

SURFACE TRANSPORTATION BOARD

ARBITRATION APPEAL

Docket No. FD 32760 (Sub-No. 47)

IN THE MATTER OF ARBITRATION BETWEEN UNION PACIFIC RAILROAD  
COMPANY AND THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS & TRAINMEN

Digest:<sup>1</sup> This decision declines to disturb an arbitration award finding that Union Pacific Railroad Company may use Article IX of the 1986 National Arbitration Award to establish new interdivisional operations between Yermo, Cal., and West Colton, Cal., and between Yuma, Ariz., and West Colton, Cal.

Decided: July 29, 2015

On March 14, 2014, the Brotherhood of Locomotive Engineers & Trainmen (BLET) filed a petition seeking review of an arbitration award issued on December 29, 2013, by Arbitration Board No. 598, chaired by Arbitrator Marty E. Zusman (Zusman Award).<sup>2</sup> Union Pacific Railroad Company (UP) replied to BLET's petition on April 23, 2014.<sup>3</sup>

The Zusman Award found that certain proposed UP pool operations would be “new” operations under the terms of an implementing agreement and a side letter thereto arising out of the UP/Southern Pacific Rail Corp. (SP) merger. Because the pool operations would be “new,” the Zusman Award concluded that the implementing agreement and the side letter permitted UP to implement those operations pursuant to Article IX of the 1986 National Arbitration Award between various carriers (including UP) and BLET. BLET seeks Board review of the Zusman Award. As explained below, the Board declines to disturb the Zusman Award.

---

<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

<sup>2</sup> By decision served on February 27, 2014, the Board granted BLET's request to extend the deadline to submit its petition for review to March 14, 2014.

<sup>3</sup> By decision served on March 27, 2014, the Board granted UP's request to extend the deadline to reply to BLET's petition to April 23, 2014.

## BACKGROUND

In 1996, the Board approved the common control and merger of the rail carriers controlled by UP and the rail carriers controlled by SP. In doing so, the Board imposed the New York Dock<sup>4</sup> labor protection conditions as required by 49 U.S.C. § 11326(a).<sup>5</sup> In accordance with New York Dock, UP entered into a series of merger implementing agreements with BLET. One of these implementing agreements is the January 16, 1999 Los Angeles Hub Merger Implementing Agreement (LA Hub Agreement).<sup>6</sup>

The LA Hub Agreement. The LA Hub Agreement established various pool operations, including the “West Colton-Yermo” and the “West Colton-Yuma” pools. Specifically, it created one pool operation with West Colton, Cal., as the home terminal and Yermo, Cal., as an away-from-home terminal and another pool operation with West Colton as the home terminal and Yuma, Ariz., as an away-from-home terminal.

The LA Hub Agreement also includes Side Letter No. 3, which provides, in relevant part:

New Pools created after this Agreement: New pool operations not covered in this Implementing Agreement whether between Hubs or within the Hub shall be handled per Article IX of the 1986 National Arbitration Award.

1986 National Arbitration Award. The May 19, 1986 award of Arbitration Board No. 458 imposed a national collective bargaining agreement, the 1986 National Award, upon various carriers (including UP) and their employees represented by BLET.<sup>7</sup> Article IX of the 1986 National Award, entitled “Interdivisional Service,” provides expedited procedures by which carriers may establish new train runs.<sup>8</sup> Section 1 of Article IX describes the notice that a carrier must give, and Section 2 provides a non-exhaustive list of “reasonable and practical” conditions governing the establishment of the service.<sup>9</sup> Section 3 outlines the applicable procedures after a notice is served, and Section 4 provides for arbitration of disputes, including disputes over the conditions referred to in Section 2.<sup>10</sup>

---

<sup>4</sup> See N.Y. Dock Ry.—Control—Brooklyn E. Dist. Terminal (New York Dock), 360 I.C.C. 60 (1979), aff’d sub nom. N.Y. Dock Ry. v. United States, 609 F.2d 83 (2d Cir. 1979).

<sup>5</sup> See Union Pac. Corp.—Control & Merger —S. Pac. Rail Corp. (UP-SP Dec. No. 44), 1 S.T.B. 233, 452-53 (1996). The Board also applied the Norfolk & Western and Oregon Short Line labor protective conditions to trackage rights agreements and abandonments, respectively, occurring as part of the merger transaction. Id. at 453-54.

<sup>6</sup> See BLET’s Pet., Ex. B at BLET App. 27-59.

<sup>7</sup> Id. at 60.

<sup>8</sup> Id. at 60-64.

<sup>9</sup> Id.

<sup>10</sup> Id. at 63.

UP's 2013 Proposed Pool Operations. On July 17, 2013, UP served notice under Article IX to establish pool operations providing service from home terminals in Yermo and Yuma to an away-from-home terminal at West Colton—the reverse of the “West Colton-Yermo” and “West Colton-Yuma” pools previously established under the LA Hub Agreement.<sup>11</sup> UP and BLET met several times to negotiate an agreement for the proposed service, but were unable to reach agreement.

BLET sued UP in the United States District Court for the Northern District of Illinois and sought a temporary restraining order or preliminary injunction to prevent UP from beginning its proposed operations.<sup>12</sup> However, before the request for injunctive relief could be decided, UP and BLET agreed to arbitrate the dispute, leading to the creation of Arbitration Board No. 598, which was established pursuant to both New York Dock and Article IX of the 1986 Award,<sup>13</sup> and which ultimately issued the Zusman Award now under review.

Proceedings Before Arbitration Board No. 598. At arbitration, BLET argued that UP was prohibited from using Article IX to implement the pool operations outlined in its July 17, 2013 notice. BLET contended that because of the language in Side Letter No. 3 to the LA Hub Agreement, UP's Article IX rights were limited and that reversing the “home” and “away-from-home” terminals was not a “new” pool operation. UP, on the other hand, asserted that Side Letter No. 3 expressly preserved UP's rights under Article IX and that the plain language of Side Letter No. 3 permitted UP to establish any “[n]ew pool operating not covered in” the LA Hub Agreement. Additionally, UP and BLET argued about the terms and conditions of the proposed service if UP's July 17 notice was deemed to be proper.

On December 29, 2013, Arbitration Board No. 598 issued the Zusman Award. The Zusman Award concluded that UP's proposed pool operations with home terminals in Yermo and Yuma and away-from-home terminal at West Colton are “new” pool operations not covered in the LA Hub Agreement and thus, pursuant to Side Letter No. 3, could be implemented under Article IX.<sup>14</sup> Additionally, the Zusman Award found, pursuant to Article IX, that UP's proposal was not just a substantial recreation of the current pool operations,<sup>15</sup> that UP had shown that its new service would increase the efficiency of UP's operations,<sup>16</sup> and that Article IX permits UP to designate the terms and conditions of the new service.<sup>17</sup>

---

<sup>11</sup> Additionally, the July 17, 2013 notice left unchanged a “long run” from Dolores, California as the home terminal with two different pools operating to away-from-home terminals at Yermo and Yuma. See UP's Reply at Ex. 2.

<sup>12</sup> See BLET v. UP, Case No. 1:13-cv-05970 (N.D. Ill. 2013).

<sup>13</sup> See UP's Reply, Ex. D.

<sup>14</sup> See Zusman Award at 11.

<sup>15</sup> See id. at 14.

<sup>16</sup> See id. at 12-14.

<sup>17</sup> See id. at 18-19.

Appeal before the Board. On March 14, 2014, BLET petitioned the Board for review of the Zusman Award. BLET argues that the Zusman Award should be vacated because the award fails to draw its essence from the labor conditions imposed by the Board in UP-SP Dec. No. 44; Arbitrator Zusman’s interpretation of Side Letter No. 3 is wholly irrational and constitutes egregious error; and the Award is without foundation where it held that the arbitral board was required to accept the conditions proposed by UP because UP complied with Article IX.

In its response filed on April 23, 2014, UP counters that BLET’s appeal of the Zusman Award must fail because the Board’s review of arbitration decisions is limited, the Award’s interpretation of Side Letter No. 3 is not irrational, and BLET’s efforts to have this Board review Arbitrator Zusman’s interpretation of Article IX is asking the Board to exceed its jurisdiction.

## DISCUSSION AND CONCLUSIONS

Labor arbitration awards are subject to an appeal of right to the Board, pursuant to the standards for review set forth in Chicago & North Western Transportation Co.—Abandonment—Near Dubuque & Oelwein, Iowa, 3 I.C.C. 2d 729 (1987),<sup>18</sup> popularly known as the “Lace Curtain” case. Under Lace Curtain, the Board reviews “issues of causation, the calculation of benefits, or the resolution of other factual issues” only for “egregious error.”<sup>19</sup> “Egregious error” means ‘irrational,’ ‘wholly baseless and completely without reason,’ or ‘actually and indisputably without foundation in reason and fact.’<sup>20</sup> This level of deference applies to the interpretation of New York Dock implementing agreements.<sup>21</sup> Furthermore, the Board generally will not overturn an arbitral award unless it is shown that the award fails to draw its essence from the imposed labor conditions or is outside the scope of authority granted to the arbitration panel by those conditions.<sup>22</sup>

For the reasons stated below, we find no reason to disturb the Zusman Award under the Lace Curtain criteria.

### **1. BLET does not show that the Zusman Award fails to draw its essence from the labor conditions in the 1996 Merger Decision.**

BLET first argues that the Zusman Award should be vacated because it “fails to draw its

---

<sup>18</sup> Aff’d sub nom. Int’l Bhd. of Elec. Workers v. ICC, 862 F.2d 330 (D.C. Cir. 1988).

<sup>19</sup> Lace Curtain, 3 I.C.C. 2d at 735-36.

<sup>20</sup> Am. Train Dispatchers Ass’n v. CSX Transp., Inc., 9 I.C.C. 2d 1127, 1131 (1993) (quoting Loveless v. E. Airlines, Inc., 681 F.2d 1272, 1275-76 (11th Cir. 1982)).

<sup>21</sup> See, e.g., Penn. R.R.—Merger—N.Y. Cent. R.R., FD 21989 (Sub-No. 4), slip op. at 8 (STB served Jan. 10, 2011); CSX Corp.—Control—Chessie Sys., Inc. & Seaboard Coast Line Indus., Inc. (Chessie Sys.), FD 28905 (Sub. No-29), slip op. at 6 n.9 (STB served Mar. 14, 2008).

<sup>22</sup> See Chessie Sys., slip op. at 6.

essence” from the labor conditions imposed in UP-SP Dec. No. 44.<sup>23</sup> BLET contends that the fundamental operational change in the approval of the UP-SP merger was the creation of a hub-and-spoke model, achieved through combining UP and SP seniority districts in various hub agreements.<sup>24</sup> BLET explains that the LA Hub Agreement established pool operations with a central home hub at West Colton and spokes at Yermo and Yuma.<sup>25</sup> Reversing the location of the home terminals from the “hub” at West Colton to the “spokes” at Yuma and Yermo, BLET argues, would eliminate the hub-and-spoke system, “directly contrary to the essence of the merger.”<sup>26</sup> Thus, BLET asserts, the Board should vacate the Award even if the Board agrees that the proposed service is “new” under Side Letter No. 3 and allowed under Article IX, because it fails to draw its essence from the merger decision.<sup>27</sup>

UP responds that its intent to operate two pool operations with home terminals outside the major city of the seniority district does not show that it is ending the hub and spoke structure.<sup>28</sup> UP asserts that West Colton, which is in the Los Angeles area, remains a hub and that all engineers within the hub have seniority rights to bid on assignments within the hub.<sup>29</sup> Additionally, UP contends that the Board, in approving the UP-SP merger, did not order UP, “for all time henceforth, to operate all of its train runs with home terminals at a single point in a hub and away from home terminals at other points.”<sup>30</sup> Moreover, UP argues that the question for the Board is not which competing interpretation of Side Letter No. 3 was correct but whether Arbitrator Zusman, in concluding that UP’s interpretation was correct, was arguably construing or applying the LA Hub Agreement.<sup>31</sup>

We find no support for BLET’s position that the UP proposal at issue is inconsistent with the labor protective conditions that were imposed in UP-SP Dec. No. 44.<sup>32</sup> BLET does not direct the Board’s attention to any specific place in the merger decision where the Board conditioned the approval on the maintenance of all runs with home terminals at central points. When arguing that the fundamental operational change in the approval of the UP-SP merger was the creation of a hub-and-spoke model, BLET does not cite to UP-SP Dec. No. 44, but to other, secondary

---

<sup>23</sup> See BLET’s Pet. 9-12.

<sup>24</sup> See id. at 9.

<sup>25</sup> See id. at 10.

<sup>26</sup> Id. at 10.

<sup>27</sup> Id.

<sup>28</sup> UP’s Reply 22.

<sup>29</sup> Id.

<sup>30</sup> Id.

<sup>31</sup> See id. at 18 (citing United Paperworkers Int’l Union v. Misco, Inc., 484 U.S. 29, 38 (1987)).

<sup>32</sup> See BLET’s Pet. 9-12.

materials.<sup>33</sup>

UP-SP Decision No. 44 does not prohibit UP from establishing pool operations like those permitted by the Zusman Award. BLET's contention is that UP's proposal will eliminate the hub-and-spoke model—the basis for the LA Hub Agreement—by moving the engineers' home terminals to the “spokes” of the hub-and-spoke model.<sup>34</sup> But there is nothing in the merger decision that prevents the home terminals from being outside of the major city nor does it prevent the establishment of new pools. Furthermore, as UP explains, the Los Angeles hub will still exist.

Thus, BLET has not shown that the Zusman Award “fails to draw its essence” from the labor conditions imposed in UP-SP Dec. No. 44

**2. Arbitrator Zusman's conclusion that the proposed pool operations are “new” under Side Letter No. 3 is not egregious error or irrational.**

BLET argues that the Zusman Award egregiously errs in interpreting and applying Side Letter No. 3. BLET asserts that “the plain language of [Side Letter No. 3] states that ‘new pool operations’ ‘shall be handled per Article IX’ *only* when they are ‘not covered in this implementing agreement.’”<sup>35</sup> BLET asserts that the proposed pool operations—which differ from the West Colton-Yuma and West Colton-Yermo operations under the LA Hub Agreement only in that the designated home and away terminals would be reversed—would not be “new” operations under Side Letter No. 3 but rather would merely substantially recreate those existing operations, and thus may not be established by invoking Article IX. BLET argues that the Zusman Award's conclusion that the proposed operations are indeed “new” operations under Side Letter No. 3 is egregious error. Citing to various other arbitration awards, BLET asserts that “new” service is shown where mileage is changed, a terminal is run through, or service is lengthened, and that none of those conditions are met here.<sup>36</sup>

UP counters that Arbitrator Zusman's finding that its proposed runs constitute “new pool operations” not covered in the LA Hub Agreement is in keeping with the plain language of Side Letter No. 3 and is not “irrational” or “wholly baseless.”<sup>37</sup> UP argues that Arbitrator Zusman interpreted Side Letter No. 3 in the Award by quoting the relevant language, discussing the

---

<sup>33</sup> Id. at 9. BLET cites (1) a case study of merger efficiencies in the context of the merger of UP-SP by the Federal Trade Commission; (2) Swonger v. STB, 265 F.3d 1135, 1139 (10th Cir. 2002); (3) UP's appeal of a December 2007 award rendered by Arbitrator Robert Perkovich in Arbitration Board No. 589; and (4) UP's 1999 Investor Factbook.

<sup>34</sup> See BLET's Pet. 10.

<sup>35</sup> Id. at 12 (emphasis in original).

<sup>36</sup> Id. at 13.

<sup>37</sup> UP's Reply 19.

competing arguments of the parties, and deciding that UP's interpretation was the correct one.<sup>38</sup> UP reiterates that there are no current pool operations with a home terminal in Yermo or Yuma and away-from-home terminal in West Colton. By definition, therefore, the proposed runs are "new" under the plain language of Side Letter No. 3.<sup>39</sup> Further, UP contends that Arbitrator Zusman's ruling that the change in home and away-from-home terminals creates new pool operations is supported by other arbitral decisions.<sup>40</sup>

The Zusman Award's conclusion that UP's proposed operations are "new" under Side Letter No. 3 is not egregious error or irrational. Arbitrator Zusman analyzed the relevant language of Side Letter No. 3, recognized that "the language has latent ambiguity," and explained that UP does not have current pool operations with home terminals in Yermo, Cal., or Yuma, Ariz., or away-from-home terminals in West Colton, Cal.<sup>41</sup> The Award notes that the pool operation proposed by UP did not previously exist.<sup>42</sup> This conclusion is supported by arbitral decisions cited by UP for the proposition that altering home- and away-terminal designations creates "new" service.<sup>43</sup> The arbitral decisions cited by BLET for the proposition that "new" service is shown where mileage is changed, a terminal is run through, or service is lengthened do not conclude that those are the *only* factors that indicate new service. The cited cases merely give examples of new operations. None claim that these exhaust the universe of new services.

As noted, the Board's review of arbitral interpretations of New York Dock implementing agreements is limited and deferential. While reasonable people could have decided the issue differently in the first instance, we cannot say that the Zusman Award's conclusion on this issue was irrational—i.e., wholly baseless and completely without reason. Thus, we cannot overturn the Zusman Award's interpretation of Side Letter No. 3.

### **3. Arbitrator Zusman's rejection of BLET's "savings clause" argument was not egregious error.**

---

<sup>38</sup> Id.

<sup>39</sup> See id. (citing Public Law Board 7318/Award 20 (Carrier's Ex. 17); Public Law Board 7318/Award 1 (Carrier Ex. 18)).

<sup>40</sup> See UP's Reply 19 (citing Public Law Board 7318/Award 20 (Carrier's Ex. 17); Public Law Board 7318/Award 1 (Carrier Ex. 18)).

<sup>41</sup> Zusman Award 10.

<sup>42</sup> Id. at 11.

<sup>43</sup> See Public Law Board No. 7318/Award 20 (UP's Reply, Ex. B, UP's Opening Submission to Arbitrator Zusman at Carrier's Ex. 17) (concluding that when a carrier changes the home terminal of an existing interdivisional service, the change is material and the service is new); Public Board No. 7463/Award 1 (UP's Reply, Ex. B, UP's Opening Submission to Arbitrator Zusman at Carrier's Ex. 18) (concluding that elimination of a home terminal constitutes a significant, material change and not a substantial recreation of the former interdivisional service).

BLET argues that Side Letter No. 3 “saves” pool operations established by the LA Hub Agreement from unilateral change under the procedures of Article IX.<sup>44</sup> BLET notes that Article VI, Section C of the LA Hub Agreement provides that “[e]xcept as specifically provided herein the system and national collective bargaining agreements, awards and interpretations shall prevail.”<sup>45</sup> BLET asserts that Side Letter No. 3 is just such a specifically provided-for exception. According to BLET, Side Letter No. 3 specifically provides that Article IX can only be applied to “pool operations not covered” under the LA Hub Agreement, and therefore, BLET asserts, the West Colton-Yermo and West Colton-Yuma pools, which *were* established under the LA Hub Agreement, cannot be changed via Article IX. BLET asserts that its conclusion is consistent with earlier arbitration awards involving the availability of Article IX by arbitrators Kenis (Kenis Award)<sup>46</sup> and Perkovich (Perkovich Award),<sup>47</sup> and seeks to distinguish an award by arbitrator Binau (Binau Award)<sup>48</sup> that upheld the carrier’s right to invoke Article IX.

UP responds that the Kenis and Perkovich Awards are irrelevant because the merger implementing agreements at issue in those cases did not include any language like that in Side Letter No. 3, and those cases turned instead on other provisions not found in the LA Hub Agreement.<sup>49</sup> UP argues that the Binau Award—the only case of the three that involved the LA Hub Agreement—concluded that the LA Hub Agreement preserves all national bargaining agreements (including the ability to invoke Article IX) that existed before creation of the Los Angeles Hub.<sup>50</sup>

BLET’s “saving clause” argument essentially reiterates its argument, discussed above, that the proposed pool operation is covered by the LA Hub Agreement, and therefore cannot be handled under Article IX. Both iterations of this argument, however, suffer from the same defect: they fail to recognize that the Zusman Award considered at length whether UP’s proposed operations are “new” operations under Side Letter No. 3 or, on the other hand, whether they “substantially recreate” the West Colton-Yermo and West Colton-Yuma operations, and rationally concluded that they are “new.” Thus, for the reasons BLET’s second argument does not meet the Lace Curtain standards, BLET’s “saving clause” argument fails as well.

BLET’s invocation of the Kenis, Perkovich, and Binau Awards does not change this

---

<sup>44</sup> BLET’s Pet. 14-16.

<sup>45</sup> Id. at 15 (emphasis by BLET).

<sup>46</sup> A 2004 award rendered by Arbitrator Ann Kenis in Arbitration Board No. 581.

<sup>47</sup> A 2007 award rendered by Arbitrator Robert Perkovich in Arbitration Board No. 589.

<sup>48</sup> A 2006 award rendered by Arbitrator John Binau in Arbitration Board No. 590.

<sup>49</sup> UP’s Reply 24. BLET argues that because Arbitrators Kenis and Perkovich never considered any agreement containing the language of Side Letter No. 3, their awards are irrelevant to this dispute. See id. (citing Union Pac. Corp.—Control & Merger—S. Pac. Transp. Corp., FD 32760 (Sub-No. 45), slip op. at 12-15 (STB served Dec. 14, 2010) (affirming arbitrator’s award that interpreted implementing agreement resulting from UP/SP merger)).

<sup>50</sup> See UP’s Reply 23-24.

result. The Board discussed the interplay among the Kenis, Perkovich, and Binau Awards in Union Pacific Corp.—Control & Merger—Southern Pacific Transportation Corp., FD 32760 (Sub-No. 45) (STB served Dec. 14, 2010), in which the Board upheld the Perkovich Award. In that decision, the Board concluded that the language in the hub merger implementing agreement considered in the Binau Award had a different meaning than the hub merger implementing agreements considered in the Kenis and Perkovich Awards.<sup>51</sup> The Binau Award, the only award to look at the LA Hub Agreement, found that UP retained its rights to the national agreements that existed prior to the creation of the LA Hub Agreement.<sup>52</sup> BLET’s attempt to distinguish the Binau Award on the ground that it did not consider the effect of Side Letter No. 3 is not persuasive. As previously explained, Side Letter No. 3 permits use of Article IX for new operations, and the Zusman Award rationally found that UP’s proposed operations are new. Thus, the Zusman Award’s rejection of BLET’s “saving clause” argument was not egregious error.

#### **4. The Zusman Award’s conclusions regarding operational efficiencies are outside the Board’s jurisdiction.**

BLET argues that there is no legal or factual basis for Arbitrator Zusman to have issued the Award on the ground that UP would gain new operational efficiencies.<sup>53</sup> BLET contends that even if UP could rely on operational efficiencies as a basis to “substantially recreate” existing service with new conditions, UP failed to provide adequate information to support a finding based on those efficiencies.<sup>54</sup> BLET asserts that other than vague statements from Mr. Randy Guidry, the General Director of Labor Relations for UP, there is no record from which Arbitrator Zusman could determine whether the proposed changes would create any efficiencies apart from reductions in labor costs.<sup>55</sup>

UP counters that BLET’s arguments regarding UP’s rationale for its new pool operations are outside of the Board’s jurisdiction because they concern the interpretation of Article IX.<sup>56</sup> UP argues that Arbitrator Zusman looked to see whether the new pool operations were designed solely to obtain the more favorable conditions of the 1986 National Award, and that this is an issue that deals exclusively with the proper interpretation of Article IX, not Side Letter No. 3.<sup>57</sup> Moreover, UP asserts that even if BLET could properly make its argument to the Board, BLET’s efficiency argument fails because it is a factual finding outside the scope of

---

<sup>51</sup> Union Pac. Corp. FD 32760 (Sub. No-45), slip op. at 14.

<sup>52</sup> Id.

<sup>53</sup> BLET’s Pet. 16-17.

<sup>54</sup> Id. at 16.

<sup>55</sup> Id. (citing Ry. Labor Executives’ Ass’n v. United States, 987 F.2d 806, 815 (D.C. Cir. 1993)).

<sup>56</sup> UP’s Reply 26.

<sup>57</sup> Id.

review under Lace Curtain.<sup>58</sup> In any event, UP argues that Arbitrator Zusman had adequate evidence to conclude that UP was not proposing new pool operations solely to obtain more favorable conditions but to increase efficiency.<sup>59</sup>

BLET's argument about operational efficiency apparently involves the interpretation of Article IX, the purpose of which is to "permit the latitude necessary for carriers to establish interdivisional pool operations improving efficiency."<sup>60</sup> Article IX is part of an arbitration award adopted under the Railway Labor Act (RLA), and review of an arbitrator's interpretation of Article IX rests with the district courts. See, e.g., Grand Trunk W. R.R.—Merger—Detroit & Toledo Shore Line R.R., 7 I.C.C. 2d 1038, 1042-43 (1991); Burlington N., Inc.—Control & Merger—St. Louis-S.F. Ry., FD 28583 (Sub-No. 24), slip op. at 2 (ICC served Oct. 20, 1989). As a result, the Board does not have jurisdiction to consider this portion of BLET's appeal.<sup>61</sup>

##### **5. The Zusman Award's conclusions regarding proposed conditions are outside the Board's jurisdiction.**

BLET argues that UP included "bare-bones" terms and conditions governing its proposed service.<sup>62</sup> In response to those proposed terms and conditions, BLET proposed conditions that, it says, were reasonable and practicable under Section 2 of Article IX.<sup>63</sup> BLET contends that Arbitrator Zusman did not consider its terms and conditions because he believed that he was precluded from doing so because UP complied with Article IX.<sup>64</sup> BLET argues that Arbitrator Zusman's acceptance of UP's terms and conditions on this basis is irrational and without foundation or reason.<sup>65</sup>

UP counters that BLET's argument about the proposed terms and conditions cannot be considered by the Board because the entire argument falls within the RLA's arbitration appeal process requiring BLET to file suit in federal district court.<sup>66</sup>

---

<sup>58</sup> Id. at 27.

<sup>59</sup> Id. at 27-28.

<sup>60</sup> Zusman Award 11.

<sup>61</sup> We note that Arbitration Board No. 598, which issued the Zusman Award, was specifically created pursuant to Article IX as well as New York Dock, and that the parties' agreement creating Arbitration Board No. 598 specifically made the RLA and New York Dock applicable to any appeal of the Zusman Award. UP's Reply, Ex. D.

<sup>62</sup> BLET's Pet. 17.

<sup>63</sup> Id. at 17-18.

<sup>64</sup> Id. at 18 (quoting Zusman Award at 20) ("The Carrier's proposal must therefore be accepted by this Board. It complies with the requirements of Article IX").

<sup>65</sup> BLET's Pet. 18.

<sup>66</sup> UP's Reply 29-32.

As explained above, issues arising solely under Article IX are not within the Board's jurisdiction. As noted by UP,<sup>67</sup> BLET cites only Article IX when presenting this argument to the Board.<sup>68</sup> Therefore, for the same reasons we cannot review BLET's concerns about UP's operational-efficiencies arguments under Article IX, we cannot review BLET's contention about UP's terms and conditions governing its proposed service: we lack the jurisdiction to do so because this issue deals solely with the interpretation of Article IX.

It is ordered:

1. BLET's appeal of the Zusman Award is denied.
2. This decision is effective on the date of service.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Miller.

---

<sup>67</sup> Id. at 29.

<sup>68</sup> See BLET's Pet. 17-19.