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SEC

SERVICE DATE – SEPTEMBER 29, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 21989 (Sub-No. 4)¹

PENNSYLVANIA RAILROAD COMPANY
– MERGER –
NEW YORK CENTRAL RAILROAD COMPANY
(Arbitration Review)

Decided: September 28, 2009

On August 19, 2009, the Penn Central Transportation Company (Penn Central) filed a petition for review under 49 CFR 1115.8 of an arbitration decision rendered on July 30, 2009.

On September 1, 2009, the claimant employees in the arbitration proceeding (Claimants) filed a motion to stay, which is in essence a motion to hold this proceeding before the Board in abeyance, pending disposition of their motion before a United States District Court “to confirm” the arbitration decision. Claimants also filed a motion requesting an extension of the September 8, 2009 deadline for filing a reply to Penn Central’s petition for review until 30 days after the Board rules on their motion to hold this proceeding in abeyance. On September 3, 2009, Penn Central replied in opposition to Claimants’ motions for abeyance and extension of time to file a reply.

By decision served on September 4, 2009, the Board, *inter alia*, suspended the deadline for filing Claimants’ reply pending a ruling by the agency on Claimants’ motion to hold this proceeding in abeyance.

Claimants’ motion to hold this proceeding in abeyance will be denied. Penn Central timely filed an appeal of the arbitration decision as provided under our rules at 49 CFR 1115.8. In doing so, Penn Central has properly invoked this agency’s authority to review arbitration decisions awarding benefits under agency-imposed employee protective conditions. *See Chicago & North Western Transp. Co. – Abandonment*, 3 I.C.C. 2d 729, 732-33 (1987), *aff’d sub nom. International Brotherhood of Electrical Workers v. I.C.C.*, 862 F. 2d 330 (D.C. Cir. 1988). An arbitration award made pursuant to a merger protection agreement is subject to exclusive review by this agency and appeal to the United States Courts of Appeals. *See, e.g., Railway Labor Executives Assn. v. Southern Pac. Transp. Co.*, 7 F. 3d 902 (9th Cir. 1993). Only after the Board has completed its review would the arbitration decision, if upheld, become ripe for “confirmation” by a court of competent jurisdiction. Accordingly, Claimants have failed to provide a proper basis for holding the proceeding before the Board in abeyance.

¹ This proceeding initially was mistakenly docketed as STB Finance Docket No. 35289.

Having denied Claimants' motion to hold this proceeding in abeyance, Claimants will be required to file their reply to Penn Central's petition by October 29, 2009. This extension will provide Claimants with ample time to prepare their reply.

It is ordered:

1. Claimants' motion to hold this proceeding in abeyance is denied.
2. Claimants' reply to Penn Central's petition for review of the arbitration decision is due by October 29, 2009.
3. This decision is effective on its day of service.

By the Board, Anne K. Quinlan, Acting Secretary.

Anne K. Quinlan
Acting Secretary