

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33429

BURLINGTON NORTHERN SANTA FE RAILWAY COMPANY

v.

AMERICAN TRAIN DISPATCHERS DEPARTMENT
BROTHERHOOD OF LOCOMOTIVE ENGINEERS

Decided: July 18, 1997

The motion of the American Train Dispatchers Department of the Brotherhood of Locomotive Engineers for an order staying the transfer of dispatchers from Schaumburg, Illinois, to Fort Worth, Texas, is denied.

BACKGROUND

On August 23, 1995, the Interstate Commerce Commission (ICC) approved the merger of the Burlington Northern Railroad Company (BN) and The Atchison, Topeka and Santa Fe Railway Company (Santa Fe). That approval was affirmed in *Western Resources, Inc. v. Surface Transp. Bd.*, 109 F.3d 782 (D.C. Cir. 1997) and *Grainbelt Corp. v. Surface Transp. Bd.*, 109 F.3d 794 (D.C. Cir. 1997). Pursuant to that approval, the two railroads subsequently merged to form The Burlington Northern and Santa Fe Railway Company (BNSF).¹

In approving the merger, the ICC imposed its standard labor protection conditions established in *New York Dock Ry.--Control--Brooklyn Eastern Dist.*, 360 I.C.C. 60, 84-90 (1979) (*New York Dock*), *aff'd sub nom. New York Dock Ry. v. United States*, 609 F.2d 83 (2d Cir. 1979). Under *New York Dock*, labor changes related to approved transactions are effected through implementing agreements negotiated before the changes occur. If the parties cannot agree, the issues are resolved by arbitration, with possible appeal to the Board. Affected employees receive comprehensive displacement and termination benefits for up to 6 years.

After the BNSF merger, train dispatching continued as it had been conducted before the merger. The dispatching of trains over former Santa Fe lines has continued to be performed in Schaumburg, IL, by nonunion personnel. The dispatching of trains over former BN lines has continued to be performed in Fort Worth, TX, by union employees represented by the American Train Dispatchers Department of the Brotherhood of Locomotive Engineers (the Union).

On January 9, 1997, BNSF notified the dispatchers at Schaumburg that it intended to relocate the operations to the dispatching center in Fort Worth. The letter of notification stated that the Schaumburg office and the current assignments of the dispatchers working there would be transferred in place. The letter also stated that the Schaumburg operation would not be "consolidated or integrated with the current unionized operation and will continue to work separately." Throughout the year, BNSF has been taking steps to coordinate this move with the Schaumburg employees. According to BNSF, the relocation is scheduled to begin on July 21, 1997 and to be completed "by the end of August."

On July 15, 1997, BNSF filed what it terms a "complaint for issuance of a cease and desist order." In its complaint, BNSF asserts that the Union has taken the position that: (1) the relocation is subject to the requirements of *New York Dock*; and (2) under *New York Dock*, the relocation may not occur until the carrier first serves notice on the Union that it is undertaking a workforce change under *New York Dock*, attempts to negotiate an implementing agreement with the Union, and submits any dispute to arbitration if the parties cannot agree. BNSF further states that the

¹ In this proceeding, all parties refer to the merged entity as "The Burlington Northern Santa Fe Railway Company."

Union has unilaterally requested arbitration of the dispute. BNSF asks the Board to issue an order directing the Union to cease and desist from taking this dispute to arbitration.

On July 17, 1997, the Union filed an “emergency motion” for a order staying the relocation pending arbitration or, alternatively, action by the Board on the merits of the carrier’s complaint. On July 18, 1997, BNSF filed a reply in opposition to the Union’s stay motion filed on July 17, 1997.

DISCUSSION AND CONCLUSION

The standards governing disposition of a petition for stay are: (1) that there is a strong likelihood that the movant will prevail on the merits; (2) that the movant will suffer irreparable harm in the absence of a stay; (3) that other interested parties will not be substantially harmed by a stay; and (4) that the public interest supports the granting of the stay.²

Here, the requested stay must be denied because the stay criteria have not been satisfied.

I. Likelihood of Success on the Merits

As to the merits, our preliminary view on this record is that the Union has not shown that BN has not followed proper procedures in moving the Schaumburg operation. BNSF maintains that the only employees affected by the transfers to begin on July 21, 1997, are the Schaumburg dispatchers and that the mere transfer of the Schaumburg dispatchers will not affect the Fort Worth dispatchers represented by the Union.³ BNSF maintains that the employees represented by the Union will not be affected by the mere reporting of the Schaumburg dispatchers for work at Fort Worth—the Union is not claiming that seniority lists are being merged, hours of work are being altered, tasks are being modified, or any other changes are being made to the jobs of current Fort Worth dispatchers as a result of the arrival of the dispatchers from Schaumburg. The mere reporting of the Schaumburg dispatchers to work in Fort Worth on July 21, 1997, and after, with no apparent injury to the unionized Fort Worth dispatchers provides no basis for granting a stay.⁴

Of course, BNSF could some day take actions that *will* affect the Fort Worth dispatchers represented by the Union, such as merging seniority lists or altering the assignments of these dispatchers. Before that could happen, however, BNSF would be required to proceed under the *New York Dock* procedures. In fact, based on the Union’s motion it appears that BNSF and the Union may have already begun to negotiate over actions that may in the future affect the Fort Worth dispatchers represented by the Union. In any event, BN acknowledges its obligation to negotiate under Section 4 of *New York Dock* any consolidation of dispatching forces or functions at Fort Worth before it occurs (BNSF Reply, at 10), and we will hold BNSF to that commitment. But until any such actions actually take place, there are no grounds for staying actions that are currently affecting only the Schaumburg dispatchers.

Nor is there reason to believe that the transfers may have to be enjoined because of their effect on the Schaumburg employees. These employees are not represented by a union. However,

² *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987); *Cuomo v. United States Nuclear Regulatory Comm’n*, 772 F.2d 972, 974 (D.C. Cir. 1985); *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *Virginia Petroleum Jobbers Association v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958). The parties seeking a stay or injunctive relief carry 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).

³ If BNSF is correct in this respect, then the Union’s standing to require BNSF to negotiate with it over matters that will not affect the employees represented by the Union is questionable.

⁴ We note that a United States District Court for the Northern District of Texas has denied similar relief on the merits.

BNSF alleges, and the Union does not dispute, that BN has been negotiating the transfers with the Schaumburg employees through an ad hoc committee of these employees and that these employees are receiving more than the *New York Dock* level of protection to which these employees are entitled. Moreover, the Board has received no complaints from any of these employees that BNSF will not be providing the level of protection to which they are entitled under *New York Dock* concerning the relocation and that arbitration is required.

II. Irreparable Harm to the Union

There is no reason to believe that the Union will suffer any harm, let alone irreparable harm, if a stay is not granted before the Board rules on the underlying merits of the dispute. In fact, as discussed above, there is no reason to expect that the mere reporting to work at Fort Worth by the Schaumburg dispatchers will have any effect at all on the current Fort Worth dispatchers, until BNSF attempts to merge seniority lists, alter assignments, or take other actions that affect them.

III. Substantial Harm to the Schaumburg Dispatchers and BNSF

On the other hand, a stay would irreparably harm the Schaumburg dispatchers who are to be moving to Fort Worth and BNSF. If a stay were granted, the Schaumburg dispatchers would be prohibited from reporting to Fort Worth as scheduled, and dispatching over the former Santa Fe lines would have to continue from Schaumburg. BNSF alleges that over 90% of the Schaumburg employees who are to report to Fort Worth have already sold their homes or terminated their leases and are in the process of moving to Fort Worth before the Texas school year begins. The Union, in response, simply suggests that BNSF make arrangements so that the employees stay in Schaumburg while their families move to Fort Worth. However, the separation of families while these matters are being resolved would create an irreparable injury to the Schaumburg dispatchers.

IV. The Public Interest

Nor does the public interest support granting a stay. Delaying employee moves to positions in Fort Worth would injure those employees and impair the efficient transfer of the important dispatching function. Permitting the planned moves to go forward, on the other hand, has not been shown to cause injury to employees already working in Fort Worth.

It is ordered:

1. The Union's request for a stay is denied.
2. This decision is effective on its date of service.

By the Board, Linda J. Morgan, Chairman.

Vernon A. Williams
Secretary