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# GRIEVANCE SETTLEMENT IN THE AVIATION INDUSTRY

NICHOLAS F. TSAMOUTALES\*

In 1926 Congress passed the Railway Labor Act to prevent labor disputes from disrupting railroad transportation.<sup>1</sup> The act established the National Mediation Board to assist collective bargaining by mediating disputes arising from the creation or revision of bargaining agreements and by policing the arbitration procedures.<sup>2</sup> Later, an agency was created, the National Railroad Adjustment Board, to adjust employer-employee disputes concerning rates of pay, rules, or working conditions under the consummated bargaining agreements.<sup>3</sup> All of these disputes must initially be handled by union-carrier conference. If no adjustment is made at this level, they may be referred by either party to the National Railroad Adjustment Board or to a local adjustment board created by the consent of the parties in the collective bargaining contract.<sup>4</sup> As an adjudicatory agency, the National Railroad Adjustment Board decides grievances and claims from throughout the railroad industry.<sup>5</sup> The act further provides that the NRAB awards are final, binding and enforceable in the federal district courts.<sup>6</sup>

The provision made in the Railway Labor Act for the establishment of system, group or regional boards by agreement of the parties is permissive in nature. However, none has been established. Should either party to such an agreement be dissatisfied with an arrangement of this type, it may, on ninety days notice to the other party, elect to come under the NRAB.<sup>7</sup>

In 1936 Congress extended the coverage of the Railway Labor Act

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1. 44 Stat. 577 (1926), as amended, 45 U.S.C. § 151(a) (1958).

2. 44 Stat. 577 (1926), as amended, 45 U.S.C. § 157 (1958).

3. 44 Stat. 577 (1926), as amended, 45 U.S.C. § 152 (1958).

4. Section 153(1) creates and governs the NRAB; Section 153(2) provides permissive substitutes for the NRAB in the form of system groups, or regional boards created by agreement between the union and carriers.

5. 44 Stat. 577 (1926), as amended, 45 U.S.C. § 153 (1958). For a succinct summary of the procedures followed in the settlement of "minor" disputes in the railroad industry, see Wisheart, *The Airlines' Recent Experience Under the Railway Labor Act*, 25 LAW & CONTEMP. PROB. 22, 27-8 (1960). Regarding procedures followed in settling "other" disputes (other than major or minor ones) in both the railroad and airlines industry see Wisheart, *supra* at 28-30; *cf.*, Elgin, J. & E. Ry. v. Burley, 325 U.S. 711, 722-24 (1945). "Other" disputes are defined as neither major, since they do not involve rates of pay, rules or working conditions, nor minor, since they do not involve grievances, or the interpretation or application of grievance procedures.

6. Kroner, *Minor Disputes Under the Railway Labor Act: A Critical Appraisal*, 37 N.Y.U.L. REV. 41, 43 (1962). This article truly provides a "critical appraisal" of the Railway Labor Act as it applies to the railroad industry.

7. *Id.* at 72.

to the airlines industry.<sup>8</sup> It left the creation of a National Air Transport Adjustment Board, a board similar to the NRAB, to the discretion of the National Mediation Board.<sup>9</sup> Although the authority to create this board has never been exercised,<sup>10</sup> Congress nevertheless has required each carrier and union in the airlines industry to organize a *local* system board of adjustment which would have jurisdiction over disputes involving the interpretation of individual bargaining agreements. Thus far, these system boards seem to have functioned satisfactorily, and neither labor nor management has found it necessary to urge that a national board be established for the airlines industry.<sup>11</sup>

Thus, it should be noted that the settlement of disputes in the railroad industry is governed by a national agency, whereas in the airlines industry local agencies, known as system boards, perform the same function. The disputes fall into two categories: controversies over rates of pay, rules, or working conditions in the negotiation of a new contract, which are referred to as "major" disputes, and "minor" disputes, which involve employee grievances or the interpretation or application of an effective agreement.<sup>12</sup> The act provides procedures for the mediation and arbitration of both major and minor disputes, but the system boards have jurisdiction to hear only the minor ones.<sup>13</sup>

The airlines system boards generally have two labor and two carrier representatives, with a separate board for each union in each company. Since there are approximately six major craft classes and as many as twelve classifications within each major craft in the airlines industry, it is conceivable that if each classification is represented by a different union, within the structure of one company dozens of different boards and dozens of different employer-employee agreements will exist. However, since an individual union usually represents more than one employee classification,<sup>14</sup> the average number of each seems to be six, and, while inadequate records make it difficult to generalize about the airlines boards, approximately eighty per cent of their cases are decided without referees, *i.e.*, within the company procedures.<sup>15</sup>

In view of the numerous unions and the resulting numerous agreements which provide for individual system boards based on such agree-

8. 45 U.S.C. § 181 (1958). See generally comment, 51 Nw. U.L. REV. 596 n.2 (1956).

9. *Id.* at 597.

10. 14 STAN. L. REV. 893, 895 (1962); Comment, 51 Nw. U.L. REV. 596, 597 (1956).

11. 45 U.S.C. § 184 (1958). See also Comment, 51 Nw. U.L. REV. 596, 597 & n.11 (1956).

12. See Elgin, J. & E. Ry. v. Burley, 325 U.S. 711, 722-24 (1945).

13. See 14 STAN. L. REV. 893, 894 (1962); Kroner, *Minor Disputes Under the Railway Labor Act*, 37 N.Y.U.L. REV. 41, 44 (1962).

14. Information obtained from interviews with persons involved in the labor-management area of the airlines industry.

15. See Comment, 51 Nw. U.L. REV. 596, 605 (1956). *But see* Wisheart, *The Airlines' Recent Experience Under the Railway Labor Act*, 25 LAW & CONTEMP. PROB. 22, 27-8 (1960), wherein the author states that the disputes usually are settled by a neutral referee.

ments, it has been impossible for the airlines industry to attain industry-wide uniformity in interpreting contracts. The fact that there is no national board or coordinating agency such as the railroad industry's NRAB also contributes to this lack of uniformity. Further, since there is no procedure for the central filing of awards, it is virtually impossible for a claimant to research one principle through the prior awards of his own or other system boards. Although neither the system boards nor the referees are bound by previous findings, certain principles have been established and, as in the railroad industry, the parties submit available precedent to the boards. However, the weight accorded prior decisions varies with different boards and referees, and occasionally there are notable departures.<sup>16</sup> In spite of this lack of uniformity in interpreting carrier-union contracts, and even though there is little value in precedent, the minor dispute procedures seem to be fairly successful in adjusting such disputes.<sup>17</sup>

Procedures for the hearing of grievances are specified in the collective bargaining agreements and encompass a series of intra-company appeals by the employee first to his own superior and then to other higher ranking company officials. For example, in one typical airline pilot's agreement,<sup>18</sup> after the provisions regarding notice and time within which answer must be made, witnesses secured, and a representative obtained, there follow appeal provisions in the event of an adverse ruling against the pilot. There are two steps to the appeal, each to officials of the company. The agreement then provides that the employee may appeal from the highest company official to the appropriate system board. This final step is, at the same time, a statutory remedy; the Railway Labor Act provides that both railroad and airlines disputes

shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the dispute may be referred by petition of the parties . . . to the appropriate division of the Adjustment Board.<sup>19</sup>

#### THE ROLE OF THE COURTS IN SETTLING DISPUTES

At this point it should be noted that the Railway Labor Act provides that an aggrieved employee "may" take his claim to the appropriate adjustment board. The choice of the word "may" rather than "shall"

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16. See generally Comment, 51 Nw. U.L. REV. 596, 606 (1956). Decisions rendered in intra-carrier hearings are generally binding upon that carrier.

17. Information obtained from persons involved in the labor-management area of the airlines industry.

18. The companies which provided the writer with agreements requested that no specific mention of them be made.

19. 44 Stat. 577 (1926), as amended, 45 U.S.C. § 153 (1958). Procedures to be followed will be discussed in detail in the remainder of this article.

perhaps implies that the employee has the alternative of taking his claim to court if he desires adjudication.<sup>20</sup> However, the doctrines of "exhaustion of administrative remedies" and "primary jurisdiction" restrict sharply the availability of a judicial hearing. The exhaustion of remedies doctrine requires that the claimant first resort to all available administrative procedures.<sup>21</sup> In *Scott v. National Airlines, Inc.*,<sup>22</sup> the employee resorted to the procedures provided for by the employer-union agreement except for the final step of submission to the system board. The court declared that since Florida adheres to the exhaustion of administrative remedies doctrine, an action would not lie without compliance with such doctrine. In states where "exhaustion" is not required, it seems that a discharged airline employee may sue in a state or federal court for damages for wrongful discharge, or, in the alternative, he may pursue his administrative remedies through the company hearings to the airlines system boards in a claim for reinstatement.<sup>23</sup> Although the point at which a discharged employee can no longer elect to sue in court also presents problems, it seems to vary with, and be determined by, state laws on "exhaustion."<sup>24</sup>

On the other hand, the doctrine of primary jurisdiction requires that the claimant present his claim to the appropriate administrative agency and it may restrict him to the remedies available from such agency.<sup>25</sup>

### JUDICIAL REVIEW OF SYSTEM BOARD DECISIONS

The law is unclear as to the availability or extent of judicial review of an employee's claim once a system board has decided it. This uncertainty has been caused by the absence of provisions in the act for review of system board awards. However, it has been determined judicially that it is proper for a court to review the jurisdictional limitations and the conformity of the hearing with procedural due process. In *Farris v. Alaska Airlines, Inc.*,<sup>26</sup> the court set forth the following basis for such review:

- (1) That the Board's procedure and the award conformed substantially to the statute and the agreement, (2) That the award

20. Comment, *supra* note 16, at 597 & n.12.

21. The procedures to which the employee may avail himself will be specified in the employer-union contract.

22. 142 So.2d 313 (Fla. 3d Dist. 1962); *accord*, *Mountain v. National Airlines, Inc.*, 75 So.2d 574 (Fla. 1954).

23. In *Transcontinental & W. Air, Inc. v. Koppal*, 345 U.S. 653 (1953), the Supreme Court declared that state law should govern the extent to which exhaustion of administrative remedies should be required if at all.

24. *Ibid.*

25. See *Slocum v. Delaware, L. & W.R.R.*, 339 U.S. 239 (1950).

26. 113 F. Supp. 907, (W.D. Wash. 1953); see *Sigfred v. Pan Am. World Airways*, 230 F.2d 13 (5th Cir.), *cert. denied*, 351 U.S. 925 (1956).

confined itself to the letter of submission [complaint] and, (3) That the award was not arrived at by fraud or corruption.<sup>27</sup>

This limited basis of review indicates the great degree of finality in system boards awards. Since, by the terms of many employer-union contracts, there is no requirement that a transcript of record be provided, this could create some problems in establishing the grounds laid out in *Farris*. Moreover, the degree of "substantial conformance," "confinement to the letter of submission," and "fraud and corruption" necessary to constitute a denial of due process is uncertain. On the other hand, if the scope of review is too broad, the parties may regard the hearing before the board as a mere perfunctory step prior to judicial determination of the controversy, greatly minimizing the effective operation of system boards.

Although most of the questions concerning judicial review have arisen in a collateral manner rather than directly on petition for review, it seems evident there is virtually no jurisdiction in the federal courts to review system board awards. The appropriate forum, absent grounds of federal jurisdiction, would be in the state court.<sup>28</sup>

#### JUDICIAL ENFORCEMENT OF SYSTEM BOARD AWARDS

It is significant that when Congress amended the Railway Labor Act in 1936 to include the airlines industry, it did not include section 153, which provides that the national board's awards are final, binding and enforceable in the federal courts.<sup>29</sup> Thus, since no provision confers jurisdiction upon the federal courts to enforce a system board award, there has been considerable conflict among the courts as to whether or not this federal right could be found in the statute.<sup>30</sup>

In *Metcalf v. National Airlines*,<sup>31</sup> the court reasoned that since both parties were Florida residents and since the action did not arise under the Constitution, laws, or treaties of the United States, jurisdiction did not rest in the federal courts.<sup>32</sup> In short, the court determined that since Congress did not include section 153, it did not intend to grant in the federal courts the right to enforce board awards until a national board

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27. *Id.* at 909.

28. *National Airlines, Inc. v. Metcalf*, 144 So.2d 229 (Fla. 3d Dist. 1959).

29. 48 Stat. 1192 (1934), 45 U.S.C. § 153(m)(p) (1958) are not applicable to air carriers under 45 U.S.C. § 181 (1958). Generally, however, the employer-union bargaining agreements provide that the award is final and binding on the parties. Note, 72 *YALE L.J.* 803 (1963).

30. *Granting jurisdiction*: *Bates v. Northwest Airlines, Inc.*, 171 F. Supp. 273 (D. Minn. 1959); *American Airlines, Inc. v. Air Line Pilots Ass'n*, 91 F. Supp. 629 (E.D.N.Y. 1950). *Denying jurisdiction*: *Metcalf v. National Airlines, Inc.*, 271 F.2d 817 (5th Cir. 1959); *Hettenbaugh v. Air Line Pilots Ass'n*, 189 F.2d 319 (5th Cir. 1951); *cf. Air Line Pilots Ass'n v. Trans World Airlines, Inc.*, 203 F. Supp. 438 (W.D. Mo. 1962).

31. 271 F.2d 817 (5th Cir. 1959).

32. *Id.* at 820.

was established in the airlines industry,<sup>33</sup> and that until such time, jurisdiction, if any, was in the state courts.<sup>34</sup>

However, the recent case of *International Ass'n of Machinists v. Central Airlines*,<sup>35</sup> seems to have rendered moot any further discussions regarding the enforcement of system board awards and the propriety of federal jurisdiction. In that case, six employees were discharged for their refusal to attend disciplinary hearings unless a union representative was present. The union and employees initiated grievances over the discharges. An award for reinstatement without loss of seniority and with back pay was rendered for the employees. The airline refused to comply with the award and the employees instituted a suit in a United States district court to enforce the award. The court dismissed the complaint on grounds of lack of jurisdiction, relying on *Metcalf v. National Airlines*,<sup>36</sup> and the court of appeals affirmed.<sup>37</sup> It should be noted that this was a non-diversity action, the sole issue being whether a suit to enforce an award of an airline system board was one arising under the laws of the United States.<sup>38</sup> The airline, relying on the *Metcalf* case, argued that Congress did not intend to confer jurisdiction in the federal courts for purposes of enforcing system board awards and that since the carrier-union contracts were not created pursuant to any federal law, the federal courts had no jurisdiction to entertain such suit.

However, the Supreme Court in reversing the lower courts, said:

Although the system boards were expected to be temporary arrangements . . . Congress intended the . . . [awards] to be legally enforceable. . . . If these contracts are to serve their function . . . their validity, *interpretation, and enforceability* cannot be left to the laws of the many states. . . . The contracts and the adjustment boards . . . are creations of the federal law. . . .<sup>39</sup>

The Court further stated that the complaint in this case, for jurisdictional purposes, did present a substantial claim, having its source in and arising under the Railway Labor Act. The district courts therefore have jurisdiction.<sup>40</sup>

It seems, therefore, that the questions regarding enforcement and proper jurisdiction are resolved. However, the language of the decision

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33. *Ibid.*

34. The court at this point cited *National Airlines, Inc. v. Metcalf*, 114 So.2d 229 (Fla. 3d Dist. 1959). It should be noted, however, that this case involved an action for declaratory relief by the airlines and not an action to enforce an award.

35. 372 U.S. 682 (1963).

36. 271 F.2d 817 (5th Cir. 1959).

37. *International Ass'n of Machinists v. Central Airlines, Inc.*, 295 F.2d 209 (5th Cir. 1961), *rev'd*, 372 U.S. 682 (1963).

38. *International Ass'n of Machinists v. Central Airlines, Inc.*, 372 U.S. 682, 684 (1963).

39. *Id.* at 690-92. (Emphasis added.)

40. *Id.* at 696 & nn.1 & 2.

presents interesting questions. Did the Court decide that the federal courts have jurisdiction to enforce awards and also interpret employer-union contracts?<sup>41</sup> Does "validity and interpretation" mean that the federal courts have jurisdiction also to review system board awards beyond the areas set forth in *Farris v. Alaska Airlines*?<sup>42</sup>

#### INTRA-COMPANY PROCEDURE—REPORT OF CASES

Each employer-employee agreement contains provisions governing the procedure to be followed in settling grievances. Grievances can be instituted either by employees who feel that an injustice has been done or by the carrier.<sup>43</sup>

First, with regard to employee-instituted grievances, it is generally permissible for the employee to present his grievance personally or through an authorized representative.<sup>44</sup> The grievance must be in writing and must be submitted within a designated period of time after the occurrence of the event about which the employee grieves.<sup>45</sup> It is submitted to the employee's immediate superior who must render a written decision on it within a specified period of time.<sup>46</sup>

If at this point the employee is not satisfied with the decision rendered by his supervisor, he has a right of appeal. Such appeal must be submitted to a higher-ranking supervisor within a specified time period after the decision is rendered. This supervisor, in turn, must render a written decision within a given time period.<sup>47</sup> If the employee remains dissatisfied with the decision rendered, he may present an additional appeal to an even higher-ranking supervisor.<sup>48</sup> If he is dissatisfied with the decision at this third stage, he then has a right of appeal to his System Board of Adjustment.<sup>49</sup>

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41. The court stated that "their validity, interpretation, and enforceability cannot be left to the laws of the . . . states. . . ."

42. *Supra* note 26.

43. Although there are many agreements, and although each agreement varies slightly, they are generally similar. For purposes of this paper one typical agreement has been examined cogently; the generalities are stated in the text with specific and gross differences being footnoted. All of the agreements examined provide for four steps in the grievance procedure.

44. This representative is generally a union official and generally the employee uses one. The term "carrier-instituted," although used in the industry, is, in a sense, a misnomer since the employee really institutes the grievance; the carrier "causes" him to institute it by, for example, discharging or suspending him. However, the carrier can institute grievances although their right to do so is virtually never exercised.

45. Time periods provided in the agreements range from five to thirty days.

46. Time periods range from five to ten days.

47. This is the first of three appeals the employee may make. Time periods for filing each appeal range from five to ten days; the same periods of time are generally granted the carrier to render a decision.

48. Some of the agreements indicate to whom appeals must be made, e.g., to the "Senior Vice President of the Industrial Relations Department." Others merely state "to the next higher-ranking supervisor."

49. The time periods within which appeals must be made to the system board range from twenty to thirty days.



Second, a carrier-instituted grievance is generally begun when the carrier suspends, discharges, or otherwise disciplines an employee. The agreements require that written notice stating the reasons for the suspension or discharge be given to the employee within a specified period of time after the carrier learns of the occurrence which it feels warrants the disciplinary action.<sup>50</sup> The employee must then request a hearing, in writing, within a designated time period from the date of receipt of the notice of the disciplinary action taken.<sup>51</sup> The carrier must provide a hearing within a certain time after the date of the written request.<sup>52</sup> Provision is made for a reporter to be present if both parties agree.<sup>53</sup> The carrier official who presides at a hearing must render a written decision and furnish the employee and/or his union representative a copy. If the employee is dissatisfied with the decision rendered, he may then appeal, in accordance with the procedures set forth above. The most important appeal is the one to the system board of adjustment since it is deemed to be final and binding on the carrier and the employee.<sup>54</sup>

These system boards awards are committed to writing and the Air Transport Association compiles the ones submitted to it by the different airlines into volumes, which contain a subject index, table of cases, table of arbitrators and a conversion table indicating employee classification. The cases are given a reference number which consists of three parts: The first part is a number which indicates the year the award was rendered; the second part is also a number which indicates the numerical order in which the case was reported that year; the third part is a letter which indicates the job classification of the employee involved in the hearing.<sup>55</sup> There are twelve employee classifications listed, each of which has a letter indicating the class.<sup>56</sup>

The subject index indicates whether the decision rendered was

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50. The time periods range from five to seven days.

51. The time periods range from seven to ten days. Failure to request a hearing results in the discipline's becoming final.

52. The time periods range from seven to ten days.

53. Only one of the agreements examined contained this provision. Generally, however, an official court reporter is used at all stages if the discipline of discharge has been imposed. Otherwise, there is no reporter until the system board stage is reached and at this point one is always used regardless of the type of discipline.

54. *International Ass'n of Machinists v. Central Airlines*, *supra* note 35, at 687-88.

55. For example, case number 60-28C was the twenty-eighth case reported in 1960 and the employee involved was a clerk. Since each case is paginated separately, the reference "*Id.* at 2" designates the second page of the case cited in the preceding note. The manual is entitled "Airline Arbitration Reports." The facts of each case have been digested, following which an excerpt or excerpts from the original award, which the publisher felt was most important, appears. All references will be to these reports.

56. The following is a list of the twelve employee classifications and their code letters: Clerical "C," Dispatchers "D," Flight Engineers "FE," Flight Navigators "FN," Flight Radio Operators "FRO," Guards "G," Mechanics, Stores, Fleet Service "M," Pilots "P," Radio and Teletype Operator "RT," Stewardesses, Stewards, Pursers "P," Meteorologists "ME," Truck Drivers "TD."

either denied, compromised or affirmed.<sup>57</sup> The reports also contain a list of the arbitrators; there are 137 arbitrators who are referred to in the written reports as either referee, neutral, arbitrator or chairman. There is also a list of thirty-three airlines which submit the transcripts of their board hearings for purposes of publication in these reports.

#### THE BOARD—CONSTRUCTION AND JURISDICTION

Generally the grievances are of the carrier-instituted type. The reasons for institution of grievances against employees are many and varied, including the following: abuse of privileges, leaving station unattended, tardiness, untruthful excuses for absence, walking off the job, accumulated misconduct, altercations and assaults, false applications for jobs, conduct embarrassing to the carrier, dating hostesses, causing delay of flights, discourteous treatment of passengers, dishonesty, disloyalty, drinking, "horseplay," insubordination, refusal to cross picket line, refusal to work with others, disregard of safety rules, failure to perform duties properly, falsification of records, improper handling of liquor supply, marital status, misuse of passes, punching time clock for others, reckless driving or parking on company area, refusal of assignment, refusal to work overtime, refusal to transfer, sleeping on duty, reading on duty, gambling on duty and theft.

Approximately twenty per cent of all the grievances instituted are taken through each of the appellate procedures up to and including the system board. Of those that reach the system board, approximately twenty per cent are never heard, since settlement is made prior to the sitting of the board.<sup>58</sup>

The structure of the board is specifically set forth in each carrier-union agreement, though it generally consists of four members. Two of the members are selected and appointed by the union, and two are selected and appointed by the carrier. They serve for a minimum of one year from the date of their appointment. The board has jurisdiction over matters covered in the carrier-union agreement and considers any dispute properly submitted to it by an employee or a carrier. The chairmanship of the board is filled, alternately, by the union and by management.

The petition for review presented to a board must meet certain minimum requirements regarding form and contents. For example, it must show the question at issue, a statement of the facts, the position of the employee and the position of the carrier. Generally, no matter is considered by a board which has not first been handled in accordance with the appeals provisions of the carrier-union agreement.

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57. A total of 606 cases were reported between August 28, 1945, and June 1, 1961. Of these, 134 were denied; the remainder were either modified or affirmed.

58. The board sits twice a year. Each session continues indefinitely until all matters before them have been considered.

In the event of a tie vote regarding any dispute before a board, either party may notify each member of the board that the services of a referee are desired.<sup>59</sup> The board must then choose a referee within a designated time after receipt of the notice. If the board is unable to decide on a referee it must request that the National Mediation Board name one.<sup>60</sup>

A board, sitting either with or without a referee, may consider the entire prior record in the case and may call additional witnesses and receive additional evidence as it may deem necessary. Either party may present additional witnesses or documentary evidence at the discretion of the board and/or referee.<sup>61</sup> A majority vote of the members of a board is necessary to reach a decision. The expenses and compensation of the referee are borne equally by the parties involved.

For either party to assert the jurisdictional powers of a board, strict compliance with the procedural rules set forth in the carrier-union agreement must be followed. Failure by one party to adhere to the rules, and timely assertion by the other party that procedural rules have not been followed, may result in the dismissal of an appeal.

Further, a board has no jurisdiction to entertain abstract, hypothetical or moot questions; *i.e.*, in order for a board to entertain a matter, there must be a present, actual and justiciable controversy. In *United Airlines, Inc. and Air Line Pilots Ass'n*<sup>62</sup> a captain and other pilots, in behalf of all pilots, filed a grievance to determine whether or not the carrier violated the carrier-union agreement regarding sick leave benefits. During the preliminary stages of the proceeding the grievants failed to comply with the procedural requirements, in that they failed to file a written request for appeal within the specified time period. The carrier argued that the board lacked jurisdiction to entertain the matter. Nevertheless, the union requested rulings regarding: (1) rights under a provision of their agreement, without reference to any of the claimants;

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59. This provision, in effect, provides an additional appellate step to the entire procedure. It is interesting to note that the procedure also renders nugatory a hearing by an "independent board"; since a tie vote is required before a neutral is chosen, and since a neutral votes as he sees fit, and although ostensibly he is breaking a tie, in reality he is deciding the entire matter. An important factor regarding the outcome of a grievance would be whether or not he is either union or carrier "conscience." One of the agreements provides that a neutral may be called initially and without a tie vote. Under this procedure the "additional" appeal is not available. Also, all steps may be by-passed and the matter taken directly to the system board sitting with a referee, by stipulation of the parties.

60. The notice requesting the appointment of a neutral must be made within five days after notice of the tie vote is received. The request to the National Mediation Board is made if the system board is unable to agree on one within ten days after receipt of the notice.

61. It seems incongruous to label a hearing before the board with a neutral an appellate hearing; since either the board or a party may present additional witnesses and/or documentary evidence, in reality the neutral hears the matter *de novo*.

62. 53-11P.

(2) rights of employees for future grievances; and (3) a ruling that the carrier be held to be in violation of the employer-employee agreement in the event they adhered to specifically mentioned practices. The board held that since the required procedure was not followed, it lacked jurisdiction. Also, since only one of the class sustained any damage, the grievance was rendered a sham. Regarding the request for a ruling dealing with future matters, the board held that since there was no provision in the grievance procedure to determine other than actual wrongs, and since there was no present or actual controversy, the issues presented by the union were rendered moot and not arbitrable.

The doctrine of estoppel, however, has been successfully asserted in connection with the question of jurisdiction, when one of the parties fails to follow the procedures prescribed in the employer-employee agreement. In *Pan Am. World Airways, Inc. and Transport Workers Union*,<sup>63</sup> the carrier contended that the board had no jurisdiction to hear the dispute because the union had failed to follow procedures set forth in the agreement. The board held that the carrier's failure to raise the point during the preliminary stages constituted an estoppel, and thus it was precluded from raising it at this point. However, in *Northeast Airlines, Inc. and International Ass'n of Machinists*,<sup>64</sup> while the board held that grievances should be dismissed on the motion of the opposing party upon failure to follow grievance procedures, it further stated that such dismissal was neither a determination of the merits of the dispute, nor did it preclude the bringing of a formal grievance in compliance with the applicable provisions of the agreement.

Acquiescence to the position of the opposing party, in connection with the settlement of a grievance in a lower procedural step, renders a grievance settled and determined. Such settlement also strips a board of jurisdiction, *i.e.*, settlement in the lower procedural steps precludes a board from exercising jurisdiction to hear a subsequent appeal on the same issue.<sup>65</sup>

#### HEARINGS—NOTICE AND DEMAND

When the carrier institutes disciplinary proceedings against an employee, the employee is entitled to written notice of the specific charges lodged against him. In *Flying Tiger Line, Inc. and Air Line Pilot Ass'n*<sup>66</sup> the neutral stated:

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63. 47-2G.

64. 56-55M.

65. Southern Airways, Inc. and Air Carrier Mechanics Ass'n, 56-58M. This decision, coupled with Northwest Airlines, Inc. and International Ass'n of Machinists, 55-52M, seems to recognize the doctrine of *res judicata*. Therefore, it may be concluded that settlement in the lower procedural stages is tantamount to a formal hearing and thus binding upon the parties as well as upon the board.

66. 52-7P.

[W]ithout knowledge of the charge against him, an accused can make no defense. . . . The same rule governs in all civil litigation. It puts into effect the constitutional requirement of due process of law, and secures to every man his day in court in advance of, and necessary to, any judgment against him.

In this case the employee was given notice of dismissal and written charges against him on the day of the hearing. The neutral held such notice insufficient even though the employee appeared with a representative. In rendering the opinion, he stated:

[A] precise charge as contemplated by the agreement, strictly requires such information as will necessarily eliminate any need for guessing by the accused in order that he may have an adequate and reasonable opportunity to prepare his defense. . . .

In *Western Air Lines, Inc. and Brotherhood of Ry. Clerks*,<sup>67</sup> it was held that a charge is sufficiently precise if it

affords the employee enough information to provide him with a reasonable opportunity to secure the presence of representatives and necessary witnesses.

The neutral stated that this requirement is met if the charge is "sufficiently precise to inform the employee of the acts or conduct complained of and of the time and place of their occurrence."<sup>68</sup>

In a later case<sup>69</sup> an employee appealed a disciplinary discharge alleging that the notice from the carrier was vague and did not specify the exact charge against him. The notice read as follows:

[Y]ou are charged with violating the Employee Rules and Regulations during the incident which occurred on the company premises on Friday, November 15, 1957. For reasons of the above, you are herewith notified that your services with \_\_\_\_\_ Airlines are terminated, effective November 15, 1957.

The issue on appeal in this case involved only the form of the notice. The carrier-union agreement contained a clause which provided that "No employee shall be disciplined or discharged without first being advised in writing of the charge, or charges, preferred against him." The employee's appeal was denied, the referee stating:

[N]otification forms need not be definite. Yet, at the same time, they should be written in such a manner as to appraise employees in a meaningful way of the charge or charges preferred against them.

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67. 56-66C.

68. *Ibid.*

69. *Eastern Airlines, Inc. and International Ass'n of Machinists*, 58-51M.

Thus, this case, when considered with the *Flying Tiger* case,<sup>70</sup> seems to require of a notice a high degree of specificity when the action of the carrier carries with it the penalties of either dismissal or suspension. Further, the notice must be given within a reasonable time so as to afford the employee an opportunity to secure witnesses and representation. A copy of the notice of charges must be given to the employee.<sup>71</sup>

In order to have a hearing, an employee must make a timely demand for one. This demand must be made by him within a specific period of time after his receipt of notice of the disciplinary action taken against him. Failure to make such demand may constitute a waiver of his right to a hearing.<sup>72</sup> Conversely, the failure of the carrier to give sufficient notice to the employee of the charges against him and/or failure to notify him within the provided time periods constitutes a waiver of its right to take such disciplinary action. System boards require strict adherence to the limitations established by the carrier-union agreement regarding times within which grievances must be filed, objections made, motion for rehearing filed, and appeals filed.

In *American Airlines, Inc. and Transport Workers Union*<sup>73</sup> a provision in the agreement provided that appeals to the system board of adjustment from intra-company decisions "must be submitted within 20 calendar days of receipt of the decision." The grievant filed an appeal at the intra-company level eight days beyond the time provided for in the agreement. Nevertheless, it was heard, although denied on the merits. Subsequently, the employee appealed to his system board of adjustment within the time provided, if calculated from the date of the decision rendered on the late intra-company appeal, but not within the time period provided if calculation was made from the initial rendering of the decision. The carrier's motion to dismiss the appeal on jurisdictional grounds was made only at the system board level and yet was sustained. The referee explained:

[T]o overrule the jurisdictional objection would be to waive the express limitations provided by the agreement, a power not within the province of the Board.<sup>74</sup>

#### REPRESENTATION

An employee's right to be represented at hearings exists in all of the employer-employee agreements. However, it is important to read

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70. *Supra* note 66.

71. As a matter of practicality, the carrier generally has a form which is used for purposes of notifying an employee of the reasons for taking any disciplinary action. One of the carrier-union agreements even specifically provides that such form be supplied by the carrier.

72. *Supra* note 51.

73. 56-31M.

74. *Supra* note 62. Although the estoppel doctrine regarding adherence to time limitations is recognized, the general rule seems to require strict adherence.

each agreement carefully since some of them give the employee a choice of either representing himself or of having another represent him. Other agreements insure that an employee necessarily have representation at certain times, yet provide for self representation regarding other matters. Also, the stage of the proceedings at which an employee is entitled to representation becomes a critical question; an employee may unknowingly cause himself irreparable harm by submitting to questioning by the carrier without benefit of representation.

In *United Air Lines, Inc. and International Ass'n of Machinists*,<sup>75</sup> the carrier, in an effort to ascertain the cause of loss of a substantial amount of scrap metal, questioned some employees. The employees requested union representation at the interrogation but were denied it. During the course of the investigation one of the employees submitted to a polygraph test, and, evidently, incriminating information was obtained. The union, at a subsequent hearing before the system board, contended that during the preliminary investigation, *prior to the filing of a formal complaint*, representation should have been permitted and the union should have been informed of the investigation. In denying the union's claim the referee looked to the carrier-union agreement, and upon finding that there existed no provision regarding representation at preliminary investigation, stated that "either party may interrogate . . . to ascertain facts . . . regarding matters not covered in the Collective Bargaining Agreement." The referee interpreted this clause to mean that preliminary investigation and interrogation of employees did not amount to a hearing and that the employee therefore was not entitled to representation.

However, in *Braniff Airways, Inc. and Carrier Mechanics Ass'n*<sup>76</sup> five employees who were concerned about the equal distribution of overtime work discussed the problem with their shop steward. The steward then discussed the matter with the employees' immediate foreman, and during the conversation the steward mentioned the possibility of the union's filing a grievance because overtime had not been equally distributed. Subsequently, the foreman expressed a desire to discuss the matter with each of the five employees. Four of the five agreed to discuss it, but the fifth, the grievant, was advised not to talk with him without union representation. After three refusals to discuss the matter without union representation, the grievant was directed to appear before his superintendent. The grievant inquired about the nature of the meeting, desiring to know if it concerned the overtime matter. The superintendent's testimony concerning the grievant's question was as follows: "I did not want to talk about the union and that problem but about the grievant's attitude and his job." The grievant was again advised by

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75. 56-62M.

76. 57-7M.

a higher union official to stand on his right to to have a union representative present. Upon refusal to answer any question the superintendent charged the grievant with gross insubordination and told him that he was discharged.

The union contended that the grievant acted within his rights under the agreement and under the Railway Labor Act. The Company, on the other hand, contended that the grievant's refusal to talk to either the foreman or the superintendent amounted to insubordination. In the alternative the carrier argued that regardless of the grievant's refusal to talk to his foreman, refusal to talk to his superintendent about anything was clearly insubordination since the purpose of the meeting was not to discuss the overtime matter but rather to discuss the grievant's attitude. Furthermore, the carrier contended that even if the grievant had the right to have a union representative, he was still guilty of insubordination since employees are required to "obey first and grieve later."<sup>77</sup> In addition, it contended that failure to obey even improper orders, reserving the right to file a grievance at a later time, is insubordination. The pertinent sections of the agreement pertaining to the dispute read as follows:

*Article 37—Grievances and Grievance Procedure* A. Any employee . . . who believes that he/they have been unjustly dealt with or that any provisions of this agreement have not been properly applied or interpreted, shall be entitled to have such grievance adjudicated in the following manner: 1. All grievances . . . not settled by mutual agreement between the employee and/or his steward and his superintendent . . . must be reduced to writing and filed . . . within 15 days, but in no event later than 30 days after the date following the occurrence causing the complaint or grievance. Any grievance or complaint not so filed shall be deemed to have been waived and shall not be entitled to consideration.

*Article 40—General* B. Management is in the business of the company and by the direction of the company's personnel is the exclusive responsibility of the company, including the right to hire and promote, and to discharge, demote and suspend for cause, except as limited by this agreement.

The arbitrator stated that the fundamental issue was the stage in a typical proceeding at which an aggrieved employee is first entitled to demand union representation in the handling of his grievance. Admitting that the agreement was silent on the specific question, the arbitrator decided that it was from the time "the grievance comes into being." This

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77. See e.g., *Trans World Airlines, Inc. and Air Line Navigators Ass'n*, 54-12FN; *American Airlines, Inc. and Transport Workers Union*, 56-5M; *Capital Airlines, Inc. and International Ass'n of Machinists*, 59-18M; *Hawaiian Airlines, Inc. and International Ass'n of Machinists*, 61-27M.



point of time includes the formative stage of a grievance, *i.e.*, when the employee believes that he is being unjustly dealt with, before his grievance is reduced to writing, and during discussions with a foreman. In considering the carrier's alternative contention, based on the "obey first and grieve later" doctrine, the arbitrator reiterated exceptions to it.<sup>78</sup>

In *Central Airlines, Inc.* and *International Ass'n of Machinists*,<sup>79</sup> the system board rendered a decision favorable to the grievants, but the carrier refused to comply with the arbitrator's award to reinstate the grievants. The main issue involved the employees' right to union representation and the point of time at which this right accrued. The carrier agreed that a grievant is entitled to representation once "disciplinary action" is taken against an employee, arguing, however, that disciplinary action is not begun until there is a formal hearing or investigation under the agreement provision allowing for a hearing. The provision contained in the agreement in question provided that "prior to such investigation and hearing, such employee shall be notified by the Company of the precise charge or charges against him. . . ."

Based upon this provision, the carrier contended that disciplinary action had not been taken since the employee had not been notified of the precise charge. The carrier further asserted that it merely wanted to "interview" the employee. Although the arbitrator agreed that disciplinary action must be taken before an employee is entitled to representation, it was held that suspension, with or without formal notice, constitutes disciplinary action.

#### CONFRONTATION—CROSS EXAMINATION

In an early case,<sup>80</sup> it was held:

[A]lthough arbitral proceedings are not conducted according to strict rules of legal evidence, an employee is entitled to confrontation of witnesses when he is accused of a misdeed which might result in the loss of his job.

The grievant had been charged with spraying a fellow employee with an aerosol bomb, causing the fellow employee to lose two days work, to necessitate consultation with a doctor, and to incur the expense of treatment. The referee conceded that such action, coupled with the result, amounted to gross negligence and warranted the dismissal of the grievant. However, the carrier attempted to substantiate the charge by submitting

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78. The one exception applicable in the instant case is that an employee need not obey an order which interferes with his use of the grievance procedure. The arbitrator ordered the carrier to reinstate the employee without loss of either seniority or employee benefits, and with payment for time lost from the date of discharge to the date of reinstatement, less any sums earned elsewhere during the period.

79. 59-62M.

80. Pan Am. Airways, Inc. and Transport Workers Union, 49-18M.

signed statements of two other fellow employees, which stated that the grievant had also sprayed them on previous occasions. These employees were still employed by the carrier, but neither they nor the alleged victim were called as witnesses at the hearing; only their statements were used.

The grievant testified that in the course of his duties he had, in fact, sprayed certain areas with insecticide. However, he further testified that this practice was common even when passengers were present, and that, although the employees may have been present and affected, he had not injured them deliberately. The grievant's explanation was held to be decisive, even in light of the two signed statements, on the constitutional grounds of "right to cross examine" and "right to be confronted."

In *Eastern Airlines, Inc.* and *International Ass'n of Machinists*,<sup>81</sup> the rule and the rights involved in the *Pan American* case were recognized. Nevertheless, the grievant's discharge was upheld even though all the evidence introduced by the carrier to prove a charge of "careless, negligent, and unsatisfactory performance of duty" was based on hearsay, and even though the grievant had no opportunity to cross examine. The carrier's evidence included: (1) statements of four witnesses who claimed to have observed the accident in which the grievant was involved; (2) the fact that a fine for the accident was imposed upon the grievant at another hearing; (3) the fact that his driver's license was revoked; and (4) a report that the plane, with which the grievant's truck collided, was in the proper position. All of this testimony was introduced by an investigator of the Civil Aeronautics Administration.<sup>82</sup>

In the opinion of the referee, the objections of the grievant, that the evidence was inadmissible for lack of an opportunity to cross examine and because it was hearsay, were well founded. However, the referee concluded that since the grievant's own testimony established his carelessness and negligence, this disposed of the issue even without considering the carrier's evidence.

In *Northwest Airlines, Inc.* and *Airline Stewards and Stewardesses Ass'n*,<sup>83</sup> a stewardess was discharged for consuming alcoholic beverages while on flight duty. During the hearing before the system board, the carrier introduced witnesses who were not called at the preliminary investigation. The union argued that, since it was unaware of the new witnesses, it was unable to cross examine them properly. It was held that since the grievant did not claim she was unaware of the precise charge against her, or that she did not have ample opportunity to secure

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81. 58-46M.

82. At best, because all the testimony was introduced by an investigator, everything was at least hearsay; most of it was probably hearsay upon hearsay upon hearsay.

83. 59-7S.

witnesses in her defense, and since no request for a continuance was made in order to become better prepared, she was not denied a "fair trial."

In *Eastern Airlines, Inc. and International Ass'n of Machinists*,<sup>84</sup> in which the carrier attempted to prove larceny of some sandwiches, and in which the employee alleged that he had permission from flight personnel to take them, the employee's discharge was reversed. The referee admonished the carrier that it would have been a simple matter to obtain statements from the flight personnel that would either substantiate or contradict the statements of the grievant. The referee concluded that

[T]he failure of the company to do this must lead anyone to the inescapable conclusion that the flight personnel of this plane would have in fact supported and corroborated the statements made by grievant.

Obviously, the application of the rule regarding the opportunity to be confronted and to examine is not uniform.

#### BURDEN OF PROOF—SUFFICIENCY—DOUBTS

The burden of proving the allegations necessary to sustain a disciplinary action rests upon the carrier.<sup>85</sup> It has been declared that the proof needed to sustain a charge must be established by a "preponderance of evidence,"<sup>86</sup> must be demonstrated by a "fair weight" of the evidence,<sup>87</sup> or must be of a "substantial nature and devoid of conflicts."<sup>88</sup> However, the charges need not be substantiated by evidence that will prove guilt "beyond a reasonable doubt."<sup>89</sup> In *Trans World Airlines, Inc. and International Ass'n of Machinists*,<sup>90</sup> the board held that

proof need not be beyond a reasonable doubt, as is required in a criminal proceeding . . . [I]t is enough to show by a fair weight of the evidence that fault existed. . . .

It should be noted that the degree of proof required to sustain the burden varies, depending upon either the type of disciplinary action taken or the type of offense alleged. If the offense charged involves moral turpitude, a much greater *quantum* of proof is needed.<sup>91</sup> In cases involving discharge of pilots, less than a preponderance is necessary because of "management's duty imposed by law to perform its services

84. 59-12M.

85. *United Air Lines, Inc. and Air Line Pilots Ass'n*, 51-9P.

86. *National Airlines, Inc. and Air Line Pilots Ass'n*, 50-8P.

87. *Id.* at 4.

88. *Southern Airways, Inc. and Air Carrier Mechanics Ass'n*, 56-58M.

89. *Id.* at 2.

90. 58-24M.

91. *Trans World Airlines, Inc. and Flight Eng'rs Ass'n*, 52-21 FE.

with the highest degree of safety in the public interest."<sup>92</sup> And the only factor to be considered on review by a system board in pilot discharge cases is whether the discharge was discriminatory, arbitrary, malicious or capricious.<sup>93</sup>

In *United Air Lines, Inc. and Air Line Pilots Ass'n*,<sup>94</sup> the referee stated that there would be "sufficient justification" for the discharge of a pilot if the carrier could "present evidence which would indicate that it would be negligent in retaining and assigning regular duties" to him.<sup>95</sup>

Doubts in the evidence are resolved in favor of the employee. In *Eastern Airlines, Inc. and International Ass'n of Machinists*,<sup>96</sup> there was a conflict in the testimony, and questions existed concerning the credibility of the witnesses. After considering the entire record the referee stated that since he was "uncertain where the truth really lies [*sic*] . . . doubts must be resolved against the company which has the burden of sustaining the charges made against the grievant."

Conflicts in the evidence are also resolved in favor of the employee. In *Trans World Airlines, Inc. and Air Line Stewards and Stewardesses Ass'n*,<sup>97</sup> the referee reinstated a stewardess who had been discharged for failure to cover her assignment, and for her accumulated misconduct. She testified that she had followed certain required procedures to determine that she was free from duty. Although the carrier's records did not reflect that the procedures were taken, the conflict was resolved in favor of the stewardess.

Adherence to the formal rules of evidence is not required in the hearings. Therefore, evidence based upon inference, assumption and hearsay, coupled with strong corroborative testimony, is given consideration.<sup>98</sup> Nevertheless, very strong corroborative evidence seems to be required. In *Braniff Airways, Inc. and International Ass'n of Machinists*,<sup>99</sup> it was held that inferential evidence was insufficient to support a charge of dereliction of duty, the neutral stating:

[T]o impose a penalty on grievant would be following a course diametrically opposed to a cherished principal of American democratic law—namely, a man is innocent until proven guilty.

Evidence obtained through surveillance is admissible as long as the facts indicate that (1) the carrier was justified in conducting the

92. National Airlines, Inc. and Air Line Pilots Ass'n, 50-8P.

93. *Id.* at 3.

94. 53-3P.

95. Is this another standard the carrier must achieve to sustain his burden? If so, does it require more or less than the others?

96. 61-19M.

97. 61-35S.

98. Braniff Airways, Inc. and Air Line Pilots Ass'n, 55-12P.

99. 58-56M.

surveillance; it must have, for example, prior complaints; and (2) there is no possibility that the carrier entrapped the employee. In *Northwest Airlines, Inc. and International Ass'n of Machinists*,<sup>100</sup> an employee, who held a supervisory position on the third shift, was discharged. The employee's immediate supervisor, who worked on the second shift, suspected him of sleeping on the job. The supervisor remained in the plant to observe the grievant's actions and thereby established that he was sleeping. The neutral sustained the discharge after having determined that the two conditions of surveillance were met, namely, justification and the absence of entrapment.

In spite of vagueness in the rules regarding the degree and sufficiency of evidence required to sustain the burden of proof, the rule regarding the use of relevant evidence is marked by precision and generally seems to be interpreted in favor of the employee. In *Alaska Airlines, Inc. and Air Line Stewards and Stewardesses Ass'n*,<sup>101</sup> the carrier discharged a stewardess for accumulated misconduct, asserting four charges to sustain it. Later, at the hearing, the carrier offered evidence concerning five other past incidents unrelated to the specific charges as further justification for the discharge. In reinstating the stewardess, the neutral ruled that, since such evidence was unrelated to the allegations, it was irrelevant and thus inadmissible.

It should be noted, however, that evidence of past conduct is generally admissible if it favors the employee. In *Southern Airways, Inc. and Air Carrier Mechanics Ass'n*,<sup>102</sup> the board held:

In making a determination as to the propriety of the employer's action in discharging an employee, it is well settled that an arbitrator or board of arbitration may inquire into the employee's past record to determine whether or not his past record is such to justify a finding that he, the employee, had been in the past a good employee and that leniency is justified. . . .<sup>103</sup>

#### ASSESSMENT AND REVIEW

The carrier has discretionary power to impose any discipline it deems appropriate.<sup>104</sup> The exercise of this power will not be questioned on review by a system board unless the penalty violates "written codes, the Collective Bargaining Agreement, or the dictates of reasonableness in the light of common experience. . . ."<sup>105</sup>

100. 57-3M.

101. 59-3S.

102. *Supra* note 88.

103. Also see *Braniff Airways, Inc. and International Ass'n of Machinists*, 58-58M, where the board stated: "The excellent long-service records of employees must be given considerable weight in determining the fairness of the company action. That is well established in labor relations. . . ."

104. *Capital Airlines, Inc. and International Ass'n of Machinists*, 58-14M.

105. *Southern Airways, Inc. and Air Carrier Machinists Ass'n*, 57-21M.

The following are some of the factors considered in determining the type of penalty and its severity: (1) the nature of the airlines industry and the fact that the common carriers owe to the public the highest degree of care; (2) the nature of the employee's derelictions and their relation to the degree of care imposed;<sup>106</sup> and (3) whether the discipline was assessed arbitrarily or capriciously.<sup>107</sup> However, the arbitrator or board may either completely reverse the carrier's action or modify it. Generally, the discipline is sustained,<sup>108</sup> and even when it is modified, it is usually only mitigated. Consequently, the factors that warrant mitigation become quite important, and the grounds for it are numerous.

In *Northwest Airlines, Inc. and International Ass'n of Machinists*,<sup>109</sup> the discipline imposed was in the form of a demotion for a period of one year. The referee reduced the penalty after considering the employee's "long and faithful, and loyal service"; considered also were the employee's assumption of full responsibility for his acts and his full cooperation in the investigation of the matter.

The personal relationship between the employee and the supervisor who either reprimands, suspends or dismisses an employee is also considered.<sup>110</sup> In *Northeast Airlines, Inc. and Transport Workers Union*,<sup>111</sup> the board considered this factor and reinstated a discharged employee after a finding that the supervisor had provoked the employee into causing a fight with him.

Another factor which has been considered is the physical, mental and emotional condition of the employee at the time the act or conduct complained about occurred.<sup>112</sup> The type and degree of punishment imposed upon other employees who have been involved in similar incidents may be considered as well.<sup>113</sup> In addition, the following are factors which boards have considered in modifying disciplinary action taken by a carrier: (1) failure of the carrier to discipline other employees for similar conduct;<sup>114</sup> (2) failure of the carrier to sustain the burden of proving its allegations;<sup>115</sup> (3) use of irrelevant evidence in attempting to

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106. Pan Am. World Airways, Inc. and Air Lines Pilots. Ass'n, 48-1P.

107. Northwest Airlines, Inc. and International Ass'n of Machinists, 60-25M.

108. *Supra* note 57.

109. 60-26M. The grievant was discharged from the classification of Crew Chief, with loss of Crew Chief seniority, and denied any classification higher than mechanic for a period of one year. The penalty was modified to provide that the grievant would not lose his seniority as a Crew Chief.

110. Western Airlines, Inc. and International Ass'n of Machinists, 58-71M.

111. 59-22C.

112. Trans World Airlines, Inc. and Air Line Stewards and Stewardesses Ass'n, 59-55S.

113. Northwest Airlines, Inc. and International Ass'n of Machinists, 60-24M, Capital Airlines, Inc. and International Ass'n of Machinists, 59-27M.

114. Transcontinental and W. Air, Inc. and International Ass'n of Machinists, 48-7M.

115. Northwest Airlines, Inc. and Air Line Pilots Ass'n, 59-1P.

prove the allegations;<sup>116</sup> and (4) whether the violation is willful or merely technical.<sup>117</sup>

### CONCLUSION

There is no uniformity concerning the criticism of the system, favorable or unfavorable, among the people who deal with the settlement of grievances in the airlines industry.<sup>118</sup> Even though it is agreed that there is room for improvement, this twenty-six-year-old system satisfies the interested members of the industry. One reason for their satisfaction with the status quo is that the alternative of having a national system does not seem to appeal to them, despite the fact that one of the criticisms of the present system concerns the lack of industry-wide uniformity in interpreting carrier-union agreements.

It is interesting to note that the average length of time it takes to settle a grievance is one and one-half years, provided that all of the procedural steps are followed.<sup>119</sup> The factor of delay has been the object of the most criticism among both union and airline officials. It is detrimental to an employee because it renders his future uncertain, especially if he has been discharged. Carrier officials are dissatisfied because they feel it engenders poor morale among employees and because it renders the meaning of contract provisions uncertain.

As a solution to this problem, it seems that the enactment of procedures which are less formal and less time-consuming is needed. In addition, it might be desirable to include in the agreements actions in the nature of declaratory decrees. These procedures should be designed to maintain and preserve the rights of the employee and the interests of the carrier.

Regarding the lack of industry-wide uniformity in interpreting carrier-union agreements, a procedure whereby all decisions would be submitted to a central agency for publication should be established. Since the provisions in most of the agreements are similar throughout the industry, the doctrine of *stare decisis* should also be considered in this connection. This procedure could, at the same time, minimize the number of grievances filed and shorten the time it takes to resolve one; the parties could research a specific principle and determine their rights and the limitations upon their powers.

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116. *Supra* note 101, at 3.

117. *Supra* note 112.

118. The writer has interviewed union officials, neutrals, and labor relations management personnel.

119. This time includes not only the maximum periods permitted by the agreements, but also continuances and the time consumed waiting for a board to sit and to decide.