Handling discipline cases and the RLA

From my desk as AGC for GO-513

Just to help explain a process often misunderstood about the appeal process for discipline cases

Ed Weathers and myself have heard from many members and Local Chairman, the request for more information on the discipline process and the steps involved. We wanted to provide this information today to allow for better education to everyone of what is involved and why the time frame can be extensive.

The process of appealing a discipline case can be long and frustrating for all involved. The member that is charged is really the main one that has to deal with the frustrations, especially in a dismissal case.
The process is something protected by the Railway Labor Act, which was established by Congress 1926, to allow employees of the railroad carriers to have a fair process for dealing with discipline.

The RLA can be a benefit and a hindrance all at the same time since both the Carrier and the Union fall under the same process and the process can be very lengthy, time wise.

The first step is always the investigation and then the fact that a decision usually is not issued until almost 25-30 days after. Then the Local Chairmen or the General Chairmen file an appeal on the LCAT system on CSX. This is usually done around 30 days after the decision is received. We now have at least 2 months involved for the member charged.

The Carrier then has 60 days to respond from LR to the appeal, which the majority of the time the discipline is upheld by Labor Relations. This is usually not done until around the 50^{th}-60^{th} day. We now have at least 4 months involved for the member charged.

Due to the large amount of discipline cases ongoing at any one time, when a new case has been appealed to LR and given to our office for further handling, the new case goes to the back of the line behind the other cases already in our GC office. The next step will be a conference on the case with a member of LR to discuss the merits of the case again in appeal. Based on the other cases already ahead of a new case, this might take another 2 months. The dismissal cases always go before the cases that just involved suspensions. We now have at least 6 months involved for the member charged.

Now that the case has been conferenced, LR will sometimes go back and review a case and might overturn one at this stage of the appeal rather than place it before a possible arbitration review. Nonetheless, the case now goes behind the other cases that have been conferenced and will wait in line until it is able to be scheduled for a Public Law Board with an arbitrator and arranged by the National Mediation Board (NMB). This might take another 3-4 months based on the funding provided by Congress to the NMB. We now have at least 9-10 months involved for the member charged.

Once the case can be properly docketed for a PLB and is to be heard, our office will notify the member and they have the choice on whether to attend or not. It is not mandatory nor is there any claim that it benefits a member more in being in attendance than not being there as it is a choice for each member to make. The number of cases to be heard before each arbitrator depends on the cases to be allowed. Sometimes it might be only 10 cases and other times it might be 20 cases. In extreme cases, there have been some party pay Boards where the Carrier and the Union split the costs but this is a very expensive venue and our Committee cannot afford this route and most of the time the carrier refuses also because of the costs. The Arbitrators are usually very well educated individuals with legal back grounds and many will teach at law schools. Once the arbitrator hears the cases it takes an additional 2-6 months on average for a verdict from the hearings. Sometimes we will get a bench award, which means the arbitrator will rule right then and send the award later. We now have at least 12 months or more involved for the member. When we receive a favorable ruling for a member, the award usually has to be implemented within 30 days. If we receive an unfavorable ruling then our process for representation is usually over, except in very extreme cases that might be subject to further appeals to the NMB at the First Division level.

This is not a great process at times but at least we have a process versus the Carriers being able to simply dismiss an employee with no recourse. It is very refreshing to win those cases where a member is brought back to work with all their back pay from a dismissal charge but many times it is simply an award where the member is brought back to work, which means allot to their family. I see our General Committee getting many good awards for our members based on the efforts of the Local Chairmen and this Committee but when we go before an arbitrator, you never know what the outcome might be as the arbitrator simply deals with facts.
We always advise our Local Chairman to protest at the beginning of every investigation to any procedural errors or issues that might affect the case. We also advise that the member charged to allow the Local Chairman to handle the questioning of witnesses as much as possible because they understand the nature of what must be done in the investigation and what issues we do not want to be exposed any further than possible. The best line for a member charged is always “I compiled with the rule to the best of my ability” and “I will let the record speak for itself”. Preparing for each investigation can be tough and time consuming for the Local Chairmen. Sometimes it is essential to take pictures or maps or to get written and signed testimonies from other members that might not be at the investigations. Sometimes it involves reading for hours on the UTU website or the NMB website, the different PLB rulings to understand and research the charges for arguing in an investigation. It is never an easy task.

Our office commends each Local chairman for their efforts and hope this information helps them and the members to better understand the process we all face but especially the member that is charged.

Historical antecedents to the RLA
After the Great Railroad Strike of 1877, which was put down only with the intervention of federal troops, Congress passed the *Arbitration Act of 1888*, which authorized the creation of arbitration panels with the power to investigate the causes of labor disputes and to issue non-binding arbitration awards.[1] The Act was a complete failure: only one panel was ever convened under the Act, and that one, in the case of the 1894 Pullman Strike, issued its report only after the strike had been crushed by a federal court injunction backed by federal troops.
Congress attempted to correct these shortcomings in the Erdman Act, passed in 1898.[2] The Act likewise provided for voluntary arbitration, but made any award issued by the panel binding and enforceable in federal court. It also outlawed discrimination against employees for union activities, prohibited "yellow dog contracts" (in which an employee agrees not to join a union while employed), and required both sides to maintain the status quo during any arbitration proceedings and for three months after an award was issued. The arbitration procedures were rarely used. A successor statute, the Newlands Act of 1913, which created the Board of Mediation, proved to be more effective,[3] but was largely superseded when the federal government nationalized the railroads in 1917. (*See* United States Railroad Administration.)
The Adamson Act, passed in 1916, provided workers with an eight hour day, at the same daily wage they had received previously for a ten hour day, and required time and a half pay for overtime work.[4] Another law passed in the same year gave President Woodrow Wilson the power to "take possession of and assume control of any system of transportation" for transportation of troops and war material.[5]
Wilson exercised that authority on December 26, 1917.[6] While Congress considered nationalizing the railroads on a permanent basis after World War I, the Wilson administration announced that it was returning the railroad system to its owners. Congress tried to preserve, on the other hand, the most successful features of the federal wartime administration, the adjustment boards, by creating a Railroad Labor Board (RLB) with the power to issue non-binding proposals for the resolution of labor disputes, as part of the Esch–Cummins Act (Transportation Act of 1920).
The RLB soon destroyed whatever moral authority its decisions might have had in a series of decisions. In 1921 it ordered a twelve percent reduction in employees' wages, which the railroads were quick to implement. The following year, when shop employees of the railroads launched a national strike, the RLB issued a declaration that purported to outlaw the strike; the Department of Justice then obtained an injunction that carried out that declaration. From that point forward railway unions refused to have anything to do with the RLB.
Passage and amendment of the RLA
The RLA was the product of negotiations between the major railroad companies and the unions that represented their employees.[7] Like its predecessors, it relied on boards of adjustment, established by the parties, to resolve labor disputes, with a government-appointed Board of Mediation to attempt to resolve those disputes that board of adjustment could not. The RLA promoted voluntary arbitration as the best method for resolving those disputes that the Board of Mediation could not settle.

Congress strengthened these procedures in the 1934 amendments to the Act, which created a procedure for resolving whether a union had the support of the majority of employees in a particular "craft or class," while turning the Board of Mediation into a permanent agency, the National Mediation Board (NMB), with broader powers.
Congress extended the RLA to cover airline employees in 1936.[8]

Bargaining and strikes under the RLA

Unlike the National Labor Relations Act (NLRA), which adopts a less interventionist approach to the way the parties conduct collective bargaining or resolve their disputes arising under collective bargaining agreements, the RLA specifies both (1) the negotiation and mediation procedures that unions and employers must exhaust before they may change the status quo, and (2) the methods for resolving "minor" disputes over the interpretation or application of collective bargaining agreements. The RLA permits strikes over major disputes only after the union has exhausted the RLA's negotiation and mediation procedures, while barring almost all strikes over minor disputes. The RLA also authorizes the courts to enjoin strikes if the union has not exhausted those procedures.
On the other hand, the RLA imposes fewer restrictions on the tactics that unions may use when they do have the right to strike. The RLA does not, unlike the NLRA, bar secondary boycotts against other RLA-regulated carriers; it may also permit employees to engage in other types of strikes, such as intermittent strikes, that might be unprotected under the NLRA.

"Major" and "Minor" Disputes

The RLA categorizes all labor disputes as either "major" disputes, which concern the making or modification of the collective bargaining agreement between the parties, or "minor" disputes, which involve the interpretation or application of collective bargaining agreements. Unions can strike over major disputes only after they have exhausted the RLA's "almost interminable" negotiation and mediation procedures. They cannot, on the other hand, strike over minor disputes, either during the arbitration procedures or after an award is issued.
The federal courts have the power to enjoin a strike over a major dispute if the union has not exhausted the RLA's negotiation and mediation procedures. The Norris-LaGuardia Act dictates the procedures that the court must follow. Once the NMB releases the parties from mediation, however, they retain the power to engage in strikes or lockouts, even if they subsequently resume negotiations or the NMB offers mediation again.
The federal courts likewise have the power to enjoin a union from striking over arbitrable disputes. The court may, on the other hand, also require the employer to restore the status quo as a condition of any injunctive relief against a strike.

Discipline and replacement of strikers

Carriers can lawfully replace strikers engaged in a lawful strike, but may not, however, discharge them, except for misconduct, or eliminate their jobs to retaliate against them for striking. It is not clear whether the employer can discharge workers for striking before exhausting all of the RLA's bargaining and mediation processes.
The employer must also allow strikers to replace replacements hired on a temporary basis and permanent replacements who have not completed the training required before they can become active employees. The employer may, on the other hand, allow less senior employees who crossed the picket line to keep the jobs they were given after crossing the line, even if the seniority rules in effect before the strike would have required the employer to reassign their jobs to returning strikers.

Representation elections under the RLA

The NMB has the responsibility for conducting elections when a union claims to represent a carrier's employees. The NMB defines the craft or class of employees eligible to vote, which almost always extends to all of the employees performing a particular job function throughout the company's operations, rather than just those at a particular site or in a particular region.
A union seeking to represent an unorganized group of employees must produce signed and dated authorization cards or other proof of support from at least fifty percent of the craft or class. A party attempting to oust an incumbent union must produce evidence of support from a majority of the craft of class and then the NMB must conduct an election. If the employees are unrepresented and the employer agrees, the NMB may certify the union based on the authorization cards alone.
The NMB usually uses mail ballots to conduct elections, unlike the National Labor Relations Board (NLRB), which has historically preferred walk-in elections under the NLRA. The NMB can order a rerun election if it determines that either an employer or union has interfered with employees' free choice.

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