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SERVICE DATE - LATE RELEASE OCTOBER 29, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 32760 (Sub-No. 36)

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

(Petition for Enforcement of Arbitration Award)

Decided: October 29, 1999

By petition filed on October 26, 1999, the Transportation • Communications International Union (TCU) requests that the Board issue an order compelling the Union Pacific Railroad Company (UP) to comply with an arbitration award, issued on October 22, 1999, by Robert O'Brien (the O'Brien Award), pertaining to UP's consolidation of crew hauling work as a result of the Board's 1996 decision approving UP's acquisition and control of the Southern Pacific Transportation Company (SP). According to TCU, the O'Brien Award allowed UP to transfer crew hauling work performed from, and crew hauling employees working out of, what was, prior to the control and merger transaction, SP's Armourdale Yard in Kansas City, KS, to UP's Neff Yard facility 10 miles away in Kansas City, MO, subject to the condition that all of the crew hauling work to be performed out of UP's Neff Yard facility would be performed under SP's collective bargaining agreement, rather than the UP collective bargaining agreement under which work at that location was performed prior to the consolidation of the work. TCU also requests that the Board issue an order preserving the status quo pending a decision.

The standards governing disposition of a petition for stay are set out in 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) (Cuomo); 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). Based on these standards, a temporary (housekeeping) order will be issued to preserve the status quo for 60 days, which will allow the Board the time necessary to consider UP's views in response to TCU's petition and make a determination on the issues raised by TCU.

In the absence of this order, UP might proceed with its plan (1) to abolish the positions of 12 former SP clerks working out of the Armourdale Yard, (2) to transfer their work to UP's Neff Yard facility, (3) to discharge the 12 employees without allowing them to follow their work or to require them to work under the less favorable UP collective bargaining agreement at Neff Yard before the

Board has had an opportunity to fully consider the issues in the proceeding. This could irreparably harm affected employees.

In contrast, if an order to preserve the status quo for 60 days is issued, the most that can happen to UP is that it will have to employ the 12 former SP crew haulers at their current locations under the SP collective bargaining agreement for that time period while the Board addresses the issues and renders a decision on TCU's petition.

The public interest supports issuance of this order. The public has an interest in policies that "encourage fair wages and safe and suitable working conditions in the railroad industry [49 U.S.C. 10101(11)]. United States v. Lowden, 308 U.S. 225 (1939). This requires that we be able to forestall actions that might result in irreparable harm to employees until there is an opportunity to address the matter on its merits with a complete record.¹

It is ordered:

1. UP will take no action (1) to abolish the positions of 12 former SP clerks working out of the Armourdale Yard, (2) to transfer their work to UP's Neff Yard facility, or (3) to remove them from the SP collective bargaining agreement for a period of 60 days from the service date of this decision.

2. This decision is effective on its date of service.

By the Board, Linda J. Morgan, Chairman.

Vernon A. Williams
Secretary

¹ By letter dated October 27, 1999, UP has indicated that it intends to file its reply within the applicable time period provided by the Board's rules. In the same letter UP has committed to postponing the effective date for its planned action from October 29, 1999, for a 30-day period. UP's reply is not due under our rules until 20 days from the date of filing of TCU's petition, which would be November 15, 1999. The Board must have sufficient time to consider UP's response and to resolve the important issues raised in this proceeding. A stay of 60 days will provide the time to do so.