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SERVICE DATE - FEBRUARY 13, 2003

SURFACE TRANSPORTATION BOARD

NOTICE

STB Docket No. 42076

ALBANY & EASTERN RAILROAD COMPANY
v.
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

February 11, 2003

Pursuant to the Board's procedures in 49 CFR Part 1108—Arbitration of Certain Disputes Subject to the Statutory Jurisdiction of the Surface Transportation Board, the Albany & Eastern Railroad Company (AERC) has filed a complaint seeking arbitration under the Railroad Industry Agreement (RIA) of a dispute with The Burlington Northern and Santa Fe Railway Company (BNSF).¹ AERC is seeking waiver of a contractual provision in an agreement by which AERC purchased 17.4 miles of BNSF's line between Lebanon and Foster, OR.² AERC claims that the provision precludes it from interchanging traffic originating on its line with the Union Pacific Railroad Company (UP) at Albany, OR, that is destined for points served only by UP. BNSF, in response to the complaint, has agreed to arbitrate the dispute.

A petition for leave to intervene in the determination of whether arbitration should proceed was filed by John D. Fitzgerald, United Transportation Union-General Committee of Adjustment (UTU/GO-386). UTU/GO-386 supplemented its petition on February 6, 2003. Intervention is not

¹ The RIA is an agreement between the Association of American Railroads and the American Short Line and Regional Railroad Association that is intended to provide a framework for improving the ability of smaller (Class II or Class III) railroads, on the one hand, and, on the other, Class I railroads to work together to serve the public in the most efficient possible manner. AERC's complaint invokes the provision of the RIA for resolving disputes over so-called "paper barriers." These, generally, are restrictions on interchange imposed by contract upon short lines at the time they are created. See Assn. of American Railroads et al.—Agreement—49 U.S.C. 10706, 3 S.T.B. 910 (1998).

² See Albany & Eastern Railroad Company—Acquisition and Operation Exemption—The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 33567 (STB served May 21, 1998) (AERC Acquisition).

appropriate, however. As the Board determined in Arbitration of Disputes Subject to Stat. Juris. of the STB, 2 S.T.B. 564, 574 (1997) (Ex Parte No. 560), the only disputes that can be brought for arbitration under 49 CFR 1108 are those that the individual parties to the dispute could otherwise settle privately without Board involvement, and it would thwart the voluntary and informal nature of the arbitration process to permit outside parties to intervene in the resolution of the dispute. A request in Ex Parte No. 560 that the proposed rule provide for intervention by third parties in arbitrations was considered and rejected. UTU/GO-386's argument that the Board must grant intervention in this proceeding is an impermissible collateral attack on the applicable rule. Here, the Board is merely exercising a ministerial function by facilitating the initiation of an arbitration process agreed to by the parties.

Moreover, the concern expressed by UTU/GO-386 is that an arbitral award favoring AERC could result in the loss of jobs on the BNSF to the UP. Any adverse impact on BNSF employees would stem from the Board's decision in AERC Acquisition, which permitted the effects the union fears might result from arbitration. That transaction is governed by 49 U.S.C. 10901, which specifically precludes imposition of conditions for the protection of adversely affected employees. See 49 U.S.C. 10901(c). The arbitral award sought here cannot cause any adverse impact on BNSF employees beyond that already allowed by the Board's action in AERC Acquisition.

AERC and BNSF have agreed to binding arbitration, and may now proceed with their selection of an arbitrator pursuant to 49 CFR 1108.6. A list of arbitrators is available from the Board's Office of Public Services at (202) 565-1592.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary