NMB Webinar

Problematic Issues in Railroad Arbitration©

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Presenter Biographies

Lynette A. Ross – Ms. Ross is an arbitrator and mediator with over 25 years of experience in labor relations. After obtaining an MS from the Rutgers University Institute of Management and Labor Relations, she worked for over 12 years in various labor relations positions in the railroad industry.

Elizabeth C. Wesman – Ms. Wesman has more than 30 years of experience as an arbitrator and mediator. She is the current president of the NARR, a member of the NAA and Professor Emeritus of human resources, strategy and labor relations at the Whitman School of Management at Syracuse University.

Q&A, Polls, Etc.

Q&A at the end of the presentation – send in questions to this e-mail address:

nmbwebinar@gmail.com

Polls will appear on screen – respond by clicking on your chosen answer.

The program will be recorded and posted on the NMB Lyceum, along with the program slides

CODE OF PROFESSIONAL RESPONSIBILITY FOR ARBITRATORS OF LABOR MANAGEMENT DISPUTES

Signatories:

NATIONAL ACADEMY OF ARBITRATORS

AMERICAN ARBITRATION ASSOCIATION

FEDERAL MEDIATION AND CONCILIATION SERVICE

See, http://www.naarb.org/code.asp

1. Arbitrators' Qualifications and Responsibilities to the Profession

A. General Qualifications

1. Essential personal qualifications of an arbitrator include honesty, integrity, impartiality and general competence in labor relations matters.
   An arbitrator must demonstrate ability to exercise these personal qualities faithfully and with good judgment, both in procedural matters and in substantive decisions….

2. An arbitrator must be as ready to rule for one party as for the other on each issue, either in a single case or in a group of cases. Compromise by an arbitrator for the sake of attempting to achieve personal acceptability is unprofessional.

5. Hearing Conduct

A. General Principles

1. An arbitrator must provide a fair and adequate hearing which assures that both parties have sufficient opportunity to present their respective evidence and argument.

   c. *An arbitrator should not intrude into a party's presentation so as to prevent that party from putting forward its case fairly and adequately.*

Summary of Excerpts from Legislation and Regulations

I. Railway Labor Act (RLA), Section 3, First

Covers establishment of the National Railroad Adjustment Board (NRAB), its powers and duties, creation of the four divisions, hearing and awards and judicial review.

II. Railway Labor Act, Section 3, Second

Addresses the establishment of arbitration boards: PLB's, SBA's, the designation of representatives by the NMB, appointment of neutral member, compensation, quorum, and finality and enforcement of awards.

Provides framework for the arbitration process. Parties do not compensate the neutral member of the Board (referee). Delineates role of the arbitrator as neutral member.

Summary of Excerpts from Legislation and Regulations (Cont.)

Circular No. 1 – issued October 10, 1934

I. NRAB

- Specifies required format for submissions to a Division. Individual claimants must comply with these guidelines. The neutral member of the Board may enforce the procedural guidelines as appropriate.

II. NRAB Uniform Rules of Procedure (Rev. 6/2003)

- Specifies procedures for filing Notice of Intent to file a submission to the Board, docketing process and applicable time limits. Individual claimants must comply with these rules. A sample Notice of Intent letter is also provided.
- See. www.nmb.gov/arbitration/nrab-circ_1.pdf , www.nmb.gov/arbitration/nrab-rules.pdf

SCENARIOS

Scenario 1

- The Claimant has filed a claim *pro se* (on his/her own and not supported by the Organization) with the NRAB. At the hearing, the Organization asks to be present for the oral hearing before the Board. The Claimant objects.

Scenario 1 (discussion)

What should the Referee do?

A. Tell the Organization Rep to wait outside.

B. Allow the Rep to stay and comment if he/she feels appropriate.

C. Allow the Organization Rep to remain, but instruct him/her not to comment during the Claimant's presentation.

Scenario 2

- A Claimant arrives at a PLB hearing with her lawyer accompanying her. Both the Carrier and the Organization object.

Scenario 2 (discussion)

What should the Referee do?

A. Allow the lawyer to stay and support the Claimant – passing notes or consulting with her throughout the hearing.
B. Allow the lawyer to stay and comment at the end of the oral presentations by the Parties.
C. Allow the lawyer to stay but not permit him/her to comment before or after the oral presentation by the Parties.
D. Comply with the Carrier and Organization's objections and ban the lawyer from the proceedings.

Scenario 3

- Under what circumstances should a referee return a discharged Claimant to work but without back pay?

- *Discussion*
- A. Never. The referee should always return the Claimant with full back pay or not at all.
- B. If the back pay liability for the Carrier is excessively large.
- C. It depends.

Scenario 4

- At the end of the oral presentation on a Board involving a case in which the Claimant failed his follow-up drug and alcohol test, the Organization asks to offer new evidence regarding the Claimant's success at rehabilitation. It has a notarized letter from the Claimant's rehab program stating he has remained clean and sober – submitting to voluntary testing once every two weeks – for the past three years. The Carrier objects.

Scenario 4 (discussion)

- *What should the referee do?*

- A. Refuse to admit any new evidence
- B. Accept the letters "for what they are worth" without comment.
- C. Discuss with the Parties in Executive Session possible options in dealing with the documents.
- D. Take them as "compelling" evidence of the Claimant's fitness for returning to work.

Scenario 5

- At the end of the oral presentation on a Board involving a case in which the Claimant was apparently caught stealing Carrier property, the Carrier asks to enter on the record police documents containing the Claimant's arrest and conviction for theft at a hardware store just three days after his discharge for allegedly stealing from the Carrier. The documentation also indicates that the Claimant remains in jail as of the date of the Board hearing. The Organization objects.

Scenario 5 (discussion)

- *What should the referee do?*

- A. Refuse to admit any new evidence.
- B. Accept the documents "for what they are worth" without comment.
- C. Accept the documents as proof that Claimant is most likely guilty of the theft of Carrier's property as charged.
- D. Maintain the same standard of persuasion before the Board irrespective of the civil conviction.

Scenario 6

- Would your answer in #5 be different if the arrest and conviction were for an entirely unrelated crime – like DUI?
- Would your answer to the above question be different if he were an engineer?

Scenario 7 – Part I

- Before an oral presentation on a Board, at which the Claimant is in attendance, the referee gives an explanation of the arbitration process and the finality of arbitration under the RLA. Should the neutral begin the hearing with such prefacing remarks or should he simply introduce himself and turn the proceedings over to the parties?

Scenario 7 – Part – I (discussion)

- A. He should provide the Claimant with an overview as to how arbitration works in the rail industry.
- B. In an executive session before the hearing, the neutral should ask the Board members if they want him to make any remarks to the Claimant.
- C. He should converse casually with the Claimant beyond a simple introduction and acknowledging his presence at the hearing, to help the Claimant relax.

Scenario 7 – Part II

- At the conclusion of the Parties' presentations during a Board hearing a dismissal case for which the Claimant is in attendance, the referee allows the Claimant to say a few words about his case. Is this a good idea?

Scenario 7 – Part II – Discussion

- A. Yes. It ensures a fair hearing and gives the Claimant an opportunity to accept responsibility, convey an apology, or express gratitude for his job.
- B. No. It is a slippery slope, can give an employee false hope, or opens the door for an attempt to present new evidence.
- C. The question of whether the Claimant should be permitted to comment at the end of the oral presentation should be first cleared with the partisan members of the Board.

Questions?

- Please send any unanswered or "after the fact" questions to nmbwebinar@gmail.com so they can be forwarded to the speakers.