

(May 20, 1926, ch. 347, § 5, 44 Stat. 580; June 21, 1934, ch. 691, § 5, 48 Stat. 1195; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107.)

#### CODIFICATION

As originally enacted, par. Third (b) contained a reference to the "circuit court of appeals". Act June 25, 1948, as amended by act May 24, 1949 substituted "court of appeals" for "circuit court of appeals".

#### AMENDMENTS

1934—Act June 21, 1934, amended generally par. First and par. Third, (e) and (f).

### § 156. Procedure in changing rates of pay, rules, and working conditions

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, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. 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 section 155 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.

(May 20, 1926, ch. 347, § 6, 44 Stat. 582; June 21, 1934, ch. 691, § 6, 48 Stat. 1197.)

#### AMENDMENTS

1934—Act June 21, 1934, inserted "in agreements" after "intended change" in text, struck out provision formerly contained in text concerning changes requested by more than one class, and substituted "Mediation Board" for "Board of Mediation" wherever appearing.

#### WAGE AND SALARY ADJUSTMENTS

Ex. Ord. No. 9299, eff. Feb. 4, 1943, 8 F.R. 1669, provided procedure with respect to wage and salary adjustments for employees subject to this chapter.

### § 157. Arbitration

#### First. Submission of controversy to arbitration

Whenever a controversy shall arise between a carrier or carriers and its or their employees which is not settled either in conference between representatives of the parties or by the appropriate adjustment board or through mediation, in the manner provided in sections 151—156 of this title such controversy may, by agreement of the parties to such controversy, be submitted to the arbitration of a board of three (or, if the parties to the controversy so stipulate, of six) persons: *Provided, however,* That the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon

such party by the terms of this chapter or otherwise.

#### Second. Manner of selecting board of arbitration

Such board of arbitration shall be chosen in the following manner:

(a) In the case of a board of three the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name one arbitrator; the two arbitrators thus chosen shall select a third arbitrator. If the arbitrators chosen by the parties shall fail to name the third arbitrator within five days after their first meeting, such third arbitrator shall be named by the Mediation Board.

(b) In the case of a board of six the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name two arbitrators; the four arbitrators thus chosen shall, by a majority vote, select the remaining two arbitrators. If the arbitrators chosen by the parties shall fail to name the two arbitrators within fifteen days after their first meeting, the said two arbitrators, or as many of them as have not been named, shall be named by the Mediation Board.

#### Third. Board of arbitration; organization; compensation; procedure

##### (a) Notice of selection or failure to select arbitrators

When the arbitrators selected by the respective parties have agreed upon the remaining arbitrator or arbitrators, they shall notify the Mediation Board; and, in the event of their failure to agree upon any or upon all of the necessary arbitrators within the period fixed by this chapter, they shall, at the expiration of such period, notify the Mediation Board of the arbitrators selected, if any, or of their failure to make or to complete such selection.

##### (b) Organization of board; procedure

The board of arbitration shall organize and select its own chairman and make all necessary rules for conducting its hearings: *Provided, however,* That the board of arbitration shall be bound to give the parties to the controversy a full and fair hearing, which shall include an opportunity to present evidence in support of their claims, and an opportunity to present their case in person, by counsel, or by other representative as they may respectively elect.

##### (c) Duty to reconvene; questions considered

Upon notice from the Mediation Board that the parties, or either party, to an arbitration desire the reconvening of the board of arbitration (or a subcommittee of such board of arbitration appointed for such purpose pursuant to the agreement to arbitrate) to pass upon any controversy over the meaning or application of their award, the board, or its subcommittee, shall at once reconvene. No question other than, or in addition to, the questions relating to the meaning or application of the award, submitted by the party or parties in writing, shall be considered by the reconvened board of arbitration or its subcommittee.

Such rulings shall be acknowledged by such board or subcommittee thereof in the same man-

ner, and filed in the same district court clerk's office, as the original award and become a part thereof.

**(d) Competency of arbitrators**

No arbitrator, except those chosen by the Mediation Board, shall be incompetent to act as an arbitrator because of his interest in the controversy to be arbitrated, or because of his connection with or partiality to either of the parties to the arbitration.

**(e) Compensation and expenses**

Each member of any board of arbitration created under the provisions of this chapter named by either party to the arbitration shall be compensated by the party naming him. Each arbitrator selected by the arbitrators or named by the Mediation Board shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, while serving as an arbitrator.

**(f) Award; disposition of original and copies**

The board of arbitration shall furnish a certified copy of its award to the respective parties to the controversy, and shall transmit the original, together with the papers and proceedings and a transcript of the evidence taken at the hearings, certified under the hands of at least a majority of the arbitrators, to the clerk of the district court of the United States for the district wherein the controversy arose or the arbitration is entered into, to be filed in said clerk's office as hereinafter provided. The said board shall also furnish a certified copy of its award, and the papers and proceedings, including testimony relating thereto, to the Mediation Board to be filed in its office; and in addition a certified copy of its award shall be filed in the office of the Interstate Commerce Commission: *Provided, however,* That such award shall not be construed to diminish or extinguish any of the powers or duties of the Interstate Commerce Commission, under subtitle IV of title 49.

**(g) Compensation of assistants to board of arbitration; expenses; quarters**

A board of arbitration may, subject to the approval of the Mediation Board, employ and fix the compensation of such assistants as it deems necessary in carrying on the arbitration proceedings. The compensation of such employees, together with their necessary traveling expenses and expenses actually incurred for subsistence, while so employed, and the necessary expenses of boards of arbitration, shall be paid by the Mediation Board.

Whenever practicable, the board shall be supplied with suitable quarters in any Federal building located at its place of meeting or at any place where the board may conduct its proceedings or deliberations.

**(h) Testimony before board; oaths; attendance of witnesses; production of documents; subpoenas; fees**

All testimony before said board shall be given under oath or affirmation, and any member of the board shall have the power to administer oaths or affirmations. The board of arbitration,

or any member thereof, shall have the power to require the attendance of witnesses and the production of such books, papers, contracts, agreements, and documents as may be deemed by the board of arbitration material to a just determination of the matters submitted to its arbitration, and may for that purpose request the clerk of the district court of the United States for the district wherein said arbitration is being conducted to issue the necessary subpoenas, and upon such request the said clerk or his duly authorized deputy shall be, and he is, authorized, and it shall be his duty, to issue such subpoenas.

Any witness appearing before a board of arbitration shall receive the same fees and mileage as witnesses in courts of the United States, to be paid by the party securing the subpoena.

(May 20, 1926, ch. 347, § 7, 44 Stat. 582; June 21, 1934, ch. 691, § 7, 48 Stat. 1197; Pub. L. 91-452, title II, § 238, Oct. 15, 1970, 84 Stat. 930.)

CODIFICATION

In par. Third (f), "subtitle IV of title 49" substituted for "the Interstate Commerce Act, as amended [49 U.S.C. 1 et seq.]" on authority of Pub. L. 95-473, § 3(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV of Title 49, Transportation.

AMENDMENTS

1970—Par. Third, (h). Pub. L. 91-452 struck out provisions authorizing board to invoke aid of the United States courts to compel witnesses to attend and testify and to produce such books, papers, contracts, agreements, and documents to same extent and under same conditions and penalties as provided for in the Interstate Commerce Act.

1934—Act June 21, 1934, substituted "Mediation Board" for "Board of Mediation" wherever appearing.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-452 effective on sixtieth day following Oct. 15, 1970, and not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104-88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of Title 49, Transportation, and section 101 of Pub. L. 104-88, set out as a note under section 1301 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104-88, set out as a note under section 1301 of Title 49.

WORK RULES DISPUTE

Pub. L. 88-108, Aug. 28, 1963, 77 Stat. 132, provided: "[SEC. 1. Settlement of disputes]. That no carrier which served the notices of November 2, 1959, and no labor organizations which received such notices or served the labor organization notices of September 7, 1960, shall make any change except by agreement, or pursuant to an arbitration award as hereinafter provided, in rates of pay, rules, or working conditions encompassed by any of such notices, or engage in any strike or lockout over any dispute arising from any of such notices. Any action heretofore taken which would be prohibited by the foregoing sentence shall be forth-

with rescinded and the status existing immediately prior to such action restored.

"SEC. 2. [Arbitration board]. There is hereby established an arbitration board to consist of seven members. The representatives of the carrier and organization parties to the aforesaid dispute are hereby directed, respectively, within five days after the enactment hereof [Aug. 28, 1963] each to name two persons to serve as members of such arbitration board. The four members thus chosen shall select three additional members. The seven members shall then elect a chairman. If the members chosen by the parties shall fail to name one or more of the additional three members within ten days, such additional members shall be named by the President. If either party fails to name a member or members to the arbitration board within the five days provided, the President shall name such member or members in lieu of such party and shall also name the additional three members necessary to constitute a board of seven members, all within ten days after the date of enactment of this joint resolution [Aug. 28, 1963]. Notwithstanding any other provision of law, the National Mediation Board is authorized and directed: (1) to compensate the arbitrators not named by the parties at a rate not in excess of \$100 for each day together with necessary travel and subsistence expenses, and (2) to provide such services and facilities as may be necessary and appropriate in carrying out the purposes of this joint resolution.

"SEC. 3. [Decision of board]. Promptly upon the completion of the naming of the arbitration board the Secretary of Labor shall furnish to the board and to the parties to the dispute copies of his statement to the parties of August 2, 1963, and the papers therewith submitted to the parties, together with memorandums and such other data as the board may request setting forth the matters with respect to which the parties were in tentative agreement and the extent of disagreement with respect to matters on which the parties were not in tentative agreement. The arbitration board shall make a decision, pursuant to the procedures hereinafter set forth, as to what disposition shall be made of those portions of the carriers' notices of November 2, 1959, identified as 'Use of Firemen (Helpers) on Other Than Steam Power' and 'Consist of Road and Yard Crews' and that portion of the organizations' notices of September 7, 1960, identified as 'Minimum Safe Crew Consist' and implementing proposals pertaining thereto. The arbitration board shall incorporate in such decision any matters on which it finds the parties were in agreement, shall resolve the matters on which the parties were not in agreement, and shall, in making its award, give due consideration to those matters on which the parties were in tentative agreement. Such award shall be binding on both the carrier and organization parties to the dispute and shall constitute a complete and final disposition of the aforesaid issues covered by the decision of the board of arbitration.

"SEC. 4. [Award]. To the extent not inconsistent with this joint resolution the arbitration shall be conducted pursuant to sections 7 and 8 of the Railway Labor Act [this section and section 158 of this title], the board's award shall be made and filed as provided in said sections and shall be subject to section 9 of said Act [section 159 of this title]. The United States District Court for the District of Columbia is hereby designated as the court in which the award is to be filed, and the arbitration board shall report to the National Mediation Board in the same manner as arbitration boards functioning pursuant to the Railway Labor Act [this chapter]. The award shall continue in force for such period as the arbitration board shall determine in its award, but not to exceed two years from the date the award takes effect, unless the parties agree otherwise.

"SEC. 5. [Hearings]. The arbitration board shall begin its hearings thirty days after the enactment of this joint resolution [Aug. 28, 1963] or on such earlier date as the parties to the dispute and the board may agree upon and shall make and file its award not later than ninety days after the enactment of this joint resolution

[Aug. 28, 1963]: *Provided, however,* That said award shall not become effective until sixty days after the filing of the award.

"SEC. 6. [Collective bargaining for issues not arbitrated]. The parties to the disputes arising from the aforesaid notices shall immediately resume collective bargaining with respect to all issues raised in the notices of November 2, 1959, and September 7, 1960, not to be disposed of by arbitration under section 3 of this joint resolution and shall exert every reasonable effort to resolve such issues by agreement. The Secretary of Labor and the National Mediation Board are hereby directed to give all reasonable assistance to the parties and to engage in mediatory action directed toward promoting such agreement.

"SEC. 7. [Considerations affecting award; enforcement.]

"(a) In making any award under this joint resolution the arbitration board established under section 2 shall give due consideration to the effect of the proposed award upon adequate and safe transportation service to the public and upon the interests of the carrier and employees affected, giving due consideration to the narrowing of the areas of disagreement which has been accomplished in bargaining and mediation.

"(b) The obligations imposed by this joint resolution, upon suit by the Attorney General, shall be enforceable through such orders as may be necessary by any court of the United States having jurisdiction of any of the parties.

"SEC. 8. [Expiration date]. This joint resolution shall expire one hundred and eighty days after the date of its enactment [Aug. 28, 1963], except that it shall remain in effect with respect to the last sentence of section 4 for the period prescribed in that sentence.

"SEC. 9. [Separability]. If any provision of this joint resolution or the application thereof is held invalid, the remainder of this joint resolution and the application of such provision to other parties or in other circumstances not held invalid shall not be affected thereby."

#### **§ 158. Agreement to arbitrate; form and contents; signatures and acknowledgment; revocation**

The agreement to arbitrate—

- (a) Shall be in writing;
- (b) Shall stipulate that the arbitration is had under the provisions of this chapter;
- (c) Shall state whether the board of arbitration is to consist of three or of six members;
- (d) Shall be signed by the duly accredited representatives of the carrier or carriers and the employees, parties respectively to the agreement to arbitrate, and shall be acknowledged by said parties before a notary public, the clerk of a district court or court of appeals of the United States, or before a member of the Mediation Board, and, when so acknowledged, shall be filed in the office of the Mediation Board;
- (e) Shall state specifically the questions to be submitted to the said board for decision; and that, in its award or awards, the said board shall confine itself strictly to decisions as to the questions so specifically submitted to it;
- (f) Shall provide that the questions, or any one or more of them, submitted by the parties to the board of arbitration may be withdrawn from arbitration on notice to that effect signed by the duly accredited representatives of all the parties and served on the board of arbitration;
- (g) Shall stipulate that the signatures of a majority of said board of arbitration affixed to their award shall be competent to constitute a valid and binding award;
- (h) Shall fix a period from the date of the appointment of the arbitrator or arbitrators nec-