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SERVICE DATE - DECEMBER 30, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 32435 (Sub-No. 1)

THE BAY LINE RAILROAD, L.L.C.--ACQUISITION AND
OPERATION EXEMPTION--RAIL LINES OF ATLANTA & ST. ANDREWS
BAY RAILROAD COMPANY

(ARBITRATION REVIEW)

Decided: December 15, 1997

This proceeding involves an arbitrator's decision finding that 12 former railroad maintenance of way employees are entitled to lump sum separation allowances under the labor protective conditions the Interstate Commerce Commission (ICC) imposed in The Bay Line Railroad, L.L.C.--Acquisition and Operation Exemption--Rail Lines of Atlanta & St. Andrews Bay Railroad Company, ICC Finance Docket No. 32435 (ICC served Mar. 31, 1995) (ICC Decision). Following an administrative appeal by Atlanta & St. Andrews Bay Railroad Company (ASAB), in a decision served September 3, 1997 (September 3 Decision), we applied the standard of review for arbitration decisions set forth 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), and declined to review the award.¹

On September 16, 1997, ASAB filed a petition for stay of our September 3 Decision. On September 19, 1997, the Brotherhood of Maintenance of Way Employees (BMWE) replied. In a decision served October 1, 1997, the Chairman denied the stay request. However, she ordered ASAB immediately to place into escrow funds sufficient to cover the payments due to the claimants as determined by the decision of the arbitrator.

On September 23, 1997, ASAB filed a petition for reconsideration of the September 3 Decision and, on October 10, 1997, BMWE replied. This decision considers and denies ASAB's petition for reconsideration.

¹ Under the Lace Curtain standard, (1) we do not review "issues of causation, the calculation of benefits, or the resolution of other factual questions," and (2) our review is limited to "recurring or otherwise significant issues of general importance regarding the interpretation of our labor protective conditions."

BACKGROUND

A detailed background of this proceeding is set forth in our September 3 Decision. We will briefly repeat the salient facts here.

In ICC Decision, the agency determined that the subject acquisition transaction was within the purview of (former) 49 U.S.C. 10901 (now superseded by a revised 49 U.S.C. 10901), and that the transaction involved “exceptional circumstances” that justified the discretionary imposition of labor protective conditions for BMW members. The ICC then imposed, as protective conditions, a benefits package identical to the one that had been proposed by ASAB and that three other labor unions had accepted following negotiations with ASAB. Subsequently, a question arose as to whether 12 BMW member employees were entitled to benefits under the conditions the ICC had imposed. ASAB and BMW agreed to submit the question to arbitration. The arbitrator subsequently found that the 12 claimants had been denied employment within the meaning of the protective conditions and were entitled to lump sum separation allowances.

ASAB petitioned for review of the arbitrator’s decision and, in the September 3 Decision, we declined to accept the case for review. We accepted BMW’s argument that this proceeding did not involve “recurring or otherwise significant issues of general importance” as required by Lace Curtain.² ASAB has now petitioned for reconsideration of the September 3 Decision. It contends that our action involved material error (49 CFR 1115.3(b)(2)) because we failed to properly apply the Lace Curtain standards.

DISCUSSION AND CONCLUSIONS

ASAB argues that we overemphasized the uniqueness of the involved labor protective conditions, and that we gave undue consideration to the question of likelihood of recurrence. In ASAB’s view, we ignored the alternative ground for review, i.e., whether its case presented “otherwise significant issues of general importance.” Petitioner argues that there is a significant issue here, i.e., “whether an arbitrator may base the application of discretionary labor protection on the precedents of mandatory labor protection.” Specifically, petitioner asserts that the arbitrator’s findings were based on his interpretation of the decision in Delaware and Hudson Ry. Co.--Lease

² Specifically, we found that the labor protective conditions at issue here were unique and there was “nothing to suggest that the same or similar conditions would come before this agency again.” We also noted that recurrence was unlikely because, under revised section 10901(c), we no longer have discretionary authority to impose labor protective conditions when we approve noncarrier acquisitions of active rail lines. Finally, we concluded that the arbitrator’s decision did not have a broad impact, nor was it likely to have any continuing significance.

and Trackage Rights Exemption--Springfield Terminal Ry. Co., 4 I.C.C.2d 322 (1988).³ ASAB asserts that the misapplication of the law of mandatory labor protection to an interpretation of discretionary protection, as here, is “significant” regardless of whether it is likely to recur or whether the conditions imposed were unique.

These arguments are without merit. First, we did not ignore the question of significance. After noting that the issues resolved by the arbitrator’s decision were unlikely to recur, we concluded that “the decision does not have a broad impact; nor is it likely to have any continuing significance.” September 3 Decision, at 4. Moreover, the fact that the issues are unlikely to recur obviously affects any determination as to whether they are significant or of general importance. While the issues may be of significance to ASAB, it has not shown how they are “of general importance” to the rail industry or to our administration of the statute because this was one of only two or three instances in which the ICC had discretionarily imposed labor protection on a 49 U.S.C. 10901 transaction. Cf. United Transp. Union v. STB, 114 F.3d 1242, 1246 (D.C. Cir. 1997) (“impact of . . . decision on the STB’s administration of the Act” may properly be considered in determining whether arbitrator’s decision constitutes egregious error).

ASAB also contends that, in the past, the ICC granted review of arbitration awards that involved unique, negotiated conditions, non-recurring transactions, and claims far smaller than those involved here. In support, it cites the proceedings in Burlington Northern, Inc.--Control and Merger--St. Louis--San Francisco Railway Company (Petition for Review of an Arbitral Award), Finance Docket No. 28583 (Sub-No. 24) (ICC served June 23, 1988, vacated in ICC served Oct. 25, 1989) (Burlington Northern); and Norfolk and Western Railway Company and New York, Chicago and St. Louis Railroad Company--Merger, Etc. (Arbitration Review), Finance Docket No. 21510 (Sub-No. 5) (ICC served May 25, 1995) (Norfolk and Western).

However, the cited cases do not require reconsideration here. The fact that the ICC found that these cases involved significant issues of general importance does not dictate such a finding here because the central issues involved in those cases differed from those involved here. In Burlington Northern, the ICC reviewed the standard used by the arbitration board to determine whether a post-merger action was a “transaction” that had adverse impacts on employees. In Norfolk and Western, the ICC reviewed the holding of the arbitrator concerning the difference between a reassignment of employees and a transfer of work. We do not see any inconsistency, certainly not any inconsistency rising to the level of material error, between these cases and our disposition of ASAB’s review request. As noted above, the particular facts of this case do not make the issues it raises either significant, of general importance, or recurring. Finally, decisions of the ICC, unreviewed by any court, cannot limit our discretion to independently apply the Lace Curtain standards to this case.

In sum, ASAB has not established material error. Consequently, its petition for reconsideration of our September 3 Decision will be denied.

³ The case involved mandatory protection under (former) 49 U.S.C. 11343.

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

It is ordered:

1. The petition for reconsideration is denied.
2. This decision will be effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

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On September 23, 1997, ASAB filed a petition for reconsideration of the September 3 Decision and, on October 10, 1997, BMWE replied. This decision considers and denies ASAB's petition for reconsideration.

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BACKGROUND

A detailed background of this proceeding is set forth in our September 3 Decision. We will briefly repeat the salient facts here.

In ICC Decision, the agency determined that the subject acquisition transaction was within the purview of (former) 49 U.S.C. 10901 (now superseded by a revised 49 U.S.C. 10901), and that the transaction involved “exceptional circumstances” that justified the discretionary imposition of labor protective conditions for BMW members. The ICC then imposed, as protective conditions, a benefits package identical to the one that had been proposed by ASAB and that three other labor unions had accepted following negotiations with ASAB. Subsequently, a question arose as to whether 12 BMW member employees were entitled to benefits under the conditions the ICC had imposed. ASAB and BMW agreed to submit the question to arbitration. The arbitrator subsequently found that the 12 claimants had been denied employment within the meaning of the protective conditions and were entitled to lump sum separation allowances.

ASAB petitioned for review of the arbitrator’s decision and, in the September 3 Decision, we declined to accept the case for review. We accepted BMW’s argument that this proceeding did not involve “recurring or otherwise significant issues of general importance” as required by Lace Curtain.² ASAB has now petitioned for reconsideration of the September 3 Decision. It contends that our action involved material error (49 CFR 1115.3(b)(2)) because we failed to properly apply the Lace Curtain standards.

DISCUSSION AND CONCLUSIONS

ASAB argues that we overemphasized the uniqueness of the involved labor protective conditions, and that we gave undue consideration to the question of likelihood of recurrence. In ASAB’s view, we ignored the alternative ground for review, i.e., whether its case presented “otherwise significant issues of general importance.” Petitioner argues that there is a significant issue here, i.e., “whether an arbitrator may base the application of discretionary labor protection on the precedents of mandatory labor protection.” Specifically, petitioner asserts that the arbitrator’s findings were based on his interpretation of the decision in Delaware and Hudson Ry. Co.--Lease

² Specifically, we found that the labor protective conditions at issue here were unique and there was “nothing to suggest that the same or similar conditions would come before this agency again.” We also noted that recurrence was unlikely because, under revised section 10901(c), we no longer have discretionary authority to impose labor protective conditions when we approve noncarrier acquisitions of active rail lines. Finally, we concluded that the arbitrator’s decision did not have a broad impact, nor was it likely to have any continuing significance.

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These arguments are without merit. First, we did not ignore the question of significance. After noting that the issues resolved by the arbitrator’s decision were unlikely to recur, we concluded that “the decision does not have a broad impact; nor is it likely to have any continuing significance.” September 3 Decision, at 4. Moreover, the fact that the issues are unlikely to recur obviously affects any determination as to whether they are significant or of general importance. While the issues may be of significance to ASAB, it has not shown how they are “of general importance” to the rail industry or to our administration of the statute because this was one of only two or three instances in which the ICC had discretionarily imposed labor protection on a 49 U.S.C. 10901 transaction. Cf. United Transp. Union v. STB, 114 F.3d 1242, 1246 (D.C. Cir. 1997) (“impact of . . . decision on the STB’s administration of the Act” may properly be considered in determining whether arbitrator’s decision constitutes egregious error).

ASAB also contends that, in the past, the ICC granted review of arbitration awards that involved unique, negotiated conditions, non-recurring transactions, and claims far smaller than those involved here. In support, it cites the proceedings in Burlington Northern, Inc.--Control and Merger--St. Louis--San Francisco Railway Company (Petition for Review of an Arbitral Award), Finance Docket No. 28583 (Sub-No. 24) (ICC served June 23, 1988, vacated in ICC served Oct. 25, 1989) (Burlington Northern); and Norfolk and Western Railway Company and New York, Chicago and St. Louis Railroad Company--Merger, Etc. (Arbitration Review), Finance Docket No. 21510 (Sub-No. 5) (ICC served May 25, 1995) (Norfolk and Western).

However, the cited cases do not require reconsideration here. The fact that the ICC found that these cases involved significant issues of general importance does not dictate such a finding here because the central issues involved in those cases differed from those involved here. In Burlington Northern, the ICC reviewed the standard used by the arbitration board to determine whether a post-merger action was a “transaction” that had adverse impacts on employees. In Norfolk and Western, the ICC reviewed the holding of the arbitrator concerning the difference between a reassignment of employees and a transfer of work. We do not see any inconsistency, certainly not any inconsistency rising to the level of material error, between these cases and our disposition of ASAB’s review request. As noted above, the particular facts of this case do not make the issues it raises either significant, of general importance, or recurring. Finally, decisions of the ICC, unreviewed by any court, cannot limit our discretion to independently apply the Lace Curtain standards to this case.

In sum, ASAB has not established material error. Consequently, its petition for reconsideration of our September 3 Decision will be denied.

³ The case involved mandatory protection under (former) 49 U.S.C. 11343.

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

It is ordered:

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