31120 SERVICE DATE - DECEMBER 8, 2000
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SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 32760 (Sub-No. 39)

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: December 6, 2000

We are denying the request filed by David E. Thompson, a General Chairman of the Brotherhood of Locomotive Engineers (BLE), seeking permission to late-file an appeal of an arbitration award.

BACKGROUND

This matter involves a New York Dock[1] arbitration proceeding between BLE and the Union Pacific Railroad Company (UP) regarding the interpretation of certain contractual matters. An arbitration hearing was held on March 29, 2000, before Mr. Eckehard Muessig as Board Chairman and Neutral. BLE was represented by Vice President D.M. Hahs and UP was represented by General Director of Labor Relations W. S. Hinckley. On April 18, 2000, Mr. Muessig issued an Opinion and Award.

By petition filed on June 12, 2000, General Chairman Thompson requests an extension of time to file an appeal of this arbitration award. Mr. Thompson states that he was the moving party and signed BLE's submission to the arbitrator, but claims that he did not become aware of the issuance of the award until on or after May 8, 2000. On that date, according to Mr. Thompson, he received from BLE Vice President Hahs a copy of an itemized fee statement, dated April 18, 2000, that had been submitted by Mr. Muessig to Mr. Hahs. Mr. Thompson maintains that he then contacted the carrier and Mr. Hahs about the status of the arbitration, and

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[1] The underlying transactions here were approved subject to the standard employee protective conditions established in New York Dock Ry. — Control — Brooklyn Eastern Dist., 366 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). Under New York Dock, labor issues unresolved by the parties may be resolved by arbitration, subject to appeal to the Board.

subsequently received a copy of the award from Mr. Hahs. Mr. Thompson claims that he also attempted to contact Mr. Muessig on this matter.

On June 16, 2000, UP filed a reply in opposition to Mr. Thompson's request for permission to late-file the appeal. On July 24, 2000, UP filed a reply addressing the issues raised in the substantive appeal that Mr. Thompson had filed on June 22, 2000.[2]

DISCUSSION AND CONCLUSIONS

An appeal of an arbitration decision must be filed within 20 days of the issuance of the decision, unless a later date is authorized by the Board. 49 CFR 1115.8. A request for an extension of time to file an appeal must be filed not less than 10 days before the due date of the appeal, and must be justified by good cause. 49 CFR 1104.7(b). Thus, an appeal of the arbitration award issued here on April 18, 2000, was due by May 8, 2000, and a request for an extension of time to file an appeal was due by April 28, 2000.

General Chairman Thompson has not shown good cause for an extension of the filing deadline for his appeal. Mr. Thompson admits that he was put on notice that an award had been issued when he received the fee statement forwarded by Mr. Hahs on May 8, 2000.[3] Mr. Thompson apparently received a copy of the actual award and opinion shortly thereafter. However, he took no action whatsoever–either to file an appeal or seek an extension of time to appeal–until June 12, 2000. Mr. Thompson has not adequately explained why he waited well over a month after he first heard that a decision had been issued to request an extension of the filing deadline. Even if we were to treat the May 8th date, when Mr. Thompson says he received actual notice, as the date when the appeal deadline began to run, rather than the April 18, 2000 date, when his representative was notified of issuance of the award, the fact remains that he did not file an appeal, or take any action to begin the appeal process, within 20 days of May 8, 2000. Indeed, Mr. Thompson did not even make a request for an extension of time to file an appeal for almost five weeks after that date.

Mr. Thompson has not offered any explanation for this extended delay. Nor will we accept the appeal based on Mr. Thompson's representation that an unidentified Board employee informed him over the telephone on June 12, 2000, that the appeal would be accepted. Any

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[2] UP also filed a request, on July 5, 2000, seeking an extension of 21 days to reply to Mr. Thompson's substantive appeal. Due to our decision here, we need not rule on this request.

[3] We note that Mr. Thompson does not dispute that Mr. Muessig's award was transmitted to Mr. Hahs–the BLE Vice President who represented BLE at the arbitration hearing–shortly after its issuance on April 18th. Thus, the decision was in the possession of BLE's representative in the matter for a considerable amount of time (probably at least six weeks) before Mr. Thompson submitted his late-filed request.

informal conversations with Board staff would not constitute Board decisions. In any event, unlike the carrier, Mr. Thompson cannot claim detrimental reliance, as he had already missed the deadline by June 12.

Finally, we note that the subject of the appeal is the arbitrator's interpretation of a specific collective bargaining agreement. We normally defer to an arbitrator's interpretation of such a labor agreement. See the two separate decisions served August 16, 2000, in Union Pacific Corp., et al. – Control and Merger – Southern Pacific, et al. (Arbitration Review), STB Finance Docket No. 32760 (Sub-No. 37) and STB Finance Docket No. 32760 (Sub-No. 38). Moreover, this particular appeal appears narrowly focused on specific contract interpretation issues that do not raise broad issues of policy concern. Under all of these circumstances, we find no good cause to disregard the time limits for appeals of arbitral awards.[4]

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

It is ordered:

1. Permission to late-file an appeal is denied.

2. The Secretary will refund the filing fee tendered by General Chairman Thompson.

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

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

Vernon A. Williams
Secretary

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[4] Even as to timely filed appeals, under our narrow standard for reviewing an arbitral award, which has been affirmed in court, we generally defer to arbitral decisions on factual matters 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." See Chicago & North Western Tptn. Co. – Abandonment, 3 I.C.C.2d 729, 735-36 (1987) (Lace Curtain), aff'd sub nom. IBEW v. ICC, 862 F.2d 330 (D.C. Cir. 1988). In any event, in view of our rejection of the appeal on procedural grounds, we will direct the Secretary to refund the filing fee received with Mr. Thompson's substantive appeal.