

but not to limit its discretion in arriving at a final decision." *Bro. of Locomotive Firemen & Enginemen, et al. v. Chicago, Burlington & Quincy RR, et al.*, 225 F. Supp. 11 at 19 (D.D.C., 1964).

The proposed Joint Resolution provides the Special Board with even greater latitude in fashioning its own brand of industrial justice than that provided the board of arbitration under Public Law 88-108.

It is entirely clear that in considering S.J. Res. No. 81 and H.J. Res. No. 559 Congress cannot evade the responsibility of determining whether it will impose compulsory arbitration upon the parties as it did only three and one-half years ago in enacting Public Law 88-108. It likewise is clear that in considering the impact of Public Law 88-108 upon collective bargaining in the railroad industry, the only conclusion which reasonably can be drawn is that such legislation was a mistake which should not be repeated. The compulsory arbitration under Public Law 88-108 not only failed to resolve effectively the rules disputes at which it was aimed, but also created an atmosphere which has permeated railroad labor-management disputes since the enactment and which, in no small measure, is responsible for the situation which has brought us here today.

The failure of Public Law 88-108 to resolve the dispute at which it was pointed is evident from the fact that even at this late date, more than three and one-half years since its enactment, and more than 15 months after the expiration of the award of the arbitration board, there are a couple of dozen cases involving the arbitration award now pending in the Court of Appeals for the District of Columbia Circuit, and some which still have not even been argued before that tribunal as of this date, and some still pending in the District Court. Dozens more were brought in the District Court and decided without an appeal being taken. The arbitration of the rules dispute has resulted in a situation where the parties are in total disagreement on such a fundamental issue as which rules have been in effect since January 25, 1966, the date the award expired. The parties cannot even agree on the method and manner in which they are required now to bargain about the subject. Collective bargaining has come to a complete standstill on that issue and even now, the railroads are once more seeking to establish a national crisis with respect to the rules dispute in the hope that Congress will again step into the dispute and again require compulsory arbitration as it did in 1963.

The impact of Public Law 88-108, however, has extended far beyond the confines of the dispute with which it was concerned. Indeed, its specter is present in this room today. The failure of the parties to reach agreement on the dispute involved here, at this stage of the negotiations, certainly does not present a unique situation. There have been many such instances. Yet never before Public Law 88-108 has any one felt the need to propose legislation to deal with such a dispute. The reason for this is obvious. In the past, prior to Public Law 88-108, each side was aware that the dispute could be settled only across the bargaining table, and with such knowledge, engaged in sincere and meaningful negotiations to resolve the dispute before either side would find it necessary to resort to self help. And agreements were reached. The undeniable fact is that the last "national" strike in the railroad industry occurred more than 20 years ago, and that strike lasted only for a few days at which time agreement was reached. Public Law 88-108, however, has thrown a pall over the continued effectiveness of collective bargaining. The railroads believe that there no longer is any necessity to reach agreement except on their own terms. If agreement is not reached, the railroads assume, Congress will step in and require compulsory arbitration before any economic pressure can be brought to bear by the employees in an attempt to reach agreement.

Congress recognized the inherent danger to the future of collective bargaining in the enactment of Public Law 88-108 and it went to great lengths in the committee reports, and in the Act, to make it clear that Public Law 88-108 was not to be taken as a precedent, that it was a "one shot solution", and that the enactment was in no way to be taken as an indication that Congress no longer believed that the settlement of disputes is to be reached in any manner other than "in a manner which preserves and prefers solutions reached through collective bargaining." To enact this proposed resolution requiring compulsory arbitration, within such a short period following the enactment of Public Law 88-108, and indeed, at the very first opportunity to do so following that enactment, will be taken by the railroads as establishing a last ditch of compulsory arbitration which Congress would afford them (and which they have long sought) if agreement was not reached. This will encourage the railroads to be uncon-