

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 32435 (Sub-No. 1)

THE BAY LINE RAILROAD, L.L.C.--ACQUISITION AND
OPERATION EXEMPTION--RAIL LINES OF ATLANTA & ST. ANDREWS
BAY RAILROAD COMPANY

(ARBITRATION REVIEW)

Decided: October 1, 1997

This proceeding involves an arbitrator's decision finding that 12 former railroad maintenance of way employees are entitled to lump sum separation allowances under the labor protective conditions the Interstate Commerce Commission (ICC) imposed in The Bay Line Railroad, L.L.C.--Acquisition and Operation Exemption--Rail Lines of Atlanta & St. Andrews Bay Railroad Company, ICC Finance Docket No. 32435 (ICC served Mar. 31, 1995). In a decision served September 3, 1997, the Board applied the standard of review for arbitration decisions set forth in Chicago & North Western Tptn. Co.--Abandonment, 3 I.C.C.2d 729 (1987) (Lace Curtain), aff'd sub nom. International Broth. of Elec. Workers v. ICC, 862 F.2d 330 (D.C. Cir. 1988), and found that the award is not reviewable.¹ The decision takes effect on October 3, 1997.

On September 16, 1997, Atlanta & St. Andrews Bay Railroad Company (ASAB) filed a petition for stay of the Board's decision.² On September 19, 1997, the Brotherhood of Maintenance of Way Employees (BMWE) replied.

DISCUSSION AND CONCLUSION

The standards governing disposition of a petition for stay are: (1) whether petitioner is likely to prevail on the merits on appeal; (2) whether petitioner will be irreparably harmed in the absence of a stay; (3) whether issuance of a stay would substantially harm other parties; and (4) whether issuance of a stay is in the public interest. Washington Metropolitan Area Transit Comm. v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977); and Virginia Petroleum Jobbers Association v. FPC, 259 F.2d 921 (D.C. Cir. 1958). The party seeking stay or injunctive relief carries the burden of persuasion on all of the elements required for extraordinary relief such as a stay. Canal Authority of Fla. v. Callaway, 489 F.2d 567, 573 (5th Cir. 1974).

ASAB has failed to demonstrate entitlement to a stay under the governing criteria, and, accordingly, its request will be denied.

¹ Under the Lace Curtain standard, (1) we do not review "issues of causation, the calculation of benefits, or the resolution of other factual questions," and (2) our review is limited to "recurring or otherwise significant issues of general importance regarding the interpretation of our labor protective conditions."

² The petition was tendered for filing one day late and was accompanied by a motion for acceptance of a late-filed pleading. As BMWE will not be prejudiced, the motion will be granted.

ASAB styles its pleading a "Petition to Stay Arbitration Award." It is apparent that ASAB seeks a stay of the effectiveness of the September 3 decision pending disposition of its petition for reconsideration of that decision (timely filed September 23, 1997), and its pleading will be treated accordingly.

1. Likelihood of success on the merits. In order to prevail in its petition for reconsideration, ASAB will have to establish material error in the Board's application of the Lace Curtain standards. ASAB has not, however, shown a likelihood that it can do so. ASAB contends that the Board materially erred in focusing on the question of whether "recurring" issues were involved, while failing to consider whether the matter presented "other significant issues of general importance." However, ASAB fails to note the Board's statement that: "In addition, the decision does not have a broad impact." Decision, at 4. Moreover, in contending that the issues require consideration because of their uniqueness, ASAB fails to recognize and address the "general importance" component of the standard. A matter that is unique will not usually be generally important. That is particularly so where, as here, the issue is not likely to recur. Finally, ASAB's contention that one construction is "more reasonable" than another does not constitute a showing of material error. If anything, it demonstrates that our construction is also permissible and that, therefore, it is unlikely that ASAB will prevail on the merits.

2. Irreparable harm. ASAB argues that payment of a separation allowance to the BMW claimants would be an unrecoverable loss, as there assertedly is no practical or legal procedure by which it could recover monies paid to the claimants. But, as petitioner acknowledges when it asserts that it "would be left to initiate separate and independent judicial actions against each claimant," judicial relief is available to it. While petitioner fails to show that pursuing these claims would be futile, pursuing claims against individuals in several courts would impose a substantial burden on ASAB. ASAB's immediate placement into escrow of funds sufficient to cover the payments due to the claimants pending final disposition by the Board of ASAB's petition for reconsideration would appear to protect the interests of all parties and will be ordered.

3. Harm to other parties. ASAB avers that: "The conduct of BMW in engaging in a protracted legal dispute is the best evidence of whether its members would be substantially harmed by waiting for a final resolution before receiving any payment." ASAB appears to be contending that any delay in seeing their claims satisfied is the fault of the claimants. In BMW's view, its members have been harmed and are continuing to suffer harm by what BMW views as "making a no interest loan of their separation allowances to the ASAB." In any event, this factor does not weigh in petitioner's favor.

4. Public interest. To the extent petitioner addresses this criterion, it essentially reargues its case on the merits. In contends that the payments directed by the arbitrator would be contrary to the Board's policy that costs and associated burdens of labor protection should not frustrate the economics of short line sales. This argument is irrelevant to the issue of whether the public interest would be served by a stay here. We agree with BMW's assertion that the public's interest in quick, inexpensive resolution of disputes through arbitration would be frustrated by any further delay.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. ASAB's motion for acceptance of its late-filed petition is granted.
2. The petition for stay is denied, pending final disposition by the Board of ASAB's petition for reconsideration.

3. ASAB shall immediately place into escrow funds sufficient to cover the payments due to the claimants as determined by the decision of the arbitrator.

4. This decision is effective on its service date.

By the Board, Linda J. Morgan, Chairman.

Vernon A. Williams
Secretary