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SERVICE DATE - AUGUST 16, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 32760 (Sub-No. 37)

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: August 11, 2000

The Brotherhood of Locomotive Engineers, General Committee of Adjustment for the Union Pacific Railroad--Eastern Region (BLE-UPER), has petitioned for review¹ of an arbitration award (the Award) entered by a panel (the Panel) chaired by neutral member Ekehard Muessig. We decline to review the Award.

BACKGROUND

In 1996, we approved the acquisition and control of the Southern Pacific Rail Corporation and its rail carriers by the Union Pacific Corporation and its rail carriers, including the Union Pacific Railroad Company (UP or the Carrier),² subject to our standard New York Dock conditions for the protection of employees.³ Under New York Dock, changes affecting rail employees and related to approved transactions must be implemented by agreements negotiated before the changes occur. If the parties cannot reach agreement or disagree on the interpretation of an implementing agreement, the issues are resolved by arbitration, subject to appeal to the

¹ Appeals of arbitration decisions are permitted under 49 CFR 1115.8.

² Union Pacific/Southern Pacific Merger, 1 S.T.B. 233 (1996), aff'd sub nom. Western Coal Traffic League v. STB, 169 F.3d 775 (D.C. Cir. 1999).

³ See New York Dock Ry. — Control — Brooklyn Eastern Dist., 360 I.C.C. 60, 84-90 (1979) (New York Dock), aff'd sub nom. New York Dock Ry. v. United States, 609 F.2d 83 (2d Cir. 1979).

Board under our deferential Lace Curtain standard of review.⁴ Once the scope of the necessary changes is determined by negotiation or arbitration, employees adversely affected by them are entitled to receive comprehensive displacement and dismissal benefits for up to 6 years.

In accordance with New York Dock, BLE and UP entered into implementing agreements concerning the coordination of BLE engineers in various hubs established by UP. The implementing agreement at issue here is the Kansas City Hub Merger Agreement (the Agreement). A dispute arose as to whether the Agreement requires that “prior rights” in Zone 2 of the Kansas City Hub be granted to 12 employees who responded to an October 10, 1998 bulletin for bids to enter engineer training.⁵ BLE-UPER maintains that the employees should be on the prior rights roster; the Carrier argues that they should not.

When the parties could not agree, the dispute was taken to arbitration.⁶ The case was docketed as “Case No. 7.”⁷ On February 8, 2000, the arbitrator entered an award disposing of this case and the six other cases. The arbitrator phrased and disposed of the issue in Case No. 7 as follows (Award at 15):

Question: “Are the twelve engineers who responded to the October 10, 1998 promotion notice at Kansas City entitled to prior rights in Zone 2 of the Kansas City Hub?”

⁴ Under 49 CFR 1115.8, the standard for review is provided in Chicago & North Western Tptn. Co. — Abandonment, 3 I.C.C.2d 729 (1987) (Lace Curtain), aff’d sub nom. IBEW v. ICC, 862 F.2d 330 (D.C. Cir. 1988). Under Lace Curtain, we generally defer to arbitrators’ decisions in the absence of “egregious error,” and limit our review to “recurring or otherwise significant issues of general importance regarding the interpretation of our labor protective conditions.” “Id. at 735 - 36.

⁵ “Prior rights” generally refer to seniority rights based on pre-merger status vis-a-vis other employees on a division that once constituted another separate carrier.

⁶ In the arbitration proceeding, a statement in support of BLE-UPER’s position was filed by the Brotherhood of Locomotive Engineers General Committee of Adjustment for the Union Pacific Railroad-Eastern District.

⁷ The arbitration also involved six other cases, Case Nos. 1-6, which are not at issue in this petition. An appeal was also filed in Case No. 1, which is addressed in a separate decision served today in 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), STB Finance Docket No. 32760 (Sub-No. 38) (STB served August 16, 2000) (herein, Sub-No. 38).

Answer: "... for the same reasons as in Case No. 1, the trainees are not prior righted and the answer to the above question is in the negative."

On March 3, 2000, BLE-UPER filed a petition for review of this disposition of Case No. 7, and on March 23, 2000, UP replied.

DISCUSSION AND CONCLUSIONS

This case does not present an issue of general importance regarding the interpretation of our labor conditions, but rather the interpretation of a specific labor agreement, a matter which is well within the expertise of arbitrators. Therefore, the Panel's construction of the agreement is entitled to our deference under Lace Curtain, absent egregious error.⁸

The Agreement here provides that: (1) prior rights are granted to "engineers holding seniority in the territory comprehended by this Agreement on the effective date thereof;"⁹ and, (2) "engineers in training on the effective date of this Agreement shall also participate in the formulation of the [prior rights] roster described above" (emphasis added).¹⁰ Thus, under the Agreement, the cutoff date for determining an employee's eligibility for prior rights is the "effective date" of the Agreement.

Article X of the Agreement, which is entitled "Effective Date," provides: "This agreement implements the merger of the Union Pacific and SSW/SPCSL railroad operations in the area covered by Notice dated January 30, 1998. Signed at Denver, CO this 2nd day of July, 1998."

The dispute concerns the "effective date" of the Agreement. The Panel accepted UP's argument that the effective date of the Agreement was its July 2, 1998 signature date, i.e., before the October 10, 1998 bulletin for bids to enter engineer training. BLE-UPER argues that the effective date was the January 16, 1999 date of operational implementation announced in UP's letter of intent dated October 26, 1998.¹¹

⁸ We typically defer to the arbitrator's determination on seniority matters. See Norfolk and Western Railway Company and New York, Chicago and St. Louis Railroad Company - Merger, Etc., Finance Docket No. 21510 (Sub-No. 5) (STB served Dec. 22, 1998), at 6.

⁹ Agreement, Article II.A. The Agreement is reproduced in BLE Exhibit A of Appendix C of BLE-UPER's petition for review.

¹⁰ Agreement, Article II.F.

¹¹ See: BLE-UPER's petition at 5; Appendix C of BLE's petition, BLE Exhibit C.

BLE-UPER has not shown that the Panel egregiously erred in finding that the effective date of the Agreement for the purpose of determining eligibility for prior rights was the July 2, 1998 signature date. In its discussion of Case No. 1, the Panel cited examples of other hub agreements where the parties intended to adopt cutoff dates that were (unlike the January 16, 1999 date favored by BLE-UPER here) fixed and known at the time of signing. The Panel reasonably presumed that the parties had a similar intention here. In the absence of a fixed and known cut-off date, employees would have been faced with having to vote on an implementation agreement without knowing exactly how every employee would be affected by the Agreement.

The Panel in Case No. 1 also reasoned that the parties expressed their intent to use the signature date of the agreement in a side letter bearing the same signature date, which stated that employees who were “currently” in training would be added to the roster. The Panel’s application of this reasoning to Case No. 7 did not involve egregious error. A side letter that is almost identical to the one cited by the Award in Case No. 1 was also agreed upon by the parties in Case No. 7.¹² That side letter reveals that the parties were referring to a known group of employees who were in training at the time, not employees who would enter training in the future.

BLE-UPER points out that page 1 of the Award includes a broad statement suggesting that the BLE General Chairmen were in disagreement as to the issues involved in all seven of the cases, when, in fact, the record indicates that there was no disagreement between the General Chairmen concerning the issues involved in the instant Case No. 7. However, the reasoning of the Panel in Case No. 7 is not dependent on a disagreement between the General Chairmen. The principal issue in both Case No. 1 and Case No. 7 was whether trainees who entered training after the signature date of an implementing agreement but prior to its actual implementation could claim prior rights. This issue remains the same regardless of which parties are in dispute. The Panel’s generalized statement as to the positions of the BLE General Chairmen, which is generally accurate, provides no grounds for reversing this decision.

¹² See Side Letter No. 21, reproduced on p. 65 of Appendix C of BLE-UPER’s Petition, which reads in pertinent part as follows:

As discussed, there are currently a group of engineers in training for Dalhart/Pratt. Under the SSW Agreement and seniority provisions, some of these trainees bid the training vacancies from Kansas City with the hope that they could hold seniority in the Kansas City Hub after implementation of the merger. It was agreed that these trainees would stand to be canvassed for establishment of seniority in the Kansas City Hub if the roster sizing numbers are such that there are roster slots for them. If not, there is no requirement that they be added to the Kansas City Hub roster.

Nor has BLE-UPER demonstrated that the Panel egregiously erred by failing to address BLE-UPER's argument that the carrier's October 10, 1998 bulletin misled the 12 employees into believing that they would be entitled to prior rights.¹³ The bulletin merely announced a training program. It did not purport to touch upon contractual rights under the Agreement. Nor, contrary to what BLE-UPER maintains, did the carrier's July 16, 1999 letter discussing the controversy admit that the bulletin was misleading. That letter stated merely that "while the employees may have perceived prior rights would be provided, the Merger Agreement language does not support such position."¹⁴

For the foregoing reasons, we decline to review the decision of the Panel.

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

It is ordered:

1. The petition for review of the Award will not be heard.
2. This decision is effective on its date of service.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams
Secretary

¹³ The bulletin is reproduced in BLE Exhibit D of Appendix C of BLE-UPER's petition.

¹⁴ This letter is reproduced in BLE Exhibit F of Appendix C of BLE-UPER's petition.