




NATIONAL MEDIATION BOARD
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TO: Railroad Neutrals
Railroad Carriers
Rail Labor Organizations

FROM: Daniel Rainey
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Subject: Rail Arbitration Administrative Matters

Several items have been discussed by representatives of rail labor, rail management, and rail neutrals over the past few months. This memo will address those items. Specifically, the items I will cover in this memo are:

- The process for requesting Executive Sessions;
- The process for requesting Interpretations;
- The period of time during which cases can be scheduled for hearing after having been moved into "active" status;
- The status of cases with funds obligated from FY2012 still unheard;
- The "three month rule" for rendering awards;
- The shift to "pay per case" scheduling of cases;
- Party responsibility for managing cases;
- NMB flexibility.

Executive Sessions and Interpretations

Under the current accounting system, arbitrators are paid for work by attaching draft awards to requests for payment. When payment is made, even though the awards are draft awards at the stage the arbitrators request payment, cases are closed in the accounting system. In rare instances the parties may request, and the arbitrator may agree to perform, additional work in the form of executive sessions or an interpretation of a final award. If the arbitrator provides to the NMB a reason for the extra work, the NMB may grant the arbitrator additional time to work on the award or to interpret a final award on a public law board or special board of adjustment. However, in order for the accounting system to make it clear that further payment is being made for new work, not additional payment for work already done, it is necessary to assign a new case number, linked to the old case number, when the work is approved.

Since the arbitrator is the government contractor and will be paid for any additional work on cases, it is the responsibility of the arbitrator to consult with the parties and determine when executive sessions are necessary and when interpretations are requested. In order for the new case number to be assigned and for the work to be approved, the arbitrator must follow the procedure below for both executive sessions and interpretations:

- The arbitrator must provide the NMB with a request in writing for the executive session or the interpretation of a PLB or SBA award. In the request, the arbitrator should specify the portion of the award which will be addressed in the executive session or interpretation and why the section needs to be addressed. This forms a basic audit trail that shows the need for extended work.
- Upon receipt of this request, NMB may allow, based on funding levels, the arbitrator the opportunity to do further work.
- When the request is granted, the NMB will give that request a new case number in the arbitrator work space.
- The arbitrator may then choose the new case number from her or his work space list and schedule the executive session/interpretation with the parties.
- When the session has been held or the interpretation has been rendered, the arbitrator must submit the revised award or the latest version of the award along with her or his normal request for payment.

A request for an interpretation at the NRAB will be assigned a new case number at the time of the submission of the request for an interpretation.

Scheduling Period

Under the current system, parties may move cases into active status at the beginning of each month. This does not mean that the work must be scheduled or performed in the following month. It is the case that parties can schedule with an arbitrator three months ahead so that work not approved in one month still can be approved before the scheduled hearing date. Beginning in June, 2013, cases for which requests have been made but which are not funded will no longer have to be re-filed in the following month. Instead, the Director of Arbitration will place the un-funded requests on a "wait list," putting them in top priority position for funding during the next month. Assuming the parties manage cases well and do not flood the system with requests, there should be no case that goes more than two months before being funded. If the parties do flood the system with case requests, the Board may revisit this issue and address some means of prioritizing cases.

FY 2012 Obligations

At the end of FY 2012, the NMB undertook a survey of cases pending. At that time it was possible to obligate enough money to hear and decide all of those pending cases (on the books as of September 30, 2012). These cases are approved, available for work and funded. To date, the parties have done a very poor job of clearing those cases. These cases are outside the case load for FY 2013, are already funded, and can be heard at any time. If they are not heard and decided by September 30, 2013, the money will be lost, and the cases will be go back into inactive status. If your organization has cases in this status, please contact the Director of Arbitration for suggestions on how handle them before the end of this fiscal year (September 30, 2013).

The "Three Month Rule"

For a number of reasons, including not losing money from cases carried over from one fiscal year to another, the NMB began in 2011 discussions regarding moving from a Six Month Rule for rendering awards to a Three Month Rule. After consultation with the parties and arbitrators, the Three Month Rule was instituted in FY 2013. Cases heard now must be decided and draft awards submitted within 90 days of the hearing date. Since the three-month rule has recently been implemented, the Board has not had sufficient time to review its progress. However, during the past three fiscal years, over 75% of cases have been submitted in less than three months, even when the rule allowed six months. The Board established the Three Month rule for submitting awards, even though most other Federal agencies who administer arbitration rosters require awards in as few as 30 days. We think the 90 day time frame is reasonable, and that is supported by the data regarding award submission.

Pay per Case

Compensation on case work in Section 3 has traditionally been based on a "per day" basis. This method distorts the amount of work done on cases, and artificially limits the number of cases arbitrators may work on in a given month. Currently, there are approximately 30 boards for which arbitrators are compensated on a per-case basis. The NMB is interested in expanding this form of compensation in a way that allows arbitrators to hear and decide more cases per month. If you are interested in setting up pay-per-case boards, or if you want information about how pay-per-case works, contact the Director of Arbitration.

Party Responsibility

It is the case that the entire NMB budget, including the money allocated for Section 3 work, has been severely cut by the sequester and by the pressure to reduce costs in the overall budget process. This pressure will not, I think, be relieved in the near future. Therefore, it is even more imperative that the parties manage cases in a way that puts forward high profile, important cases first. Moving a large number of cases into active status, with no indication of priority between dismissal cases and other cases that are possibly of less urgency, may well mean that time claims or other less pressing cases are approved for work and that dismissal or severe discipline cases are not approved. The NMB does not make judgments about which cases are the most pressing in terms of scheduling. The parties must make those judgments, and it is even more important for them to do so in a time of budget stress. In the past there was enough money to hear most of the cases put forward in a given month. That is no longer the case. The auditors, the Board, the parties, and common sense suggest that the NMB should manage the money in Section 3 so that business can be done throughout the fiscal year. If we did not do so, the parties would, as in years past, find themselves early in the second half of the fiscal year with urgent and important cases that cannot be heard because there is no money to operate. If the parties manage cases well, the monthly allocation that we are currently using should ensure that the urgent cases can be heard, no matter which month of the year in which they occur.