dating a number of conflicting interests and calls for thoughtful negotiation. It can be done, and has been done in the two instances I have described. Not all of the governing factors, however, are in the parties'—or indeed anyone's—control.

## II. THE CANADIAN RAILWAY EXPERIENCE

ROBERT COLOSIMO*

Several weeks ago, while I was making a purchase at a local delicatessen, I saw a sign posted over the cash register. It said: "Rule 1—The boss is always right. Rule 2—If the boss is wrong, see rule 1."

I should imagine there are many of us who wish the arbitration process were that simple. But it isn't. Indeed, it has become such a time-consuming and troublesome process, for those on both sides of the dispute, that labor specialists are looking for ways to streamline it. Today, the magic phrase is expedited arbitration. It is seen as the simple solution to a complex problem, and therein lies its deficiency. There are *no* simple solutions to complex problems. *That's rule 1.*

I have been asked today to discuss the promise and performance of expedited arbitration. However, I would also like to go a step beyond. Drawing on Canadian railway experience, I would like to offer you a workable and *working* alternative. More on this later.

To begin, let's take a look at everyday reality for a number of industries across the continent. Schizophrenia and marriage aside, it takes no fewer than two to make a dispute. In our context, it is the employee and the boss, and the scenario often goes like this.

Fred works in a heavy industrial environment where heat, noise, and some highly expressive language are the order of the day. His supervisor, Jo-Anne, is pretty much one of the boys—up to a point. One day Fred returns from his morning break five minutes late. Jo-Anne tells him it's the third time this month and enough is enough. Fred makes a fist, extends his middle finger, and walks away. He is suspended without pay for insubordination.

He goes to his union and argues that he meant nothing per-

*Vice President, Industrial Relations, CP Rail, Montreal, Quebec.

sonal—that's just the way guys are. His union agrees to begin grievance procedures. Several months later, no satisfactory solution has been found. The whole case is then referred to arbitration. And this is where lawyers get into the act.

I am reminded of two neighbors discussing their sons. "What profession is your boy going to select?" asked one. "I'm going to educate him to be a lawyer," said the other. "He's naturally argumentative and bent on mixing into other people's troubles, so he might just as well get paid for his time." I have no doubt he will appear before arbitration panels.

Anyway, our dispute has now reached a panel of arbitration —*two years after* the panel's assistance was first requested. Before the hearing begins, there is an executive session. Lawyers representing both sides, and the panel, wrangle over technical matters. If there is a technical glitch, there may be yet another delay. If not, the hearing takes place—probably after another two months.

Once the hearing concludes, it takes two *more* months for a member of the panel to draft a report. He shows it to the other panel members and hopes they will agree with his assessment of the case. Since a majority decision is required, a form of plea bargaining takes place. Finally, more than three years after the original act of insubordination, a decision is handed down.

It's a compromise. Fred is assigned to another job under what is hoped is less sensitive male supervision, and half the pay he lost under suspension is restored. Of course, by this time, Fred has also left the company and is doing a Don Rickles act in Los Vegas, while Jo-Anne is the executive vice president of a rival company.

In short, an inordinate amount of time has been wasted. Both sides have incurred staggering legal fees, the original opponents are long gone, and the real issue is still not resolved. However, several new grievances have resulted from the procedure.

Obviously, there has to be a better way.

My colleagues on American railroads have taken a good stab at it. In a dispute between a supervisor and one of his employees, they will go through many months of the usual grievance procedures before resorting to one of two alternatives.

The first, and least satisfactory one, will see the case referred to a division of the National Railroad Adjustment Board. As in the case of Fred and Jo-Anne, it's a long, arduous road. There are prehearing hearings, postponements, technical delays,

scheduling problems, protracted appearances, delayed decisions, appeals—and so it goes. Again, using this procedure, it can take as long as three years to reach a binding decision.

The second and more satisfactory procedure is to refer nonresolved grievances to a public law board. The procedure is this: A law board consisting of one management representative, one union representative, and one neutral party is appointed. Since the first two representatives tend to cancel each other out, the neutral is the key. He must be appointed within 30 days of start-of-proceedings. If the management and union representatives can't reach an agreement on the neutral, the National Mediation Board will assign one. Once appointed, this neutral calls an executive session to set up time frames. Assuming there are no technical problems, a hearing will take place at an undefined time after the executive session. Argument can be submitted orally or in written form. After two months or so, the neutral submits a written decision to the other two representatives, seeking to get at least a majority decision after more haranguing and perhaps a further adjournment.

This process takes approximately one year and is a distinct improvement over the adjustment board route. Most U.S. railroad cases are now handled this way. In 1982, 16,000 of them were scheduled for presentation. It's not a perfect system, but then the only things that are perfect are bachelors' wives and old maids' children. But there are still those who think a year is too long. They think there is an even better way called *expedited arbitration.* Within limited circumstances, I agree.

Simply put, expedited arbitration means that, in a dispute between two people, an independent authority is appointed within a week to render an immediate and binding decision, almost on the spot. On the surface, this would appear to be the Valhalla of labor relations—quick, efficient, and final. I know that in labor disputes at the Port of Montreal this type of arbitration has been used and used well. But that is in a limited and confined area.

I am less enthusiastic, however, when I think about this type of arbitration being applied to an entire industry with transcontinental operations spanning a wide variety of terrain and climate, as well as different languages and operating conditions—a railway, for example, or an airline. I think the danger of a quick and binding decision based on purely local considerations is that it may be applied in other areas where the same conditions don't exist.

To illustrate my concern about expedited arbitration, let me try another scenario using a railway context. During the winter, it's not uncommon to see wind-chill factors in northern Ontario of 65 degrees below zero—so cold that metal can freeze to skin. Let's suppose a purely hypothetical situation. A track welder decides to do his job in these conditions without wearing his metal-frame safety glasses. He doesn't want them freezing to his face. This is a violation of work rules and results in disciplinary measures. He files a grievance and it escalates to expedited arbitration. An arbitrator is called in and almost immediately decides in favor of the employee. A precedent is set—and, unfortunately, it becomes applicable across the system to *any* employee who decides he doesn't want to wear glasses because, in his opinion, 20 degrees above zero is too cold.

I realize this is an extreme example and runs the risk of throwing the baby out with the bathwater. But it does serve to illustrate the danger of an industry-wide precedent being established on the basis of purely local conditions.

In my view, the normal arbitration procedures ensure that all factors are considered, while the short, expedited procedure may not. But the former take so long that the latter has been developed as an overreaction. To underline my point, an analogy might be useful.

Let us suppose that two people are arguing over the ownership of an orange. The normal process of arbitration might provide a truly fair solution. Unfortunately, the orange might not last that long. Expedited arbitration, on the other hand, risks making a mistake. For example, an expedited solution might be to give each person half of the orange. The first person promptly eats his half and throws away the peel. The second person throws away the pulp but keeps the peel and uses it to bake a cake. Obviously, there was a better solution—give one person the whole peel for his cake and the other the whole pulp to eat, neither having a need for the other. Expedited arbitration might have missed this alternative because it didn't take enough time to examine the *real* needs of both parties.

This brings me to a fourth process, somewhere between the lengthy *normal* arbitration and *expedited* arbitration. It is a process that works not just in theory, but has been in practice for almost 20 years in the Canadian railway labor system. Since it doesn't have a label, I've decided to give it one. I call it "accelerated arbitration."

I know many of you are unfamiliar with railway arbitration, and particularly the Canadian experience, so a bit of history might be useful. At CP Rail we have had unionized employees since before the turn of the century. By the end of the 1920s, the majority were organized, and today 85 percent of all our employees are covered by collective agreements.

We have had a formal system for settling disputes since August 1918. That's when the Canadian Railway Board of Adjustment was created. It consisted of six management and six union representatives and sat regularly each month to hear disputes. It reached decisions by majority vote and its decisions were final. In the event of a tie vote, a referee could be appointed to break the deadlock.

The system worked well until the 1960s. Then the board became polarized. In many cases it was unable to reach a decision on the basis of a majority vote. Between 1961 and 1963, it referred an ever increasing number of disputes to a referee and, as such, ceased to perform its function effectively. One obvious result was long delays in achieving settlements.

In 1964, the board was terminated and the four major unions and two major railways—CP Rail and CN Rail—agreed to establish the Canadian Railway Office of Arbitration. The term "office" was perhaps a bit grandiose as it consisted of one arbitrator and a full-time secretary. The arbitrator was appointed by the railways and unions for one year, subject to annual renewal thereafter. In essence, what they did was give the old referee a full-time job and drop the other 12.

Under the terms that established that office, it was then—and is today—the court of last resort for any dispute relative to collective agreements. But, before you get there, you have to go through all the steps in a set grievance procedure enshrined in the collective agreements.

To obtain the arbitrator's services, the parties concerned must file with his office a joint statement of the issue, outlining all the relevant facts as well as the section of the collective agreement involved. On a monthly basis, the arbitrator has to hear any dispute filed and docketed in his office before the eighth day of the preceding month.

Hearings take place on the second Tuesday of each month. At the hearing, each party submits a written statement of its position, together with supporting evidence. Each party may also be represented by a lawyer. During the hearing, the arbitrator

can examine witnesses under oath, and so can the contesting parties. The arbitrator also has the power to receive, hear, request, or consider any other evidence he feels is relevant. Within 30 days of the hearing, he must provide a written decision containing all the reasons for arriving at that decision. It is final and binding on all parties.

The process I have just described takes approximately six months, leaves no stone unturned, and satisfies both the railways and the unions. It is much, much quicker than the normal arbitration procedure, but avoids the potential superficiality of expedited proceedings.

And there is one other major benefit to be derived from it —*dramatically* reduced costs. It is not uncommon for a full arbitration case in many industries to cost tens of thousands of dollars. Now compare this with the cost of our accelerated arbitration process. Last year the cost of running the Canadian Railway Office of Arbitration was $117,000, most of which is office rental, secretarial service, and printing fees. During the year the office has handled 120 cases. This means that the average cost per case works out to less than $1000.

The bottom line is this. Accelerated arbitration ensures that all of the good aspects of normal arbitration are retained without incurring any of the possible disadvantages of expedited arbitration. It is much faster and costs far less than normal arbitration. Finally, and perhaps most importantly, it really works for all parties concerned.

Since it opened, the office has had only two arbitrators, and the present incumbent has been there since 1968. Therefore, we have had consistency from an expert on railway collective agreements whose jurisprudence has set precedents which help settle grievances before they ever need the arbitrator's services.

Accelerated arbitration now applies to 22 railway, steamship, and express companies in Canada as well as to all the major unions representing 90,000 employees. In short, it is a superbly efficient and successful process that we all are very proud of.

It is successful because of its informality. It is not a legal battleground. The average hearing time is one hour. Submissions are in writing, followed by rebuttal. Witnesses are rare and legal counsel rarer. Of the 1000 cases heard since 1965, I would estimate that lawyers have been involved on fewer than 50 occasions. In contrast, the Labour Gazette has reported that in typical arbitration proceedings outside the railways, management

used lawyers nearly 60 percent of the time, while unions used them nearly 35 percent of the time.

In summary, then, our way of handling grievance arbitration has worked. I think it has worked because we have an agreed-upon procedure, with established time tables for hearings and a deadline for decisions. Another reason it works is that the negotiators of the agreement are responsible for its administration and make presentations to the arbitrator without costly legal representation.

Having the same arbitrator for a long time also contributes to success because he has become familiar with the terms and conditions of the collective agreement and has established consistent jurisprudence for future guidance.

Most of all, it works because everyone respects the process. Where respect exists, diplomacy sets the tone. It's a bit like the old drugstore scene. An elderly lady asks the young counterman if he has anything for grey hair. His diplomatic response: "Nothing, madam, but the greatest respect."

## III. U.S. POSTAL SERVICE—A MANAGEMENT VIEW

SHERRY S. BARBER*

Approximately 670,000 people work in the Postal Service, one of the largest United States employers. Almost 90 percent of our employees are represented under collective bargaining agreements, and more than half of that 90 percent by the American Postal Workers Union, AFL-CIO, which is also represented on this panel. The other three major unions are the National Association of Letter Carriers, AFL-CIO, the National Rural Letter Carriers' Association, and the National Post Office Mail Handlers, Watchmen, Messengers, and Group Leaders Division of the Laborers' International Union of North America, AFL-CIO.

Beginning with the 1963 agreement between the former Post Office Department and the six organizations then certified as exclusive representatives, some form of arbitration has been utilized in the Postal Service. Prior to Postal Reorganization, this was referred to as advisory arbitration. The arbitrator had no

*General Manager, Arbitration Division, Labor Relations Department, United States Postal Service, Washington, D. C.