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SERVICE DATE - FEBRUARY 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

Decided: February 9, 1998

By decision served 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).

The Brotherhood of Maintenance of Way Employes (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 decision (Arbitration Award). On November 12, 1997, BMWE filed an appeal to the Arbitration Award.¹ On December 5, 1997, UP filed a reply to the appeal.²

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, BMWE 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 December 2, 1997.

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

DISCUSSION AND CONCLUSIONS

We have reviewed the evidence and arguments of both BMWWE and UP and find that the record is insufficient to allow us to make a decision on the merits at this time. Accordingly, we are requiring 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 BMWWE. UP was a party to the NCCC and signed the Mediation Agreement. The Mediation Agreement specifically provides that carriers that opted in 1991 to retain their old collective bargaining agreements with BMWWE, rather than to operate under system-gang rules derived from Presidential Emergency Board No. 219, would continue to operate under their old agreements.⁴ The Denver and Rio Grande Western Railroad Company (DRGW) and Southern Pacific Transportation Company (SPT) also retained their old agreements.

The arbitrator, nevertheless, found that it was necessary to abrogate BMWWE'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. See Arbitration

³ The filing of an appeal did not automatically stay the Arbitration Award, which was scheduled to become effective on January 1, 1998.

⁴ Article XVI of the Mediation Agreement, as pertinent, states:

Section 5

Existing property-specific agreements on a covered carrier, whether arrived at voluntarily or through arbitration, will continue to control the terms and conditions of regional and system-wide gangs on each covered carrier or sub-section of covered carrier property.

Section 6

This Article is intended to continue the use of regional and system gangs on carriers which timely opted to create such gangs after the implementation of the recommendations of PEB No. 219, but not to extend their use to carriers which opted to operate under other local provisions.

Award at 23. BMWWE objects to this finding, arguing that, because UP signed the Mediation Agreement after we approved the merger, UP is estopped from overriding SPT's and DRGW's collective bargaining agreements.⁵

Under 49 U.S.C. 11347,⁶ we are required to ensure a fair and equitable arrangement for the protection of employee interests. E.g., United Transp. Union v. I.C.C., 43 F.3d 697, 698 (D.C. Cir. 1995). BMWWE has raised a legitimate issue of whether it is fair to allow UP, after signing the Mediation Agreement, to abrogate SPT's and DRGW's collective bargaining agreements. UP's response is that it signed the Mediation Agreement because a national strike was looming and with BMWWE's knowledge that, after the merger, UP intended to conduct consolidated system-gang operations under a single system-gang agreement (i.e., the existing "UP-proper" agreement). UP is directed to provide whatever evidence exists that supports this assertion, including a complete, unredacted copy of its existing "UP-proper" collective bargaining agreement with BMWWE. Both parties are encouraged to brief us more thoroughly on the fair and equitable issue.

UP argues, and arbitrator Meyers found, that the changes in the combined system's maintenance-of-way forces are in the public interest. UP states that the reorganization of the maintenance-of-way operations for the western portion of its system is essential for its ongoing recovery from the track congestion problems that it has experienced since we approved this merger and to avoid such problems in the future. BMWWE states that transportation benefits are possible without permitting UP to abrogate its existing labor agreements. BMWWE states that it is flexible when the situation requires and, as an example, points to its coordination agreements with UP to operate UP system gangs over the former Western Pacific Railroad (WP). Our examination of the current record indicates, however, that the creation of system gangs might be precluded if the SPT and DRGW agreements are not abrogated as arbitrator Meyers found they should be. Accordingly, we will require BMWWE to provide a copy of one of its coordination agreements for UP operations over WP and explain what type of system operations over the entire western part of UP's system is or may be possible under such an agreement.

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

It is ordered:

⁵ Generally, we expect arbitrators to hold both parties to any contracts that they have voluntarily signed. See CSX Corp.--Control--Chessie and Seaboard C.L.I., 6 I.C.C.2d 715, 749 (1990).

⁶ 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.

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1. UP and BMWWE shall submit supplemental statements addressing our concerns by March 3, 1998 and each shall serve a copy of its statement on the other. UP must also provide a copy of its collective bargaining agreement with BMWWE for "UP-proper." BMWWE must also provide a copy of its coordinating agreement for UP operations over WP.

2. Both parties may file responses by March 13, 1998.

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

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary