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SERVICE DATE – MARCH 14, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 28905 (Sub-No. 29)

CSX CORPORATION—CONTROL—CHESSIE SYSTEM, INC.
AND SEABOARD COAST LINE INDUSTRIES, INC.

(Arbitration Review)

Decided: March 12, 2008

The Sheet Metal Workers International Association (SMWIA) has appealed an arbitration award, addressing a dispute over wages between SMWIA and CSX Transportation, Inc. (CSXT). The question before the arbitration committee was which of two collective bargaining agreements governs the wages payable to certain members of SMWIA at a CSXT facility in Richmond, VA. The committee found that a 1994 collective bargaining agreement between CSXT and another union governs these employees' wages. We decline to review the award.

This dispute arose out of the consolidation of various carriers to form CSXT. After the consolidation occurred on paper, CSXT sought to harmonize the operations of the newly controlled systems. In a two-step process, CSXT unified its roadway mechanics in a single shop in Richmond, VA. CSXT and SMWIA, which represented a small minority of the carrier's roadway mechanics, negotiated implementing agreements to facilitate each step of this consolidation. In these agreements, SMWIA agreed that the wages of its members employed by CSXT as roadway mechanics would be governed by a collective bargaining agreement between CSXT and another union, the International Association of Machinists (IAM), which represented the vast majority of CSXT roadway mechanics. When SMWIA later obtained wage increases for its employees generally in a new national collective bargaining agreement, it claimed that these increases should also apply to the roadway mechanics at the Richmond facility. CSXT disagreed. The parties brought the matter to arbitration, and the arbitration committee upheld CSXT's position. It is that ruling that SMWIA has appealed to us.

BACKGROUND

The Creation of CSXT. As relevant here, CSXT was created by a series of transactions approved by the Board's predecessor, the Interstate Commerce Commission (ICC). In CSX Corp.—Control—Chessie and Seaboard C.L.I., 363 I.C.C. 521 (1980), the ICC authorized CSX Corporation, a noncarrier holding company, to control as subsidiary corporations the Chessie

System, Inc. (Chessie), and Seaboard Coast Line Industries, Inc. (SCLI).¹ At that time, CSX Corporation also acquired control of the Richmond, Fredricksburg and Potomac Railroad Company. In a subsequent series of decisions, the ICC approved the consolidation of the railroad corporate entities controlled by CSX Corporation into its subsidiary CSXT.²

Each of these transactions leading to the creation of CSXT was approved subject to the ICC's standard labor protection conditions. Those conditions were adopted in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979) (New York Dock), aff'd sub nom. New York Dock Railway v. United States, 609 F.2d 83 (2d Cir. 1979), to implement the Congressional mandate to provide such protection under then 49 U.S.C. 11347 (now 49 U.S.C. 11326).

Under New York Dock, labor changes necessary for consummation of agency-approved transactions (such as dismissals or rearrangement of forces) are established by implementing agreements negotiated before the changes occur. If the parties cannot resolve issues concerning an implementing agreement, the issues are resolved by arbitration. Arbitration awards may be appealed to the Board. See 49 CFR 1115.8.

CSXT's Consolidation and the Related Implementing Agreements. In 1987, in an effort to realize efficiencies from the common control of formerly separate railroads, CSXT coordinated roadway equipment repair work on the former Chessie railroads. Consistent with the applicable New York Dock conditions, CSXT and the relevant labor representatives (the International Association of Mechanics (IAM) and SMWIA) negotiated an implementing agreement (the 1987 implementing agreement). That agreement placed all roadway repair mechanics of the former Chessie railroads, the vast majority of whom were affiliated with the IAM, under a 1969 collective bargaining agreement between IAM and one of CSXT's predecessors, C&O (the 1969 IAM CBA). A side letter to the agreement provided that "[t]he incumbent mechanic will continue his present union affiliation and representation status should he be awarded a position in the coordinated operation."

¹ The railroads controlled by Chessie included the Chesapeake & Ohio Railway Company (C&O), the Baltimore & Ohio Railroad Company (B&O), the Western Maryland Railway Company, and several smaller carriers. The railroads controlled by SCLI included the Seaboard Coast Line Railroad Company (Seaboard), the Louisville and Nashville Railroad Company (L&N), the Clinchfield Railroad Company, and several smaller carriers.

² In 1982, in Seaboard Coast Line R.R.—Merger Exemption—Louisville & N. R.R., Finance Docket No. 30054 (ICC served Nov. 8, 1982), the Seaboard and the L&N (both of which were subsidiaries of SCLI in 1980) were authorized to merge and did merge to form the Seaboard System, Inc. Subsequently, in Baltimore & O. R.R. and Chesapeake & O. Ry.—Merger Exemption, Finance Docket No. 31033 (ICC served May 22, 1987), the B&O was authorized to merge and did merge into the C&O. Later that year, C&O was authorized to merge and did merge into the recently created CSXT. See Chesapeake & O. R.R. and CSX Transp., Inc.—Merger Exemption, Finance Docket No. 31106 (ICC served Sept. 18, 1987).

In 1992, CSXT sought to extend throughout its entire system the coordination and consolidation steps taken in 1987. Specifically, CSXT proposed to consolidate all roadway equipment repair work into a single shop at Richmond, VA, and to place all roadway mechanics on a single, system-wide seniority roster. In an implementing agreement effective January 1993 (the 1993 implementing agreement), CSXT and the unions representing the affected employees (SMWIA, IAM, and the Brotherhood of Maintenance of Way Employees (BMWE)) agreed to make these changes and to bring the work under the 1969 IAM CBA. The 1993 implementing agreement superseded the 1987 implementing agreement.

In particular, Article II(A) of the 1993 agreement provided that seniority rosters for all roadway repair mechanics would “be consolidated by dovetailing the existing seniority rosters of the employees as it appears on their respective seniority rosters into a ‘Consolidated System Roster.’” Article III(A) adopted the 1969 IAM CBA by providing that “Engineering Department Equipment Repair Work presently performed on Carrier’s former properties will be coordinated as hereinafter provided and will be performed, except as specifically provided herein, under the [1969 IAM CBA].”

Like the side letter to the 1987 implementing agreement, Article X(A) of the 1993 implementing agreement provided that “the Incumbent Roadway Mechanics represented by [IAM], BMWE and SMWIA will continue their present union affiliation and representation status in the coordinated operation unless changed by applicable law.” Article X(B) provided that “[a]ny settlement of a claim or grievance . . . will not constitute an interpretation binding on [IAM].”

When the parties entered into the 1993 implementing agreement, CSXT and IAM had negotiated a new system-wide collective bargaining agreement that was to become effective in 1994 (the 1994 IAM CBA). In a side letter to the 1993 implementing agreement, IAM and CSXT agreed that when the 1994 IAM CBA became effective, it would replace the 1969 IAM CBA for purposes of Article III(A) of the 1993 implementing agreement for roadway mechanics who were IAM members.

Subsequent Developments. In 1999, a new round of collective bargaining began between SMWIA and the National Carriers’ Conference Committee (NCCC), acting as CSXT’s bargaining agent. Pursuant to Section 6 of the Railway Labor Act (RLA), SMWIA served notice of the union’s proposals, among them a 7% annual wage increase. In 2001, while the negotiations progressed, SMWIA and CSXT signed a letter stating the parties’ understanding that the 1994 IAM CBA would replace the 1969 IAM CBA for purposes of Article III(A) of the 1993 implementing agreement.

In April 2005, SMWIA and the NCCC arrived at a new national collective bargaining agreement (the 2005 SMWIA CBA). SMWIA demanded that CSXT apply the terms of the 2005 SMWIA CBA to the SMWIA roadway mechanics employed at Richmond and grant those employees the wage increase contained in the agreement. The carrier refused, claiming that the 1994 IAM CBA governs wages for all those roadway mechanics.

In January 2006, while CSXT and SMWIA were discussing the applicability of the 2005 SMWIA CBA, CSXT and BMWI agreed that the roadway mechanics represented by BMWI would perform work under the 1994 IAM CBA rather than the 1969 IAM CBA. BMWI specifically recognized that it would “not be a party to any future negotiations concerning the [1994 IAM CBA].”

The Arbitration. In November 2006, SMWIA and CSXT agreed to arbitrate their dispute over the 2005 SMWIA CBA before an arbitration committee as provided for under the New York Dock conditions. The parties further agreed to create a public law board (PLB) pursuant to Section 3, Second of the RLA to resolve any issues remaining after the arbitration. They selected Arbitrator Ross as the neutral member of the Committee and the PLB.

In arbitration, CSXT claimed that the wage increases in the 1994 IAM CBA, and not those in the 2005 SMWIA CBA, apply to SMWIA members at the Richmond facility based on the terms of the 1993 implementing agreement. SMWIA countered that the 2005 SMWIA CBA applied to all of its employees and that CSXT should have applied the raise to the SMWIA-represented employees covered by the 1993 implementing agreement. SMWIA further claimed that it never relinquished any right to bargain over wages and other terms and conditions of employment on behalf of the roadway mechanics it represented.

In a 2-1 decision, the arbitration committee ruled for CSXT and found that the SMWIA roadway mechanics are entitled to wages and wage adjustments negotiated by IAM rather than those negotiated by SMWIA. Arbitrator Ross, speaking for the majority, explained that, based on Article III(A) of the 1993 implementing agreement—which provided that all work would be performed under the 1969 IAM CBA—the parties had intended to place all the employees, including the SMWIA employees, under that agreement. The arbitrator noted that, had the parties intended that the provision be applied in a limited fashion, such as for work rules only, they would have placed restrictions on the provision to that effect. The arbitrator further explained that the parties’ intent to have wage negotiations in the care of the IAM is also evidenced when Article V(C) of the 1993 implementing agreement—a provision which ties shop mechanics’ wages to one scheduling agreement—is read in conjunction with Article III(A) of the 1993 implementing agreement.³

³ Article V(C) provides as follows: “Shop Mechanics will be paid on an hourly basis, straight time for straight time hours and overtime for overtime hours, in accordance with the schedule Agreement. The rate of pay for hourly Mechanics will be \$14.55, adjusted to reflect any subsequent wage increases.” The Arbitrator found additional evidence that all employees were to have wages negotiated by IAM based on an article similar to Article III(A) that CSXT, SMWIA, and IAM included in the 1987 implementing agreement coordinating and consolidating the roadway mechanics’ work on the Chessie system. That article, Article V(A), provides as follows: “All agreements currently in effect covering the Engineering Department (MofW) Mechanics employed upon the former Chessie System (B&O and B&OCT) Carriers are hereby abrogated and upon the effective date of this agreement all such mechanics will be subject to the former C&O Chesapeake District Agreement, including all amendments thereto, and all other

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The arbitrator further noted that the parties' intent to have the roadway mechanics come under the IAM's agreement for wages is demonstrated by SMWIA having agreed to adopt the 1994 IAM CBA for its Richmond mechanics in 2001, when SMWIA was in the process of negotiating a new CBA with all carriers through the NCCC.

The arbitrator rejected SMWIA's argument that Article X(A) of the 1993 implementing agreement—which provided that employees will continue to be affiliated and represented by their respective labor organizations—ensured that SMWIA could still negotiate wage increases for the mechanics. The arbitrator explained that, in light of Article III(A), Article X(A) does not provide SMWIA the right to negotiate wage increases, but provides only that the employees in question will continue to be affiliated with it. The arbitrator noted that, when read with Article X(B),⁴ those provisions show only that SMWIA continued to represent its roadway mechanics from the standpoint of union affiliation, and that it continued to have the authority to handle grievances.⁵

The Petition for Review. On June 13, 2007, SMWIA filed a petition for Board review of the arbitration award. Concurrently, SMWIA filed a motion asking the Board to waive the 30-page limit prescribed in 49 CFR 1115.2(d) and 1115.8 so that it could file the award and related documents. In a decision served June 20, 2007, the Board granted this request, and SMWIA filed its supplement soon afterwards.

On June 22, 2007, CSXT filed a request asking that the Board make its reply due on July 24, 2007. In a decision served on June 29, 2007, the Board granted this request, and CSXT timely filed its reply.

PRELIMINARY MATTER

CSXT filed a motion asking the Board to waive the 30-page limit set forth in 49 CFR 1115.2(d) and 49 CFR 1115.8 so that the Board can consider the appendix attached to its reply. CSXT notes that the Board would be served by having the Committee's record before it when making its decision and that the Board waived the page limitation for SMWIA. CSXT's request is reasonable and will be granted.

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agreements, understandings, practices, and other contractual arrangements currently in effect for those C&O Chesapeake District Engineering Department (MofW) Mechanics.”

⁴ Article X(B) provides as follows: “Any settlement of a claim or grievance with any of the General Chairmen or designated representatives involving a C&O (Chesapeake District) Agreement Rule will not constitute an interpretation binding on the IAM&AW General Chairman of the C&O Committee.”

⁵ Because the arbitration resolved all of the issues presented, there was no need to convene the PLB.

DISCUSSION AND CONCLUSIONS

Congress has directed the Board to impose labor protective conditions on its approval of railroad mergers. 49 U.S.C. 11326.⁶ Although we retain jurisdiction to resolve disputes regarding the scope of such conditions,⁷ we first require parties to submit such disputes to arbitration as provided in the New York Dock conditions. Under Chicago & North Western Tptn. Co. – Abandonment, 3 I.C.C.2d 729 (1987) (Lace Curtain), *aff'd sub nom. IBEW*, we limit our review of arbitration awards “to recurring or otherwise significant issues of general importance regarding the interpretation of our labor protective conditions,” and, in the absence of an egregious error, we will not review issues of causation, the calculation of benefits, or the resolution of other factual questions. Lace Curtain, 3 I.C.C.2d at 736. Moreover, we generally will not overturn an arbitration award unless the award is irrational, or fails to draw its essence from the labor conditions imposed by the ICC or the Board, or is outside the scope of those conditions.⁸ Applying these standards here, we find no basis for reviewing or overturning the arbitration award in this proceeding.

SMWIA asks the Board to set aside the award and direct CSXT to grant the employees the raise provided in the 2005 SMWIA CBA. SMWIA claims that the award fails to draw its essence from the New York Dock conditions because it deprives the organization of its full representative authority and binds some of its members to another union’s CBA. SMWIA further argues that, because the conditions do not give the arbitration committee the authority to limit a duly designated collective bargaining representative’s bargaining authority, the award exceeds the committee’s jurisdiction. SMWIA adds that questions of representation can only be decided by the National Mediation Board (NMB).

SMWIA has failed to show that the committee exceeded its jurisdiction. Here, acting on authority delegated to it under Article I, Section 11 of the New York Dock conditions, the committee merely answered the questions put before it. In doing so, the committee only sought to interpret and to apply the 1993 implementing agreement’s terms. We have recognized that interpreting labor agreements is well within the expertise of an arbitration panel.⁹ The committee did not exceed its jurisdiction in this case in making such an interpretation.

⁶ Pursuant to 49 U.S.C. 11326(c), this requirement no longer applies to transactions involving only Class III rail carriers.

⁷ International Bhd. of Elec. Workers v. ICC, 862 F.2d 330, 336 (D.C. Cir. 1988) (IBEW); Union R.R. Co. and Bessemer & Lake Erie R.R. Co.—Arbitration Review—United Steel Workers of Am., STB Finance Docket No. 31363 (Sub-No. 3), slip op. at 4 (STB served Dec. 17, 1998) (Union R.R.).

⁸ See The Burlington Northern and Santa Fe Railway Company – Petition for Review of Arbitration Award, STB Finance Docket No. 32549 (Sub-No. 24), slip op. at 3 (STB served Sept. 25, 2002).

⁹ See Union Pac. Corp., Union Pac. R.R. Co., & Missouri Pac. R.R. Co.—Control and Merger—Southern Pac. Rail Corp., Southern Pac. Transp. Co., St. Louis S.W. Ry. Co., SPCSL

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SMWIA cites to Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company, STB Finance Docket No. 32760 (Sub-No. 22) (STB served June 26, 1997) (1997 Union Pacific), for the proposition that an arbitrator cannot strip a labor organization of its representation status. But that case is not inconsistent with the committee’s holding. In that case, the arbitrator indicated who should represent the union in future bargaining with the carrier. The union claimed that the arbitrator was interfering with its representation status. The Board found that the arbitrator had not interfered with the union’s representation status and had not purported to do so. Instead, the Board explained, the arbitrator only referenced the person that the union itself had selected as its negotiator.¹⁰

Similarly, in this case, the committee did not interfere with SMWIA’s representation rights. The negotiated implementing agreement, not the committee, shifted responsibilities from one labor organization to another. Implementing agreements consolidating employees under a single CBA may on occasion have such an effect, and the ICC and the courts have upheld implementing agreements that have done so in the past.¹¹

Additionally, SMWIA argues that the committee committed egregious error when interpreting the 1993 implementing agreement. SMWIA claims that the committee ignored language in Article X(A) providing that SMWIA mechanics will continue to be represented by SMWIA. SMWIA argues that, as the representative of these employees, it has the right under the RLA to negotiate for their wages.

SMWIA has failed to show that the committee made an egregious error in interpreting the agreement. The committee’s interpretations and arguments are logical, reasonable, and solidly based in the record and the 1993 implementing agreement. The committee found that Article III(A) and Article V(C) showed that the parties intended to place the SMWIA employees under the 1969 IAM CBA. This interpretation was logical in light of the 1993 implementing agreement’s goal of consolidating and coordinating the work force. Moreover, as noted by CSXT, BMW also understood the 1993 implementing agreement in this respect as providing

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Corp., & The Denver & Rio Grande W. Ry. Co., STB Finance Docket No. 32760 (Sub-No. 37), slip op. at 3 (STB served Aug. 16, 2000).

¹⁰ 1997 Union Pacific, slip op. at 3-4.

¹¹ See CSX Corp.—Control—Chessie System, Inc., et al. (Arbitration Review), 10 I.C.C. 2d 831, 850 (1995) (adopting implementing agreement that required employees of one railroad represented by one union, to work under the agreement that another union had negotiated with another railroad), aff’d sub nom. United Transp. Union v. STB, 108 F.3d 1425, 1431 (D.C. Cir. 1997); Union R.R., slip op at 3, 7-8 (declining to review arbitration award that required employees of one railroad, represented by one union, to transfer to second railroad, where they would be represented by another union).

that all the employees would be under the 1969 IAM CBA and that IAM would handle wage negotiations.

SMWIA contends that Article X(A) was meant to preserve the union's right to negotiate for wages and work rules following the 1993 implementing agreement. But the arbitrator reasonably found to the contrary. SMWIA's interpretation would allow the three labor organizations to begin to create varying pay scales and hours within the same shop even though Article III(A) had just ensured the same conditions for all. Such a reading would frustrate the 1993 implementing agreement's goal of unifying the employees and render Article III(A) meaningless.

We likewise find no merit in SMWIA's claim that the committee's interpretation of the 1993 implementing agreement deprives the term "representation status" in Article X(A) of its universally accepted meaning. Rather, under the committee's interpretation, SMWIA agreed that its roadway mechanics at the Richmond facility would be subject to the wage rates negotiated by IAM,¹² but would continue to be represented by SMWIA concerning grievances and claims. Consistent with this interpretation, Article X(B) provides that the settlement of a claim or grievance by the SMWIA will not constitute an interpretation binding on the IAM. SMWIA argues that CSXT would have negotiated different language had it intended to limit SMWIA's role to handling claims and grievances. SMWIA points to language in an implementing agreement that CSXT reached with another union following the Conrail acquisition. But CSXT was not required to insist upon the same language used in a different implementing agreement. Accordingly, nothing in Article X(A) shows that the committee made an egregious error in interpreting the 1993 implementing agreement.

Nor does the other evidence SMWIA references lead us to question the committee's interpretation of the 1993 implementing agreement. For example, SMWIA also argues that it has retained the right to negotiate wages for the employees in question given that BMW specifically agreed not to bargain for its Richmond employees while SMWIA did not so agree. SMWIA notes that, whereas BMW specifically renounced such bargaining rights in its 2006 agreement with CSXT adopting the 1994 IAM CBA for its employees, SMWIA made no similar renunciation in its 2001 agreement with CSXT adopting the 1994 IAM CBA for its roadway mechanics.¹³ However, as CSXT notes in its reply, BMW's negotiations merely confirmed the parties' understanding that BMW would not participate in future bargaining over wages for its Richmond facility members after 1993. This explanation is reasonable given that, at the time of BMW's renunciation in 2006, CSXT and SMWIA were disputing that very question.

¹² We reject SMWIA's claim that the arbitration award violates the provision of the RLA that guarantees employees "the right to organize and bargain collectively through representatives of their own choosing." 45 U.S.C. 152, Fourth. The group of roadway mechanics at issue here chose SMWIA as their representative to bargain for them collectively, and, as their representative, SMWIA agreed with CSXT that those employees' wages would be subject to the 1969 IAM CBA, and later the 1994 IAM CBA. Nothing in the RLA prevented SMWIA from negotiating such an arrangement with CSXT.

¹³ See SMWIA's petition at Exhibit 9 and 10.

SMWIA further claims that the mere fact that it had to adopt the 1994 IAM CBA for it to be applicable to the SMWIA employees illustrates that the organization retains the right to negotiate for their wages. But, as noted by the arbitrator, SMWIA chose to commit these employees to the 1994 IAM CBA even though it was then in the process of negotiating a new CBA with the NCCC, which represented CSXT. Moreover, SMWIA did not propose to negotiate changes to the 1993 implementing agreement and, ultimately, agreed to a new CBA that did not purport to change that agreement. Thus, the committee reasonably found SMWIA's argument on this point unpersuasive.

Finally, SMWIA's past conduct adds support to the committee's interpretation that only IAM would negotiate future wage increases. The record reflects that the SMWIA members at the Richmond facility, along with all of the other roadway mechanics, have been paid pursuant to the 1994 IAM CBA and received IAM wage and related adjustments, regardless of union affiliation, for the past 13 years. This pattern of conduct provides further support for the arbitration committee's interpretation here.

In sum, we decline to review the committee's award, because SMWIA has failed to show that the award should be reviewed and overturned under the Lace Curtain standards. If SMWIA continues to believe that it is unlawfully being denied its representation status under the RLA, it may attempt to pursue relief before the NMB.

It is ordered:

1. CSXT's motion for leave to exceed our page limits is granted.
2. The petition for review is denied.
3. This decision is effective on its date of service.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan
Acting Secretary