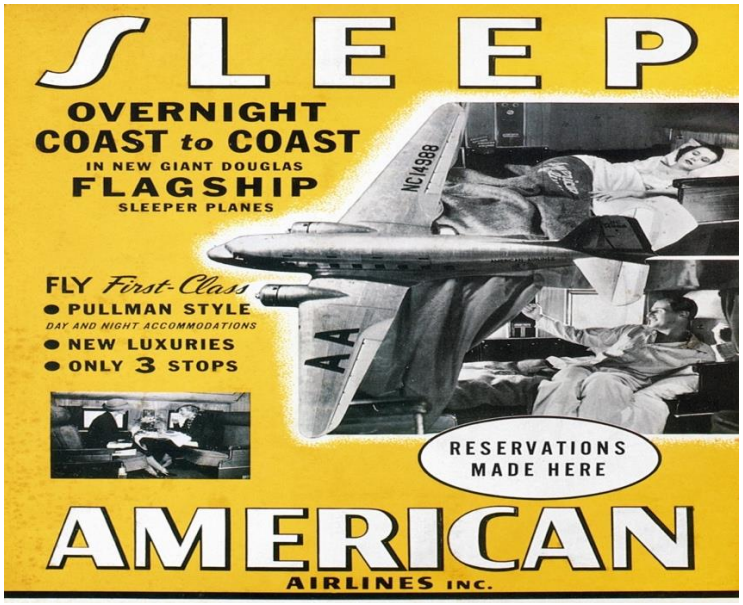
ILLINOIS.—THE STRIKE ON THE CHICAGO, BURLINGTON AND QUINCY RAILROAD—ATTACK OF STRIKERS AND THEIR FRIENDS ON "SCAB" SWITCHMEN AND BRAKEMEN, NEAR THE STOCK-YARDS IN CHICAGO.
FROM A SKETCH BY J. ANDERSON.—SEE PAGE 119.

Also noteworthy, the Federal government contemporaneously took control of the railroads during World War I, which contributed to Congress' greater interest in the day-to-day activities and strife on the railroads. Railroads are critically important for national security, economic stability, military mobilization, and public transportation. Passage of the Transportation Act ended government control of the railroads for war purposes, returning them to private ownership, but WWI's effect on the future of railroad governance was profound.

Recognizing the importance of uninterrupted rail operations, President Coolidge sanctioned a committee of railroad management and railroad unions to jointly draft a proposal for Congress to enact in the interest of continuity of operations and the avoidance of strikes, shutdowns, slowdowns, lockouts, and stoppages. Congress adopted this framework in 1926 and President Coolidge signed it. The next seven years demonstrated the need for additional measures to govern union organizing rights and create methods for resolving disputes.

In 1934, Congress amended the RLA to prohibit unions created and controlled by the companies; establish the National Railroad Adjustment Board for arbitrating grievances; and permitted railroads and unions to create their own board(s) of adjustment to arbitrate grievances that involve the interpretation or the application of a collective bargaining agreement, *i.e.*, "minor disputes", discussed *infra*.

In 1936, the RLA was amended to include airlines as Congress recognized the rapidly growing importance of air travel.



There are 3 major federal laws that govern collective bargaining in the United States, the RLA being the first enacted. The National Labor Relations Act ("NLRA") (29 U.S.C. 151) governs collective bargaining in the private sector, excluding airlines and railroads. The Federal Service Labor-Management Relations Statute (5 U.S.C. 71) governs collective bargaining in the federal employment sector.

The Railway Labor Act ("RLA") governs collective bargaining in the railroad and airline industries. Comparatively analyzed, the RLA contains a strong policy statement expressing intent to keep the railroads and airlines moving, and its provisions are designed to deter the interruption of commerce caused by labor disagreements. The RLA aims to promote settlement by imposing guidelines on the parties and procedures to be used when they cannot mutually resolve disputes.

The RLA establishes the National Mediation Board ("NMB") to assist in reaching agreements after negotiations have been unsuccessful. The NMB possesses no enforcement authority to end strikes, only mechanisms which may be used to prevent them.

There are 2 subchapters in the RLA. Subchapter 1 (Sections 151-165) is referred to as "general provisions" and contains the overall provisions and those affecting railroads and airlines, with the exception of Section 153 (NRAB) which only applies to railroads. Subchapter 2 (sections 181-185, added in 1936) is referred to as "carriers by air" section and contains provisions covering air carriers.

Adjustment Boards are another feature of the RLA Section 153 (rail carriers) and Section 184 (air carriers), which requires such boards to be established for handling disputes arising out of the interpretation of an agreement between the parties (minor disputes). These boards are established by agreement with flexibility in their make-up, other than the National Air Transport Adjustment Board (NATAB) and National Railroad Adjustment Board (NRAB). While NRAB has been established and functioning for many years to resolve railroad minor disputes, the NMB has not moved to establish and operate NATAB for the airlines.

There are notable differences between the NLRA and the RLA in how major disputes (*e.g.*, negotiating new contract terms) are handled. You will encounter numerous comparisons wherever labor law is discussed. The major differences between the NLRA and the RLA involve the RLA's mandatory dispute resolution methods and the difference in fixed dates for the expiration of collective bargaining agreements. Interestingly, railroad parties have treated their collective bargaining agreements as perpetual contracts without expiration dates, while airline parties have generally placed amendable dates on theirs, much like NLRA regulated companies. Under RLA provisions, when either party seeks a change in the agreement after the "amendable date" or the "moratorium date" is reached, the party may send a notice (known as "Section 6 notice" named for Section 156 of the RLA) to the other party enumerating the changes sought. The RLA disallows new contract terms without first providing notice of the intent to negotiate them.

The RLA is heavily influenced by the nation's need to avoid the interruption of commerce by use of indefinite negotiations and usually protracted mediation. Mediators have no authority to enforce a settlement. The NMB often continues mediation for years and has virtually unreviewable discretion as to whether to release the parties from mediation. The NMB held Amtrak and its organizations for 8 years after the filing of Section 6 notices prior to releasing them. The NMB has prevailed in the few instances in which a party has sued the NMB to compel a release. Even when released from NMB mediation, the parties are not required to arbitrate and remain bound to follow the RLA provisions.

If no settlement is reached by NMB mediation, the RLA provides for the possible appointment of a PEB. If a PEB is appointed, then hearings and the preparation of a written report and recommendations follow, further delaying the time at which self-help may be exercised. If no agreement is reached in the follow-up bargaining after the issuance of a PEB Report and Recommendations, there is the possibility that Congress may intervene and force a settlement upon the parties. In this manner, railroad collective bargaining agreements are never terminated, they are perpetually amended.

"Self-help" (strikes, lockouts, etc.) shall not be undertaken by either party until the RLA prescribed negotiation/mediation steps are followed. Self-help is only allowed over disputes

that are deemed "major" but the prohibition continues until mediation has concluded and all other RLA procedures have ended.

It is noted, most RLA minor disputes or grievances (*e.g.,* employee claims, discipline, rule interpretations) are resolved by arbitration through arbitration boards created by the parties for that express purpose. Most railroad arbitration boards are overseen and funded by the NMB, but the parties may opt out and fund their own grievance arbitrations.

Airlines and their unions generally employ grievance arbitration procedures similar to NLRA covered parties and share the costs.

By contrast, the NLRA empowers the National Labor Relations Board ("NLRB") to enforce the NLRA by receiving unfair labor practice complaints ("ULP") and investigating, hearing, and ruling on them with enforcement. The NLRB does not assist parties in reaching agreements like the NMB does. Parties under the jurisdiction of the NLRA may litigate matters, even appealing NLRB decisions in federal court, unless they have agreed to arbitration by contract. Self-help measures are allowed under the NLRA unless the parties have agreed not to within their agreement. Such agreements usually state that the parties mutually agree to not strike, lock out, work stoppage, slowdown, etc. and that any and all disputes be resolved by arbitration. Usually, self-help is only seen when a contract has expired.

Most observers conclude that the NMB is the agency *administering* provisions of the RLA, while the NLRB is the agency *enforcing* provisions of the NLRA.

The RLA enumerates its purpose in RLA Section 151(a):

1. *to avoid any interruption to commerce or to the operation of any carrier engaged therein;*

2. *to forbid any limitation upon freedom of association among employees or any denial as a condition of employment or otherwise, of the right of employees to join a labor organization;*

3. *to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this Act;*

4. *to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions;*

5. *to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation of application of agreements covering rates of pay, rules, or working conditions.*

In 2012, Congress amended the RLA to adjust provisions governing the certification election process in the following manner:

-Union elections held when at least 50% (increase from 35%) of employees in a craft or class show interest in selecting a representative for collective bargaining.

-When a NMB election ballot has 3 or more options and no option receives a majority of votes, there will be a runoff between the two options receiving the most votes. The prior NMB regulation required a runoff between the two unions receiving the most votes.

There have been no amendments to the RLA since 2012.

This lecture is a brief overview of the RLA's functions and affects. The bibliography of sources and further research materials are included herein, including internet links to much of the material expounding the discussions herein.

Finally, included herein is the text of the Railway Labor Act, officially cited as 45 U.S.C. 151-188 for a more comprehensive working source for your library.

Chapter 2
Coverage Under RLA

Carrier by rail is defined in RLA Section 151, First.

Carrier by air is defined in RLA Section 181.

Employees of both rail and air carriers are defined in RLA, Section 151, Fifth. Carriers by air, carriers by rail, and their employees are subject to the RLA per RLA Sections 151 and 181.

EMPLOYEES

Within the railroad industry, the RLA covers all employees working in rail transportation, meaning engineers, conductors, signalmen, maintenance of way workers, dispatchers, and administrative staff.

Within the airline industry, the RLA covers employees working for commercial airlines, meaning pilots, flight attendants, mechanics, dispatchers, and ground crew.

If carrier employees are located in a state with right to work laws, those state laws will not apply to workers covered by the RLA. Congress allowed individual states to enact right to work laws (Taft-Hartley Act). However, these state laws are applicable to employees covered by the NLRA, but not applicable to employees covered by the RLA.

Under the RLA, an employee cannot be required to be a member of a union or pay union fees as a condition of employment, unless the collective bargaining agreement contains a provision requiring all employees to either join the union or pay union fees. Under such an agreement, the employee not wanting to be a union member must still pay the union fees, generally called "agency fee" because the union is still required to represent the employee and any benefits found in the agreement cannot be denied to the member because of non-membership. For more on this subject, see Ellis v. BRAC, 466 U.S. 435, 1984.

The RLA Section 151, Fifth defines **employee** as *"every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Surface Transportation Board now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Board pursuant to the authority which is conferred upon it to enter orders amending or interpreting such existing orders: Provided, however, That no occupational classification made by order of the Surface Transportation Board shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this chapter or by the orders of the Board."*

Notably, RLA Section 151, Fifth, does not exclude supervisors from engaging in collective bargaining because of the RLA term including *"subordinate officials",* generally meaning foreman, supervisors, dispatchers, and the like. As stated, the NMB's determinative factors concerning what constitutes a carrier "employee" are the duties, functions, and responsibilities of the subjective position.

CARRIERS

The RLA, Section 151 First, defines **carrier** as *"any railroad subject to the jurisdiction of the Surface Transportation Board, any express company that would have been subject to subtitle IV of title 49, as of December 31, 1995, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such "carrier"."*

The RLA Section 181 added language to further define air carriers, stating the definition of carrier is extended *to "every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service".*

Stated more concisely, a carrier is an enterprise owned or controlled by or under common control with a direct rail or air carrier that provides service related to rail or air.

The RLA, Section 151 uses the definition of "rail carrier" found in the Interstate Commerce Commission Termination Act of 1995 (ICCTA), stating that a carrier is any railroad subject to the jurisdiction of the Surface Transportation Board (STB) and the STB has jurisdiction over any enterprise defined as carrier under the ICCTA, meaning any rail carrier that holds itself out to the public to provide railroad transportation for compensation. Transportation meaning the movement of passengers and/or property.

A company may be a "carrier" subject to STB jurisdiction if it owns no rail or rail equipment but uses track and equipment of a carrier to provide transportation services. (See American Orient Express Railway case, STB Finance Docket No. 34502)

A company may not be a "carrier" if it owns and operates its own rail and equipment but uses them only for its own property and product. (See Hanson Natural Resources Co. Petition for Declaratory Order, 1994)

An entity that transports its own property for itself or hires another to do so is deemed a private carrier, not subject to the STB and the RLA.

State or government owned railroads providing freight transportation services are a carrier covered by the STB and the RLA. (See UTU v. Long Island R.R., 455 US 678) However, publicly owned railroads providing mass transportation, such as Amtrak, while not under STB jurisdiction, are still considered a carrier for purposes of governing their employment under the RLA.

The NMB requires RLA-covered employees to organize in system-wide bargaining units (known as "crafts" or "classes") rather than in location-specific units. This requirement is intended to avoid localized disruptions in air and rail transportation. The NMB also plays a critical role in promoting peaceful negotiations and preventing disruptions in essential transportation services by prohibiting strikes, lockouts, and other forms of self-help until all

avenues of negotiation and mediation have been exhausted and required cooling-off periods have been observed.

The NMB also asserts RLA jurisdiction over "derivative carriers," meaning a company that provides essential transportation services to their airline or railroad carrier customers, such as freight, baggage, catering, fueling, maintenance, passenger support, ground services, ramping, track maintenance, and other related functions necessary for operations.

The NMB historically has applied a 2-part test to determine whether an entity is a derivative carrier subject to the RLA:

-whether the employees performed work traditionally done by railroads or airlines; *and*

- whether an airline or railroad sufficiently "control" the entity.

In a recent airline case (Swiss Cargo Services, LP, 52 NMB 8) the NMB's derivative carrier test was expanded to more deeply examine the extent to which the air carrier had "control" over the entity to include:

-to what extent the carrier controls how the entity conducts its business;

-the carrier's access to the entity's operations and records;

-the carrier's role in the entity's personnel decisions;

-the degree of carrier supervision over the entity's employees;

-whether the entity's employees are held out to the public as carrier employees; *and*

-to what extent the carrier controls training of the entity's employees.

The effect of the NMB's new test for whether a company is a derivative carrier has resulted in removing RLA authority over most independent companies that contract with air carriers, thereby placing those companies under the NLRA.

Chapter 3
Collective Bargaining

The RLA *requires* collective bargaining by extending it under the NMB's power to prevent labor unrest that might interrupt transportation and commerce.

CBA MANDATE

RLA Section 152, First requires that a carrier and its employee representative (union) *"exert every reasonable effort to make and maintain agreements*" about "*rates of pay, rules, and working conditions."* This provision is considered the heart of the RLA.

This strong preference for collective bargaining agreements is made essential under the RLA as railroads are subject to federal arbitration boards instead of self-help, and airlines are likewise forced to include an arbitration clause in their collective bargaining agreements.

Besides providing for dispute resolution, collective bargaining allows workers to negotiate terms and conditions of their employment, *namely*: wages, hours, safety standards, working conditions, vacation, rest, and health benefits.

The inclusion of dispute resolution processes and agreements on rates of pay, rules, and working conditions in collective bargaining agreements is inarguably required by the RLA. Advocates should gain an understanding of both the overriding provisions of the RLA as well as the terms and conditions of their negotiated collective bargaining agreements.

DISPUTE RESOLUTION MANDATE

RLA Section 153 First (i) requires the parties to resolve disputes *"in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes..."* meaning that claims, discipline, and other disputes shall be submitted to the resolution methods agreed upon in their negotiated collective bargaining agreements. See "resolving minor disputes", *infra.*

Most collective bargaining agreements contain rules governing disciplinary investigative hearings and the processing of claims and other grievances, up to the appeal to arbitration, the arbitration hearing, and the final resolution.

Commonly seen agreement language:

"...all claims, grievances, and disputes will be conferenced by the parties and if not resolved, may be appealed and arbitrated at the request of either party." This essential language may vary from agreement to agreement, but the requisites of the RLA along with due process and procedural fairness are deeply inherent in such language.

CONFERENCE

Reference is made to RLA Section 152, Second and 152, Sixth:

"Second. Consideration of disputes by representatives

All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and

authorized so to confer, respectively, by the Carrier or carriers and by the employees thereof interested in the dispute."

"Sixth. Conference of representatives; time; place; private agreements
In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: Provided, (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: And provided further, That nothing in this chapter shall be construed to supersede the provisions of an agreement (as to conferences) then in effect between the parties."

The "conference" referred to in RLA 152, Sixth arises from a *"grievance"* or the *"interpretation or application of agreements concerning rates of pay, rules, or working conditions"* and mandates parties set the conference *"within ten days"* after request is made by either side. The Conference must be held within 20 days. Interestingly, this conference is the only specifically described and required arbitration step in the RLA. It is commonly referred to as the "on property conference" held between the union and carrier to resolve or "adjust" the claim, grievance, or discipline matter.

ARBITRATION BOARDS

The RLA also requires that certain claims (including discipline matters) the parties cannot settle by conference, shall then be settled by submission to the RLA arbitration scheme. In other words, when the parties are unable to resolve the matter amongst themselves ("on property") then it must be referred to an RLA sanctioned arbitral tribunal, meaning:
*Any one of NRAB's 4 job-classified division boards (RLA Section 153 First (h)); *or*
*An NRAB-created panel (RLA Section 153 First (k)); *or*
*An NRAB temporary regional adjustment board (RLA Section 153 First (x)); *or*
*An Adjustment Board voluntarily created by the parties. These arbitration boards are usually created specifically for one carrier and one union, and/or for covering a specified region. (See RLA Section 184); *or*
*Public Law Boards consisting of 3 persons (Carrier rep, Union rep, & Arbitrator). (RLA Section 153, Second); *or*
*Ad Hoc Board of Arbitration (RLA Section 157); *or*
*A System Board of Adjustment for Air Carriers/Unions, which may consist of 4-person Boards, 5-person Boards, 3-person Boards, or a single Arbitrator (RLA Section 184).

For a discussion concerning the RLA jurisdictional mandates governing disputes, see the 1972 U.S. Supreme Court case of Andrews v. Louisville & Nashville R.R. at 406 U.S. 320.

Some agreements delegate the conduct of hearings or the appeal of claims to a hearing officer, upper management official, or some other identified party. The hearing officer or management official (sometimes referred to as the highest designated official or "HDO") may

have broad latitude in operating the hearing and/or handling an appeal absent agreement provisions to the contrary. Including an HDO, or his/her designee in the process serves RLA Section 153, First (i) referencing the handling of disputes *"in the usual manner up to and including the chief operating officer of the carrier."* Most agreements contain additional mandates for fairness and impartiality in the processing of disputes, which must be honored by all involved.

RLA UNIQUE PROVISIONS

Characteristics of RLA collective bargaining agreements:

-Bargaining units consist of system wide crafts/classes of employees, such as engineers, pilots, conductors, dispatchers, mechanics, flight attendants, maintenance workers, signalmen;
-Lower-level supervisors or "subordinate officials" may be represented by a union;
-50% of the employees must show interest by signature to have a union election;
-Carriers may replace but not terminate striking employees;
-No unfair labor practice (ULP) mechanisms exist under the RLA;

-Picketing is allowed;
-Federal Courts may enjoin a carrier from implementing changes to rates of pay, rules, or working conditions that are deemed "formation" of an agreement and as such are a "major" dispute;
-Claims, discipline matters, and other disputes not considered "major" are deemed "minor" and are resolved by the parties negotiated process, a system board of adjustment, or arbitration;
-RLA allows for collective bargaining nationally for a craft/class of employees;
-Unions may join together in a coalition to bargain with a nationwide carrier;
-Agreements do not have to expire, but may become amendable by agreement instead;
-No union self-help or concerted activity may occur before the agreement becomes amendable or has expired and RLA required steps have been completed;
-No carrier lock out of employee members before the agreement becomes amendable or has expired and RLA required steps have been completed;
-Both sides must maintain the "status quo" until certain conditions occur after the contract becomes amendable or has expired;

AMENDING PERPETUAL CBA'S

-Agreements are amendable per RLA Section 156 (Section 6 Notice), which states:

"156. Procedure in changing rates of pay, rules, and working conditions

Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice and said time shall be within the thirty days provided in the notice.

In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon, as required by section 155 of this title, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board."

Steps pursuant to Section 6:

-Notices (proposals) from either or both are delivered seeking to amend the agreement;
-Negotiations between the parties with no time limit for completion;
-Negotiations end when one side asks for mediation;
-Mediation administered by the NMB with no time limitation for completion;
-Release from NMB mediation after reaching an agreement or when the NMB decides to end the mediation;
-Proffer of arbitration when NMB declares an impasse, at NMB's discretion;
-Arbitration only if both parties agree and a final/binding decision is obtained from Arbitrator;
-Cooling-off period for 30 days during which further negotiations are likely;

-Self-help, strike, lock out, or other concerted activities are now allowed;
-Presidential Emergency Board may be appointed after the cooling off period, which prohibits self-help to give the PEB time to investigate the dispute and make recommendations;
-Congress adopts PEB recommendations and mandates the new agreement (discretionary);
-Self-help, strike, lock out, or other concerted activities are now allowed if Congress chooses not to intervene;

Conclusion

While the airline and railroad industries are subject to the same statutory procedures, collective bargaining in the two industries differs. Individual airlines and their employees typically negotiate comprehensive bargaining agreements for a definitive term period; if a class or craft of employees is represented by a union, that union represents all such employees of the carrier.

Railroad collective bargaining, on the other hand, is more dominated by national bargaining. However, some railroad carriers such as Amtrak are not part of the national bargaining committee and some general union chairmen on certain rail carriers may elect to negotiate directly with the carrier rather than grant national union officers the authority to bargain for them nationally.

Chapter 4
Resolving Disputes

The RLA considers a dispute to be either Major or Minor. Federal courts are far more likely to intervene (mandate or enjoin) in a major dispute than a minor dispute. Courts may make the initial determination whether a dispute is minor or major. If the dispute is seen as minor, the federal courts are going to send the parties back to resolve it through their own dispute resolution procedures, which they established by collective bargaining agreement per the RLA.

MAJOR DISPUTES

A major dispute involves the formation or modification of a collective bargaining agreement. Simply put, creating a new agreement or making changes to an existing agreement can be a source of "major" conflict. These are considered statutory rights being potentially violated, and will not be subject to the mandatory processes of a system board of adjustment for minor disputes, unless both parties agree to arbitrate instead of litigate.

Major disputes typically involve issues like significant changes in employment terms—wage increases, changes in work rules or adjustments in job classifications, for example. If a party breaches a term of the existing contract, this breach is going to be considered a major dispute. If the dispute can conclusively be resolved by interpreting an existing agreement it is a minor dispute. If a dispute concerns rights that do not exist under an agreement or an attempt to create new rights, it may then be deemed a major dispute.

Federal courts will also hear disputes concerning the initial steps in collective bargaining that concern the determination of the employee representative (organizing rights). These disputes are referred to as "pre-certification" and are considered major, since there exists no collective bargaining agreement arbitration process yet. "Post-certification" disputes will only be heard by a federal court when the court is the only body that can enforce the RLA provisions. Logically, once a union is certified and a system board of adjustment is established, judicial intervention becomes unnecessary.

A major dispute may commence by the filing of an action in court or by notice between the parties. RLA Section 156 provides a notice process for the parties to follow, but there are instances when a party believes the other has bypassed the notice procedures by their actions. Seeking an order from a court with jurisdiction may occur. The court most likely will halt the activity (injunction) and direct the parties to follow the negotiation, mediation, arbitration provisions of RLA Section 156-160.

When a major dispute arises, it triggers a detailed RLA sanctioned negotiation process, which includes the NMB. If mediation ultimately fails, the dispute may proceed to arbitration, but it can also lead to strikes or other collective actions if the parties are still unable to reach an agreement at the conclusion of the RLA procedures administered by the NMB.

MAJOR DISPUTE PROCESS TIMELINE

Exchange of Section 6 Notice: These "section 6 notices", which are named for RLA Section 156, that defines bargaining procedures, include the proposed contractual changes the party is seeking. The RLA requires the notice to be in writing and delivered to the other party at least 30 days in advance of the changes being proposed. The parties have 10 days to agree upon a time and place to begin negotiations or "confer".

The Section 6 process is the only RLA recognized process for changing work rules and commencing the bargaining process. The parties may not alter any existing rules or wages during the Section 6 process, thus maintaining the "status quo".

Nothing in the RLA prevents parties from mutually agreeing to amendments to an agreement without utilizing the Section 6 Notice process. It is common to see "letters of understanding" or "memorandums of understanding" or a "side letter agreement" worked out between the parties to clarify or adjust their contract provisions.

Bargaining Between Parties: Direct bargaining concludes when one of four actions occurs, either:

1. The parties reach agreement, *OR*
2. Either side unequivocally terminates negotiations, *OR*
3. A party requests mediation under the auspices of the NMB, *OR*
4. The NMB proffers mediation on its own accord.

Mediation: The NMB assigns a staff approved Mediator. The NMB is obligated to use its "best efforts" to bring the parties to agreement with no timeline for the mediation process. Although, the parties may request the NMB release them from mediation, the NMB has no obligation to do so. Mediation may linger for years under the control of the NMB's RLA authority.

Arbitration: When NMB mediation fails, the NMB will urge the parties to accept binding arbitration, which either party may reject. This may be called the NMB's "proffer of arbitration" and is sanctioned in RLA Section 157.

If both parties consent to arbitration, an arbitration board will issue a final decision regarding the terms of the parties' agreement and the matter will end. This is usually a 3-person board (Special Board of Adjustment, Public Law Board, Arbitration Board, or Board of Adjustment) with a Carrier member, a Union member, and a Neutral/Chairman/Arbitrator member agreed upon by the two parties. See RLA Section 158 for the requisites of a written agreement to arbitrate.

The arbitration award shall be final upon the signatures of a majority of the arbitration board members. If the dispute emanated in federal court, the board shall provide said court with a copy of the award. See RLA Section 159 for finality of arbitration award and grounds/procedure for appealing an arbitration award in federal court.

If either or both parties reject arbitration, the NMB will release them from the mediation process and into a 30-day cooling off period.

Cooling Off Period: If arbitration is rejected, the NMB will "release" the parties from mediation by notifying them that mediation has failed. This notification triggers the 30-calendar day cooling-off period.

During the cooling off period, the parties are prohibited from self-help (*i.e.*, strike, work stoppage, lockout). This 30-calendar day cooling off period provides additional time for the parties to reach an agreement with the constant RLA goal of avoiding any disruption to commerce.

Presidential Emergency Board: If the NMB decides that the dispute threatens to interrupt interstate commerce, it must notify the President of the United States. The President may appoint a Presidential Emergency Board (PEB) to investigate the dispute and recommend solutions. The PEB powers are found in RLA Section 160.

If a PEB is appointed, the RLA imposes additional cooling-off periods. The President selects the members of the PEB. Once appointed, PEB members (typically experienced professional arbitrators) have 30 days to issue a report to the President with their findings and non-binding recommendations for a resolution. (Per RLA Section 159, If the carrier is a publicly funded commuter rail, either party or the Governor of the state may request a PEB, the PEB is given 60 days to issue a report, and a second PEB may be created if the dispute is not resolved.)

It is common for PEB members to encourage settlement during the course of their term, and the PEB recommendations usually contain party proposals that have been discussed with the PEB.

During the PEB process, the parties are still prohibited from engaging in "self-help".

Cooling Off Period: After the PEB issues its report to the President, there is another 30-day cooling off period. The parties are still prohibited from self-help during this period. Congress should be reviewing the PEB recommendations during this period.

Congress Acts: Following the PEB cooling off period. The parties may strike, lockout, etc. Congress may step in and pass legislation dictating a settlement, which is binding on the parties, thus ending the dispute. Usually, Congress uses the PEB recommendations, but has amended them slightly in past instances.

If Congress chooses not to act, there may be a strike, lockout, work stoppage, or other form of self-help undertaken by the parties for an indefinite period.

For a chronological flow chart of bargaining under the RLA, see NMB's site referenced in the bibliography or click here: https://nmb.gov/NMB_Application/wp-content/uploads/2019/04/med-flowchart.pdf

MINOR DISPUTES

Minor disputes typically involve the interpretation or application of existing collective bargaining agreement provisions relating to rates of pay, rules, and working conditions that are resolved through binding arbitration before boards of adjustment per RLA Section 153 (railroads) and Section 184 (airlines).

For example, a minor conflict might involve a disagreement over how a specific provision in a contract applies to a particular situation—overtime pay, job assignments, or discipline matters. Ideally, minor disputes are resolved through a grievance process and negotiations. If those negotiations fail, the dispute becomes subject to binding arbitration, where an impartial arbitrator/neutral reviews the case and makes a final decision.

The federal courts will not exercise jurisdiction to resolve a minor dispute. Whenever the dispute can conclusively be resolved by interpreting an existing agreement it is determined to be a minor dispute. If a dispute concerns rights that do not exist under an agreement or an attempt to create new rights, the dispute may then be deemed a major dispute. The federal courts have interpreted "minor dispute" broadly to direct the vast majority of disputes be resolved entirely through the parties' collective bargaining created procedures.

In rare instances, a federal court may enjoin a strike over a minor dispute solely to enforce compliance with the arbitration provisions of the collective bargaining agreement.

Within the railroad industry, the RLA established the National Railroad Adjustment Board (NRAB) to handle such disputes. Composed of members of both labor and management, the board is divided into four divisions to handle various types of minor disputes. Alternatively, some rail carriers and all air carriers, since there is no NRAB equivalent for airlines, have established their own adjustment boards by collective bargaining agreement to handle minor disputes more quickly and efficiently.

AIRLINE / RAILROAD DIFFERENCES IN DISPUTE RESOLUTION

Minor disputes are ultimately handled by boards of adjustment, and ultimately an arbitration process. The RLA requires parties to establish and maintain grievance handling procedures that include boards of adjustment for the final resolution of frequent disputes that arise in their day-to-day functioning.

The National Railroad Board of Adjustment (NRAB) created by RLA Section 153, has formal rules and procedures in place to handle minor disputes in the railway industry. Rail carriers may choose to establish their own boards instead of using NRAB. NRAB is a federally funded agency under the NMB that pays for the railroad boards' resolution of minor disputes.

The National Air Transport Adjustment Board (NATAB) is likewise created by RLA per RLA Section 185 to handle minor disputes in the airline industry, as does NRAB for the rail carriers, but to date NATAB has not been established or funded by the NMB.

Notwithstanding the NMB's choice to not implement the NATAB, RLA Section 184 requires airlines and their unions to establish individual carrier system boards of adjustment. This duty is required once the employees unionize and select a bargaining representative union. The RLA does not mandate specific requirements for airline arbitration procedures or the selection or composition of airline boards of adjustment, leaving broad flexibility to the air carriers and their unions to set-up minor dispute resolution procedures and tribunals in the manner that best works for the parties.

Nearly all air carriers and their unions have established system boards of adjustment, which like the railroads and their unions, have an equal number of carrier and union members. When this board deadlocks, the parties select a neutral/arbitrator whose decision is final and binding. Some air carrier/union parties may submit unresolved disputes directly to a mutually selected arbitrator without the board deadlock step. Arbitrator selection may be assisted by

the NMB providing a list of NMB-approved arbitrators to choose from, if requested. Airline boards of adjustment and any subsequent arbitration process are paid for by the parties.

The airline industry differs from railroads in that air carriers/unions use only system boards of adjustment of varying size created by mutual agreement to resolve their minor disputes. There is no NRAB alternative for airlines and their unions. These air carrier/union adjustment boards are established by collective bargaining agreement between individual airlines and their respective unions. Also similar to NRAB's composition, airline boards of adjustment have representatives from management and labor in equal proportion, adding a neutral/arbitrator for instances when the board becomes deadlocked on a dispute.

Whether rail or airline, the decisions that these arbitration boards reach on minor disputes are final and must be honored by all parties without further action on that particular issue. Under the RLA, dispute resolution processes should set a clear, structured path for addressing disputes, major and minor, with the endeavor that negotiation, mediation, and/or arbitration will help maintain working relationships and avoid work disruptions leading to interstate commerce disruptions.

As stated, since the airlines and their employees were brought under the jurisdiction of the RLA in 1936, the arbitration mechanisms applicable to railroads in RLA Section 153 (NRAB, Board of Adjustments, Public Law Boards, *etc.)* were not made applicable to airlines, leaving airlines and their unions free to create their own private arbitration mechanisms, also referred to as "system boards of adjustment" but typically called "arbitration" by many air carriers and their unions.

MANDATORY ARBITRATION OF MINOR DISPUTES

The RLA Section 153(i) makes arbitration by both airlines and railroads mandatory in all minor disputes, which are referred to under the RLA as disputes *"growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions".*

The RLA Section 153 does not compel airlines and their unions to utilize a neutral/arbitrator on the arbitration boards they create; it only requires that they create an arbitration mechanism. However, most airline collective bargaining agreements contain provisions addressing the resolution of disputes that include professional arbitrators who ultimately serve to resolve all their minor disputes.

The airline industry traditionally used the 4-person board method (2-carrier members & 2-union members) to hear contract disputes and discipline cases, with mixed results. It was obviously far too common for this structure to result in deadlocked cases. This led the parties to move increasingly towards an odd-numbered board, *i.e*., a 5-person board, 3-person board or even a 1-person board, which includes an arbitrator, either as the "swing vote" on the multi-person board, or as the sole jurist.

The 4-person boards of adjustment are typically used for more informal discussions of the case and evidence to determine if it is possible to resolve the case before proceeding to a board with a neutral/arbitrator. This is a practical observation and serves the mission of the RLA by encouraging resolution by negotiation. By contrast, the 5-person or 3-person or 1-person arbitration tribunals are conducted as a de novo (complete) hearing involving the swearing of witnesses, cross-examination, taking of transcript, presentation of all evidence,

with basic rules of procedure and evidence guiding the proceeding under the direction of an arbitrator. The odd number of board members obviously eliminates deadlocking on the dispute, therefore the smaller the board of arbitration, the more expediently it functions.

In the early 1960's collective bargaining parties in the airline industry began creating 3-person system boards of adjustment, similar to 3-member public law boards used by railroads alternatively of the NRAB process. The smaller boards are comparatively more expedient at resolving disputes and by all historical indications equally justiciable as the larger system boards.

There are many discipline cases that may be heard by a single mutually selected arbitrator for even greater expediency. Some airlines and their unions have in fact, utilized a sole arbitrator for minor disputes since the 1970's with success and efficiency. Today, more and more airline discipline cases follow a single arbitrator regiment with both a de novo hearing and a final award conducted and administered by that mutually selected arbitrator.

Multi-person boards are more usefully utilized in certain contract interpretation cases as the additional party representative board members may be beneficial in informing and assisting the third-party neutral/arbitrator when there are technicalities or past practices particular to a specific work group.

The choice in arbitration methodology by air carriers and their unions has continuously evolved from the more cumbersome 4-man System Board of Adjustments requiring a secondary process for deadlocks; to the faster single arbitrator process utilized by collective bargaining parties in most other industrial sectors.

Some air carriers/unions like many rail carriers/unions have tripartite arbitration procedures by agreement, which consists of one arbitrator, one carrier representative, and one union representative on an arbitration board. A majority vote of the board is sufficient to render a final and binding decision of the dispute. Logically and most often, the arbitrator again becomes the ultimate deciding member whenever the parties deadlock.

The most noteworthy contrast between railroad and airline minor dispute handling is the railroad on-property disciplinary investigative hearing, which provides the only de novo hearing in the matter with no neutral jurist present. These hearings are handled by carrier officers. The arbitrator ultimately involved in a railroad case, is restricted to a review of the investigative hearing record. By contrast, in most airline cases, the arbitrator conducts a de novo (full and impartial) hearing and writes a final decision based upon the evidence presented before him. This is also the most common form of labor arbitration employed in other sectors.

Whether rail or airline, the decisions that these arbitration boards reach on minor disputes are final and must be honored by all parties without further action on that particular issue. The window for overturning an arbitration award in federal court is extremely narrow.

MINOR DISPUTE PROCESS AND TIMELINE

-Claim/Grievance Filed or Discipline Assessed. Following an investigative hearing or other management or employee act, the carrier usually has rendered a management decision affecting the represented employee(s), to which the union disagrees.

If it is a claim for compensation or benefits, another type of grievance, or a complaint concerning any agreement-covered matter, the parties will discuss and answer within time limits they have established by agreement.

These claim/grievance/protest/complaint documents are usually exchanged in writing and in the same manner as the original notice, claim, or management decision that the dispute is based on.

A communication from one party to the other, usually referred to as a claim or grievance, initially identifies the basis for the dispute. Newly implemented rules, discipline assessed, wage and benefit claims, and/or any matter believed to be violative of the parties' established agreements and practices may result in the initiation of a dispute for resolving in accordance with the RLA.

Any timelines for claims or grievance handling and/or rendering discipline after the investigation are all established by agreement.

RLA Section 184 and Section 153 have been interpreted to allow an individual employee to submit a dispute to a system board of adjustment if their grievance is not supported by their union.

-Appeal. The employee or their union files an appeal letter to the appropriate carrier official (usually the same Manager or Superintendent who rendered the discipline notice, instituted the decision being complained of, or denied the claim or grievance when it was initially presented).

The appeal usually requests a "conference" with the other party to discuss the issue and seeks a recission or an adjustment of the dispute as remedy.

The parties may add additional steps, procedures, or other formalities to initiate and progress a dispute. For instance, some agreements require an appeal first be filed and denied before the RLA described conference is undertaken.

Any timelines and form required for appealing is established by agreement between the parties.

If the appeal requests a conference, then this is usually considered to be the RLA Section 152, Sixth required conference, sometimes referred to as the "on property conference."

This appeal letter usually contains written reasons or arguments for or against rescinding the discipline or denying the claim, much like the submissions that are later submitted to a board of adjustment when appealing to arbitration, *discussed infra*.

-Conference. The only specifically required step in the RLA is the "conference" or as commonly referred to as the "on property conference" held between the union and the carrier in an effort to resolve or "adjust" the claim, grievance, discipline, or dispute.

Reference is made to RLA Section 152, Second (*duty to try and settle expediently*) and RLA Section 152, Sixth (*duty to conference*).

The "Conference" referred to in RLA 152, Sixth arises from a "*grievance*" or the "*interpretation or application of agreements concerning rates of pay, rules, or working conditions*" and mandates the parties set a conference "within ten days" after a request is made by either side. The Conference must be held within 20 days.

These 10 days to schedule and 20 days to hold the conference, are the only RLA prescribed timelines governing the handling of minor disputes. All other timelines are created by the parties' agreements. The RLA requires the conference to be on the carrier property, unless the parties agree to a different location.

Due to its' statutory mandate, this conference is a requisite before the matter can be further appealed to a board of adjustment/public law board/arbitration. During the conference, the dispute is hopefully settled, paid, dismissed, or adjusted satisfactorily by the parties.

-Appeal to Board of Adjustment or Arbitration. Only after an RLA mandated conference is held pursuant to RLA Section 152, Sixth, wherein the parties were unable to settle the matter; either party may appeal the matter to a board of adjustment/arbitration.

If it is a rail carrier/union dispute, the parties may elect to utilize the RLA-established NRAB process, where the case is assigned to one of 4 NRAB divisions categorized by railroad craft. These division boards are comprised of an equal number of union and carrier members. When the NRAB division board deadlocks, an arbitrator is selected to "*sit with the division"* and hear the case which will result in a final decision by NRAB arbitration award.

If it is an air carrier/union dispute, the parties will utilize the arbitration process they have agreed to, be it a system board of adjustment of their desired composition, a single arbitrator, or a combination of both.

An appeal letter, much like the earlier appeal letter exchanged on property should be sent to the other side in the form and within the timelines agreed upon. This appeal requesting or invoking arbitration may be referred to as the claimant or grievant "submission". The other party ordinarily responds with a counter argument, which may be referred to as the reply/respondent's submission or response.

These are usually the same submissions later sent to the arbitrator selected by the parties that will review the record and either deny the disputed grievance or sustain it. Any transcripts, documents, or other evidence from investigative hearings and conferences are generally substantive parts of the submissions.

It is noted that the manner in which appeals are logistically handled may vary. Whether or not the parties utilize two boards or just one is a matter of collective bargaining preference in how they wish to structure their disciplinary grievance/claim handling procedures. Any timelines, discovery issues, submissions, and formats required for appealing is established by agreement between the parties.

-System Board of Adjustment.

The dispute is presented to the Board of Adjustment in a manner that the parties have agreed upon, usually by exchange of submissions, discovery, information exchange, all in preparation for a hearing.

At the hearing, the parties may present evidence, take testimony, and/or examine the written arguments and evidence from the submissions. This is at the discretion of the parties. Any timelines, discovery issues, and form required is established by agreement between the parties.

If a system board of adjustment with equal membership from the carrier and the union; a deadlock may most likely occur. This triggers the next step wherein a neutral/arbitrator becomes involved in a format that is also determined by the parties. It is possible, but generally unlikely that an even numbered board of adjustment resolves or adjusts a dispute to the mutual satisfaction of both parties. The board's usefulness may be to narrow the dispute and stipulate to certain facts, thereby reducing the scope of the dispute for a future arbitration resolution.

When the board deadlocks on the dispute, as is usually the case, the board will certify or document the deadlock in a form agreed to. Either party may then appeal further to the next step (arbitration) within a timeline established by the parties.

It is noted that some system boards of adjustment with equal representation, do in fact settle disputes when member(s) representing the carrier or member(s) representing the union evaluate the evidence and agree with the other side.

-Arbitration.

Unless the system board of adjustment is odd-numbered and includes a third-party neutral/arbitrator, the likelihood of the dispute settling is rare. Thereafter, either party may appeal to have the dispute arbitrated for final resolution in the manner and format that the parties have agreed to, *i.e*., a single arbitrator or an arbitration board.

Once the arbitration process is in place. The dispute is sent to the arbitrator/arbitration board by including the submissions and a hearing is then scheduled. Some agreements place timelines for holding an arbitration hearing. The parties may also agree to other rules governing the hearing, such as the number of party representatives allowed, sequestration of witnesses, taking of transcript, holding a live or virtual hearing, *etc.*

Generally, in a railroad board of arbitration, the arbitrator may only receive the parties' submissions for examination or receive submissions and also hear oral arguments.

Generally, in an airline board of arbitration, the arbitrator will conduct a full (de novo) hearing where evidence is presented, and testimony is taken.

Any timelines, discovery issues, and form required is established by agreement between the parties. However, if railroad parties are utilizing an arbitration board funded by the NMB, the NMB will set a deadline for the dispute to be scheduled, heard, and an award/decision rendered.

The arbitrator/board of arbitration shall issue a final and binding decision/award to the parties and the dispute is resolved. Some agreements place timelines for the arbitrator to render a decision.

Any timelines and form required for appealing to arbitration, scheduling a hearing, submitting evidence, and rendering a decision is established by agreement between the parties or by the NMB, if the arbitration is NMB funded.

Conclusion

The airlines have historically shown the most flexibility in establishing dispute resolution processes that either bypass or streamline board of adjustment steps enroute to final dispute resolution. Many railroads and their unions still utilize the protracted NRAB process, others have created their own dispute handling agreements outside of NRAB.

In some collective bargaining structures, the third or neutral member of a board of arbitration does not initially participate with the equally numbered party-selected system board members who may first conduct their own hearing. The neutral/arbitrator is only called upon when the two disagree (deadlock). This is actually very similar in result to the on-property conference attempts and other procedures undertaken by the parties to first settle a matter before resorting to their arbitration process. If you recognize the repetitive opportunities to attempt settlement of minor disputes before the finality of arbitration, then you recognize the overall working theme of the RLA.

Where parties have agreed to reduce the number of steps in the handling of minor disputes, the expediency of claims and discipline appeals has benefited the collective bargaining process.

The dispute resolution processes created by the parties as required by the RLA set a clear, structured path for addressing grievances both major and minor in the hope that negotiation, mediation, and/or arbitration can help maintain better working relationships between workers and management and avoid disruptions in work and interstate commerce.

Arbitrator Sidney Moreland

Chapter 5
Representation Issues

RLA Section 152, Third and Fourth, contain provisions governing the rights of employees to organize and thereby possess the legal right to engage in collective bargaining with the carrier. The importance of these provisions is underscored as any dispute arising in the course of organizing ("pre-certification") are deemed "major" disputes subject to litigation in federal court.

The NMB is empowered under RLA Section 152, Ninth to receive, open a case, and investigate applications received for becoming the certified union of a group of air carrier or rail carrier employees. The NMB also oversees the process for compliance against interference and certifies the representative organization after determining the requisites of the process have been met.

152, Third states: *"Representatives, for the purposes of this chapter, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this chapter need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier."*

152, Fourth states: "*Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this chapter. No carrier, its officers, or agents shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: Provided, That nothing in this chapter shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization."*

CERTIFICATION PROCESS

The NMB's promulgated Representation Manual details the processes of seeking certified representative status.
https://nmb.gov/NMB_Application/wp-content/uploads/2025/03/Rep-Manual-2024-July-1-4-1.pdf

RLA Section 152, Ninth, grants the NMB the authority to *"investigate such dispute and to certify the name of the organization that have been designated and authorized to be the representative"* and to certify that organization. The NMB is granted broad authority to conduct another secret ballot vote or utilize any other appropriate method for determining the representative organization. This process was in response to Congress' refraining from establishing a system of bargaining units within the RLA due to the array of different crafts or classes of carrier employees.

An organizing union must have 50% of the employees signing an authorization card with required elements contained therein (showing an interest) in order to call an election. Said union must obtain a majority of the votes cast during the NMB overseen election in order to prevail. If successfully elected and certified by the NMB, no further certification election may occur for a period of 2 years after the union is certified. If unsuccessful, no certification election may occur for a period of 1 year.

The NMB has also promulgated rules that allow for de-certification of a union by employees. If a majority of the employees in a "craft or class" sign authorization cards clearly stating that they are opposed to the present union's representation; an employee-petitioner may file an application for "Investigation of Representational Dispute" with the NMB. If a majority of the employees vote against the present union when the NMB holds the secret-ballot election, the certification of the union is revoked. (see Federal Rules, 29 CFR 1203-1206, for de-certification procedures)

ORGANIZING PROHIBITIONS

The following list summarizes the actions a carrier is prohibited from undertaking pursuant to RLA Section 152, Fourth and Fifth concerning organizing efforts under the RLA:

-Surveillance of organizing activities;
-Threatening litigation in an effort to suppress;
-Disciplining or threatening to discipline employees for supporting or engaging in organizing;
-Prohibiting employees from soliciting membership during non-work hours;
-Prohibiting employees from soliciting membership in non-work areas, unless the Company has a specific and non-discriminatory policy banning all solicitation;
-Enquiring about confidential union matters, such as whether an employee signed a card or supports organizing;
-Threatening to discontinue existing benefits;
-Promising benefits in exchange for voting against the union;
-Endorsing one union over another;
-Preventing employees from voting;
-Prohibiting employees from wearing a union pin at work, unless it contains a controversial statement or violates a company policy;
-Preventing employees from discussing the union while at work when it does not interfere with work duties;
-Providing financial support or assistance to a union;
-Requiring any person seeking employment to sign any contract or agreement promising to join or not join a union;

RLA Section 152, Tenth provides for criminal prosecution with respect to the willful failure or refusal of a rail or air carrier, or its officers or agents, to comply with the terms of RLA Section 152, Third, Fourth, Fifth, Seventh, and Eighth. RLA Section 152, Tenth further provides that each offense may result in imprisonment up to 6 months and/or $20,000 fine for each day during which such carrier, officer, or agent willfully fails or refuses to comply with obligations under RLA Section 152, Tenth.

In 2012, Congress amended the RLA to adjust provisions governing the certification election process in the following manner:

-Union elections held when at least 50% (increase from 35%) of employees in a craft or class show interest in selecting a representative for collective bargaining.

-When NMB election ballot has 3 or more options and no option receives a majority of votes, there will be a runoff between the two options receiving the most votes. The prior NMB regulation required a runoff between the two unions receiving the most votes.

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CHAPTER 8—RAILWAY LABOR

SUBCHAPTER I—GENERAL PROVISIONS

SUBCHAPTER II—CARRIERS BY AIR

SUBCHAPTER I—GENERAL PROVISIONS

§151. Definitions; short title

When used in this chapter and for the purposes of this chapter—

First. The term "carrier" includes any railroad subject to the jurisdiction of the Surface Transportation Board, any express company that would have been subject to subtitle IV of title 49, as of December 31, 1995,,[1] and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such "carrier": *Provided, however*, That the term "carrier" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Surface Transportation Board is authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term "carrier" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to a carrier where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

Second. The term "Adjustment Board" means the National Railroad Adjustment Board created by this chapter.

Third. The term "Mediation Board" means the National Mediation Board created by this chapter.

Fourth. The term "commerce" means commerce among the several States or between any State, Territory, or the District of Columbia and any foreign nation, or between any Territory or the District of Columbia and any State, or between any Territory and any other Territory, or between any Territory and the District of Columbia, or within any Territory or the District of Columbia, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign nation.

Fifth. The term "employee" as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Surface Transportation Board now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Board pursuant to the authority which is conferred

upon it to enter orders amending or interpreting such existing orders: *Provided, however*, That no occupational classification made by order of the Surface Transportation Board shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this chapter or by the orders of the Board.

The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

Sixth. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

Seventh. The term "district court" includes the United States District Court for the District of Columbia; and the term "court of appeals" includes the United States Court of Appeals for the District of Columbia.

This chapter may be cited as the "Railway Labor Act."

(May 20, 1926, ch. 347, §1, 44 Stat. 577; June 7, 1934, ch. 426, 48 Stat. 926; June 21, 1934, ch. 691, §1, 48 Stat. 1185; June 25, 1936, ch. 804, 49 Stat. 1921; Aug. 13, 1940, ch. 664, §§2, 3, 54 Stat. 785, 786; June 25, 1948, ch. 646, §32(a), (b), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Pub. L. 104–88, title III, §322, Dec. 29, 1995, 109 Stat. 950; Pub. L. 104–264, title XII, §1223, Oct. 9, 1996, 110 Stat. 3287.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning act May 20, 1926, ch. 347, 44 Stat. 577, known as the Railway Labor Act, which enacted this chapter and amended sections 225 and 348 of former Title 28, Judicial Code and Judiciary. Sections 225 and 348 of former Title 28 were repealed by section 39 of act June 25, 1948, ch. 646, 62 Stat. 992, section 1 of which enacted Title 28, Judiciary and Judicial Procedure. Section 225 of former Title 28 was reenacted as sections 1291 to 1294 of Title 28. For complete classification of this Act to the Code, see this section and Tables.

CODIFICATION

Provisions of act Aug. 13, 1940, §2, similar to those comprising par. First of this section, limiting the term "employer" as applied to mining, etc., of coal, were formerly contained in section 228a of this title. Provisions of section 3 of the act, similar to those comprising par. Fifth of this section, limiting the term "employee" as applied to mining, etc., of coal, were formerly contained in sections 228a, 261, and 351 of this title, and section 1532 of former Title 26, Internal Revenue Code, 1939.

As originally enacted, par. Seventh contained references to the Supreme Court of the District of Columbia. Act June 25, 1936 substituted "the district court of the United States for the District of Columbia" for "the Supreme Court of the District of Columbia", and act June 25, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "district court of the United States for the District of Columbia".

As originally enacted, par. Seventh contained references to the "circuit court of appeals". Act June 25, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals".

As originally enacted, par. Seventh contained references to the "Court of Appeals of the District of Columbia". Act June 7, 1934, substituted "United States Court of Appeals for the District of Columbia" for "Court of Appeals of the District of Columbia".

AMENDMENTS

1996—Par. First. Pub. L. 104–264 inserted ", any express company that would have been subject to subtitle IV of title 49, as of December 31, 1995," after "Board" the first place it appeared.

1995—Par. First. Pub. L. 104–88, §322(1), (2), substituted "railroad subject to the jurisdiction of the Surface Transportation Board" for "express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act" and "Surface Transportation Board" for "Interstate Commerce Commission".

Par. Fifth. Pub. L. 104–88, §322(2), (3), substituted "Surface Transportation Board" for "Interstate Commerce Commission" in two places and "Board" for "Commission" in two places.

1940—Act Aug. 13, 1940, inserted last sentence of par. First, and second par. of par. Fifth.

1934—Act June 21, 1934, added par. Sixth and redesignated provisions formerly set out as par. Sixth as Seventh.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1996 AMENDMENT

Except as otherwise specifically provided, amendment by Pub. L. 104–264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104–264, set out as a note under section 106 of Title 49, Transportation.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 1301 of Title 49, Transportation.

RESTRICTION ON ESTABLISHMENT OF NEW ANNUITIES OR PENSIONS

Pub. L. 91–215, §7, Mar. 17, 1970, 84 Stat. 72, provided that: "No carrier and no representative of employees, as defined in section 1 of the Railway Labor Act [this section], shall, before April 1, 1974, utilize any of the procedures of such Act [this chapter], to seek to make any changes in the provisions of the Railroad Retirement Act of 1937 [section 228a et seq. of this title] for supplemental annuities or to establish any new class of pensions or annuities, other than annuities payable out of the Railroad Retirement Account provided under section 15(a) of the Railroad Retirement Act of 1937 [subsection (a) of section 228o of this title], to become effective prior to July 1, 1974; nor shall any such carrier or representative of employees until July 1, 1974, engage in any strike or lockout to seek to make any such changes or to establish any such new class of pensions or annuities: *Provided*, That nothing in this section shall inhibit any carrier or representative of employees from seeking any change with respect to benefits payable out of the Railroad Retirement Account provided under section 15(a) of the Railroad Retirement Act of 1937 [subsection (a) of section 228o of this title]."

SOCIAL INSURANCE AND LABOR RELATIONS OF RAILROAD COAL-MINING EMPLOYEES; RETROACTIVE OPERATION OF ACT AUGUST 13, 1940; EFFECT ON PAYMENTS, RIGHTS, ETC.

Act Aug. 13, 1940, ch. 664, §§4–7, 54 Stat. 786, 787, as amended by Reorg. Plan No. 2 of 1946, §4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095, with regard to the operation and effect of the laws amended, provided:

"Sec. 4. (a) The laws hereby expressly amended (section 1532 of Title 26, I.R.C. 1939 [former Title 26, Internal Revenue Code of 1939] and sections 151, 215, 228a, 261, and 351 of this title), the Social Security Act, approved August 14, 1935 (section 301 et seq. of Title 42), and all amendments thereto, shall operate as if each amendment herein contained had been enacted as a part of the law it amends, at the time of the original enactment of such law.

"(b) No person (as defined in the Carriers Taxing Act of 1937 [section 261 et seq. of this title]) shall be entitled, by reason of the provisions of this Act, to a refund of, or relief from liability for, any income or excise taxes paid or accrued, pursuant to the provisions of the Carriers Taxing Act of 1937 or subchapter B of chapter 9 of the Internal Revenue Code [section 1500 et seq. of former Title 26, Internal Revenue Code of 1939], prior to the date of the enactment of this Act [Aug. 13, 1940] by reason of employment in the service of any carrier by railroad subject to part I of the Interstate Commerce Act [former 49 U.S.C. 1 et seq.], but any individual who has been employed in such service of any carrier by railroad subject to part I of the Interstate Commerce Act as is excluded by the amendments made by this Act from coverage under the Carriers Taxing Act of 1937 and subchapter B of chapter 9 of the Internal Revenue Code, and who has paid income taxes under the provisions of such Act or subchapter, and any carrier by railroad subject to part I of the Interstate Commerce Act which has paid excise taxes under the provisions of the Carriers Taxing Act of 1937 or subchapter B of chapter 9 of the Internal Revenue Code, may, upon making proper application therefor to the Bureau of Internal Revenue [now Internal Revenue Service], have the amount of taxes so paid applied in reduction of such tax liability with respect to employment as may, by reason of the amendments made by this Act, accrue against them under the provisions of title VIII of the Social Security Act [section 1001 et seq. of Title 42] or the Federal Insurance Contributions Act (subchapter A of chapter 9 of the Internal Revenue Code) [section 1400 et seq. of former Title 26].

"(c) Nothing contained in this Act shall operate (1) to affect any annuity, pension, or death benefit granted under the Railroad Retirement Act of 1935 [section 215 et seq. of this title] or the Railroad Retirement Act of 1937 [section 228a et seq. of this title], prior to the date of enactment of this Act [Aug. 13, 1940], or (2) to include any of the services on the basis of which any such annuity or pension was granted, as employment within the meaning of section 210(b) of the Social Security Act or section 209(b) of such Act, as amended [sections 410(b) and 409(b), respectively, of Title 42]. In any case in which a death benefit alone has been granted, the amount of such death benefit attributable to services, coverage of which is affected by this Act, shall be deemed to have been paid to the deceased under section 204 of the Social Security Act [section 404 of Title 42] in effect prior to January 1, 1940, and deductions shall be made from any insurance benefit or benefits payable under the Social Security Act, as amended [section 301 et seq. of Title 42], with respect to wages paid to an individual for such services until such deductions total the amount of such death benefit attributable to such services.

"(d) Nothing contained in this Act shall operate to affect the benefit rights of any individual under the Railroad Unemployment Insurance Act [section 351 et seq. of this title] for any day of unemployment (as defined in section 1(k) of such Act [section 351(k) of this title]) occurring prior to the date of enactment of this Act. [Aug. 13, 1940]

"Sec. 5. Any application for payment filed with the Railroad Retirement Board prior to, or within sixty days after, the enactment of this Act shall, under such regulations as the Federal Security Administrator may prescribe, be deemed to be an application filed with the Federal

Security Administrator by such individual or by any person claiming any payment with respect to the wages of such individual, under any provision of section 202 of the Social Security Act, as amended [section 402 of Title 42].

"Sec. 6. Nothing contained in this Act, nor the action of Congress in adopting it, shall be taken or considered as affecting the question of what carriers, companies, or individuals, other than those in this Act specifically provided for, are included in or excluded from the provisions of the various laws to which this Act is an amendment.

"Sec. 7. (a) Notwithstanding the provisions of section 1605(b) of the Internal Revenue Code [section 1605(b) of former Title 26, Internal Revenue Code of 1939], no interest shall, during the period February 1, 1940, to the eighty-ninth day after the date of enactment of this Act [Aug. 13, 1940], inclusive, accrue by reason of delinquency in the payment of the tax imposed by section 1600 with respect to services affected by this Act performed during the period July 1, 1939, to December 31, 1939, inclusive, with respect to which services amounts have been paid as contributions under the Railroad Unemployment Insurance Act [section 351 et seq. of this title] prior to the date of enactment of this Act.

"(b) Notwithstanding the provisions of section 1601(a)(3) of the Internal Revenue Code [section 1601(a)(3) of former Title 26, Internal Revenue Code of 1939], the credit allowable under section 1601(a) against the tax imposed by section 1600 for the calendar year 1939 shall not be disallowed or reduced by reason of the payment into a State unemployment fund after January 31, 1940, of contributions with respect to services affected by this Act performed during the period July 1, 1939, to December 31, 1939, inclusive, with respect to which services amounts have been paid as contributions under the Railroad Unemployment Insurance Act [section 351 et seq. of this title] prior to the date of enactment of this Act [Aug. 13, 1940]: *Provided*, That this subsection shall be applicable only if the contributions with respect to such services are paid into the State unemployment fund before the ninetieth day after the date of enactment of this Act."

[1] *So in original.*

§151a. General purposes

The purposes of the chapter are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this chapter; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

(May 20, 1926, ch. 347, §2, 44 Stat. 577; June 21, 1934, ch. 691, §2, 48 Stat. 1186.)

EDITORIAL NOTES

CODIFICATION

Section is comprised of the first sentence of section 2 of act May 20, 1926, as added in the general amendment of section 2 by act June 21, 1934. The remainder of section 2 of act May 20, 1926, is classified to section 152 of this title.

AMENDMENTS

1934—Act June 21, 1934, amended section 2 of act May 20, 1926, generally, adding the text of this section.

§152. General duties

First. Duty of carriers and employees to settle disputes

It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. Consideration of disputes by representatives

All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

Third. Designation of representatives

Representatives, for the purposes of this chapter, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this chapter need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

Fourth. Organization and collective bargaining; freedom from interference by carrier; assistance in organizing or maintaining organization by carrier forbidden; deduction of dues from wages forbidden

Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this chapter. No carrier, its officers, or agents shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: *Provided*, That nothing in this chapter shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

Fifth. Agreements to join or not to join labor organizations forbidden

No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this chapter, then such carrier shall

notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way.

Sixth. Conference of representatives; time; place; private agreements

In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: *Provided*, (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: *And provided further*, That nothing in this chapter shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

Seventh. Change in pay, rules, or working conditions contrary to agreement or to section 156 forbidden

No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class, as embodied in agreements except in the manner prescribed in such agreements or in section 156 of this title.

Eighth. Notices of manner of settlement of disputes; posting

Every carrier shall notify its employees by printed notices in such form and posted at such times and places as shall be specified by the Mediation Board that all disputes between the carrier and its employees will be handled in accordance with the requirements of this chapter, and in such notices there shall be printed verbatim, in large type, the third, fourth, and fifth paragraphs of this section. The provisions of said paragraphs are made a part of the contract of employment between the carrier and each employee, and shall be held binding upon the parties, regardless of any other express or implied agreements between them.

Ninth. Disputes as to identity of representatives; designation by Mediation Board; secret elections

If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this chapter, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this chapter. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. In any such election for which there are 3 or more options (including the option of not being represented by any labor organization) on the ballot and no such option receives a majority of the valid votes cast, the

Mediation Board shall arrange for a second election between the options receiving the largest and the second largest number of votes. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

Tenth. Violations; prosecution and penalties

The willful failure or refusal of any carrier, its officers or agents, to comply with the terms of the third, fourth, fifth, seventh, or eighth paragraph of this section shall be a misdemeanor, and upon conviction thereof the carrier, officer, or agent offending shall be subject to a fine of not less than $1,000, nor more than $20,000, or imprisonment for not more than six months, or both fine and imprisonment, for each offense, and each day during which such carrier, officer, or agent shall willfully fail or refuse to comply with the terms of the said paragraphs of this section shall constitute a separate offense. It shall be the duty of any United States attorney to whom any duly designated representative of a carrier's employees may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States, all necessary proceedings for the enforcement of the provisions of this section, and for the punishment of all violations thereof and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States: *Provided*, That nothing in this chapter shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this chapter be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.

Eleventh. Union security agreements; check-off

Notwithstanding any other provisions of this chapter, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this chapter and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this chapter shall be permitted—

(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: *Provided*, That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

(b) to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership: *Provided*, That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner.

(c) The requirement of membership in a labor organization in an agreement made pursuant to subparagraph (a) of this paragraph shall be satisfied, as to both a present or future employee in engine, train, yard, or hostling service, that is, an employee engaged in any of the services or capacities covered in the First division of paragraph (h) of section 153 of this

title defining the jurisdictional scope of the First Division of the National Railroad Adjustment Board, if said employee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with this chapter and admitting to membership employees of a craft or class in any of said services; and no agreement made pursuant to subparagraph (b) of this paragraph shall provide for deductions from his wages for periodic dues, initiation fees, or assessments payable to any labor organization other than that in which he holds membership: *Provided, however*, That as to an employee in any of said services on a particular carrier at the effective date of any such agreement on a carrier, who is not a member of any one of the labor organizations, national in scope, organized in accordance with this chapter and admitting to membership employees of a craft or class in any of said services, such employee, as a condition of continuing his employment, may be required to become a member of the organization representing the craft in which he is employed on the effective date of the first agreement applicable to him: *Provided, further*, That nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from one organization to another organization admitting to membership employees of a craft or class in any of said services.

(d) Any provisions in paragraphs Fourth and Fifth of this section in conflict herewith are to the extent of such conflict amended.

Twelfth. Showing of interest for representation elections

The Mediation Board, upon receipt of an application requesting that an organization or individual be certified as the representative of any craft or class of employees, shall not direct an election or use any other method to determine who shall be the representative of such craft or class unless the Mediation Board determines that the application is supported by a showing of interest from not less than 50 percent of the employees in the craft or class.

(May 20, 1926, ch. 347, §2, 44 Stat. 577; June 21, 1934, ch. 691, §2, 48 Stat. 1186; June 25, 1948, ch. 646, §1, 62 Stat. 909; Jan. 10, 1951, ch. 1220, 64 Stat. 1238; Pub. L. 112–95, title X, §§1002, 1003, Feb. 14, 2012, 126 Stat. 146, 147.)

EDITORIAL NOTES

REFERENCES IN TEXT

The effective date of this chapter, referred to in par. Fifth, probably means May 20, 1926, the date of approval of act May 20, 1926, ch. 347, 44 Stat. 577.

CODIFICATION

Section is comprised of pars. designated First to Twelfth of section 2 of act May 20, 1926. The remainder of section 2 of act May 20, 1926, is classified to section 151a of this title.

AMENDMENTS

2012—Pub. L. 112–95, §1002, in par. Ninth, inserted after fourth sentence "In any such election for which there are 3 or more options (including the option of not being represented by any labor organization) on the ballot and no such option receives a majority of the valid votes cast, the Mediation Board shall arrange for a second election between the options receiving the largest and the second largest number of votes."

Pub. L. 112–95, §1003, added par. Twelfth.

1951—Act Jan. 10, 1951, added par. Eleventh.

1934—Act June 21, 1934, substituted "by the carrier or carriers" for "by the carriers" in par. Second, generally amended pars. Third, Fourth, and Fifth, and added pars. Sixth to Tenth.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States attorney" for "district attorney of the United States". See section 541 of Title 28, Judiciary and Judicial Procedure, and Historical and Revision Notes thereunder.

§153. National Railroad Adjustment Board

First. Establishment; composition; powers and duties; divisions; hearings and awards; judicial review

There is established a Board, to be known as the "National Railroad Adjustment Board", the members of which shall be selected within thirty days after June 21, 1934, and it is provided—

(a) That the said Adjustment Board shall consist of thirty-four members, seventeen of whom shall be selected by the carriers and seventeen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of sections 151a and 152 of this title.

(b) The carriers, acting each through its board of directors or its receiver or receivers, trustee or trustees, or through an officer or officers designated for that purpose by such board, trustee or trustees, or receiver or receivers, shall prescribe the rules under which its representatives shall be selected and shall select the representatives of the carriers on the Adjustment Board and designate the division on which each such representative shall serve, but no carrier or system of carriers shall have more than one voting representative on any division of the Board.

(c) Except as provided in the second paragraph of subsection (h) of this section, the national labor organizations, as defined in paragraph (a) of this section, acting each through the chief executive or other medium designated by the organization or association thereof, shall prescribe the rules under which the labor members of the Adjustment Board shall be selected and shall select such members and designate the division on which each member shall serve; but no labor organization shall have more than one voting representative on any division of the Board.

(d) In case of a permanent or temporary vacancy on the Adjustment Board, the vacancy shall be filled by selection in the same manner as in the original selection.

(e) If either the carriers or the labor organizations of the employees fail to select and designate representatives to the Adjustment Board, as provided in paragraphs (b) and (c) of this section, respectively, within sixty days after June 21, 1934, in case of any original appointment to office of a member of the Adjustment Board, or in case of a vacancy in any such office within thirty days after such vacancy occurs, the Mediation Board shall thereupon directly make the appointment and shall select an individual associated in interest with the carriers or the group of labor organizations of employees, whichever he is to represent.

(f) In the event a dispute arises as to the right of any national labor organization to participate as per paragraph (c) of this section in the selection and designation of the labor members of the Adjustment Board, the Secretary of Labor shall investigate the claim of such labor organization to participate, and if such claim in the judgment of the Secretary of Labor has merit, the Secretary shall notify the Mediation Board accordingly, and within ten days after receipt of such advice the Mediation Board shall request those national labor organizations duly qualified as per paragraph (c) of this section to participate in the selection and designation of the labor members of the Adjustment Board to select a representative. Such representative, together with a representative likewise designated by the claimant, and a third or neutral party designated by the Mediation Board, constituting a board of three, shall within thirty days after the appointment of the neutral member, investigate the claims of the labor organization desiring participation and decide whether or not it was organized in accordance with sections 151a and 152 of this

title and is otherwise properly qualified to participate in the selection of the labor members of the Adjustment Board, and the findings of such boards of three shall be final and binding.

(g) Each member of the Adjustment Board shall be compensated by the party or parties he is to represent. Each third or neutral party selected under the provisions of paragraph (f) of this section shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while serving as such third or neutral party.

(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

First division: To have jurisdiction over disputes involving train- and yard-service employees of carriers; that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees. This division shall consist of eight members, four of whom shall be selected and designated by the carriers and four of whom shall be selected and designated by the labor organizations, national in scope and organized in accordance with sections 151a and 152 of this title and which represent employees in engine, train, yard, or hostling service: *Provided, however*, That each labor organization shall select and designate two members on the First Division and that no labor organization shall have more than one vote in any proceedings of the First Division or in the adoption of any award with respect to any dispute submitted to the First Division: *Provided further, however*, That the carrier members of the First Division shall cast no more than two votes in any proceedings of the division or in the adoption of any award with respect to any dispute submitted to the First Division.

Second division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers, carmen, the helpers and apprentices of all the foregoing, coach cleaners, power-house employees, and railroad-shop laborers. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of the employees.

Third division: To have jurisdiction over disputes involving station, tower, and telegraph employees, train dispatchers, maintenance-of-way men, clerical employees, freight handlers, express, station, and store employees, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employees. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of employees.

Fourth division: To have jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions. This division shall consist of six members, three of whom shall be selected by the carriers and three by the national labor organizations of the employees.

(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on June 21, 1934, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them.

(k) Any division of the Adjustment Board shall have authority to empower two or more of its members to conduct hearings and make findings upon disputes, when properly submitted, at any place designated by the division: *Provided, however*, That except as provided in paragraph (h) of this section, final awards as to any such dispute must be made by the entire division as hereinafter provided.

(l) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote of the division members, as provided in paragraph (n) of this section, then such division shall forthwith agree upon and select a neutral person, to be known as "referee", to sit with the division as a member thereof, and make an award. Should the division fail to agree upon and select a referee within ten days of the date of the deadlock or inability to secure a majority vote, then the division, or any member thereof, or the parties or either party to the dispute may certify that fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit with the division as a member thereof and make an award. The Mediation Board shall be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this chapter for the appointment of arbitrators and shall fix and pay the compensation of such referees.

(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute. In case a dispute arises involving an interpretation of the award, the division of the board upon request of either party shall interpret the award in the light of the dispute.

(n) A majority vote of all members of the division of the Adjustment Board eligible to vote shall be competent to make an award with respect to any dispute submitted to it.

(o) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective and, if the award includes a requirement for the payment of money, to pay to the employee the sum to which he is entitled under the award on or before a day named. In the event any division determines that an award favorable to the petitioner should not be made in any dispute referred to it, the division shall make an order to the petitioner stating such determination.

(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be conclusive on the parties, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. 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. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board: *Provided, however*, That such order may not be set aside except for failure of the division to comply with the requirements of this chapter, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or for fraud or corruption by a member of the division making the order.

(q) If any employee or group of employees, or any carrier, is aggrieved by the failure of any division of the Adjustment Board to make an award in a dispute referred to it, or is aggrieved by

any of the terms of an award or by the failure of the division to include certain terms in such award, then such employee or group of employees or carrier may file in any United States district court in which a petition under paragraph (p) could be filed, a petition for review of the division's order. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Adjustment Board. The Adjustment Board shall file in the court the record of the proceedings on which it based its action. The court shall have jurisdiction to affirm the order of the division, or to set it aside, in whole or in part, or it may remand the proceedings to the division for such further action as it may direct. On such review, the findings and order of the division shall be conclusive on the parties, except that the order of the division may be set aside, in whole or in part, or remanded to the division, for failure of the division to comply with the requirements of this chapter, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or for fraud or corruption by a member of the division making the order. The judgment of the court shall be subject to review as provided in sections 1291 and 1254 of title 28.

(r) All actions at law based upon the provisions of this section shall be begun within two years from the time the cause of action accrues under the award of the division of the Adjustment Board, and not after.

(s) The several divisions of the Adjustment Board shall maintain headquarters in Chicago, Illinois, meet regularly, and continue in session so long as there is pending before the division any matter within its jurisdiction which has been submitted for its consideration and which has not been disposed of.

(t) Whenever practicable, the several divisions or subdivisions of the Adjustment Board shall be supplied with suitable quarters in any Federal building located at its place of meeting.

(u) The Adjustment Board may, subject to the approval of the Mediation Board, employ and fix the compensations of such assistants as it deems necessary in carrying on its proceedings. The compensation of such employees shall be paid by the Mediation Board.

(v) The Adjustment Board shall meet within forty days after June 21, 1934, and adopt such rules as it deems necessary to control proceedings before the respective divisions and not in conflict with the provisions of this section. Immediately following the meeting of the entire Board and the adoption of such rules, the respective divisions shall meet and organize by the selection of a chairman, a vice chairman, and a secretary. Thereafter each division shall annually designate one of its members to act as chairman and one of its members to act as vice chairman: *Provided, however*, That the chairmanship and vice-chairmanship of any division shall alternate as between the groups, so that both the chairmanship and vice-chairmanship shall be held alternately by a representative of the carriers and a representative of the employees. In case of a vacancy, such vacancy shall be filled for the unexpired term by the selection of a successor from the same group.

(w) Each division of the Adjustment Board shall annually prepare and submit a report of its activities to the Mediation Board, and the substance of such report shall be included in the annual report of the Mediation Board to the Congress of the United States. The reports of each division of the Adjustment Board and the annual report of the Mediation Board shall state in detail all cases heard, all actions taken, the names, salaries, and duties of all agencies, employees, and officers receiving compensation from the United States under the authority of this chapter, and an account of all moneys appropriated by Congress pursuant to the authority conferred by this chapter and disbursed by such agencies, employees, and officers.

(x) Any division of the Adjustment Board shall have authority, in its discretion, to establish regional adjustment boards to act in its place and stead for such limited period as such division may determine to be necessary. Carrier members of such regional boards shall be designated in keeping with rules devised for this purpose by the carrier members of the Adjustment Board and the labor members shall be designated in keeping with rules devised for this purpose by the labor members of the Adjustment Board. Any such regional board shall, during the time for

which it is appointed, have the same authority to conduct hearings, make findings upon disputes and adopt the same procedure as the division of the Adjustment Board appointing it, and its decisions shall be enforceable to the same extent and under the same processes. A neutral person, as referee, shall be appointed for service in connection with any such regional adjustment board in the same circumstances and manner as provided in paragraph (l) hereof, with respect to a division of the Adjustment Board.

Second. System, group, or regional boards: establishment by voluntary agreement; special adjustment boards: establishment, composition, designation of representatives by Mediation Board, neutral member, compensation, quorum, finality and enforcement of awards

Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this chapter, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board.

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. Each member of the board shall be compensated by the party he is to represent. 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. If with respect to any dispute or group of disputes the members of the board designated by the carrier and the representative are unable to agree upon an award disposing of the dispute or group of disputes they shall by mutual agreement select a neutral person to be a member of the board for the consideration and disposition of such dispute or group of disputes. In the event the members of the board designated by the parties are unable, within ten days after their failure to agree upon an award, to agree upon the selection of such neutral person, either member of the board may request the Mediation Board to appoint such neutral person and upon receipt of such request

the Mediation Board shall promptly make such appointment. The neutral person so selected or appointed shall be compensated and reimbursed for expenses by the Mediation Board. Any two members of the board shall be competent to render an award. Such awards shall be final and binding upon both 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. Compliance with such awards shall be enforcible by proceedings in the United States district courts in the same manner and subject to the same provisions that apply to proceedings for enforcement of compliance with awards of the Adjustment Board.

(May 20, 1926, ch. 347, §3, 44 Stat. 578; June 21, 1934, ch. 691, §3, 48 Stat. 1189; Pub. L. 89–456, §§1, 2, June 20, 1966, 80 Stat. 208, 209; Pub. L. 91–234, §§1–6, Apr. 23, 1970, 84 Stat. 199, 200.)

EDITORIAL NOTES

AMENDMENTS

1970—Par. First, (a). Pub. L. 91–234, §1, substituted "thirty-four members, seventeen of whom shall be selected by the carriers and seventeen" for "thirty-six members, eighteen of whom shall be selected by the carriers and eighteen".

Par. First, (b). Pub. L. 91–234, §2, provided that no carrier or system of carriers have more than one voting representative on any division of the National Railroad Adjustment Board.

Par. First, (c). Pub. L. 91–234, §3, inserted "Except as provided in the second paragraph of subsection (h) of this section" before "the national labor organizations", and provided that no labor organization have more than one voting representative on any division of the National Railroad Adjustment Board.

Par. First, (h). Pub. L. 91–234, §4, decreased number of members on First division of Board from ten to eight members, with an accompanying decrease of five to four as number of members of such Board elected respectively by the carriers and by the national labor organizations satisfying the enumerated requirements, and set forth provisos which limited voting by each labor organization or carrier member in any proceedings of the division or in adoption of any award.

Par. First, (k). Pub. L. 91–234, §5, inserted "except as provided in paragraph (h) of this section" after proviso.

Par. First, (n). Pub. L. 91–234, §6, inserted "eligible to vote" after "Adjustment Board".

1966—Par. First, (m). Pub. L. 89–456, §2(a), struck out ", except insofar as they shall contain a money award" from second sentence.

Par. First, (o). Pub. L. 89–456, §2(b), inserted provision for a division to make an order to the petitioner stating that an award favorable to the petitioner should not be made in any dispute referred to it.

Par. First, (p). Pub. L. 89–456, §2(c), (d), substituted in second sentence "conclusive on the parties" for "prima facie evidence of the facts therein stated" and inserted in last sentence reasons for setting aside orders of a division of the Adjustment Board, respectively.

Par. First, (q) to (x). Pub. L. 89–456, §2(e), added par. (q) and redesignated former pars. (q) to (w) as (r) to (x), respectively.

Par. Second. Pub. L. 89–456, §1, provided for establishment of special adjustment boards upon request of employees or carriers to resolve disputes otherwise referable to the Adjustment Board and made awards of such boards final.

1934—Act June 21, 1934, amended provisions comprising this section generally.

§154. National Mediation Board

First. Board of Mediation abolished; National Mediation Board established; composition; term of office; qualifications; salaries; removal

The Board of Mediation is abolished, effective thirty days from June 21, 1934, and the members, secretary, officers, assistants, employees, and agents thereof, in office upon June 21, 1934, shall continue to function and receive their salaries for a period of thirty days from such date in the same manner as though this chapter had not been passed. There is established, as an independent agency in the executive branch of the Government, a board to be known as the "National Mediation Board", to be composed of three members appointed by the President, by and with the advice and consent of the Senate, not more than two of whom shall be of the same political party. Each member of the Mediation Board in office on January 1, 1965, shall be deemed to have been appointed for a term of office which shall expire on July 1 of the year his term would have otherwise expired. The terms of office of all successors shall expire three years after the expiration of the terms for which their predecessors were appointed; but any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor. Vacancies in the Board shall not impair the powers nor affect the duties of the Board nor of the remaining members of the Board. Two of the members in office shall constitute a quorum for the transaction of the business of the Board. Each member of the Board shall receive necessary traveling and subsistence expenses, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while away from the principal office of the Board on business required by this chapter. No person in the employment of or who is pecuniarily or otherwise interested in any organization of employees or any carrier shall enter upon the duties of or continue to be a member of the Board. Upon the expiration of his term of office a member shall continue to serve until his successor is appointed and shall have qualified.

All cases referred to the Board of Mediation and unsettled on June 21, 1934, shall be handled to conclusion by the Mediation Board.

A member of the Board may be removed by the President for inefficiency, neglect of duty, malfeasance in office, or ineligibility, but for no other cause.

Second. Chairman; principal office; delegation of powers; oaths; seal; report

The Mediation Board shall annually designate a member to act as chairman. The Board shall maintain its principal office in the District of Columbia, but it may meet at any other place whenever it deems it necessary so to do. The Board may designate one or more of its members to exercise the functions of the Board in mediation proceedings. Each member of the Board shall have power to administer oaths and affirmations. The Board shall have a seal which shall be judicially noticed. The Board shall make an annual report to Congress.

Third. Appointment of experts and other employees; salaries of employees; expenditures

The Mediation Board may (1) subject to the provisions of the civil service laws, appoint such experts and assistants to act in a confidential capacity and such other officers and employees as are essential to the effective transaction of the work of the Board; (2) in accordance with chapter 51 and subchapter III of chapter 53 of title 5, fix the salaries of such experts, assistants, officers, and employees; and (3) make such expenditures (including expenditures for

rent and personal services at the seat of government and elsewhere, for law books, periodicals, and books of reference, and for printing and binding, and including expenditures for salaries and compensation, necessary traveling expenses and expenses actually incurred for subsistence, and other necessary expenses of the Mediation Board, Adjustment Board, Regional Adjustment Boards established under paragraph (w) of section 153 of this title, and boards of arbitration, in accordance with the provisions of this section and sections 153 and 157 of this title, respectively), as may be necessary for the execution of the functions vested in the Board, in the Adjustment Board and in the boards of arbitration, and as may be provided for by the Congress from time to time. All expenditures of the Board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

Fourth. Delegation of powers and duties

The Mediation Board is authorized by its order to assign, or refer, any portion of its work, business, or functions arising under this chapter or any other Act of Congress, or referred to it by Congress or either branch thereof, to an individual member of the Board or to an employee or employees of the Board to be designated by such order for action thereon, and by its order at any time to amend, modify, supplement, or rescind any such assignment or reference. All such orders shall take effect forthwith and remain in effect until otherwise ordered by the Board. In conformity with and subject to the order or orders of the Mediation Board in the premises, [and] such individual member of the Board or employee designated shall have power and authority to act as to any of said work, business, or functions so assigned or referred to him for action by the Board.

Fifth. Transfer of officers and employees of Board of Mediation; transfer of appropriation

All officers and employees of the Board of Mediation (except the members thereof, whose offices are abolished) whose services in the judgment of the Mediation Board are necessary to the efficient operation of the Board are transferred to the Board, without change in classification or compensation; except that the Board may provide for the adjustment of such classification or compensation to conform to the duties to which such officers and employees may be assigned.

All unexpended appropriations for the operation of the Board of Mediation that are available at the time of the abolition of the Board of Mediation shall be transferred to the Mediation Board and shall be available for its use for salaries and other authorized expenditures.

(May 20, 1926, ch. 347, §4, 44 Stat. 579; June 21, 1934, ch. 691, §4, 48 Stat. 1193; Oct. 28, 1949, ch. 782, title XI, §1106(a), 63 Stat. 972; Pub. L. 88–542, Aug. 31, 1964, 78 Stat. 748.)

EDITORIAL NOTES

CODIFICATION

In par. First, provisions that prescribed the basis compensation of members of the Board were omitted to conform to the provisions of the Executive Schedule. See sections 5314 and 5315 of Title 5, Government Organization and Employees.

In par. Third, "subject to the provisions of the civil service laws, appoint such experts and assistants to act in a confidential capacity and such other officers and employees" substituted for "appoint such experts and assistants to act in a confidential capacity and, subject to the provisions of the civil-service laws, such other officers and employees". All such appointments are now subject to the civil service laws unless specifically excepted by such laws or by laws enacted subsequent to Executive Order 8743, Apr. 23, 1941, issued by the President pursuant to the Act of Nov. 26, 1940, ch. 919, title I, §1, 54 Stat. 1211, which covered most excepted

positions into the classified (competitive) civil service. The Order is set out as a note under section 3301 of Title 5.

In par. Third, "chapter 51 and subchapter III of chapter 53 of title 5" substituted for "the Classification Act of 1949, as amended" on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5.

AMENDMENTS

1964—Par. First. Pub. L. 88–542 inserted sentences providing that each member of the Board in office on Jan. 1, 1965, shall be deemed to have been appointed for a term of office which shall expire on July 1 of the year his term would have otherwise expired, and that upon the expiration of his term of office a member shall continue to serve until his successor is appointed and shall have qualified, and struck out provisions which related to terms of office of members first appointed.

1949—Par. First. Act Oct. 15, 1949, increased basic rate of compensation for members of the board to $15,000 per year.

Par. Third. Act Oct. 28, 1949, substituted "Classification Act of 1949" for "Classification Act of 1923".

1934—Act June 21, 1934, amended section generally.

STATUTORY NOTES AND RELATED SUBSIDIARIES

REPEALS

Act Oct. 28, 1949, ch. 782, cited as a credit to this section, was repealed (subject to a savings clause) by Pub. L. 89–554, Sept. 6, 1966, §8, 80 Stat. 632, 655.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in par. Second relating to the requirement that the Board make an annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 6th item on page 184 of House Document No. 103–7.

§155. Functions of Mediation Board

First. Disputes within jurisdiction of Mediation Board

The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 160 of this title) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this chapter.

If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under section 160 of this title, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose.

Second. Interpretation of agreement

In any case in which a controversy arises over the meaning or the application of any agreement reached through mediation under the provisions of this chapter, either party to the said agreement, or both, may apply to the Mediation Board for an interpretation of the meaning or application of such agreement. The said Board shall upon receipt of such request notify the parties to the controversy, and after a hearing of both sides give its interpretation within thirty days.

Third. Duties of Board with respect to arbitration of disputes; arbitrators; acknowledgment of agreement; notice to arbitrators; reconvening of arbitrators; filing contracts with Board; custody of records and documents

The Mediation Board shall have the following duties with respect to the arbitration of disputes under section 157 of this title:

(a) On failure of the arbitrators named by the parties to agree on the remaining arbitrator or arbitrators within the time set by section 157 of this title, it shall be the duty of the Mediation Board to name such remaining arbitrator or arbitrators. It shall be the duty of the Board in naming such arbitrator or arbitrators to appoint only those whom the Board shall deem wholly disinterested in the controversy to be arbitrated and impartial and without bias as between the parties to such arbitration. Should, however, the Board name an arbitrator or arbitrators not so disinterested and impartial, then, upon proper investigation and presentation of the facts, the Board shall promptly remove such arbitrator.

If an arbitrator named by the Mediation Board, in accordance with the provisions of this chapter, shall be removed by such Board as provided by this chapter, or if such an arbitrator refuses or is unable to serve, it shall be the duty of the Mediation Board, promptly, to select another arbitrator, in the same manner as provided in this chapter for an original appointment by the Mediation Board.

(b) Any member of the Mediation Board is authorized to take the acknowledgement of an agreement to arbitrate under this chapter. When so acknowledged, or when acknowledged by the parties before a notary public or the clerk of a district court or a court of appeals of the United States, such agreement to arbitrate shall be delivered to a member of said Board or transmitted to said Board, to be filed in its office.

(c) When an agreement to arbitrate has been filed with the Mediation Board, or with one of its members, as provided by this section, and when the said Board has been furnished the names of the arbitrators chosen by the parties to the controversy it shall be the duty of the Board to cause a notice in writing to be served upon said arbitrators, notifying them of their appointment, requesting them to meet promptly to name the remaining arbitrator or arbitrators necessary to complete the Board of Arbitration, and advising them of the period within which, as provided by the agreement to arbitrate, they are empowered to name such arbitrator or arbitrators.

(d) Either party to an arbitration desiring the reconvening of a board of arbitration to pass upon any controversy arising over the meaning or application of an award may so notify the Mediation Board in writing, stating in such notice the question or questions to be submitted to such reconvened Board. The Mediation Board shall thereupon promptly communicate with the members of the Board of Arbitration, or a subcommittee of such Board appointed for such purpose pursuant to a provision in the agreement to arbitrate, and arrange for the reconvening

of said Board of Arbitration or subcommittee, and shall notify the respective parties to the controversy of the time and place at which the Board, or the subcommittee, will meet for hearings upon the matters in controversy to be submitted to it. No evidence other than that contained in the record filed with the original award shall be received or considered by such reconvened Board or subcommittee, except such evidence as may be necessary to illustrate the interpretations suggested by the parties. If any member of the original Board is unable or unwilling to serve on such reconvened Board or subcommittee thereof, another arbitrator shall be named in the same manner and with the same powers and duties as such original arbitrator.

(e) Within sixty days after June 21, 1934, every carrier shall file with the Mediation Board a copy of each contract with its employees in effect on the 1st day of April 1934, covering rates of pay, rules, and working conditions. If no contract with any craft or class of its employees has been entered into, the carrier shall file with the Mediation Board a statement of that fact, including also a statement of the rates of pay, rules, and working conditions applicable in dealing with such craft or class. When any new contract is executed or change is made in an existing contract with any class or craft of its employees covering rates of pay, rules, or working conditions, or in those rates of pay, rules, and working conditions of employees not covered by contract, the carrier shall file the same with the Mediation Board within thirty days after such new contract or change in existing contract has been executed or rates of pay, rules, and working conditions have been made effective.

(f) The Mediation Board shall be the custodian of all papers and documents heretofore filed with or transferred to the Board of Mediation bearing upon the settlement, adjustment, or determination of disputes between carriers and their employees or upon mediation or arbitration proceedings held under or pursuant to the provisions of any Act of Congress in respect thereto; and the President is authorized to designate a custodian of the records and property of the Board of Mediation until the transfer and delivery of such records to the Mediation Board and to require the transfer and delivery to the Mediation Board of any and all such papers and documents filed with it or in its possession.

(May 20, 1926, ch. 347, §5, 44 Stat. 580; June 21, 1934, ch. 691, §5, 48 Stat. 1195; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107.)

EDITORIAL NOTES

CODIFICATION

As originally enacted, par. Third (b) contained a reference to the "circuit court of appeals". Act June 25, 1948, as amended by act May 24, 1949 substituted "court of appeals" for "circuit court of appeals".

AMENDMENTS

1934—Act June 21, 1934, amended generally par. First and par. Third, (e) and (f).

§156. Procedure in changing rates of pay, rules, and working conditions

Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon, as required by section

155 of this title, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

(May 20, 1926, ch. 347, §6, 44 Stat. 582; June 21, 1934, ch. 691, §6, 48 Stat. 1197.)

EDITORIAL NOTES

AMENDMENTS

1934—Act June 21, 1934, inserted "in agreements" after "intended change" in text, struck out provision formerly contained in text concerning changes requested by more than one class, and substituted "Mediation Board" for "Board of Mediation" wherever appearing.

EXECUTIVE DOCUMENTS

WAGE AND SALARY ADJUSTMENTS

Ex. Ord. No. 9299, eff. Feb. 4, 1943, 8 F.R. 1669, provided procedure with respect to wage and salary adjustments for employees subject to this chapter.

§157. Arbitration

First. Submission of controversy to arbitration

Whenever a controversy shall arise between a carrier or carriers and its or their employees which is not settled either in conference between representatives of the parties or by the appropriate adjustment board or through mediation, in the manner provided in sections 151—156 of this title such controversy may, by agreement of the parties to such controversy, be submitted to the arbitration of a board of three (or, if the parties to the controversy so stipulate, of six) persons: *Provided, however*, That the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this chapter or otherwise.

Second. Manner of selecting board of arbitration

Such board of arbitration shall be chosen in the following manner:

(a) In the case of a board of three the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name one arbitrator; the two arbitrators thus chosen shall select a third arbitrator. If the arbitrators chosen by the parties shall fail to name the third arbitrator within five days after their first meeting, such third arbitrator shall be named by the Mediation Board.

(b) In the case of a board of six the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name two arbitrators; the four arbitrators thus chosen shall, by a majority vote, select the remaining two arbitrators. If the arbitrators chosen by the parties shall fail to name the two arbitrators within fifteen days after their first meeting, the said two arbitrators, or as many of them as have not been named, shall be named by the Mediation Board.

Third. Board of arbitration; organization; compensation; procedure

(a) Notice of selection or failure to select arbitrators

When the arbitrators selected by the respective parties have agreed upon the remaining arbitrator or arbitrators, they shall notify the Mediation Board; and, in the event of their failure to agree upon any or upon all of the necessary arbitrators within the period fixed by this chapter,

they shall, at the expiration of such period, notify the Mediation Board of the arbitrators selected, if any, or of their failure to make or to complete such selection.

(b) Organization of board; procedure

The board of arbitration shall organize and select its own chairman and make all necessary rules for conducting its hearings: *Provided, however*, That the board of arbitration shall be bound to give the parties to the controversy a full and fair hearing, which shall include an opportunity to present evidence in support of their claims, and an opportunity to present their case in person, by counsel, or by other representative as they may respectively elect.

(c) Duty to reconvene; questions considered

Upon notice from the Mediation Board that the parties, or either party, to an arbitration desire the reconvening of the board of arbitration (or a subcommittee of such board of arbitration appointed for such purpose pursuant to the agreement to arbitrate) to pass upon any controversy over the meaning or application of their award, the board, or its subcommittee, shall at once reconvene. No question other than, or in addition to, the questions relating to the meaning or application of the award, submitted by the party or parties in writing, shall be considered by the reconvened board of arbitration or its subcommittee.

Such rulings shall be acknowledged by such board or subcommittee thereof in the same manner, and filed in the same district court clerk's office, as the original award and become a part thereof.

(d) Competency of arbitrators

No arbitrator, except those chosen by the Mediation Board, shall be incompetent to act as an arbitrator because of his interest in the controversy to be arbitrated, or because of his connection with or partiality to either of the parties to the arbitration.

(e) Compensation and expenses

Each member of any board of arbitration created under the provisions of this chapter named by either party to the arbitration shall be compensated by the party naming him. Each arbitrator selected by the arbitrators or named by the Mediation Board shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, while serving as an arbitrator.

(f) Award; disposition of original and copies

The board of arbitration shall furnish a certified copy of its award to the respective parties to the controversy, and shall transmit the original, together with the papers and proceedings and a transcript of the evidence taken at the hearings, certified under the hands of at least a majority of the arbitrators, to the clerk of the district court of the United States for the district wherein the controversy arose or the arbitration is entered into, to be filed in said clerk's office as hereinafter provided. The said board shall also furnish a certified copy of its award, and the papers and proceedings, including testimony relating thereto, to the Mediation Board to be filed in its office; and in addition a certified copy of its award shall be filed in the office of the Interstate Commerce Commission: *Provided, however*, That such award shall not be construed to diminish or extinguish any of the powers or duties of the Interstate Commerce Commission, under subtitle IV of title 49.

(g) Compensation of assistants to board of arbitration; expenses; quarters

A board of arbitration may, subject to the approval of the Mediation Board, employ and fix the compensation of such assistants as it deems necessary in carrying on the arbitration proceedings. The compensation of such employees, together with their necessary traveling expenses and expenses actually incurred for subsistence, while so employed, and the necessary expenses of boards of arbitration, shall be paid by the Mediation Board.

Whenever practicable, the board shall be supplied with suitable quarters in any Federal building located at its place of meeting or at any place where the board may conduct its proceedings or deliberations.

(h) Testimony before board; oaths; attendance of witnesses; production of documents; subpoenas; fees

All testimony before said board shall be given under oath or affirmation, and any member of the board shall have the power to administer oaths or affirmations. The board of arbitration, or any member thereof, shall have the power to require the attendance of witnesses and the production of such books, papers, contracts, agreements, and documents as may be deemed by the board of arbitration material to a just determination of the matters submitted to its arbitration, and may for that purpose request the clerk of the district court of the United States for the district wherein said arbitration is being conducted to issue the necessary subpoenas, and upon such request the said clerk or his duly authorized deputy shall be, and he is, authorized, and it shall be his duty, to issue such subpoenas.

Any witness appearing before a board of arbitration shall receive the same fees and mileage as witnesses in courts of the United States, to be paid by the party securing the subpoena.

(May 20, 1926, ch. 347, §7, 44 Stat. 582; June 21, 1934, ch. 691, §7, 48 Stat. 1197; Pub. L. 91–452, title II, §238, Oct. 15, 1970, 84 Stat. 930.)

EDITORIAL NOTES

CODIFICATION

In par. Third (f), "subtitle IV of title 49" substituted for "the Interstate Commerce Act, as amended [49 U.S.C. 1 et seq.]" on authority of Pub. L. 95–473, §3(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV of Title 49, Transportation.

AMENDMENTS

1970—Par. Third, (h). Pub. L. 91–452 struck out provisions authorizing board to invoke aid of the United States courts to compel witnesses to attend and testify and to produce such books, papers, contracts, agreements, and documents to same extent and under same conditions and penalties as provided for in the Interstate Commerce Act.

1934—Act June 21, 1934, substituted "Mediation Board" for "Board of Mediation" wherever appearing.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–452 effective on sixtieth day following Oct. 15, 1970, and not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91–452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104–88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of Title 49, Transportation, and section 101 of Pub. L. 104–88, set out as a note under section 1301 of Title 49. References to Interstate Commerce Commission deemed

to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104–88, set out as a note under section 1301 of Title 49.

WORK RULES DISPUTE

Pub. L. 88–108, Aug. 28, 1963, 77 Stat. 132, provided:

"[Sec. 1. Settlement of disputes]. That no carrier which served the notices of November 2, 1959, and no labor organizations which received such notices or served the labor organization notices of September 7, 1960, shall make any change except by agreement, or pursuant to an arbitration award as hereinafter provided, in rates of pay, rules, or working conditions encompassed by any of such notices, or engage in any strike or lockout over any dispute arising from any of such notices. Any action heretofore taken which would be prohibited by the foregoing sentence shall be forthwith rescinded and the status existing immediately prior to such action restored.

"Sec. 2. [Arbitration board]. There is hereby established an arbitration board to consist of seven members. The representatives of the carrier and organization parties to the aforesaid dispute are hereby directed, respectively, within five days after the enactment hereof [Aug. 28, 1963] each to name two persons to serve as members of such arbitration board. The four members thus chosen shall select three additional members. The seven members shall then elect a chairman. If the members chosen by the parties shall fail to name one or more of the additional three members within ten days, such additional members shall be named by the President. If either party fails to name a member or members to the arbitration board within the five days provided, the President shall name such member or members in lieu of such party and shall also name the additional three members necessary to constitute a board of seven members, all within ten days after the date of enactment of this joint resolution [Aug. 28, 1963]. Notwithstanding any other provision of law, the National Mediation Board is authorized and directed: (1) to compensate the arbitrators not named by the parties at a rate not in excess of $100 for each day together with necessary travel and subsistence expenses, and (2) to provide such services and facilities as may be necessary and appropriate in carrying out the purposes of this joint resolution.

"Sec. 3. [Decision of board]. Promptly upon the completion of the naming of the arbitration board the Secretary of Labor shall furnish to the board and to the parties to the dispute copies of his statement to the parties of August 2, 1963, and the papers therewith submitted to the parties, together with memorandums and such other data as the board may request setting forth the matters with respect to which the parties were in tentative agreement and the extent of disagreement with respect to matters on which the parties were not in tentative agreement. The arbitration board shall make a decision, pursuant to the procedures hereinafter set forth, as to what disposition shall be made of those portions of the carriers' notices of November 2, 1959, identified as 'Use of Firemen (Helpers) on Other Than Steam Power' and 'Consist of Road and Yard Crews' and that portion of the organizations' notices of September 7, 1960, identified as 'Minimum Safe Crew Consist' and implementing proposals pertaining thereto. The arbitration board shall incorporate in such decision any matters on which it finds the parties were in agreement, shall resolve the matters on which the parties were not in agreement, and shall, in making its award, give due consideration to those matters on which the parties were in tentative agreement. Such award shall be binding on both the carrier and organization parties to the dispute and shall constitute a complete and final disposition of the aforesaid issues covered by the decision of the board of arbitration.

"Sec. 4. [Award]. To the extent not inconsistent with this joint resolution the arbitration shall be conducted pursuant to sections 7 and 8 of the Railway Labor Act [this section and section 158 of this title], the board's award shall be made and filed as provided in said sections and shall be subject to section 9 of said Act [section 159 of this title]. The United States District Court for the District of Columbia is hereby designated as the court in which the award is to be filed, and the arbitration board shall report to the National Mediation Board in the same manner as arbitration boards functioning pursuant to the Railway Labor Act [this chapter]. The award shall continue in force for such period as the arbitration board shall determine in its award, but not to exceed two years from the date the award takes effect, unless the parties agree otherwise.

"Sec. 5. [Hearings]. The arbitration board shall begin its hearings thirty days after the enactment of this joint resolution [Aug. 28, 1963] or on such earlier date as the parties to the dispute and the board may agree upon and shall make and file its award not later than ninety days after the enactment of this joint resolution [Aug. 28, 1963]: *Provided, however*, That said award shall not become effective until sixty days after the filing of the award.

"Sec. 6. [Collective bargaining for issues not arbitrated]. The parties to the disputes arising from the aforesaid notices shall immediately resume collective bargaining with respect to all issues raised in the notices of November 2, 1959, and September 7, 1960, not to be disposed of by arbitration under section 3 of this joint resolution and shall exert every reasonable effort to resolve such issues by agreement. The Secretary of Labor and the National Mediation Board are hereby directed to give all reasonable assistance to the parties and to engage in mediatory action directed toward promoting such agreement.

"Sec. 7. [Considerations affecting award; enforcement.]

"(a) In making any award under this joint resolution the arbitration board established under section 2 shall give due consideration to the effect of the proposed award upon adequate and safe transportation service to the public and upon the interests of the carrier and employees affected, giving due consideration to the narrowing of the areas of disagreement which has been accomplished in bargaining and mediation.

"(b) The obligations imposed by this joint resolution, upon suit by the Attorney General, shall be enforcible through such orders as may be necessary by any court of the United States having jurisdiction of any of the parties.

"Sec. 8. [Expiration date]. This joint resolution shall expire one hundred and eighty days after the date of its enactment [Aug. 28, 1963], except that it shall remain in effect with respect to the last sentence of section 4 for the period prescribed in that sentence.

"Sec. 9. [Separability]. If any provision of this joint resolution or the application thereof is held invalid, the remainder of this joint resolution and the application of such provision to other parties or in other circumstances not held invalid shall not be affected thereby."

§158. Agreement to arbitrate; form and contents; signatures and acknowledgment; revocation

The agreement to arbitrate—

(a) Shall be in writing;

(b) Shall stipulate that the arbitration is had under the provisions of this chapter;

(c) Shall state whether the board of arbitration is to consist of three or of six members;

(d) Shall be signed by the duly accredited representatives of the carrier or carriers and the employees, parties respectively to the agreement to arbitrate, and shall be acknowledged by

said parties before a notary public, the clerk of a district court or court of appeals of the United States, or before a member of the Mediation Board, and, when so acknowledged, shall be filed in the office of the Mediation Board;

(e) Shall state specifically the questions to be submitted to the said board for decision; and that, in its award or awards, the said board shall confine itself strictly to decisions as to the questions so specifically submitted to it;

(f) Shall provide that the questions, or any one or more of them, submitted by the parties to the board of arbitration may be withdrawn from arbitration on notice to that effect signed by the duly accredited representatives of all the parties and served on the board of arbitration;

(g) Shall stipulate that the signatures of a majority of said board of arbitration affixed to their award shall be competent to constitute a valid and binding award;

(h) Shall fix a period from the date of the appointment of the arbitrator or arbitrators necessary to complete the board (as provided for in the agreement) within which the said board shall commence its hearings;

(i) Shall fix a period from the beginning of the hearings within which the said board shall make and file its award: *Provided*, That the parties may agree at any time upon an extension of this period;

(j) Shall provide for the date from which the award shall become effective and shall fix the period during which the award shall continue in force;

(k) Shall provide that the award of the board of arbitration and the evidence of the proceedings before the board relating thereto, when certified under the hands of at least a majority of the arbitrators, shall be filed in the clerk's office of the district court of the United States for the district wherein the controversy arose or the arbitration was entered into, which district shall be designated in the agreement; and, when so filed, such award and proceedings shall constitute the full and complete record of the arbitration;

(l) Shall provide that the award, when so filed, shall be final and conclusive upon the parties as to the facts determined by said award and as to the merits of the controversy decided;

(m) Shall provide that any difference arising as to the meaning, or the application of the provisions, of an award made by a board of arbitration shall be referred back for a ruling to the same board, or, by agreement, to a subcommittee of such board; and that such ruling, when acknowledged in the same manner, and filed in the same district court clerk's office, as the original award, shall be a part of and shall have the same force and effect as such original award; and

(n) Shall provide that the respective parties to the award will each faithfully execute the same.

The said agreement to arbitrate, when properly signed and acknowledged as herein provided, shall not be revoked by a party to such agreement: *Provided, however*, That such agreement to arbitrate may at any time be revoked and canceled by the written agreement of both parties, signed by their duly accredited representatives, and (if no board of arbitration has yet been constituted under the agreement) delivered to the Mediation Board or any member thereof; or, if the board of arbitration has been constituted as provided by this chapter, delivered to such board of arbitration.

(May 20, 1926, ch. 347, §8, 44 Stat. 584; June 21, 1934, ch. 691, §7, 48 Stat. 1197; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107.)

EDITORIAL NOTES

CODIFICATION

As originally enacted, par. (d) contained a reference to the "circuit court of appeals". Act June 25, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals".

AMENDMENTS

1934—Act June 21, 1934, substituted "Mediation Board" for "Board of Mediation" wherever appearing.

§159. Award and judgment thereon; effect of chapter on individual employee

First. Filing of award

The award of a board of arbitration, having been acknowledged as herein provided, shall be filed in the clerk's office of the district court designated in the agreement to arbitrate.

Second. Conclusiveness of award; judgment

An award acknowledged and filed as herein provided shall be conclusive on the parties as to the merits and facts of the controversy submitted to arbitration, and unless, within ten days after the filing of the award, a petition to impeach the award, on the grounds hereinafter set forth, shall be filed in the clerk's office of the court in which the award has been filed, the court shall enter judgment on the award, which judgment shall be final and conclusive on the parties.

Third. Impeachment of award; grounds

Such petition for the impeachment or contesting of any award so filed shall be entertained by the court only on one or more of the following grounds:

(a) That the award plainly does not conform to the substantive requirements laid down by this chapter for such awards, or that the proceedings were not substantially in conformity with this chapter;

(b) That the award does not conform, nor confine itself, to the stipulations of the agreement to arbitrate; or

(c) That a member of the board of arbitration rendering the award was guilty of fraud or corruption; or that a party to the arbitration practiced fraud or corruption which fraud or corruption affected the result of the arbitration: *Provided, however*, That no court shall entertain any such petition on the ground that an award is invalid for uncertainty; in such case the proper remedy shall be a submission of such award to a reconvened board, or subcommittee thereof, for interpretation, as provided by this chapter: *Provided further*, That an award contested as herein provided shall be construed liberally by the court, with a view to favoring its validity, and that no award shall be set aside for trivial irregularity or clerical error, going only to form and not to substance.

Fourth. Effect of partial invalidity of award

If the court shall determine that a part of the award is invalid on some ground or grounds designated in this section as a ground of invalidity, but shall determine that a part of the award is valid, the court shall set aside the entire award: *Provided, however*, That, if the parties shall agree thereto, and if such valid and invalid parts are separable, the court shall set aside the invalid part, and order judgment to stand as to the valid part.

Fifth. Appeal; record

At the expiration of 10 days from the decision of the district court upon the petition filed as aforesaid, final judgment shall be entered in accordance with said decision, unless during said 10 days either party shall appeal therefrom to the court of appeals. In such case only such portion of the record shall be transmitted to the appellate court as is necessary to the proper understanding and consideration of the questions of law presented by said petition and to be decided.

Sixth. Finality of decision of court of appeals

The determination of said court of appeals upon said questions shall be final, and, being certified by the clerk thereof to said district court, judgment pursuant thereto shall thereupon be entered by said district court.

Seventh. Judgment where petitioner's contentions are sustained

If the petitioner's contentions are finally sustained, judgment shall be entered setting aside the award in whole or, if the parties so agree, in part; but in such case the parties may agree upon a judgment to be entered disposing of the subject matter of the controversy, which judgment when entered shall have the same force and effect as judgment entered upon an award.

Eighth. Duty of employee to render service without consent; right to quit

Nothing in this chapter shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this chapter be construed to make the quitting of his labor or service by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.

(May 20, 1926, ch. 347, §9, 44 Stat. 585; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107.)

EDITORIAL NOTES

CODIFICATION

As originally enacted, pars. Fifth and Sixth contained references to the "circuit court of appeals". Act June 25, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals".

§159a. Special procedure for commuter service

(a) Applicability of provisions

Except as provided in section 590(h) [1] of this title, the provisions of this section shall apply to any dispute subject to this chapter between a publicly funded and publicly operated carrier providing rail commuter service (including the Amtrak Commuter Services Corporation) and its employees.

(b) Request for establishment of emergency board

If a dispute between the parties described in subsection (a) is not adjusted under the foregoing provisions of this chapter and the President does not, under section 160 of this title, create an emergency board to investigate and report on such dispute, then any party to the dispute or the Governor of any State through which the service that is the subject of the dispute is operated may request the President to establish such an emergency board.

(c) Establishment of emergency board

(1) Upon the request of a party or a Governor under subsection (b), the President shall create an emergency board to investigate and report on the dispute in accordance with section 160 of this title. For purposes of this subsection, the period during which no change, except by agreement, shall be made by the parties in the conditions out of which the dispute arose shall be 120 days from the day of the creation of such emergency board.

(2) If the President, in his discretion, creates a board to investigate and report on a dispute between the parties described in subsection (a), the provisions of this section shall apply to the same extent as if such board had been created pursuant to paragraph (1) of this subsection.

(d) Public hearing by National Mediation Board upon failure of emergency board to effectuate settlement of dispute

Within 60 days after the creation of an emergency board under this section, if there has been no settlement between the parties, the National Mediation Board shall conduct a public hearing on the dispute at which each party shall appear and provide testimony setting forth the reasons it has not accepted the recommendations of the emergency board for settlement of the dispute.

(e) Establishment of second emergency board

If no settlement in the dispute is reached at the end of the 120-day period beginning on the date of the creation of the emergency board, any party to the dispute or the Governor of any State through which the service that is the subject of the dispute is operated may request the President to establish another emergency board, in which case the President shall establish such emergency board.

(f) Submission of final offers to second emergency board by parties

Within 30 days after creation of a board under subsection (e), the parties to the dispute shall submit to the board final offers for settlement of the dispute.

(g) Report of second emergency board

Within 30 days after the submission of final offers under subsection (f), the emergency board shall submit a report to the President setting forth its selection of the most reasonable offer.

(h) Maintenance of status quo during dispute period

From the time a request to establish a board is made under subsection (e) until 60 days after such board makes its report under subsection (g), no change, except by agreement, shall be made by the parties in the conditions out of which the dispute arose.

(i) Work stoppages by employees subsequent to carrier offer selected; eligibility of employees for benefits

If the emergency board selects the final offer submitted by the carrier and, after the expiration of the 60-day period described in subsection (h), the employees of such carrier engage in any work stoppage arising out of the dispute, such employees shall not be eligible during the period of such work stoppage for benefits under the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.].

(j) Work stoppages by employees subsequent to employees offer selected; eligibility of employer for benefits

If the emergency board selects the final offer submitted by the employees and, after the expiration of the 60-day period described in subsection (h), the carrier refuses to accept the final offer submitted by the employees and the employees of such carrier engage in any work stoppage arising out of the dispute, the carrier shall not participate in any benefits of any agreement between carriers which is designed to provide benefits to such carriers during a work stoppage.

(May 20, 1926, ch. 347, §9A, as added Pub. L. 97–35, title XI, §1157, Aug. 13, 1981, 95 Stat. 681.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 590(h) of this title, referred to in subsec. (a), was repealed by Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379.

The Railroad Unemployment Insurance Act, referred to in subsec. (i), is act June 25, 1938, ch. 680, 52 Stat. 1094, which is classified principally to chapter 11 (§351 et seq.) of this title. For complete classification of this Act to the Code, see section 367 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Aug. 13, 1981, see section 1169 of Pub. L. 97–35, set out as a note under section 1101 of this title.

[1] *See References in Text note below.*

§160. Emergency board

If a dispute between a carrier and its employees be not adjusted under the foregoing provisions of this chapter and should, in the judgment of the Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall notify the President, who may thereupon, in his discretion, create a board to investigate and report respecting such dispute. Such board shall be composed of such number of persons as to the President may seem desirable: *Provided, however*, That no member appointed shall be pecuniarily or otherwise interested in any organization of employees or any carrier. The compensation of the members of any such board shall be fixed by the President. Such board shall be created separately in each instance and it shall investigate promptly the facts as to the dispute and make a report thereon to the President within thirty days from the date of its creation.

There is authorized to be appropriated such sums as may be necessary for the expenses of such board, including the compensation and the necessary traveling expenses and expenses actually incurred for subsistence, of the members of the board. All expenditures of the board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

After the creation of such board and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose.

(May 20, 1926, ch. 347, §10, 44 Stat. 586; June 21, 1934, ch. 691, §7, 48 Stat. 1197.)

EDITORIAL NOTES

AMENDMENTS

1934—Act June 21, 1934, substituted "Mediation Board" for "Board of Mediation" wherever appearing.

§160a. Rules and regulations

(a) In general

The Mediation Board shall have the authority from time to time to make, amend, and rescind, in the manner prescribed by section 553 of title 5, and after opportunity for a public hearing, such rules and regulations as may be necessary to carry out the provisions of this chapter.

(b) Application

The requirements of subsection (a) shall not apply to any rule or proposed rule to which the third sentence of section 553(b) of title 5 applies.

(May 20, 1926, ch. 347, §10A, as added Pub. L. 112–95, title X, §1001, Feb. 14, 2012, 126 Stat. 146.)

§161. Effect of partial invalidity of chapter

If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter, and the application of such provision to other persons or circumstances, shall not be affected thereby.

(May 20, 1926, ch. 347, §11, 44 Stat. 587.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SEPARABILITY; REPEAL OF INCONSISTENT PROVISIONS

Act June 21, 1934, ch. 691, §8, 48 Stat. 1197, provided that: "If any section, subsection, sentence, clause, or phrase of this Act [amending sections 151 to 158, 160, and 162 of this title] is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. All Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed."

§162. Authorization of appropriations

There is authorized to be appropriated such sums as may be necessary for expenditure by the Mediation Board in carrying out the provisions of this chapter.

(May 20, 1926, ch. 347, §12, 44 Stat. 587; June 21, 1934, ch. 691, §7, 48 Stat. 1197.)

EDITORIAL NOTES

AMENDMENTS

1934—Act June 21, 1934, substituted "Mediation Board" for "Board of Mediation".

§163. Repeal of prior legislation; exception

Chapters 6 and 7 of this title, providing for mediation, conciliation, and arbitration, and all Acts and parts of Acts in conflict with the provisions of this chapter are repealed, except that the members, secretary, officers, employees, and agents of the Railroad Labor Board, in office on May 20, 1926, shall receive their salaries for a period of 30 days from such date, in the same manner as though this chapter had not been passed.

(May 20, 1926, ch. 347, §14, 44 Stat. 587.)

EDITORIAL NOTES

REFERENCES IN TEXT

Chapters 6 and 7 of this title, referred to in text, were in the original references to the act of July 15, 1913, and title III of the Transportation Act, 1920, respectively.

§164. Repealed. Oct. 10, 1940, ch. 851, §4, 54 Stat. 1111

Section, act Feb. 11, 1927, ch. 104, §1, 44 Stat. 1072, related to advertisements for proposals for purchases or services rendered for Board of Mediation, including arbitration boards.

§165. Evaluation and audit of Mediation Board

(a) Evaluation and audit of Mediation Board

(1) In general

In order to promote economy, efficiency, and effectiveness in the administration of the programs, operations, and activities of the Mediation Board, the Comptroller General of the United States shall evaluate and audit the programs and expenditures of the Mediation Board. Such an evaluation and audit shall be conducted not less frequently than every 2 years, but may be conducted as determined necessary by the Comptroller General or the appropriate congressional committees.

(2) Responsibility of Comptroller General

In carrying out the evaluation and audit required under paragraph (1), the Comptroller General shall evaluate and audit the programs, operations, and activities of the Mediation Board, including, at a minimum—

(A) information management and security, including privacy protection of personally identifiable information;

(B) resource management;

(C) workforce development;

(D) procurement and contracting planning, practices, and policies;

(E) the extent to which the Mediation Board follows leading practices in selected management areas; and

(F) the processes the Mediation Board follows to address challenges in—

(i) initial investigations of applications requesting that an organization or individual be certified as the representative of any craft or class of employees;

(ii) determining and certifying representatives of employees; and

(iii) ensuring that the process occurs without interference, influence, or coercion.

(b) Immediate review of certification procedures

Not later than 180 days after February 14, 2012, the Comptroller General shall review the processes applied by the Mediation Board to certify or decertify representation of employees by a labor organization and make recommendations to the Board and appropriate congressional committees regarding actions that may be taken by the Board or Congress to ensure that the processes are fair and reasonable for all parties. Such review shall be conducted separately from any evaluation and audit under subsection (a) and shall include, at a minimum—

(1) an evaluation of the existing processes and changes to such processes that have occurred since the establishment of the Mediation Board and whether those changes are consistent with congressional intent; and

(2) a description of the extent to which such processes are consistent with similar processes applied to other Federal or State agencies with jurisdiction over labor relations, and an evaluation of any justifications for any discrepancies between the processes of the Mediation Board and such similar Federal or State processes.

(c) Appropriate congressional committee defined

In this section, the term "appropriate congressional committees" means the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Health, Education, Labor, and Pensions of the Senate.

(May 20, 1926, ch. 347, §15, as added Pub. L. 112–95, title X, §1004, Feb. 14, 2012, 126 Stat. 147.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

BIANNUAL GAO AUDIT

Pub. L. 118–63, title II, §218(o), May 16, 2024, 138 Stat. 1057, provided that: "Any provision of the FAA Modernization and Reform Act of 2012 (Public Law 112–95) [see Short Title of 2012 Amendment note set out under section 40101 of Title 49, Transportation], including any amendment made by such Act, that requires the Comptroller General [of the United States] to conduct an audit (including a recurring audit) shall have no force or effect."

SUBCHAPTER II—CARRIERS BY AIR

§181. Application of subchapter I to carriers by air

All of the provisions of subchapter I of this chapter except section 153 of this title are extended to and shall cover every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service.

(May 20, 1926, ch. 347, §201, as added Apr. 10, 1936, ch. 166, 49 Stat. 1189.)

§182. Duties, penalties, benefits, and privileges of subchapter I applicable

The duties, requirements, penalties, benefits, and privileges prescribed and established by the provisions of subchapter I of this chapter except section 153 of this title shall apply to said carriers by air and their employees in the same manner and to the same extent as though such carriers and their employees were specifically included within the definition of "carrier" and "employee", respectively, in section 151 of this title.

(May 20, 1926, ch. 347, §202, as added Apr. 10, 1936, ch. 166, 49 Stat. 1189.)

§183. Disputes within jurisdiction of Mediation Board

The parties or either party to a dispute between an employee or a group of employees and a carrier or carriers by air may invoke the services of the National Mediation Board and the jurisdiction of said Mediation Board is extended to any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to an adjustment board, as hereinafter provided, and not adjusted in conference between the parties, or where conferences are refused.

The National Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

The services of the Mediation Board may be invoked in a case under this subchapter in the same manner and to the same extent as are the disputes covered by section 155 of this title.

(May 20, 1926, ch. 347, §203, as added Apr. 10, 1936, ch. 166, 49 Stat. 1189.)

§184. System, group, or regional boards of adjustment

The disputes between an employee or group of employees and a carrier or carriers by air growing out of grievances, or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on April 10, 1936 before the National Labor Relations Board, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing

to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to an appropriate adjustment board, as hereinafter provided, with a full statement of the facts and supporting data bearing upon the disputes.

It shall be the duty of every carrier and of its employees, acting through their representatives, selected in accordance with the provisions of this subchapter, to establish a board of adjustment of jurisdiction not exceeding the jurisdiction which may be lawfully exercised by system, group, or regional boards of adjustment, under the authority of section 153 of this title.

Such boards of adjustment may be established by agreement between employees and carriers either on any individual carrier, or system, or group of carriers by air and any class or classes of its or their employees; or pending the establishment of a permanent National Board of Adjustment as hereinafter provided. Nothing in this chapter shall prevent said carriers by air, or any class or classes of their employees, both acting through their representatives selected in accordance with provisions of this subchapter, from mutually agreeing to the establishment of a National Board of Adjustment of temporary duration and of similarly limited jurisdiction.

(May 20, 1926, ch. 347, §204, as added Apr. 10, 1936, ch. 166, 49 Stat. 1189.)

§185. National Air Transport Adjustment Board

When, in the judgment of the National Mediation Board, it shall be necessary to have a permanent national board of adjustment in order to provide for the prompt and orderly settlement of disputes between said carriers by air, or any of them, and its or their employees, growing out of grievances or out of the interpretation or application of agreements between said carriers by air or any of them, and any class or classes of its or their employees, covering rates of pay, rules, or working conditions, the National Mediation Board is empowered and directed, by its order duly made, published, and served, to direct the said carriers by air and such labor organizations of their employees, national in scope, as have been or may be recognized in accordance with the provisions of this chapter, to select and designate four representatives who shall constitute a board which shall be known as the "National Air Transport Adjustment Board." Two members of said National Air Transport Adjustment Board shall be selected by said carriers by air and two members by the said labor organizations of the employees, within thirty days after the date of the order of the National Mediation Board, in the manner and by the procedure prescribed by section 153 of this title for the selection and designation of members of the National Railroad Adjustment Board. The National Air Transport Adjustment Board shall meet within forty days after the date of the order of the National Mediation Board directing the selection and designation of its members and shall organize and adopt rules for conducting its proceedings, in the manner prescribed in section 153 of this title. Vacancies in membership or office shall be filled, members shall be appointed in case of failure of the carriers or of labor organizations of the employees to select and designate representatives, members of the National Air Transport Adjustment Board shall be compensated, hearings shall be held, findings and awards made, stated, served, and enforced, and the number and compensation of any necessary assistants shall be determined and the compensation of such employees shall be paid, all in the same manner and to the same extent as provided with reference to the National Railroad Adjustment Board by section 153 of this title. The powers and duties prescribed and established by the provisions of section 153 of this title with reference to the National Railroad Adjustment Board and the several divisions thereof are conferred upon and shall be exercised and performed in like manner and to the same extent by the said National Air Transport Adjustment Board, not exceeding, however, the jurisdiction conferred upon said National Air Transport Adjustment Board by the provisions of this subchapter. From and after the organization of the National Air Transport Adjustment Board, if any system, group, or regional board of adjustment established by any carrier or carriers by air and any class or classes of its or their employees is not satisfactory to either party thereto, the said party, upon ninety days'

notice to the other party, may elect to come under the jurisdiction of the National Air Transport Adjustment Board.

(May 20, 1926, ch. 347, §205, as added Apr. 10, 1936, ch. 166, 49 Stat. 1190.)

§186. Omitted

EDITORIAL NOTES

CODIFICATION

Section, act May 20, 1926, ch. 347, §206, as added Apr. 10, 1936, ch. 166, 49 Stat. 1191, transferred certain pending cases before National Labor Relations Board to Mediation Board.

§187. Separability

If any provision of this subchapter or application thereof to any person or circumstance is held invalid, the remainder of such sections and the application of such provision to other persons or circumstances shall not be affected thereby.

(May 20, 1926, ch. 347, §207, as added Apr. 10, 1936, ch. 166, 49 Stat. 1191.)

§188. Authorization of appropriations

There is authorized to be appropriated such sums as may be necessary for expenditure by the Mediation Board in carrying out the provisions of this chapter.

(May 20, 1926, ch. 347, §208, as added Apr. 10, 1936, ch. 166, 49 Stat. 1191.)