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SERVICE DATE – APRIL 7, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 33556 (Sub-No. 5)

CANADIAN NATIONAL RAILWAY COMPANY, GRAND TRUNK CORPORATION, AND
GRAND TRUNK WESTERN RAILROAD INCORPORATED

—CONTROL—

ILLINOIS CENTRAL CORPORATION, ILLINOIS CENTRAL RAILROAD
COMPANY, CHICAGO, CENTRAL AND PACIFIC RAILROAD COMPANY,
AND CEDAR RIVER RAILROAD COMPANY

(Arbitration Review)

ORAL ARGUMENT

Decided: April 6, 2011

The Surface Transportation Board will hold oral argument to address issues in this proceeding on Thursday, May 12, 2011, at 9:30 a.m., in the hearing room at the Board's headquarters located at 395 E Street, S.W., Washington, DC. Two oral arguments are scheduled for this date and time. This matter will be argued first. Both oral arguments will be open for public observation, but only counsel for the parties will be permitted to present argument.

In this matter, Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated (collectively CN) challenge an arbitration award related to CN's planned consolidation of its Troy, Mich., and Homewood, Ill., dispatching facilities. The consolidation stems from CN's acquisition of Illinois Central Company, Illinois Central Railroad Company, and affiliated carriers, which the Board authorized in 1999.¹ The arbitration award establishes various protective conditions for adversely affected employees, pursuant to New York Dock Railway—Control—Brooklyn Eastern District Terminal (New York Dock), 360 I.C.C. 60 (1979), aff'd sub nom. New York Dock Railway. v. United States, 609 F.2d 83 (2d Cir. 1979).²

In its petition for review filed on March 8, 2010, CN argues, *inter alia*, that by failing to authorize an override of the collective bargaining agreement (CBA) of the American Train

¹ Canadian Nat'l Ry.—Control—Ill. Cent. Corp., 4 S.T.B. 122 (1999).

² Under New York Dock, changes affecting rail employees related to transactions that the Board has approved pursuant to 49 U.S.C. § 11323 must be implemented by agreements, which must be negotiated before the changes occur.

Dispatchers Association (ATDA), the arbitration award unlawfully blocks consolidation of dispatching functions currently performed at Troy and Homewood. CN argues that the arbitrator denied the CBA override on the basis of an erroneous finding that CN has not upgraded its dispatching systems or trained its dispatchers as necessary to allow consolidation to proceed. CN also argues that the arbitrator exceeded the scope of his authority by granting various protective benefits not provided for by New York Dock.

On April 19, 2010, the ATDA filed a reply in opposition to CN's petition. The ATDA asks the Board to uphold most aspects of the arbitration award and argues that the evidence shows that CN has not upgraded its dispatching systems and trained its dispatchers as necessary to allow consolidation to proceed. The ATDA further argues that other aspects of the arbitration award were in accord with New York Dock and industry practice.

The Board is setting this case for oral argument on CN's petition. CN will have 20 minutes of argument time. The ATDA will have 20 minutes of argument time. CN may reserve part of its time for rebuttal if it so chooses.

In order for the Board to properly consider the issues presented in this matter, by April 14, 2011, CN and the ATDA shall provide to the Board their submissions and any evidence placed in the record, as well as the hearing transcript, if any, in the arbitration proceeding at issue here. The parties may provide this information jointly and should coordinate to ensure that duplicative material is not submitted to the Board. The parties should provide page number citations to any specific evidence in the arbitration record regarding any measures CN took or did not take to consolidate its dispatching systems at issue through upgrades or otherwise.

By May 5, 2011, the parties shall submit to the Board the names of the counsel who will be presenting argument and the name of the party counsel will be representing. CN's filing shall also address the requested time reserved for rebuttal, if any. Except as described above, no additional written comments or other submissions may be filed in connection with this oral argument. Parties should prepare a short statement of their argument and be prepared to answer questions from the Board. The purpose of oral argument is not to restate the written arguments previously presented or to present evidence for the first time, but to summarize and emphasize the key points of a party's case, and provide an opportunity for questions that the Board may have.

Counsel for the parties shall check in with Board staff in the hearing room prior to the argument. Any exhibit used at the oral argument must be based on materials previously submitted as part of the record. Electronic presentations at oral argument will be treated as exhibits. Counsel shall provide a printed copy of each exhibit to opposing counsel and shall provide 9 copies, on 8 1/2 by 11 inch paper, of each exhibit to Board staff.

Instructions for Attendance at Hearing

The STB requests that all persons attending the hearing use the Patriots Plaza Building's main entrance at 395 E Street, S.W. (closest to the northeast corner of the intersection of 4th and E Streets). There will be no reserved seating, except for those scheduled to present oral

arguments. The building will be open to the public at 7:00 a.m., and participants are encouraged to arrive early. There is no public parking in the building.

Upon arrival, check in at the 1st floor security desk in the main lobby. Be prepared to produce valid photographic identification (driver's license or local, state, or Federal government identification); sign-in at the security desk; receive a hearing room pass (to be displayed at all times); submit to an inspection of all briefcases, handbags, etc.; then pass through a metal detector. Persons choosing to exit the building during the course of the hearing must surrender their hearing room passes to security personnel and will be subject to the above security procedures if they choose to re-enter the building. Hearing room passes likewise will be collected from those exiting the hearing upon its conclusion.

Laptops and recorders may be used in the hearing room, but no provision will be made for connecting personal computers to the Internet. Cellular telephone use is not permitted in the hearing room; cell phones may be used quietly in the corridor surrounding the hearing room, or in the building's main lobby.

The Board's hearing room complies with the Americans with Disabilities Act, and persons needing such accommodations should call (202) 245-0245, by the close of business on May 5, 2011.

A video broadcast of the oral argument will be available via the Board's website at <http://www.stb.dot.gov>, under "Information Center"/"Webcast"/"Live Video" on the home page.

For further information regarding the oral argument, contact Amy Ziehm at (202) 245-0391. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877-8339.

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

It is ordered:

1. Oral argument in this proceeding will be held on Thursday, May 12, 2011, at 9:30 a.m., in the Surface Transportation Board Hearing Room, at 395 E Street, S.W., Washington, DC, as described above.
2. By April 14, 2011, the parties shall provide to the Board their submissions and any evidence placed in the record, as well as the hearing transcript, if any, in the arbitration proceeding at issue here.
3. By May 5, 2011, the parties shall submit to the Board the names of the counsel who will be presenting argument and the names of the parties counsel will be representing. CN's filing shall also address the requested time reserved for rebuttal, if any.

4. This decision is effective on the date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.