Introduction

Two Types of Disputes: Major Disputes and Minor Disputes

1. Labor disputes in the railroad industry have traditionally fallen into two distinct categories: "disputes concerning the making of collective agreements," known as major disputes, and "disputes over grievances," known as minor disputes.

2. Although the terms "major dispute" and "minor dispute" are not used in the Railway Labor Act ("RLA"), they figure prominently in RLA court decisions. The Supreme Court has long held that this separation of labor disputes into two categories, *i.e.*, "minor disputes" and "major disputes," is consistent with the purpose and policies of the Railway Labor Act ("RLA"). In the RLA, Congress created separate mechanisms through which efforts are to be made to resolve both types of these disputes between airline management and employee representatives.

Minor Disputes

3. According to the United States Supreme Court, a "minor dispute" is one that "contemplates the existence of a collective agreement" ("CBA"), and "relates either to the meaning or proper application of a particular provision with reference to a specific situation or to an omitted case." Minor disputes, therefore, generally result from attempts to enforce existing contractual obligations and rights. Accordingly, "when an employer asserts a contractual right to take the contested action, the ensuing dispute is minor *if the action is arguably justified by the terms of the parties' collective-bargaining agreement*. *Where, in contrast, the employer's claims are frivolous or obviously insubstantial, the dispute is major*."

4. As a general rule, the courts do not have jurisdiction over disputes that they decide are "minor." Rather, in seeking to resolve minor disputes, the parties must resolve their

disputes through binding arbitration, and each is free to act under its interpretation of the collective bargaining agreement until the arbitrator rules otherwise.

5. Although many, if not most, disputes between carriers and employee representatives that are parties to a CBA are considered minor disputes that must be resolved through final and binding arbitration, not all of them. There are occasions when a carrier that is party to a CBA can still trigger a "major dispute" that can be resolved through the RLA's major dispute procedures discussed below. For example, when a carrier unilaterally changes, or announces an intent to unilaterally change, the terms of a CBA, the dispute is deemed to be a major dispute. In a famous case involving Eastern Airlines, the United States Court of Appeals for the Second Circuit explained that:

> Such a unilateral change provokes a major rather than a minor dispute for an obvious reason: if the party acknowledges that the existing agreement prohibits its actions, there is no disagreement over the meaning of the contract and therefore the dispute is not one of contract interpretation. Rather, a unilateral change in the agreement look[s] to the acquisition of rights for the future, not to assertion of rights claimed to have vested in the past.

6. Other Circuit Courts of Appeal, including the Ninth Circuit, have similarly explained that RLA "major disputes" are triggered when a carrier unilaterally changes the terms of a CBA. In a case involving the Switchmen's Union of North America, for example, the Ninth Circuit explained that:

> a controversy, although couched in terms of a disagreement as to interpretation of a contract, may under some circumstances be regarded as a major dispute. This result may be reached if it can be said that the change being imposed by one side on the other is in nowise contemplated or arguably covered by the agreement. The provisions of the Railway Labor Act may not be avoided merely through the device of unilateral action which the actor purposefully intends shall not become a part of the agreement.

Major Disputes

7. "Major disputes" relate to the formation of a collective agreement or efforts to change the terms of one. Such disputes arise where a CBA either does not exist or where one of the parties seeks to change the terms of an existing CBA. RLA "major disputes" are predicated on the provisions set forth in RLA Section 2, Seventh, and RLA Section 6.

A. RLA Section 2, Seventh, states that:

> no carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class, as embodied in agreements except in the manner prescribed in such agreements or through the mediation procedures established in [RLA § 6].

B. RLA Section 6 states in relevant part that:

> Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules or working conditions . . . . In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules or working conditions shall not be altered by the carrier until the controversy has been finally acted upon, as required by [RLA Section 5] of this title by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

8. Major disputes most commonly involve disputes arising during collective bargaining negotiations and disagreements between a carrier and labor representative over the efforts to procure or amend/modify a CBA. In describing the nature of major disputes and their distinction from "minor disputes," the Supreme Court has therefore long held that major disputesinvolve "the acquisition of rights for the future, not [the] assertion of rights claimed to have vested in the past."

9. Under the RLA, major disputes are resolved in accordance with a very different procedure than the procedure required to resolve minor disputes. Specifically, with respect to major disputes, Congress provided that the parties must engage in a lengthy process of bargaining and mediation to settle a major dispute.

A. The RLA major dispute resolution process begins when a party desiring to make a change affecting the "rates of pay, rules, or working conditions" gives thirty days' written notice to the other party of the intended change. This written notice is known as a RLA “Section 6 notice.”

B. Shortly after the Section 6 notice is received, the parties must designate the place and time to begin direct negotiations (referred to in the RLA as “conferences) between their respective representatives.

C. If the parties’ direct negotiations are unsuccessful, within ten days of one side or other having terminated those direct negotiations, either party may (and almost always do) submit their dispute to mediation under the jurisdiction and guidance of the National Mediation Board (NMB).

D. If the NMB decides that mediation efforts are not likely to succeed in bringing about an agreement between the parties, the NMB must extend to the parties a “proffer” of binding interest arbitration, whereby a panel of neutral arbitrations is given authority to decide and implement all disputed terms.

E. Upon receipt of a proffer, the parties must voluntarily accept or reject arbitration. If either or both parties reject the proffer, then after engaging in an additional 30-day negotiation “cooling off” period supervised by the NMB.

F. If they parties are unable to reach an agreement within the 30-day cooling off period, they may then engage in "self-help" activities, such as strikes and lockouts, to secure their bargaining objectives. Even then, however, before a strike or lockout occurs, the President of the United States may intervene intervention to secure a resolution of the dispute through the imposition of a Presidential Emergency Board (PEB"), consisting of a panel of neutral experts who are tasked with recommending solutions to the parties, which they may accept or reject.

G. If they reject the PEB's recommendations, Congress itself may step in an enact legislation imposing the PEB's recommended terms upon the parties, thereby resolving the dispute and averting a strike or lockout.

<u>What is the Test Used to Determine Whether a Dispute is "Minor" or "Major"?</u>

10. It is not always easy to determine whether a dispute is a "minor" or a "major" oe under the RLA. In a1989 Supreme Court decision involving ConRail, the Supreme Couurt articulated an explicit standard for differentiating between major and minor disputes. The Court explained that a dispute is "minor" if it may be resolved by interpreting the terms of an existing CBA.

A. Recognizing that such a standard to distinguish between major and minor dispute can lead to mischief by a party seeking the shelter of the RLA's binding arbitration requirement after having unilaterally changed or disregarded the terms of a CBA, however, the Court noted that "there is danger in leaving the characterization of the dispute solely in the hands of one party." The Court explained that when a party asserts a contractual basis for taking certain actions or engaging in conduct without sincerity or on insubstantial grounds, honoring that parties' mere assertion of such a contractual basis or right "would . . . undercut the prohibitions of § 2, Seventh, and § 6 of the Act against unilateral imposition of new contractual terms." In that situation, the Court held, the proper function of the statutory process for settling disputes is protected only if the court "substitute[s] its characterization for that of the claimant."

B. Accordingly, the Court held that, "[w]here an employer asserts a contractual right to take the contested action, the ensuing dispute is minor if the action is arguably justified by the terms of the parties' collective-bargaining agreement. Where, in contrast, the employer's claims are frivolous or obviously insubstantial, the dispute is major."

<u>The RLA's Status Quo Obligation</u>

10. Until a carrier and labor representative have exhausted the RLA's major dispute resolution process, they are both obligated to maintain the "status quo," and the employer may not implement the contested change in rates of pay, rules, or working conditions.

11. The RLA's major dispute provisions contain three explicit status quo mandates requiring that the parties maintain, without change, the rates of pay, rules and working conditions that are "in effect prior to the time the pending dispute arose and which are involved in or related to that dispute."

12. If either a carrier or a labor representative violates the RLA's status quo obligations, the other (injure) party may take decisive action to remedy that violation.

A. The injured party may file a complaint in federal court seeking a court ordered injunction enforceable upon pain of contempt, fines and even imprisonment, requiring the offending party to restore the status quo.

B. The injured party may also engage in self-help in order to compel the offending party to restore the status quo. For example, if a carrier triggers a status quo violation by unilaterally and without any arguable justification changing or disregarding the terms of a CBA, a Union can lawfully engage in a strike to compel the carrier to restore the status quo. Such a strike is lawful even if the CBA has a no-strike clause. The Supreme Court and lower federal courts have long recognized the legality of such status quo strikes, and held that they lack the legal authority to stop the strike except in very narrow circumstances involving violence and property damage. In upholding the legality of such status quo strikes, the Supreme Court explained how that because the carrier's triggering status quo violation was at odds with the RLA, "[i]t [can]hardly be expected that the union would sit idly by as the [carrier] rushed to accomplish the very result the union was seeking to prohibit by agreement." In such circustances where a carrier triggers a status quo violation, therefore, the Court held that "the union cannot be expected to hold back its own economic weapons, including the strike."