GRIEVANCE RESOLUTION AND THE SYSTEM BOARD OF ADJUSTMENT

By Jonathan A. Cohen

One of the significant differences between the National Labor Relations Act and the Railway Labor Act is in the approach of these statutes to the resolution of grievances. Under Section 301 of the LMRA (29 U.S.C. § 185), Congress has directed the courts to entertain, and to formulate and apply federal law to, suits for violation of collective bargaining agreements, including suits to vindicate individual employee rights deriving from such contracts. *Smith v. Evening News Ass'n,* 371 U.S. 195 (51:2646) (1962). The duty to arbitrate disputes over the meaning of a collective bargaining agreement arises only when the parties to the contract themselves have created such a duty. *Nolde Bros., Inc. v. Bakery Workers, Local No. 358,* 430 U.S. 243, 254 (94:2753) (1977); *United Steelworkers v. Warrior & Gulf Nav. Co.,* 363 U.S. 574, 582 (46:2416) (1960).

Under the RLA, however, Congress has developed a statutory scheme for the final and binding resolution of grievances that the Supreme Court has characterized as "mandatory, exclusive and comprehensive." *Brotherhood of Locomotive Engineers v. Louisville & Nashville R.R. Co.,* 373 U.S. 33, 38 (52:2944) (1963). The duty to arbitrate RLA grievances is statutory and unconditional, and it is designed to eliminate, insofar as possible, the authority of the courts in connection with the process of contract enforcement.

The RLA approach is not the product of one great burst of Congressional creativity. It reflects a process of prolonged legislative concern and revision over the years, and bears, as well, the heavy imprint of the views of the regulated employers and unions. A fair understanding of the statutory scheme requires a brief historical review.

A. LEGISLATIVE HISTORY

Most of the basic framework of the Railway Labor Act was adopted in 1926. The terms of the Act were jointly drafted and supported by spokesmen for the carriers and the unions. In Section 3, First, of the 1926 version of the Act (44 Stat. 578-579), employers and employees were directed to agree to establish boards of adjustment, composed of an equal number of management and labor representatives, to resolve "minor disputes" (*i.e.*, grievances or disputes over the meaning of the existing collective bargaining contract or arrangement). If these boards were unable to reach a majority decision, however, resolution of minor disputes depended upon the same voluntary processes of mediation, conciliation or optional arbitration provided for in connection with the resolution of "major disputes" (*i.e.*, disputes over the creation of new contract rights). Moreover, the parties to these minor disputes, prior to 1934, were free to utilize the courts to resolve the contract issues.

In practice, this initial approach soon proved a failure. Contrary to the spirit of the Act, the parties often failed to create the contemplated local boards. And when boards were created, they often failed to produce a majority result. The lack of an effective automatic device for disposition of deadlocked grievances resulted in what the Supreme Court later called a "complete breakdown" in the practical workings of the process. *Elgin, Joliet & E. Ry. Co. v. Burley*, 325 U.S. 711, 726 (16:749) (1945).

As a consequence, and to alleviate the repeated threats of railroad strikes over unresolved grievances, Congress amended the Act in 1934. H.R. No. 1944 on H.R. 9861, 73rd Cong., 2d Sess. 1, 2. A National Railroad Adjustment Board was created with the power to make awards that were " final and binding," with only limited judicial review. And the new Adjustment Board was given jurisdiction by the amended Act to issue a decision upon the submission of either party, regardless of the consent of the other party. 48 Stat. 1185.

In the event of deadlocks, the National Mediation Board was required to designate a neutral referee to sit with the Board members and decide the case. In addition to the establishment of a National Adjustment Board, Congress also provided for so-called voluntary boards: carriers and unions were authorized to establish boards of adjustments on a system, group or regional basis, and to utilize such voluntary boards instead of the National Board, if they so desired, as a matter of mutual agreement.

The legislative revisions, like the original 1926 Act, were achieved only because covered employers and unions provided a broad supporting consensus. In fact, the principal draftsman of the 1934 bill complimented the unions on their statesmanlike decision to concede the right to strike over grievances in favor of the creation of an authoritative Adjustment Board, and characterized the concession as the most important part of the bill. Testimony of Joseph Eastman, Federal Coordinator of Transportation, Hearings before the House Committee on Interstate and Foreign Commerce on H.R. 7650, 73rd Cong., 2d Sess. 47, 58, 60.

In 1966, Congress felt obliged to revise the pertinent provisions again. It found the Adjustment Board mechanism bogged down with a backlog of unresolved grievances that threatened

the very integrity of the institution: "[R]ailroad employees who have grievances sometimes have to wait as long as 10 years or more before a decision is rendered . . . [and one Division of the Board] has never been current in its work, [and has] a backlog of approximately 7-1/2 years. . . ." H.R. Rep. No. 1114, 89th Cong., 1st Sess. at 3-5, S. Rep. No. 1201, p. 2. Congress also found the 1934 judicial review procedures to be a cause of dissatisfaction. Thus, under that version of the Act, the employer could obtain judicial review of a Board award favoring the employee by simply refusing to comply with it, but an employee whose grievance was denied by the Board could not obtain judicial review at all. H.R. Rep. at 15, S. Rep. at 3.

Furthermore, the 1934 Act made Adjustment Board awards "final and binding . . . except insofar as they shall contain a money award." As for money awards, the 1934 Act apparently contemplated an employee suit in federal district court that would concern itself only with the monetary damages question, without disturbing the Adjustment Board's treatment of the grievance. But some uncertainty existed about whether the language of the 1934 Act might subject the merits of the grievance itself to trial *de novo* in cases where a money award was involved.

As a result, Congress enacted substantial revisions. 80 Stat. 208-210. To help relieve congested dockets on the Adjustment Board, Congress approved the creation of Special Adjustment Boards to hear and resolve grievances on a local carrier basis; because these Special Boards included a neutral referee, they were fairly effective for that purpose. At the same time, the Congress added new language to the judicial review provisions so as to permit either the employees or the employer to seek judicial review of a Board award, but specified that the courts could set aside the award only for fraud, corruption, failure to comply with the Act's requirements, or failure to confine itself to the Board's jurisdiction. The language permitting different treatment of "money awards" was deleted.

The provisions of the Railway Labor Act were made applicable to air carriers and their employees in 1936, after a successful legislative campaign led by the Air Line Pilots Association, then the only union in a fledgling industry. Although the basic structure of the Act itself had been enacted to regulate the labor relations of the railroad industry, with its extensive history of collective bargaining experience, Congress decided in 1936 to apply virtually the entire structure to a young, dynamic, and largely non-organized airline industry. As Section 181 of the Act provides, all of the Railway Labor Act -- "except Section 153 of this title [establishing the National Railroad Adjustment Board]" -- applies to air carriers.

Section 184 makes it the duty of every air carrier and its employees' representatives to establish "system, group or regional boards of adjustment," with jurisdiction like that of Section 153 adjustment boards. In addition, the National Mediation Board is authorized by Section 185 to direct the air carriers and their employees' union to create a permanent national board of adjustment, when such a forum shall be deemed necessary by the NMB for the prompt and orderly settlement of disputes. But the NMB has never found it necessary to require a national board.

The critical language of Title II, in terms of the legal basis for resolution of grievances in the airline industry, is, therefore, the first two sentences of Section 184:

> 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 [the date of approval of this Act] 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 [Title], 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 Act.

With this summary of the Act's history as background, an analysis of the legal issues arising out of airline grievance resolution can readily be developed.

B. JUDICIAL DETERMINATIONS

1. *Adjustment Board jurisdiction over contract-interpretation questions is exclusive.*

The Congressional decision to establish an administrative tribunal with specialized expertise in the construction and interpretation of collective bargaining agreements has, since an early time in the administration of the Act, led to Supreme Court recognition that the expert tribunal's jurisdiction over such issues is exclusive: neither federal nor state courts have authority to interpret RLA collective bargaining agreements, even when that is necessary to resolve cases otherwise properly before them. *Order of Ry. Conductors v. Pitney,* 326 U.S. 561 (17:722) (1946); *Slocum v. Delaware, L & W. R.R. Co.,* 339 U.S. 239 (25:2617) (1950).

In both cited cases, the employer was confronted with conflicting demands from rival unions, each relying upon its own collective bargaining agreement to assert the jurisdiction of its members over certain disputed jobs. In *Pitney,* the employer made an award of the jobs to one of the rival unions, and the other union sued in federal court; in *Slocum,* the railroad itself sued for a declaratory judgment in state court. In both cases, the Supreme Court found that a resolution of the issues put to the court required interpretation of the various underlying bargaining agreements. Consequently, it held, both courts lack jurisdiction because Congress intended that task to be performed only by the Adjustment Board.

The opinions in *Slocum* and *Pitney* emphasize the desirability of a resolution of bargaining contract questions by labor-relations experts rather than judges:

> The Adjustment Board is well equipped to exercise its congressionally imposed functions. Its members understand railroad problems and speak the railroad jargon. Long and varied