Jurisdiction over Intertwined Contract Violation and Fair Representation Claims under the Railway Labor Act: Richins v. Southern Pacific Co.

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A 1965 Memorandum of Agreement between the Southern Pacific Transportation Company (the Railroad) and the Brotherhood of Railway Carmen and System Federation No. 114 (the Union) governed the relative seniority of carmen apprentices and carmen helpers. This agreement was modified when Southern Pacific merged with another railroad company in 1968 in order to dovetail the seniority rosters of the two companies. Union members Richins and six other employees and former employees of the Railroad subsequently claimed a violation of the 1965 agreement, alleging that they were demoted and finally furloughed from their positions as “Upgraded Carmen Apprentices,” while “Upgraded Carmen Helpers” were not demoted although they should have been demoted first under the 1965 agreement. The Upgraded Apprentices further alleged that the Union prevented them from filing a timely claim with the National Railroad Adjustment Board by consistently and maliciously misleading them as to their rights, and refusing to protest their furlough in violation of the Union’s duty of fair representation. The Railroad and the Union responded that the Upgraded Apprentices’ claims were not meritorious under a 1968 modification to the original agreement. The Upgraded Apprentices’ suit against the Railroad and the Union in federal district court was dismissed for lack of jurisdiction. The Court


2. Dovetailing is the procedure whereby employees of companies are merged on a seniority list which is based on the employees' original dates of hire with either of the merged companies. See Highway Truck Drivers & Helpers, Local 107 v. Motor Transp. Labor Relations, Inc., 232 F. Supp. 782, 783 (E.D. Pa. 1964).


4. See Richins v. Southern Pac. Co., No. 77-0038, slip op. at 7 (N.D. Utah Sept. 6, 1978). Though often loosely referred to as jurisdiction, the question ac-

Congress established the National Railroad Adjustment Board as the railroad industry's court of last resort.\(^5\) Creation of the Board arose out of Congress's desire for an expert and impartial tribunal for settlement of labor disputes.\(^6\) To this end, the Board is bipartisan, with management and union representatives each filling seventeen of the Board's thirty-four positions.\(^7\)

Although it was at first unclear whether section 3 of the Railway Labor Act (RLA)\(^8\) deprived state and federal courts of jurisdiction over so-called minor contract disputes,\(^9\) the courts subsequently determined that the Board possessed exclusive original jurisdiction in such cases.\(^10\) Minor disputes concern

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6. *See U.S. ATTORNEY GENERAL'S COMMITTEE ON ADMINISTRATIVE PROCEDURE, INQUIRY RELATING TO THE NATIONAL RAILROAD ADJUSTMENT BOARD, BOOK II, 106, 120, 151 (1939). See also 78 CONG. REC. 11,718 (1934). Unlike the strictly bipartisan boards which preceded it, the Board was to avoid the problem of deadlocks through the provision for appointment of a neutral referee in such situations. See 78 CONG. REC. 11,713, 11,715 (1934).*

7. 45 U.S.C. § 153 First (a) (1976). The Board originally was comprised of thirty-six members; half were selected by the carriers and half by the labor organizations. Act of June 21, 1934, Pub. L. No. 89-456, ch. 691, § 3(a), 48 Stat. 1189. *See Thompson v. New York Cent. R.R., 361 F.2d 137, 149 (2d Cir. 1966); Kroner, supra note 5, at 43. The membership of adjustment boards is designed to represent management and the union. Brady v. Trans World Airlines, Inc., 401 F.2d 87, 93 (3d Cir. 1968), cert. denied, 393 U.S. 1048 (1969).*

8. *Under section 3 of the RLA, when an adjustment cannot be reached by the usual procedures between railroad and employee, disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions . . . may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board.*


the interpretation or application of pre-existing agreements, in contrast to major disputes which arise out of the formation or change of collective bargaining agreements covering rates of pay, rules, or working conditions. According to the United States Supreme Court in Union Pacific Railroad v. Sheehan, "Congress considered it essential to keep these so-called 'minor' disputes within the Adjustment Board and out of the courts." Congress believed that the Board would provide effective, efficient remedies in employee-railroad disputes involving the interpretation of collective bargaining agreements, thereby promoting stability in labor-management relations. Moreover, the Third Circuit recently observed that the Board's expertise in construing railroad contracts enables it to secure prompt, orderly, and final resolution of everyday grievances involving rates of pay, rules, and working conditions. In addition, the Board's bipartisan representation is well suited to resolving such disputes. In contrast to the Board's original jurisdiction in minor contractual disputes, the Supreme Court has held that the Board is incompetent to hear fair representation claims. The Court's rationale for thus delineating the Board's jurisdiction was that section 3 of the RLA, by its express terms, applies only to suits between the railroad and its employees. Later decisions elab-

(1955). Reference of such disputes to the Board was a matter of compulsion, not option. See Andrews v. Louisville & N.R.R., 406 U.S. at 322. This compulsory character stems not from any contractual agreement of the parties but from the Act itself. Id. at 323.
17. See notes 23-28 infra and accompanying text.
18. Conley v. Gibson, 355 U.S. 41, 44-45 (1957). In Conley, minorities allegedly were demoted or discharged and then replaced by whites, after the railroad told them that their jobs were being abolished. Plaintiffs further alleged that the union, acting according to plan, refused to protect them from discrimination despite their repeated pleas. Id. at 43.
19. Id. at 44. The RLA provides:
orate that in addition to the express statutory limitation of the Board's jurisdictional competence, by its very makeup the Board is institutionally incapable of the impartiality necessary to remedy breaches of the fair representation duty. Because the RLA permits the national labor organization chosen by a majority of the crafts to "prescribe the rules under which the labor members of the Adjustment Board shall be selected" and "to select such members and designate the division on which each member shall serve," employees would be required to appear before a group largely made up of the union against whom they are complaining. Original jurisdiction over major contractual disputes and unfair representation claims therefore rests in the district court.

The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on June 21, 1934, 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 disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.


20. At one time, the Board was thought to be incapable of remedying such claims. Since the Board declined to entertain grievance complaints by individual members of a craft represented by a union, see Steele v. Louisville & N.R.R., 323 U.S. 192, 205 (1944), the only way for the individual to prevail was to have the union carry his case to the Board. Id. (citing ATTORNEY GENERAL'S COMMITTEE ON ADMINISTRATIVE PROCEDURE, ADMINISTRATIVE PROCEDURE IN GOVERNMENT AGENCIES, S. Doc. No. 10, 77th Cong., 1st Sess. pt. 4 at 7 (1941)). Individual employees now have standing before the Board, irrespective of the union's position. Thompson v. New York Cent. R.R., 361 F.2d 137, 143, 149 (2d Cir. 1966).


Given the division of jurisdiction between the Board and the courts, disputes involving intertwined allegations of minor contractual violations and unfair representation claims present two jurisdictional issues: the effect of joining parties and the effect of joining claims. Because the Board exercises exclusive original jurisdiction over minor contract disputes,23 but the Board's personal jurisdiction extends only to the railroad and its employees,24 situations in which the union was sought to be joined in minor contractual disputes created jurisdictional difficulties.25 Suits in which employees alleged that the union was in collusion with the railroad typically raised this issue. The Supreme Court resolved this aspect of the jurisdictional problem by holding that under these circumstances, the district court may hear the suit, notwithstanding the Board's original jurisdiction.26

The more difficult problem involves the joining of claims of unfair representation and claims involving minor contractual disputes, since the Board's jurisdiction over the minor contractual dispute is exclusive,27 but only the district court is competent to hear the unfair representation claim.28 The Third Circuit resolved this dilemma by analogizing to the doctrine of pendent jurisdiction,29 allowing the Board to hear claims which


23. See note 10 supra and accompanying text.
24. See note 19 supra and accompanying text.
26. See Glover v. St. Louis-S.F. Ry., 393 U.S. 324, 325 (1969). In Glover, plaintiff alleged that the railroad and union tacitly agreed to cooperate in a plan to avoid promoting black employees. Although the railroad was joined to insure full relief, the Court characterized the dispute as one essentially between employees on one side and the employer and union on the other, rather than between "an employee or group of employees and a carrier or carriers." Id. at 329.

Although the allegations in Glover do not explicitly set forth claims of contract violation and breach of the duty of fair representation, the factual allegations appear to make out such claims, see id. at 325-27, and the Court's treatment of the case indicates that it viewed the allegations in this way, see id. at 328-29.

27. See note 10 supra and accompanying text.
28. See note 18 supra and accompanying text.
29. Actually, the Third Circuit's holding is more like the converse of pendent jurisdiction. Pendent jurisdiction is a doctrine that allows a federal court to take jurisdiction over a nonfederal claim when joined with a federal claim that is substantial, where both claims together make up a single cause of action. See Rumbaugh v. Winifrede R.R., 331 F.2d 530, 539 (4th Cir.), cert. denied, 379 U.S. 929 (1964); Annot., 5 A.L.R.3d 1040, 1047 (1966).
are "primarily" contractual.\textsuperscript{30} For example, in \textit{Roberts v. Lehigh \& N.E. Ry.},\textsuperscript{31} the court held that the Board has exclusive jurisdiction over a dispute between railroad employees on the one hand and the railroad and union on the other, the resolution of which depends on contractual interpretation.\textsuperscript{32} In \textit{Roberts}, the plaintiffs alleged that they were involuntarily retired without severance pay and removed from seniority rosters contrary to memorandum agreements, and that the union refused to process their claims or appeal internally.\textsuperscript{33} Similarly, in \textit{Goclowski v. Penn Central Transportation Co.},\textsuperscript{34} the Third Circuit held that the employees' request to invalidate an allegedly unauthorized extension of the collective bargaining agreements affecting seniority required the Board's expertise in construing railroad labor contracts.\textsuperscript{35} The \textit{Goclowski} court adopted the \textit{Roberts} test and noted that the claim required "close examination of the pertinent collective bargaining agreements."\textsuperscript{36} The court further noted that the joinder of the union for alleged breach of the duty of fair representation did not destroy the Board's jurisdiction.\textsuperscript{37}

Rejecting the Third Circuit's rationale allowing the Board to have pendent jurisdiction, the Tenth Circuit in \textit{Richins} held that the district court properly had jurisdiction over intertwined breach of contract and fair representation claims.\textsuperscript{38} Absent clearer guidance from the Supreme Court, the court was unwilling to bifurcate the proceeding with the claim against the Railroad presented to the Board and the fair representation claim heard in federal court.\textsuperscript{39} The court believed that the Railroad should be made a party to the fair representation claim,

\begin{itemize}
\item \textsuperscript{31} 323 F.2d 219 (3d Cir. 1963).
\item \textsuperscript{32} Id. at 224.
\item \textsuperscript{33} Id. at 222.
\item \textsuperscript{34} 571 F.2d 747 (3d Cir. 1977).
\item \textsuperscript{35} Id. at 755.
\item \textsuperscript{36} Id.
\item \textsuperscript{37} Id. at 756. Cf. \textit{Conley v. Gibson}, 355 U.S. 41, 45 (1957) (in suit by employees against union, joinder of railroad may be requested if necessary); \textit{Cunningham v. Erie R.R.}, 266 F.2d 411, 414-16 (2d Cir. 1959) (district court had power to adjudicate claim against railroad as well as union because exclusive Adjustment Board jurisdiction extended only to employee—employer disputes). \textit{See also} \textit{Rumbaugh v. Winifrede R.R.}, 331 F.2d 530, 537 (4th Cir.), \textit{cert. denied}, 379 U.S. 929 (1964).
\item \textsuperscript{39} Id. at 762.
\end{itemize}
since full recovery could not be had in its absence due to the claim for reinstatement with seniority, and duplication of effort and inconsistent results could arise if two forums were required to interpret the contract.

The *Richins* court acknowledged the Supreme Court's statement that it is "essential to keep . . . minor disputes" before the Board, yet it found no support for extending the jurisdiction of the Board over intertwined fair representation claims based primarily on interpretation of a collective bargaining agreement. The court was unwilling to adopt the *Roberts* "primarily" contractual test, because it believed that the burden of determining whether resolution of the dispute turns primarily on contract interpretation would perhaps be impossible at such an early stage in the proceeding, and few fair representation claims would not have elements of contract interpretation. Instead, the *Richins* court chose to follow the Supreme Court's mandate that the courts rather than the Board should exercise jurisdiction over fair representation claims.

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40. Id.
43. See *Richins v. Southern Pac. Co.*, 620 F.2d 761, 763 (10th Cir. 1980), *cert. denied*, 101 S. Ct. 918 (1981) (citing *Goclowski v. Penn Cent. Transp. Co.*, 571 F.2d 747, 756 n.13 (3d Cir. 1977) (*Glover* inapplicable when basis of claim is primarily construction of existing agreement). Even if the Board had jurisdiction over some fair representation claims, the alleged facts in *Richins* are very similar to *Czosek*, according to the *Richins* court, where the federal court's jurisdiction was said to be beyond doubt. 620 F.2d at 763. In *Czosek*, plaintiff employees were furloughed and never recalled by the railroad. Plaintiffs alleged that they were wrongfully discharged by the railroad and that the union arbitrarily and capriciously refused to process their claims. *Czosek* v. *O'Mara*, 397 U.S. 25, 26 (1970).
46. See notes 21, 22, 26 supra and accompanying text.
47. *Richins v. Southern Pac. Co.*, 620 F.2d 761, 763 (10th Cir. 1980), *cert. denied*, 101 S. Ct. 918 (1981). The court reasoned that "[a]lthough the Supreme Court did not decide whether the employer may always be sued with the union . . . for breach of the duty of fair representation," id. (emphasis in original) (quoting *Czosek* v. *O'Mara*, 397 U.S. 25, 30 (1970)), such a suit is the only one approved by the Supreme Court. 620 F.2d at 763 (citing *Glover* v. *St. Louis-S.F. Ry.*, 333 U.S. 324 (1969)). In addition, the *Richins* court observed that *Czosek*'s
Considerations of adjudicative efficiency and institutional competency are at the core of the Richins decision to place jurisdiction over intertwined fair representation and contract interpretation claims in the district court. Where the two claims are truly intertwined, it would be inefficient to bifurcate the suit, relegating the contractual issues to the Board while allowing the district court to hear only the fair representation claim, because the evidentiary showing before either tribunal is likely to be similar. Moreover, by severing the two issues, the parties run the risk of inconsistent results. Inconsistent results are especially unfortunate where plaintiffs allege collusion between the union and the employer. These pitfalls can be avoided, however, by trying the contractual claim pendent to the district court's jurisdiction over the unfair representation claim. This would prevent piecemeal litigation, promote judicial economy, and create more expeditious disposition of controversies.

strong statement that the Board has no jurisdiction over fair representation claims is not repudiated by language in Union Pac. R.R. v. Sheehan, 439 U.S. 89 (1978), giving the Board jurisdiction over minor disputes. See 620 F.2d at 763.


49. Where there is federal jurisdiction over the claim against one party, a closely related nonfederal claim may be brought in under pendent jurisdiction. See Harrison v. United Transp. Union, 530 F.2d 558, 566 (4th Cir. 1975), cert. denied, 425 U.S. 958 (1976) (Winter, J., concurring in part and dissenting in part). See also note 29 supra.


If the district court has power to proceed against the union it also has power over the railroad since "[i]t would be absurd to require this closely integrated suit to be cut up into segments." Cunningham v. Erie R.R., 266 F.2d 411, 416 (2d Cir. 1959) (citations omitted).


In terms of the problems traditionally associated with joining parties and joining claims, the Richins court was correct in refusing to split the proceeding. First, joining the Railroad to the fair representation claim against the Union should not destroy the district court's jurisdiction because the facts are consistent with a pattern of collusion between the Railroad and the Union. Richins v. Southern Pac. Co., 620 F.2d 761, 762 (10th Cir. 1980), cert. denied, 101 S. Ct. 918 (1981). Thus, the implication is that the Railroad is at least a permissive party to a fair representation claim against the Union. See Fed. R. Civ. P. 20(a). See also Rumbaugh v. Winifrede R.R., 331 F.2d 530, 537 (4th Cir.), cert. denied, 379 U.S. 929 (1964). Although a district court cannot give full relief if the Railroad is not a party, this is not a case where the Railroad is joined merely to provide complete relief. Consequently, the suit is not one primarily between employees and their union so as to warrant the Railroad's dismissal, but rather "is one between some employees on the one hand and the union and management on the other [so] ... [t]he federal courts may therefore properly exercise jurisdiction over both the union and the railroad." Glover v. St. Louis-S.F. Ry., 393
Although the dangers of inefficient or inconsistent adjudication are avoided by consolidating the claims before either the district court or the Board, the district court is institutionally better suited to hear these intertwined claims, and Richins was correct in remanding the case to that forum. Nevertheless, the court's holding is subject to abuse because aggrieved employees may assert a spurious fair representation claim for the sole purpose of avoiding the Board's otherwise mandatory jurisdiction over the underlying contractual dispute. The Richins holding, therefore, should be tempered by a good faith test; an employee presenting an intertwined claim to the district court should be allowed to proceed only upon a pretrial showing sufficient to withstand a motion to dismiss.

Although these considerations militate against bifurcating intertwined claims, under the "primarily" contractual test proposed by the Third Circuit in Roberts and Goclowski claims could be consolidated before the Board rather than the district court. Thus, the true justification for vesting jurisdiction over intertwined claims in the district court lies in the institutional competency of the two tribunals.

The Board is well suited to resolving questions of contract interpretation because the Board has expertise in interpreting railway collective bargaining agreements. Half of its members are selected by railroad employees' unions and half by railroads. Board members usually come from high positions within these organizations, and thus are familiar with the


52. See notes 29-37 supra and accompanying text.

53. See note 16 supra and accompanying text.


55. Daugherty, Arbitration by the National Railroad Adjustment Board, ARBITRATION TODAY 93, 100 (J. McKelvey ed. 1955).

56. Id.; Wells, Federal-State Jurisdiction in Railway Labor Relations, NEW YORK UNIVERSITY SEVENTH ANNUAL CONFERENCE ON LABOR 29, 42 (E. Stein ed. 1954).
customs, usages, and procedures of the railway labor field and the technicalities and complexities of railroading.

Moreover, the bipartisan makeup of the Board makes it a particularly appropriate forum for contract violation claims. Both parties to the collective bargaining agreement—the union and the railroad—are represented on the Board. Thus, Board members may expertly determine what the parties meant by provisions and language in the agreement. Additionally, Board members tend to be strongly partisan, acting more as advocates than as judges. This is appropriate in a contract violation claim against the railroad since the union representatives would presumably act in the employees' interest, serving as a check on the railroad representatives, and the railroad representatives would likewise act as a check on the union representatives.

The Board is not suited for fair representation claims, however, in that its expertise in minor disputes is inapposite to problems of fair representation. Arbitrary, discriminatory, or bad faith conduct by a union toward a member of the collective bargaining agreement breaches the duty of fair representation. Consequently, a union might bargain for discriminatory contract provisions, give inadequate attention to a grievance, or fail to discharge its duty of fair representation in some other manner indicating its bad faith. A knowledge of

58. Daugherty, supra note 55, at 100. The members speak the railroad jargon, Wells, supra note 56, at 42, and know the problems, policies, and positions of the railroads and unions. See Murphy, Agreement on the Railroads—The Joint Railway Conference of 1926, 11 Lab. L.J. 823, 835 (1960), reprinted in New York State School of Industrial and Labor Relations at Cornell University, Reprint Series No. 98, at 823, 835 (1960).
60. Daugherty, supra note 55, at 100.
61. Murphy, supra note 58, at 834 (RLA was enacted to settle differences between employers and employees).
63. See note 59 supra. Expertise tends to indicate bias. See Daugherty, supra note 55, at 101.
67. Drapkin & Davis, supra note 59, at 639. A fair representation claim may properly arise if the claim of malicious discrimination sufficiently alleges bad faith and ill will. See Roberts v. Lehigh & N.E. Ry., 323 F.2d 219, 223 (3d Cir.
railroading is not useful in evaluating these kinds of breaches,\textsuperscript{68} which are patterned after violations of common law fiduciary obligations.\textsuperscript{69}

The Board's bipartisan representation is also suspect in cases involving intertwined claims of fair representation and contract interpretation. Because the basis of the fair representation claim is that the union has not discharged its duty to the plaintiff, the assumption that the Board's union representatives will be more sympathetic to the plaintiff than to the railroad\textsuperscript{70} is no longer valid.\textsuperscript{71}

The federal district court is therefore the appropriate forum for intertwined contract and fair representation claims. Courts routinely interpret contracts and determine fair representation claims.\textsuperscript{72} Moreover, courts regularly rule on fiduciary duties and relationships in a variety of contexts. Finally, in contrast to the Board, the trier of fact in the district court is less likely to be influenced by partisan allegiance because there is no direct interest in the outcome of the controversy. Thus, the \textit{Richins} holding that intertwined claims belong before the court is correct on the strength of the institutional competence of the district court and the problems of bias inherent in the Board's composition.\textsuperscript{73}

\textsuperscript{68} Nor are such determinations aided by experience with the RLA, since the duty of fair representation is not expressly mentioned therein, but rather has been inferred from powers delegated by Congress to unions under the statute. Aaron, supra note 54, at 167.

\textsuperscript{69} Id. at 182.

\textsuperscript{70} See 78 CONG. REC. 11,714, 11,718 (1934). \textit{But cf. id.} at 11,716 (employers vitally interested in welfare of employees).


\textsuperscript{72} See, e.g., Conley v. Gibson, 355 U.S. 41 (1957).

\textsuperscript{73} Moreover, the joining of the railroad to a fair representation claim against the union does not destroy the court's jurisdiction, \textit{see id.} at 45, at least where the railroad is joined because it actively participated in the union's discriminatory conduct that was the basis of the fair representation claim.
Vesting jurisdiction over intertwined claims in the district court assumes, however, that the fair representation claim is asserted in good faith. This assumption is subject to abuse since employees might "allege hostile discrimination on the part of the union in every contract interpretation suit under the Railway Labor Act . . . ."74 Moreover, a rule giving the courts jurisdiction over hybrid claims where contract interpretation is so incidental that the railroad's joinder is required solely to afford complete relief75 would destroy the integrity of the Board as the exclusive tribunal for resolution of "minor" disputes.76

To promote the integrity of the Board and to guard against abuse, the court should therefore test the validity of every intertwined fair representation claim. The court should hold a pretrial conference to determine whether the fair representation claim rests on sufficient evidence to withstand a motion to dismiss for failure to establish the court's competency. If the plaintiff makes out a prima facie case of breach of the duty of fair representation, the federal court should be presumed the appropriate forum for both claims, subject to rebuttal by show-

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74. Wade v. Southern Pac. Co., 243 F.2d 530, 536-37 (4th Cir.), cert. denied, 379 U.S. 929 (1964). Apparently this is alleged to be the situation in Richins, since the court found that the evidence supported a finding of a pattern of collusion between the Railroad and the Union. Richins v. Southern Pac. Co., 620 F.2d 760, 762 (10th Cir. 1980), cert. denied, 101 S. Ct. 918 (1981). Although plaintiffs' damages allegedly followed from the misleading conduct of the Union, see Harrison v. United Transp. Union, 530 F.2d 558, 562-63 (4th Cir. 1975), cert. denied, 425 U.S. 958 (1976), it was immediately caused by the Railroad's furloughing the plaintiffs. Therefore, the Union and the Railroad should be held liable. See id.; Jones v. Trans World Airlines, Inc., 495 F.2d 790, 798-99 (2d Cir. 1974). Because the Railroad allegedly colluded with the Union, there is good reason to stretch jurisdiction over the Railroad as well as the Union. Cf. Harrison v. United Transp. Union, 530 F.2d 558, 561, 563 (4th Cir. 1975), cert. denied, 425 U.S. 958 (1976) (fair representation claim against union may be heard in court but there is no reason to stretch the statute to allow employees to maintain an original cause of action against the railroad; case might be different if railroad and union acted in concert to discriminate or railroad agreed with union to breach union's duty to give employee timely notice while having knowledge of that duty).

75. See Andrews v. Louisville & N.R.R., 406 U.S. 320, 322 (1971); notes 15-16 supra and accompanying text. The Board's jurisdiction is suspect, however, when a bona fide fair representation claim is raised. See notes 62-71 supra and accompanying text.
ing the severability of the contract violation claim. If the claims are severed, the contract claim should be decided by the Board, and, unless clearly erroneous, its decision should be binding on the court.

This good faith test is preferable to the approach adopted by the Third Circuit in Roberts and Goclowski, under which the Board retains jurisdiction over intertwined claims that are "primarily" contractual. Although neither Roberts nor Goclowski define the term "primarily," the Roberts court stated that the test is whether "the resolution of the differences between railroad employees, on one side, and the railroad and the unions, on the other, depends on the interpretation of disputed terms of the collective bargaining agreement . . . ." This test is unworkable because such a determination is too difficult to make at such an early stage of the proceeding. To evaluate whether a claim is "primarily" contractual under that test would require a decision on the merits of the alleged contract violation. By contrast, the good faith test is not contingent on the outcome of the claims, thus enabling the court to rule on the jurisdictional question without reaching the merits.

In conclusion, the Richins court was correct in finding the federal district court, rather than the National Railroad Adjustment Board, competent to hear a contract violation claim against the Railroad and the Union. Intertwined claims have caused problems in the past because the Board exercises origi-

77. See notes 29-37 supra and accompanying text.


79. This proposition is not undermined by the application of the contract interpretation test in Goclowski since there the factual basis of the contract violation claim was distinct from that of the fair representation claim. See Goclowski v. Penn Cent. Transp. Co., 571 F.2d 747, 754 (3d Cir. 1977). The Goclowski court bifurcated the proceeding, holding that while the district court was competent to hear both the railroad and the union on the unfair representation claim under the doctrine of pendent jurisdiction, because proof of the railroad's collusion "would amount to an undermining of the collective bargaining agreements," id. at 761 n.18, the contract claim was a "minor dispute" which could only be properly heard before the Board. Because of this potential for undermining the collective bargaining agreement, it appears that the fair representation claim in Goclowski, like virtually all such claims, at least colorably involves questions of interpretation or application of a collective bargaining agreement. Richins v. Southern Pac. Co., 620 F.2d 761, 763 n.3 (10th Cir. 1980), cert. denied, 101 S. Ct. 918 (1981). It would be peculiar, however, to confer primary jurisdiction over an entire case on the Board "because a potential defense to a valid complaint of hostile discrimination might involve questions of contract interpretation." Thompson v. New York Cent. R.R., 361 F.2d 137, 149 (2d Cir. 1966) (Lumbard, C.J., concurring in part and dissenting in part) (emphasis in original).
nal jurisdiction over disputes involving contractual interpretation, yet its jurisdiction is expressly limited to disputes between the Railroad and its employees. Because the Union is a necessary party to a fair representation claim, intertwined claims raise a barrier to the Board's jurisdiction. Some courts have severed intertwined claims, but considerations of adjudicative efficiency and the danger of inconsistent outcomes militate against this result. Thus, while the courts are generally in accord that intertwined claims can be consolidated under a theory of pendent jurisdiction, they have split over whether the district court or the Board is the most appropriate forum. Rejecting Third Circuit precedents to the contrary, Richins correctly recognizes that the district court is institutionally better suited to hear intertwined claims. The district court routinely handles both contractual and fair representation claims, and is a neutral forum. By contrast, the Board’s expertise in matters involving railroads is inapposite to fair representation claims, and the Board’s strongly partisan representation may unduly prejudice an employee’s prospects for relief. These concerns notwithstanding, the integrity of the Board’s jurisdiction over minor contractual disputes can be preserved only if the district court hears intertwined claims after determining that the fair representation claim is raised in good faith, and is not simply an attempt to avoid the Board’s jurisdiction.