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SERVICE DATE - DECEMBER 11, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 32760 (Sub-No. 25)

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY,
AND MISSOURI PACIFIC RAILROAD COMPANY--CONTROL AND MERGER--
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP., AND THE DENVER AND RIO GRANDE
WESTERN RAILROAD COMPANY

(ARBITRATION REVIEW)

Decided: December 9, 1998

In this decision, we are granting the Brotherhood of Maintenance of Way Employees' (BMWE) petition to dismiss its appeal of the decision issued by arbitrator Peter R. Meyers (Arbitration Award) and to vacate the Arbitration Award.

BACKGROUND

By decision served on August 12, 1996, in Finance Docket No. 32760 (Decision No. 44), we approved the common control and merger of the rail carriers controlled by Union Pacific Corporation and the rail carriers controlled by Southern Pacific Rail Corporation. The controlling operating railroad is now the Union Pacific Railroad Company (UP), the respondent in this proceeding. In Decision No. 44, we imposed the employee protective conditions established in New York Dock Ry.--Control--Brooklyn Eastern Dist., 360 I.C.C. 60, 84-90 (1979) (New York Dock).

BMWE and UP were unable to reach an implementing agreement on labor changes involving the selection and assignment of forces to implement the consolidation of certain maintenance-of-way functions in the western territory of the merged system. The dispute was taken to arbitration under New York Dock. On October 15, 1997, arbitrator Peter R. Meyers issued his

Arbitration Award. On November 12, 1997, BMW filed an appeal to the Arbitration Award.¹ On December 5, 1997, UP filed a reply to the appeal.²

On December 19, 1997, BMW filed a petition to stay the Arbitration Award, pending our decision on the appeal.³ By decision served on December 30, 1997, BMW's petition for stay was denied, based on UP's assurance that no employee members of BMW would lose their jobs or seniority or would have to relocate their homes or families as a result of implementation of the Arbitration Award.

By decision served on February 11, 1998, we found that the record was insufficient to allow us to make a decision on the merits of the appeal, and we required the parties to submit additional evidence and argument, particularly concerning the September 26, 1996 Mediation Agreement (the Mediation Agreement) between the railroads represented by the National Carriers' Conference Committee (NCCC) and BMW. UP was a party to the NCCC and signed the Mediation Agreement. Under Article XVI of the Mediation Agreement, carriers that opted in 1991 to retain their old collective bargaining agreements with BMW, rather than to operate under system-gang rules derived from Presidential Emergency Board No. 219, would be obligated to continue operations under their old agreements. The Denver and Rio Grande Western Railroad Company (DRGW) and Southern Pacific Transportation Company (SPT) also retained their old agreements.

The arbitrator found that it was necessary to abrogate BMW's collective bargaining agreements with SPT and DRGW, as well as Article XVI of the Mediation Agreement, in order to carry out the merger transaction in an efficient and economic manner. BMW objected to this finding, and argued that, because UP signed the Mediation Agreement after we approved the merger, UP was estopped from overriding SPT's and DRGW's collective bargaining agreements. Accordingly, we asked UP to explain whether it was fair under 49 U.S.C. 11347⁴ to allow UP, after signing the Mediation Agreement, to abrogate SPT's and DRGW's collective bargaining

¹ Under our rules, an appeal must be filed within 20 days of an arbitration decision unless we authorize a later date pursuant to 49 CFR 1115.8. Accordingly, the due date for filing an appeal was November 4, 1997. On October 31, 1997, BMW requested an extension of time until November 12, 1997, to file its appeal. UP did not object, and by decision served on November 10, 1997, the extension request was granted.

² UP's reply was due on December 2, 1997. At UP's request, the time for filing its reply was extended to December 5, 1997, by decision served on December 2, 1997.

³ The filing of an appeal did not automatically stay the arbitrator's decision, which was scheduled to become effective on January 1, 1998.

⁴ Now 49 U.S.C. 11326(a), which is essentially the same provision as reenacted by the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803.

agreements, and required UP to provide whatever evidence existed that would support such a conclusion. Both parties were encouraged to brief us more thoroughly on the fair and equitable issue.

In our February 11, 1998 decision, we also noted UP's position that the reorganization of the maintenance-of-way operations for the western portion of its system was essential for its recovery from the track congestion problems that it was experiencing at that time, and asked BMW to demonstrate what transportation benefits relating to the reorganization of system gangs were possible if UP was not allowed to abrogate its existing labor agreements. We also required BMW to provide a copy of one of its coordination agreements for UP operations over the former Western Pacific Railroad and to explain what type of system operations were possible under such an agreement. A procedural schedule was established for the simultaneous filing of supplemental statements and of replies. On February 25, 1998, BMW filed a motion for an extension of time in which to file opening supplemental statements. BMW stated that the parties required additional time in order to engage in negotiations to reach a settlement of BMW's appeal. On March 2, 1998, the procedural schedule was extended as requested. Subsequently, the procedural schedule was extended four more times by decisions served on March 26, April 7, May 15, and June 30, 1998.

On July 29, 1998, BMW and UP reached a voluntary settlement regarding the disputed implementing agreement. On August 10, 1998, BMW filed a petition to dismiss its appeal of the October 15, 1997 Arbitration Award and for an order of vacatur of the Arbitration Award. On September 3, 1998, UP replied in opposition to BMW's request for vacatur of the Arbitration Award.⁵

PROCEDURAL MATTER

By motion filed on August 10, 1998, BMW requests that we place under seal its petition to dismiss its appeal and the related exhibits. BMW states that both parties have agreed to make their agreement non-referable and argue that there is no general public interest in the disclosure of the implementing agreements. BMW states that it will file a redacted version of its petition for inclusion in the public record in this proceeding. UP did not oppose this request and, accordingly, it will be granted.

Because BMW inadvertently filed the exhibits to its petition, which it requests be placed under seal, with its separately filed motion for a protective order, we have placed both documents under seal. Accordingly, BMW will be required to file a corrected copy of its motion, without the exhibits, with its redacted version of its petition for inclusion in the public record.

⁵ By decision served on September 1, 1998, we granted UP's request for an extension of time in which to file its statement of opposition.

DISCUSSION AND CONCLUSIONS

Our handling of this proceeding has provided an opportunity for a voluntary settlement of this matter, which the parties have achieved. In light of the settlement, we will dismiss the appeal as requested and discontinue this proceeding. Because the settlement agreement renders the Arbitration Award moot, we will vacate the Arbitration Award.

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

It is ordered:

1. The Brotherhood of Maintenance of Way Employes' appeal, filed on November 12, 1997, is dismissed.
2. The Arbitration Award issued on October 15, 1997, by arbitrator Peter R. Meyers, is vacated.
3. The Brotherhood of Maintenance of Way Employes must file a corrected copy of its motion for a protective order filed on August 10, 1998, and a redacted version of its petition to dismiss its appeal by December 31, 1998.
4. This proceeding is discontinued.
5. This decision is effective on January 10, 1999, except for our ordering paragraph 3, which is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary