

31034
CO

SERVICE DATE - JULY 5, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 32000 (Sub-No. 12)

RIO GRANDE INDUSTRIES, INC., SPTC HOLDING, INC., AND THE DENVER AND RIO
GRANDE WESTERN RAILROAD COMPANY
— CONTROL —
SOUTHERN PACIFIC TRANSPORTATION COMPANY
(Arbitration Review)

Decided: June 29, 2000

This decision denies the petition of Union Pacific Railroad Company (UP or the Carrier)¹ for stay of an arbitration panel's award finding that certain management information service (MIS) employees are eligible for labor protection benefits.

BACKGROUND

On August 25, 1988, the Board's predecessor agency, the Interstate Commerce Commission (ICC), approved the acquisition of control of the Southern Pacific Transportation Company (SP) by Rio Grande Industries, Inc., SPTC Holding, Inc., and the Denver and Rio Grande Western Railroad Company (DRGW).² The acquisition was conditioned on our standard New York Dock conditions for the protection of employees.³ Under New York Dock, changes affecting rail employees related to approved transactions must be implemented by agreements negotiated before the changes occur. Employees who are adversely affected by such changes related to approved transactions are entitled to receive comprehensive displacement and dismissal benefits for up to 6 years. Under Article IV of New York Dock, 360 I.C.C. at 90, adversely affected employees who are not represented by a labor organization "shall be afforded

¹ Petitioner refers to itself as the "Southern Pacific Transportation Company" (SP), because the events at issue occurred before SP and its affiliated rail carriers were absorbed by the Union Pacific Railroad Company. Because SP and its affiliated rail carriers no longer exist, this decision will refer to petitioner as "Union Pacific Railroad Company."

² Rio Grande Industries, et al.— Control—SPT Co., et al., 4 I.C.C.2d 834 (1988).

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).

substantially the same levels of protection as are afforded to members of labor organizations.” If there is disagreement over the application of, or the eligibility for, benefits under New York Dock, the dispute may be taken to arbitration pursuant to Article I, section 11 of New York Dock, 360 I.C.C. at 87, subject to appeal to the Board under our deferential Lace Curtain standard of review.⁴

In their merger application before the ICC, applicants announced that, after the acquisition, DRGW’s MIS Department in Denver would be merged into the SP’s MIS Department in San Francisco. The merger application did not mention outsourcing MIS work. Pursuant to an implementing agreement negotiated under New York Dock with the Transportation•Communications International Union (TCU), the DRGW MIS employees represented by TCU were transferred to SP’s MIS facility in San Francisco, along with the unrepresented members of that department, in late 1989.

In 1990, the merged DRGW/SP began to study whether it should contract out the work performed at its MIS Department in San Francisco. In 1992, the merged carrier’s chief administrative officer appointed a three-person task force to study the outsourcing of MIS work. Although persons working in the MIS Department were kept informed of outsourcing developments, the carrier did not serve notice of the outsourcing on TCU under Article I, section 4 of New York Dock, or attempt to negotiate an implementing agreement concerning the outsourcing.

On March 22, 1993, the Southern Pacific Empowered Employees Committee (SPEEC), a voluntary organization representing nonunion MIS employees, was formed. SPEEC attempted to secure New York Dock benefits for its members. The carrier maintained that the employees represented by SPEEC were not entitled to benefits under New York Dock.

In November 1993, the merged DRGW/SP contracted for MIS services with Integrated Systems Solutions Corporation (ISSC), a subsidiary of International Business Machines. Many persons working in the MIS Department obtained jobs with ISSC. Some who did not, or who could not obtain alternate employment with the carrier, accepted a severance package containing a release from additional compensation. The jobs of all MIS Department workers were terminated in late 1993.

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), aff’d sub nom. IBEW v. ICC, 826 F.2d 330 (D.C. Cir. 1988) (Lace Curtain). Under the Lace Curtain standard, the Board does not review issues of causation, the calculation of benefits, or the resolution of other factual questions in the absence of egregious error. 3 I.C.C.2d at 735-36.

On December 9, 1993, SPEEC, on behalf of about 310 nonunion MIS employees, and specified individuals appearing in their own names,⁵ took their claims for protective benefits to arbitration under New York Dock. The parties selected a panel chaired by neutral member William E. Fredenberger, Jr.

The record in the arbitration did not close until some time in 1998, apparently due to supervening events. In 1994, ISSC's contract employee force was reduced by about one half. In August 1996, we approved the acquisition of DRGW/SP by UP.⁶ In September 1998, UP canceled the contract with ISSC and brought the MIS function in-house, to be performed in Omaha and St. Louis. The remaining former DRGW/SP MIS employees employed by ISSC either continued to work for ISSC on other projects or left that company for other employment.

The Fredenberger panel issued an award on March 20, 2000. The panel found in favor of the claimants, except for those who had signed a waiver of claims in the severance agreement. The panel issued an "Interim Award" resolving only issues that were common to all of the claimants, leaving it to the Carrier and the individual affected claimants to resolve issues that are unique to each individual claim. In so ruling, the panel upheld the claimants' position on the following issues: the panel held that SP's outsourcing was causally related to the DRGW/SP consolidation (the causation issue);⁷ the panel rejected the Carrier's argument that the MIS claimants were not eligible for New York Dock benefits because they were managerial employees (the employment-status issue); and the panel also rejected the Carrier's argument that the claimants could not pursue their appeal because SPEEC lacked standing to represent them (the standing issue).

On May 10, 2000, after an extension granted by the Board, the Carrier filed an appeal of the panel's award, challenging the panel's findings on each of the three issues mentioned above. The Carrier simultaneously filed a motion for stay, a motion for oral argument, and a motion to exceed page limits. This decision addresses the Carrier's motion for stay.

DISCUSSION AND CONCLUSIONS

⁵ The panel's Award at 5 states that SPEEC was joined by "specified individuals," but the names of these individuals are not provided.

⁶ 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).

⁷ The parties viewed this as two separate issues: (1) whether the outsourcing was a "transaction" to which the New York Dock conditions applied; and (2) whether the outsourcing was causally related to the DRGW/SP consolidation.

For a stay to be granted, a movant must show: (1) that there is a strong likelihood that the movant will prevail on the merits; (2) that the movant will suffer irreparable harm in the absence of a stay; (3) that other interested parties will not be substantially harmed; and (4) that the public interest supports the granting of the stay. Hilton v. Braunskill, 481 U.S. 770, 776 (1987); 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). On a motion for stay, “it is the movant’s obligation to justify the . . . exercise of such an extraordinary remedy.” Cuomo v. United States Nuclear Regulatory Comm., 772 F.2d 972, 978 (D.C. Cir. 1985). The parties seeking a stay carry the burden of persuasion on all of the elements required for such extraordinary relief. Canal Authority of Fla. v. Callaway, 489 F.2d 567, 573 (5th Cir. 1974).

Here, the Carrier has not demonstrated that it will suffer irreparable harm in the absence of a stay. The panel’s decision in effect required the parties to begin a second phase whereby the carrier and each individual claimant would have to reach agreement on factors such as test period earnings and earnings after discharge or demotion. The Carrier argues that, unless a stay is granted, it will have to begin to apply the broad findings of the award to the 310 individual claimants. According to the carrier, the effort put into such a task would be wasted if the Board were subsequently to find that the panel erred.

The Carrier’s claim of irreparable harm might have carried more weight if the panel had put the Carrier under a deadline to complete the second phase. Presently, without a deadline, the parties can begin to gather the records upon which they will rely in the second phase. This preliminary effort need not cause the Carrier to incur significant expense. The Carrier would begin to incur significant costs only if a decision were delayed past the evidence gathering stage until it was time for the Carrier to begin to have to deal, and perhaps arbitrate, with each individual claimant face-to-face. A delay of this duration of the Board’s decision on the merits of the appeal is not anticipated.

Because the carrier would incur no injury when the arbitrator’s decision goes into effect, there is no basis for imposing a stay. Nor is there a need to consider the other criteria in order to refrain from staying an order that causes neither immediate nor irreparable harm to the petitioner.

It is ordered:

1. The Carrier’s petition for stay is denied.

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

By the Board, Linda J. Morgan, Chairman.

Vernon A. Williams
Secretary