

30202
CO

SERVICE DATE - APRIL 30, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 32760 (Sub-No. 33)

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: April 29, 1999

In an arbitration decision that was issued on March 25, 1999, an implementing agreement was imposed, permitting the Union Pacific Railroad Company (UP) to create the Salina Hub in Salina, KS, and to relocate a home terminal from Pratt, KS, to Herington, KS. On April 14, 1999, Lyn Swonger and James Spaulding (petitioners), who are members of the United Transportation Union (UTU), appealed the arbitrator's decision on behalf of themselves and all other similarly situated trainmen. Petitioners assert that they have been notified by UP that it intends to implement the arbitration decision on May 1, 1999. Responses to the appeal are due May 4, 1999.

On April 21, 1999, petitioners filed a motion to stay the effect of the arbitration decision pending a ruling on their petition to review the arbitration decision. Petitioners contend that there would be irreparable harm if the arbitration decision were not stayed because, if the arbitration decision takes effect, it would result in the relocation of the home terminal, requiring many employees to relocate and/or to travel a substantial distance to and from work. UTU and UP oppose the stay request.

UTU and UP state that this dispute involves the establishment of a hub in Salina on the former Tucumcari Line, which had been owned by the Chicago, Rock Island and Pacific Railroad Company (RI) and subsequently by the St. Louis Southwestern Railway Company (SSW). According to UTU and UP, when SSW purchased the Tucumcari Line in 1980, an implementing agreement was negotiated in which RI employees were considered to have severed their employment relationship with RI and were given a new seniority date on the SSW, which was the date they were hired by the SSW. In addition, those employees were given point seniority on the Tucumcari Line with prior rights at such points, including Salina. The two individuals, who appealed the arbitrator's decision in this proceeding, had been employed by the RI and SSW on the Tucumcari Line.

UTU and UP state further that UP's operating plan in the UP-SP merger proceeding¹ indicated that the carrier intended to use the "hub and spoke" system to implement the merger, with one hub at Salina. UTU and UP indicate in their replies that they conducted negotiations under Article I, section 4 of the New York Dock conditions,² and tentatively agreed on an implementing agreement for the Salina Hub. Apparently, the tentative agreement provided that employees would be dovetailed into the roster based upon their date of hire on the property at which they were last employed. UTU and UP state, however, that the UTU Associate General Chairperson representing former SSW employees refused to initial this agreement, because the employees from the RI objected to the seniority dates that would be used to form the new seniority roster. The matter was then submitted to arbitration under Article I, section 4 of New York Dock. UTU and UP indicate that the arbitration decision adopted the tentative agreement that UP and UTU had negotiated and authorized UP to close its terminal in Pratt and transfer the affected employees to Herington.

DISCUSSION AND CONCLUSIONS

The standards governing a stay request are: (1) whether petitioner is likely to prevail on the merits of the appeal; (2) whether petitioner will be irreparably harmed in the absence of a stay; (3) whether issuance of a stay would substantially harm other parties; and (4) whether issuance of a stay is in the public interest. Washington Metropolitan Area Transit Comm. v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977); and Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958).

Petitioners have not addressed the stay criteria *per se*, and more importantly have not met the evidentiary burden that those criteria impose. A review of their petition and the replies of UTU and UP leads to the conclusion that the sought relief has not been shown to be warranted. Accordingly, the motion for stay will be denied.

1. Likelihood of success on the merits. The standard for review of arbitration decisions is provided in Chicago & North Western Tptn. Co.-Abandonment, 3 I.C.C.2d 729 (1987) (Lace Curtain), aff'd sub nom., International Broth. of Elec. Workers v. ICC, 862 F.2d 330 (D.C. Cir. 1988). Under Lace Curtain, we accord deference to arbitrators' decisions and will not review "issues of causation, calculation of benefits, or the resolution of factual questions" in the absence of egregious error. Review of arbitral decisions has been limited to "recurring or otherwise significant

¹ See 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, Finance Docket No. 32760, Decision No. 44 (STB served Aug. 12, 1996).

² The UP-SP merger was subject to the employee protection conditions in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

issues of general importance regarding the interpretation of our labor conditions.” We generally do not overturn an arbitral award, unless it is shown that the award is irrational or fails to draw its essence from the imposed labor conditions or it is outside the scope of authority granted by the conditions. Id. at 736.

Petitioners challenge the arbitrator’s factual determinations. They deny that the proposed implementing agreement represents a fair and equitable method of blending the rights of the RI trainmen with those of other affected employees. In addition, petitioners seek to set aside the arbitrator’s finding that the transfer of employees from Pratt to Herington will not require them to report for work beyond a reasonable driving distance from their present locations.

Typically, the Board defers to an arbitrator’s determination regarding the manner of integrating seniority. Moreover, the arbitrator relied upon the prior award regarding similar issues arising out of the creation of the Salt Lake City and Denver Hubs. See 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, STB Finance Docket No. 32760 (Sub-No. 22) (STB served June 26, 1997), which the Board declined to review with respect to the issues petitioners seek to raise here. These circumstances indicate that it is unlikely that the Board will entertain petitioners’ appeal, let alone that petitioners will prevail on their appeal of the arbitrator’s decision.

2. Whether the petitioners will suffer irreparable harm in the absence of a stay. Petitioners assert that certain employees will be harmed because they will have to relocate or will be required to travel a substantial distance. While the Board recognizes that relocations can be inconvenient, and under some circumstances rise to the level of irreparable injury, that is not the case here. UTU, in its reply, accurately observed that any such inconvenience here clearly will be adequately remedied by monetary compensation under the New York Dock protective conditions. Moreover, the implementing agreement imposed by the arbitrator provides for the payment of relocation benefits to any employee who either volunteers or is forced to relocate to Herington. UP notes that, as early as November 1998, 28 employees volunteered to relocate from Pratt to Herington and that no employees have been forced to relocate. Given these protections and the circumstances present here, petitioners have not met their burden of showing that they will suffer irreparable harm absent a stay of the arbitrator’s decision.

3. Whether a stay will substantially harm other interested parties. UTU asserts that, if a stay were granted, all the other affected employees, as well as UP, would be harmed. The union notes that petitioners are a small minority who seek to improve their own position at the expense of other employees and do not represent the best interests of all of the UTU’s membership on each of the merged lines. Instead, UTU argues that petitioners seek to thwart implementation of a fair and rational integration of pre-existing seniority rosters.

In addition, UP states that it will not realize the cost savings associated with the coordination, if a stay is imposed. UP claims that it has incurred considerable expense to prepare to implement the coordination and is paying lodging costs for engineers who have relinquished their leases in Pratt in anticipation of relocating to Herington. In addition, UP says that it is reprogramming computers and training employees and adjusting train schedules to coincide with the May 1 implementation. Thus, this standard also weighs in favor of denying the stay request.

4. Whether a stay is in the public interest. Petitioners have not explained how issuance of a stay would further the public interest. On the other hand, the arbitrator's decision determined that implementation of the "hub and spoke" operations at Salina would have public transportation benefits by increasing efficiencies. The increased efficiencies arguably result in reduced rates and improved service to the public without undue disruption of employees. A stay would likely delay the public transportation benefits. On balance, this standard weighs in favor of denying the stay request as well.

For the reasons discussed above, petitioners' motion for stay will be denied.

It is ordered:

1. Petitioners' motion for stay is denied.
2. This decision is effective on its service date.

By the Board, Linda J. Morgan, Chairman.

Vernon A. Williams
Secretary