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July 13, 2005

Mr. Roland Watkins
Director - Office of Arbitration Services
National Mediation Board
Room 250 East
1301 "K" St. N.W.
Washington, DC 20005

RE: Third Division ten case docket, BMW and CSX.

Dear Mr. Watkins:

A procedural dispute has arisen between the partisan members of the Third Division of the National Railroad Adjustment Board ("NRAB"). I believe the nature of the dispute requires certain legal and policy guidance from the National Mediation Board ("NMB").

As background, the NMB issued me a certificate dated June 15, 2005 to sit as referee with the Third Division on a docket of ten BMW-CSX cases. Since accepting the appointment, I have received a letter dated July 6, 2005 from Labor Member Roy Robinson as well as a letter dated July 11, 2005 from Carrier Member and Third Division Chairman Michael Lesnik expressing their respective positions on the procedural dispute. You were shown to have received a copy of each of the letters so I need not describe their contents in detail. In brief summary, Mr. Robinson maintains that I am now responsible for resolving the deadlock over the setting of a hearing date for the ten cases. Mr. Lesnik, to the contrary, maintains that referees lack the authority to mandate a hearing date. The basis of Mr. Lesnik's position appears to be that the ten cases involved are not the proper cases to be heard in the near future because they deviate from the Third Division's customary, historical, and traditional first-in-first-out method of scheduling hearings.

To my knowledge, the procedural dispute is unprecedented. In my more than fifteen years of service as referee with the NRAB, hearing dates have always been set by joint agreement among the partisan members of the Third Division. Indeed, the certificate of authority that I was issued by the NMB says, "The Division will arrange for time and place of hearing."

Because the NMB is the administrator of the Railway Labor Act ("RLA"), I request the NMB's answers to the following questions:

1. What legal authority, if any, does a referee have under the RLA to resolve the kind of procedural dispute described above? If such authority exists, please cite the specific provision(s) of the RLA that establish(es) that authority.

2. On the assumption that legal authority only arguably and not explicitly exists under the RLA and a hearing date is set but the Carrier Members commence litigation to enjoin the hearing, will the NMB and/or the federal government undertake my legal representation, in the event I am named as a party in the litigation, and hold me harmless from any costs and expenses associated with the litigation?
3. In the event a hearing date is set but the Carrier Member(s) neither attend the hearing nor provide submissions, will the NMB nevertheless pay my compensation and expenses associated with preparing for and attending the hearing?

I would greatly appreciate the NMB's prompt answers to the foregoing questions. When Ms. Conrad contacted me to ascertain my willingness to accept appointment to the docket of cases in question, I was unaware that it would involve the procedural dispute at hand. The NMB's answers are necessary for me to determine whether I will continue to serve in the appointment or resign from it.

Very truly yours,

Gerald E. Wallin

cc: Mr. Martin W. Fingerhut, NRAB Chairman
Mr. William R. Miller, NRAB Vice Chairman
Mr. Michael C. Lesnik, Third Division Chairman and Carrier Member
Mr. Roy C. Robinson, Third Division Labor Member