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SERVICE DATE - LATE RELEASE DECEMBER 30, 1997

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: December 30, 1997

By decision served August 12, 1996, in Finance Docket No. 32760 [Decision No. 44], the Board 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 its decision, the Board 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 Employees (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. On November 12, 1997, BMWE filed an appeal of the arbitrator's decision.¹ On December 5, 1997, UP filed a reply to the appeal.² On December 19, 1997, BMWE filed a petition to stay the arbitrator's decision, which is scheduled to become effective on January 1, 1998.³ On December 24, 1997, UP filed a reply to the petition for stay.

¹ Under the Board's rules, an appeal must be filed within 20 days of an arbitration decision unless a later date is authorized by the Board 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 Board granted the extension request.

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.

³ The filing of an appeal did not automatically stay the arbitrator's decision.

DISCUSSION AND CONCLUSIONS

Under the arbitration award, employees of the merged carriers will be dovetailed into ten UP system gang rosters using UP selection and assignment rules instead of rules negotiated at the national level by BMWWE and certain other railroads. BMWWE seeks a stay of the award pending Board review of its appeal to ensure that BMWWE-represented employees do not lose their jobs or seniority if they do not accept recall to system gangs created under the terms of the award. BMWWE's main concern appears to be that junior employees may be forced to take system gang jobs, or lose their seniority, if not enough employees volunteer for those jobs.⁴

In reply, UP asserts that no harm of any kind will result to employees if the award is implemented on schedule. It avers that no employees will be dismissed and that no employees will have to relocate their homes or families. In response to BMWWE's concern about the loss of seniority, UP states that during the pendency of the appeal no employee will forfeit his or her seniority and that the system gang rosters can be filled strictly through volunteers. In fact, it is so confident of its ability to fill the new gangs with volunteers that UP promises that it will not revoke the seniority of any employee who refuses to accept a system gang position. UP submits that granting a stay would disrupt planned work on the Los Angeles corridor that is scheduled to begin on January 5, 1998, and would preclude completion of track repair and rehabilitation work programmed for the 1998 season, which is an essential part of a complete cure for some of the track congestion experienced following the merger.

Given UP's commitment, to which it will be held, that no employee members of BMWWE will lose their jobs or seniority or will have to relocate their homes or families as a result of creating system gangs pursuant to the arbitration award, there has been no showing of irreparable harm under the applicable stay criteria. See Washington Metropolitan Transit Comm'n. v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977). To the contrary, UP has demonstrated that, rather than harm to employees from allowing the arbitration award to go into effect as scheduled, substantial harm may result to UP's recovery program if a stay is granted and employees who would have been called back to perform the work in question would be denied employment for the duration of the stay. Accordingly, BMWWE's petition will be denied.

It is ordered:

1. BMWWE's petition for stay is denied.
2. This decision is effective on its date of service.

⁴ At the time the stay was filed, BMWWE had assertedly not been given the opportunity to review the rosters and this was proffered as an additional reason in support of a stay. In its reply, UP assures that all affected BMWWE General Chairmen were given the opportunity to review the rosters.

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By the Board, Linda J. Morgan, Chairman.

Vernon A. Williams
Secretary