

21290
EB

SERVICE DATE - JUNE 2, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 32858

ILLINOIS CENTRAL CORPORATION AND ILLINOIS CENTRAL RAILROAD
COMPANY--CONTROL--CCP HOLDINGS, INC., CHICAGO, CENTRAL & PACIFIC
RAILROAD COMPANY AND CEDAR RIVER RAILROAD COMPANY

Decided: May 27, 1998

We are denying the petition of the United Transportation Union (UTU) for an emergency cease and desist order because the issue raised must first be considered in arbitration under the labor protective provisions of New York Dock Ry.--Control--Brooklyn Eastern Dist., 360 I.C.C. 60 (1979) (New York Dock).

BACKGROUND

On November 18, 1996, UTU filed a petition for an emergency order requiring the Illinois Central Corporation (IC Corp.) and Illinois Central Railroad Company (ICR) (collectively, IC) to cease and desist from prematurely implementing the transaction approved in this proceeding by decision served on May 14, 1996.¹ By decision served on November 22, 1996, we established a procedural schedule for IC to respond to the petition and for UTU to file any rebuttal. On November 27, 1996, IC filed a reply.² UTU subsequently filed a rebuttal statement.³

UTU states that contrary to article I, section 4, of the New York Dock conditions, neither an implementing agreement nor a decision of a referee was in place before IC began

¹ In that decision, we approved the acquisition of control by IC Corp. of Chicago, Central and Pacific Railroad Company (CCPR) and Cedar River Railroad Company (CRR) through ownership of the stock of CCP Holdings, Inc., the parent of CCPR and CRR. IC Corp. already controlled ICR.

² IC filed its reply by fax. On December 5, 1996, it filed a formal copy of the reply.

³ UTU's rebuttal statement was due December 2, 1996. On that date it served copies of its rebuttal on IC, but according to our records, no copy was filed with the Board. UTU filed a replacement copy by fax on August 20, 1997.

implementing the transaction.⁴ According to UTU, IC has required CCPR crews, on other than unit trains, to report for work at ICR's Markham Yard in Chicago, IL, and to transfer cars between the Markham and Hawthorne Yards. UTU also alleges that IC is requiring "eastbound road through freights," operating out of Freeport, IL, to pick up cars at Hawthorne Yard for transfer to Markham Yard, and is having CCPR crews deliver ICR cars to other carriers while on ICR territory. In support, UTU attaches a verified statement of Jeff L. Clements, UTU General Chairperson, as well as copies of time claims, delay reports, and train consists.

IC denies that any operational change has occurred or is being contemplated in contravention of the implementing agreement requirement of New York Dock. IC explains that the operating changes that UTU complains about are merely the result of CCPR and ICR restoring full interchange operations at ICR's Markham Yard in Chicago that had previously existed from 1985 to 1991.⁵ Between 1991 and July of 1996, only unit trains of grain were interchanged at the Markham Yard; other cars were interchanged between the carriers at CCPR's Crawford Yard. Now that most cars are interchanged at the Markham Yard, IC states that CCPR crews are required to go to and from the Markham Yard in order to pick up and deliver CCPR cars. IC submits that the relocation of interchange points is a routine aspect of railroad operations between independent carriers and is unrelated to common control. In support, IC attaches a verified statement of Mick Burkart, Superintendent of CCPR.

Mr. Burkart states that no ICR cars have been interchanged at the Markham Yard by CCPR employees to or from any other carriers.⁶ Mr. Burkart also states that IC intends to consolidate ICR and CCPR operations in Chicago so that CCPR employees may handle either ICR cars or CCPR cars, but that this consolidation has not yet occurred and will not occur until an agreement is reached pursuant to the New York Dock conditions. Mr. Burkart avers that the resumption of interchange operations at the Markham Yard has not resulted in the elimination of

⁴ Article I, section 4(b) provides:

No change in operations, services, facilities, or equipment shall occur until after an agreement is reached or the decision of a referee has been rendered.

⁵ CCPR acquired 679 miles of railroad from Illinois Central Gulf Railroad Company (the former name of ICR) in 1985 and began operations as a separate railroad in that year. See Chicago, Central & Pacific Railroad Company--Purchase (Portion), Trackage Rights, and Securities Exemption, Finance Docket No. 30663 (ICC served Dec. 24, 1985).

⁶ Other than CCPR cars, the only cars that CCPR employees have handled at the Markham Yard are ICR cars that either were interchanged to or from CCPR. According to Mr. Burkart, this is a common industry interchange practice.

any yard or train crew assignments, the dismissal or displacement of any train or yard service employees, or the rearrangement of those forces.

IC asserts that UTU's complaint concerns time claims, which are formal grievances under existing collective bargaining agreements. Accordingly, IC submits that there is no justification for emergency relief and that UTU has an adequate remedy. If the work assignments to these crews were improper, IC maintains that the employees and their representatives have the opportunity to seek not only compensation but penalties before a neutral arbitrator in final and binding arbitration under the Railway Labor Act (RLA).

UTU disagrees and in rebuttal argues that the RLA would not stop IC's attempt to circumvent the clear and unambiguous language of New York Dock. According to UTU, we have exclusive jurisdiction to prevent the premature implementation of a control transaction and requiring that this matter be handled under New York Dock arbitration procedures would render meaningless the implementing agreement requirement of New York Dock.⁷

DISCUSSION AND CONCLUSIONS

We will not issue the cease and desist order sought by UTU. In our November 22 decision we found that we could not make a determination on the record as it existed and sought more information, which the parties have provided. After reviewing the evidence, it is clear that the relief UTU seeks is not appropriate and, accordingly, we will deny its request for the following reasons.

Since our November 22 decision, we have issued a decision on the merits in a case which is dispositive of this one, Kansas City Southern Industries, Inc., KCS Transportation Company, and the Kansas City Southern Railway Company--Control--Gateway Western Railway Company and Gateway Eastern Railway Company, STB Finance Docket No. 33311 (STB served Dec. 4, 1997) (Kansas City Southern). In Kansas City Southern, we denied UTU's request for an emergency cease and desist order, which UTU had argued was necessary to prevent the parties from prematurely implementing a control transaction without first providing notice or negotiating an implementing agreement under New York Dock. In that case, the railroad responded, as IC does here, that there was no premature implementation and that the activity

⁷ In rebuttal, UTU also responds to specific representations made by IC in its reply.

complained about was unrelated to the control transaction.⁸ Relying on Walsh v. United States, 723 F.2d 570 (7th Cir. 1983) and citing article I, section 11 of New York Dock,⁹ we determined that the matter must be resolved in the first instance through arbitration.

After entry of an arbitral award on the matter, either party can appeal the arbitrator's decision to us if it can satisfy the standards for review of arbitral awards set forth in Chicago & North Western Tptn. Co.--Abandonment, 3 I.C.C.2d 729 (1987), aff'd sub nom. International Broth. of Elec. Workers v. I.C.C., 862 F.2d 330 (D.C. Cir. 1988). See 49 CFR 1115.8. Deferral of such matters to the arbitration process provided by our labor conditions has been consistently approved by the courts. See Brotherhood of Locomotive Engineers v. I.C.C., 808 F.2d 1570, 1578 (D.C. Cir. 1987); United Transp. Union v. U.S., 905 F.2d 463, 470 (D.C. Cir. 1990); and American Train Dispatchers Ass'n v. I.C.C., 949 F.2d 413, 414 (D.C. Cir. 1991).

Thus, the law is clear that the matter must first be considered in arbitration. Employees and their representative have 20 days from the date of service of this decision to take the issue raised in UTU's petition to arbitration. For this reason, UTU's petition is dismissed without prejudice.

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

It is ordered:

1. UTU's petition for an emergency cease and desist order is dismissed without prejudice.

⁸ The activity in Kansas City Southern was alleged to be switching operations pursuant to a lease agreement.

⁹ Article I, section 11 of New York Dock provides, as pertinent:

11. Arbitration of disputes.—(a) In the event the railroad and its employees or their authorized representatives cannot settle any dispute or controversy with respect to the interpretation, application or enforcement of any provision of this appendix, except section 4 and 12 of this article I, within 20 days after the dispute arises, it may be referred by either party to an arbitration committee. . . .

(e) In the event of any dispute as to whether or not a particular employee was affected by a transaction, it shall be his obligation to identify the transaction and specify the pertinent facts of that transaction relied upon. It shall then be the railroad's burden to prove that factors other than a transaction affected the employee.

2. This decision is effective on its date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary