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CARRIER MEMBERS - NATIONAL RAILROAD ADJUSTMENT BOARD

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July 11, 2005

Mr. Gerald E. Wallin
P.O. Box 12608
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Dear Referee Wallin:

This is in response to Labor Member Robinson's July 6, 2005 letter regarding ten cases (Dockets MW-38271 thru MW-38280) for which the National Mediation Board has appointed you to sit with the Division. Labor Member Robinson contends that the Carrier and Labor Members of the Division have reached a "deadlock" on setting a date for hearing the ten disputes and requested that you set a date for their hearing. There is no provision in the Railway Labor Act, or in the Board's Rules, that even remotely implies that a referee has the authority or jurisdiction to set hearing dates for cases pending at the Board. The Labor Member's request should be rejected.

As a threshold matter, the Carrier Members of the Board have not refused to set a date for hearing the cases assigned to you. Our disagreement with Labor Member Robinson stems from our refusal to depart from normal Board practice and advance these particular disputes ahead of older disputes that have been pending before the Board for a longer period of time. Labor Member Robinson's proposal is to run around all these older cases, involving every other Organization, including those advanced to the Board by the Brotherhood of Maintenance of Way Employees Division of the International Brotherhood of Teamsters, and to give these cases preference. There are more than 600 cases awaiting argument that are older than the oldest case assigned to you in this docket. By the way, Labor Member Robinson's citation of Section 151a (5) is not entirely accurate. The provision is quoted as providing for the prompt and orderly "... settlement of disputes..." Inadvertently, no doubt, the word "all" which precedes "disputes" was omitted.

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The obligation of the partisan members of the Board under the Railway Labor Act is to ensure that all disputes brought before the Board are handled to finality in an orderly manner, as expeditiously and fairly as possible. The obvious method for carrying out that responsibility is to assign cases to referees on a first in, first out basis. The partisan members have followed such a rational approach throughout the Board's existence. The only exceptions were disputes that both sides agreed had reasons to be advanced out of such order, such as discipline cases. The Carrier Members do not find any compelling reason to advance these ten cases and we are not agreeable to doing so. The Division's procedures provide that a hearing date will be scheduled for these ten cases in the normal course in the order they were submitted to the Board. Thus, there is no deadlock for you to decide on setting a hearing date.

It does not take much imagination to foresee the chaos that would occur if any side, Organization or Carrier, could unilaterally advance a dispute simply by having a referee appointed after the dispute has been deadlocked for ten days. Although Labor Member Robinson's request is unique, it will become the standard operating procedure if allowed to succeed. Moreover, if the instant request is successful, it will also be a harbinger of the future for a partisan member other than the Chairman or Vice Chairman to approach a referee to request hearing dates.

In summary, we are delighted that you have been assigned this docket of cases and look forward to presenting them to you at the appropriate time.

Very truly yours,

Michael C. Lesnik

Michael C. Lesnik
Chairman - Third Division

**Copy: Mr. Roland Watkins, Director - Office of Arbitration Services, NMB
Mr. Martin W. Fingerhut, NRAB Chairman
Mr. William R. Miller, NRAB Vice Chairman
Mr. Roy C. Robinson, Labor Member**