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SERVICE DATE - LATE RELEASE DECEMBER 16, 1999

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 31700 (Sub-No. 13)

CANADIAN PACIFIC LIMITED, ET AL.
—PURCHASE AND TRackage RIGHTS —
DELAWARE & HUDSON RAILWAY COMPANY
(ARBITRATION REVIEW)

Decided: December 16, 1999

This decision relates to a petition filed by the American Train Dispatchers Department of the International Brotherhood of Locomotive Engineers (ATDD) asking us to reopen this proceeding, on the basis of new evidence and changed circumstances, and to stay the scheduled transfer of certain dispatching operations from Milwaukee, Wisconsin, to Montreal, Canada. The transfer was to be effected pursuant to a decision of an arbitrator imposing an agreement implementing a consolidation application approved by the Interstate Commerce Commission.

ATDD's petition is based on letters from the Federal Railroad Administration (FRA) to the Canadian Pacific Railway Company and its affiliates raising safety concerns over the scheduled transfer of the dispatching function to Canada. The FRA letters noted, among other things, that Canadian hours-of-service laws are different from those in the United States, and that workers in Canada are not subject to random drug testing. In light of the safety concerns raised by ATDD and the FRA, in a decision issued on December 4, 1998 (December '98 decision), the Board blocked the transfer. The Board did not, however, formally rule on the request to reopen.

In a decision issued on December 10, 1999, in Canadian Pacific Railway v. Surface Transportation Board, No. 98-1600, the United States Court of Appeals for the District of Columbia Circuit vacated the Board's December '98 decision, finding no lawful basis in the context of review of an arbitral decision for blocking the transfer of the dispatching function. The court in its decision specifically addressed the FRA letters that ATDD submitted, finding (slip op. at 5) that they can "in no sense . . . be thought evidence directed to any disputed fact," and that, in any event, they did not provide a basis for overturning or modifying the arbitrator's award here. Id. at 6.

Because the court in its decision specifically found that the letters appended to ATDD's petition do not constitute new evidence, and that, in any event, they do not provide a basis for overturning the arbitral award here, the court's discussion, in effect, rules on the pending petition. Therefore, we will dismiss the petition as moot.

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

It is ordered:

1. The petition for reopening is dismissed as moot.
2. This decision will be effective immediately.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary