



1 of such awards by the NRAB. See 45 U.S.C. § 153 First(m) (providing awards of divisions  
2 of NRAB “shall be final and binding upon both parties to the dispute”); see also  
3 Brotherhood of Locomotive Eng’rs & Trainmen v. CSX Transp., Inc., 522 F.3d 1190, 1192-  
4 93, 1200 (11th Cir. 2008) (holding request for interpretation did not toll statute of limitations  
5 on petition to enforce award; noting that once interpretation is obtained, “the parties can  
6 make [it] available to the Court in the enforcement action”); Transp. Commc’ns Int’l Union v.  
7 CSX Transp., Inc., 30 F.3d 903, 907 (7th Cir. 1994) (holding decision of division of NRAB  
8 “remains final and binding on the parties and [a] request for an interpretation . . . does not  
9 change this”).

10         2. Contrary to Union Pacific’s argument, the subject NRAB awards are not  
11 insufficiently definite by reason of any omission therefrom of a specified amount of back  
12 pay to be paid. Union Pacific’s reliance on Railroad Yardmasters of North Am. v. Ind.  
13 Harbor Belt R. Co., 166 F.2d 326, 330 (7th Cir. 1948), is unavailing. In Railroad  
14 Yardmasters, neither the NRAB’s award nor its findings disclosed any facts “upon which an  
15 award could be based.” See id. at 329-30. By contrast, in the instant action, the NRAB  
16 awards adequately state the facts upon which they are based. (See Compl. Awards Nos.  
17 26613, 26631, 26634.) Additionally, the awards sufficiently inform Union Pacific as to “what  
18 it is required to do,” see R.R. Yardmasters, 166 F.2d at 330, by stating that each petitioner  
19 shall be paid for “all time lost” and by instructing Union Pacific as to what action it must take  
20 with respect to each petitioner’s disciplinary record (see Compl. Awards Nos. 26613 at 2;  
21 26631 at 2; 26634 at 3). Union Pacific has cited no authority holding any more is required.

22         3. Contrary to Union Pacific’s argument, the NRAB awards are not subject to  
23 dismissal on the ground that the NRAB has failed to articulate the time within which Union  
24 Pacific is required to make payment. See § 153 First(o) (providing where NRAB makes  
25 monetary award, order must direct carrier “to pay to the employee the sum to which he is  
26 entitled under the award on or before a day named”). Here, each of the NRAB awards  
27 states that Union Pacific “is ordered to make the Award effective on or before 30 days  
28 following the postmark date the Award is transmitted to the parties.” (See Compl. Awards

1 Nos. 26613, 26631, 26634.) Such provision is sufficient to meet the requirements of § 153  
2 First(o).<sup>1</sup>

3 4. To the extent the petition seeks enforcement of the awards in favor of Brucker,  
4 Summers, Redmond, and Humble, the petition is subject to dismissal, due to the failure of  
5 Public Law Board No. 6778 (“PLB”), in its orders granting awards to such petitioners, to  
6 “direct the other party to comply therewith on or before the day named.” See § 153  
7 Second. Specifically, said awards fail to state dates by which compliance must be  
8 accomplished by Union Pacific. (See Compl. Awards Nos. 90, 91, 93, 106.) Consequently,  
9 the Court lacks subject matter jurisdiction over the petition to enforce said awards. See  
10 R.R. Yardmasters, 166 F.2d at 329 (holding action for enforcement of award of division of  
11 NRAB “cannot be maintained upon an order which fixes no time limit for compliance”); see  
12 also § 153 Second (providing “[c]ompliance with [special boards of adjustment] awards  
13 shall be enforceable by proceedings in the United States district courts in the same manner  
14 and subject to the same provisions that apply to proceedings for enforcement of  
15 compliance with awards of the [NRAB]”).

## 16 CONCLUSION

17 For the reasons stated above, Union Pacific’s motion to dismiss is hereby  
18 GRANTED in part and DENIED in part, as follows:

19 1. To the extent Union Pacific seeks dismissal of the petition to enforce the awards  
20 in favor of Bjazevich, Henry, and Cervantez, the motion is DENIED.

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22 <sup>1</sup>Although not expressly raised by Union Pacific, the Court also has considered  
23 whether the petition sufficiently alleges Union Pacific’s failure to comply by the date  
24 specified. See § 153 First(p) (providing petitioner may file petition to enforce award “[i]f a  
25 carrier does not comply with an order of a division . . . within the time limit in such order”).  
26 Although petitioners do not identify the specific postmark dates on which the NRAB awards  
27 were transmitted, petitioners allege that Union Pacific “has failed to comply with said  
28 Awards” (see Compl. ¶ 19), and Union Pacific has neither asserted nor presented evidence  
suggesting that fewer than 31 days elapsed between the postmark dates and the date on  
which the instant action was filed. Accordingly, drawing all reasonable inferences in  
petitioners’ favor, see Wolfe v. Strankman, 392 F.3d 358, 362 (9th Cir. 2004) (holding, in  
facial attack on subject matter jurisdiction, court “assume[s] [plaintiff’s] allegations to be  
true and draw[s] all reasonable inferences in his favor”), the Court finds petitioners have  
sufficiently pleaded subject matter jurisdiction under § 153 First(p).

1           2. To the extent Union Pacific seeks dismissal of the petition to enforce the awards  
2 in favor of Brucker, Summers, Redmond, and Humble, the motion is GRANTED and, to  
3 such extent, the petition is DISMISSED without prejudice.

4           In light of the pending request for interpretation of the NRAB awards, the Case  
5 Management Conference scheduled for November 7, 2008, is hereby CONTINUED to  
6 January 16, 2008.

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8           **IT IS SO ORDERED.**

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10          Dated: November 5, 2008

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MAXINE M. CHESNEY  
United States District Judge

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