

Surface Transportation Board, unreported, 2000 U.S. App. LEXIS 33966 (6th Cir. 2000), *cert. denied*, 533 U.S. 949 (2001). After the Sixth Circuit ruled, the parties returned to the Northern District of Ohio where the Court ordered the parties back to arbitration. That arbitration occurred in December 2007. The arbitration panel rendered its decision 17 months later, on July 30, 2009. It is this arbitration award that is the subject of Penn Central's petition on appeal herein. It is that appellate review that Claimants now seek to "stay" this Board from conducting. Claimants' alleged reason for the stay is because they filed a motion to confirm the July 30, 2009 arbitration award with the Northern District of Ohio. But Claimants filed their motion to confirm before Penn Central's 20 days to file an appeal under 49 C.F.R. § 1115.8 had run -- in fact, they filed their motion to confirm on the day that Penn Central's time to appeal **began** to run! The strategic filing of a motion to "confirm" the very arbitration award that Penn Central is appealing within time is obviously premature and not a legitimate basis to stay proceedings in this appeal.

All Claimants are really trying to do is preclude and cut off Penn Central's appellate rights. Their true strategy is revealed in their misleading words to the Board -- "**Appeals** of the same award issued by the same arbitration panel are currently pending before two tribunals: the District Court and the Surface Transportation Board." (Motion to Stay, p. 2) (emphasis added). **There is no appeal pending before the Northern District of Ohio.** There is only Claimants' strategic, premature motion to "confirm" the arbitration award. **There is only one appeal pending – Penn Central's appeal to this Board.** There is no doubt of Claimants' true motive to deny Penn Central's appeal rights because they say one thing to this Board and another to the court. In their motion to confirm filed in the Northern District of Ohio, Claimants first argued that the District Court "may not examine the merits of the decision except to the extent the award exceeds the agreement of the parties" and then relied on the fact that Penn Central "has not made any motion to

vacate, modify, or correct the award.”¹ The very day that Penn Central’s 20 day period to appeal to this Board began – the day after the arbitration award was rendered – Claimants were telling the District Court that Penn Central had not done anything to challenge it! Well, Penn Central has since filed its appeal to this Board, within time, and Claimants should not be permitted to interfere with Penn Central’s right to appeal or to buy additional time to respond to Penn Central’s timely petition with baseless motion practice.

So, to be clear – Claimants lost before the arbitration panel the last time around and filed an appeal to this Board. The Board granted their appeal by vacating portions of the arbitration award. This time around, Claimants won before the arbitration panel but seek to “stay” (really, delay and deny) the Board’s consideration of Penn Central’s appeal to allow a court to “confirm” the arbitration award! That position is frivolous and should be summarily rejected by the Board.

The Board should deny the requested stay, order Claimants to file any opposition to Penn Central’s petition within the standard 20 days for reply under 49 C.F.R. § 1115.2(e) (just as Penn Central filed its appeal petition within 20 days of the arbitration award), consider the merits, and vacate the arbitration award for the reasons set forth in Penn Central’s petition. Then, if desired, either party can appeal the Board’s decision to the Sixth Circuit. Only then will the arbitration award be ripe for a motion to confirm in the District Court.² Claimants’ motion to “confirm” at this stage of the proceedings cannot be a basis to stay the Board from proceeding with Penn Central’s appeal.

¹ See Exhibit 1 (Plaintiffs’ Memorandum in Support of Motion to Confirm) to Claimants’ Motion to Stay, pp. 4, 5.

² Indeed, at the time of the last STB appeal in these proceedings, the District Court itself recognized that a motion to confirm or vacate the arbitration award (at that time, the Claimants’ motion to vacate) was not ripe until this Board reviewed that arbitration decision on appeal: “An arbitration award pursuant to a merger protection agreement is therefore subject to exclusive review by the Interstate Commerce Commission [now, this Board], and appeal to the Circuit Courts of Appeals.” *In the Matter of the Application to Vacate an Arbitration Award Involving: Michael J. Knopik [sic], et al. v. Penn Central Transportation Company*, Case No 1:94CV2374 (N.D. Ohio April 12, 1995) (copy attached as Exhibit A), pp. 5-6.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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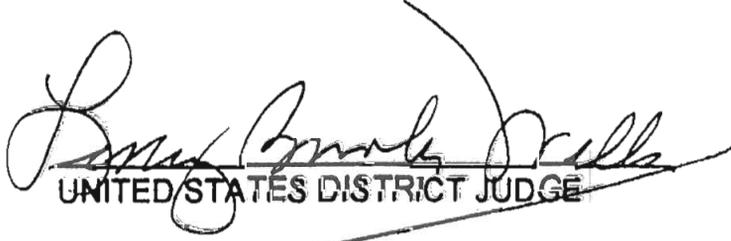
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CLERK OF COURT
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE APPLICATION TO VACATE)	JUDGE LESLEY BROOKS WELLS
ARBITRATION AWARD INVOLVING:)	
)	CASE NO. 1:94CV2374
MICHAEL J. KNOPIK, et al.)	
)	<u>ORDER OF DISMISSAL</u>
Petitioners/Claimants)	
)	
-vs-)	
)	
PENN CENTRAL TRANSPORTATION)	
COMPANY)	
)	
Respondent/Carrier)	

This Court, having previously entered its memorandum of opinion and order of dismissal for lack of subject matter jurisdiction, hereby dismisses this case, without prejudice. Petitioners to pay costs.


UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE APPLICATION TO VACATE)	JUDGE LESLEY BROOKS WELLS
ARBITRATION AWARD INVOLVING:)	
)	CASE NO. 1:94CV2374
MICHAEL J. KNOPIK, et al.)	
)	<u>MEMORANDUM OF OPINION AND</u>
Petitioners/Claimants)	<u>ORDER OF DISMISSAL FOR LACK</u>
)	<u>OF SUBJECT MATTER JURISDICTION</u>
-vs-)	
)	
PENN CENTRAL TRANSPORTATION)	
COMPANY)	
)	
Respondent/Carrier)	

This case is before the Court on respondent Penn Central Transportation Company's motion to dismiss petitioners' application to vacate arbitration award. Penn Central asserts this Court lacks jurisdiction to vacate the arbitration award in the instant case because review of the arbitration award is within the exclusive jurisdiction of the Interstate Commerce Commission ("ICC"), appeal from which is in the exclusive jurisdiction of the United States Courts of Appeals pursuant to 28 U.S.C. §§ 2321 and 2342(5).

On a motion to dismiss, this Court must accept the factual allegations of the petition as true. The petition and attached arbitration award disclose

that the parties' dispute has a lengthy and tortuous history which began more than twenty-five years ago. The petitioner/claimants were railroad workers employed by the Cleveland Union Terminal Company ("CUT"), a subsidiary of New York Central Railroad. The Pennsylvania and New York Central Railroads entered into a Merger Protection Agreement ("MPA") effective January 1, 1964 in anticipation of a merger between the two railroads. The two railroads merged in 1968 to form Penn Central. CUT was then merged into Penn Central on July 11, 1969.

The petitioner/claimants seek benefits under the MPA. They filed suit in this Court in 1969, in a case captioned Knopik et al. v. Penn Central Co., et al., Case No. 69-722. The petition states that the case was tried before a jury in 1976. According to the petition, at the conclusion of the claimants' case, the Court issued findings of fact and conclusions of law and framed the following issue for consideration in an arbitration proceeding:

Whether or not there was a breach of that contract (the 1964 Agreement) by the railroad, and/or a compliance by the Plaintiffs with the terms of that Agreement so as to entitle them to the benefits.

The Court referred the case to arbitration in 1979. According to the petition, the parties entered into an Arbitration Agreement in 1980 under guidelines mandated by the Court. An arbitration panel was convened in 1988, and a 3-day evidentiary hearing was held in May 1990. On October 28, 1994, the neutral arbitrator forwarded the final decision to the parties, but did not file the decision with this Court.

The petitioner/claimants contend "the arbitration panel exceeded its powers and its mandate as crafted by this court and as formulated in the 1980 Arbitration Agreement." They also assert the composition of the arbitration panel "was contrary to the dictates of this court." Finally, they argue the arbitration award was contrary to law, because it "ignored the plain language of the Merger Protection Agreement." They therefore demand that the Court vacate the arbitration award.

The petition asserts this Court has jurisdiction over this matter pursuant to 45 U.S.C. § 159. This section is part of the Railway Labor Act, 45 U.S.C. §§ 151 *et seq.*, which provides a mechanism for resolving disputes among carriers and their employees. Section 157 permits the parties to submit their controversies to arbitration, and describes the method of selecting a board of arbitration and the procedures before the board. Section 159 then provides in pertinent part:

First. Filing of Award

The award of a board of arbitration, having been acknowledged as herein provided, shall be filed in the clerk's office of the district court designated in the agreement to arbitrate.

Second. Conclusiveness of award; judgment

An award acknowledged and filed as herein provided shall be conclusive on the parties as to the merits and facts of the controversy submitted to arbitration, and unless, within ten days after the filing of the award, a petition to impeach the award, on the grounds hereinafter set forth, shall be filed in the clerk's office of the court in which the award has been filed, the court shall enter judgment on the award, which judgment shall be final and conclusive on the parties.

Penn Central argues the arbitration was conducted pursuant to the MPA, which was required and approved by the ICC as a condition of its approval of the proposed merger. The ICC has the exclusive power to approve proposed mergers and consolidations of carriers within its jurisdiction. 49 U.S.C. § 11341; **Norfolk & Western Ry. v. American Train Dispatchers Assn.**, 499 U.S. 117, 119-21 (1991). Among other things, the Interstate Commerce Act requires the ICC to impose labor protection conditions on such transactions to protect the interests of adversely affected employees. 49 U.S.C. § 11347. Penn Central contends that arbitration awards pursuant to such protective conditions can be reviewed only by the ICC, subject to exclusive appeal to the United States Court of Appeals under 28 U.S.C. §§ 2321 and 2342(5). See, e.g., **Railway Labor Executives Assn. v. Southern Pac. Transp. Co.**, 7 F.3d 902, 906-07 (9th Cir. 1993); **Brotherhood of Maintenance of Way Employees v. I.C.C.**, 920 F.2d 40 (D.C. Cir. 1990); **Employees of the Butte, Anaconda & Pac. Ry. Co. v. United States**, 938 F.2d 1009 (9th Cir. 1991).

Petitioner/claimants contend that the MPA was not a protective condition imposed by the ICC, but was a voluntary agreement adopted by the ICC in lieu of such a condition. See 49 U.S.C. § 11347 ("Notwithstanding this subtitle, the arrangement [for the protection of employees] may be made by the rail carrier and the authorized representative of its employees."). They assert the parties agreed in the MPA to be subject to the provisions of the Railway Labor Act, which gives this Court jurisdiction to review arbitration awards. **Brotherhood of Locomotive Engrs. v. I.C.C.**, 885 F.2d 446 (8th Cir. 1989).

Federal courts are courts of limited jurisdiction, and the parties cannot confer subject matter jurisdiction on them by agreement. Thus, even if the parties agreed in the MPA to be subject to the provisions of the Railway Labor Act, they could not confer subject matter jurisdiction on this Court if jurisdiction does not otherwise exist. For this reason, the Court does not adopt the rationale of the Eighth Circuit Court of Appeals in *Brotherhood of Locomotive Engrs.*, that because the parties' agreement adopted Railway Labor Act procedures, the arbitration award was subject to district court review.

The MPA was adopted by the ICC as part of its order approving the merger between the Pennsylvania and New York Central Railroads. The agreement thus became "a 'condition' of the Commission's 'approval' of the [merger] . . . and its provisions [were] deemed by the Commission to be 'a fair and equitable arrangement to protect the interests' of the employees." *Norfolk & Western Ry. Co. v. Nemitz*, 404 U.S. 37, 43 (1971). Once incorporated into an ICC order, the protective provisions "are more a matter of public than private law, unlike the ordinary collective bargaining agreement." *United Transp. Union v. I.C.C.*, 43 F.3d 697, 700 (D.C. Cir. 1995).

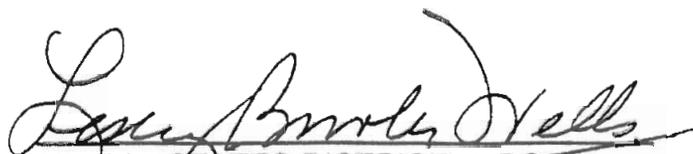
Although the ICC has discretion to require arbitration to resolve employee disputes over protective conditions, it is the ICC's obligation in the first instance to ensure that labor protection provisions are applied in accordance with statutory policy. *International Bhd. of Elec. Workers v. I.C.C.*, 862 F.2d 330 (D.C. Cir. 1988). An arbitration award pursuant to a merger protection agreement is therefore subject to exclusive review by the ICC, and appeal to the Circuit Courts of

Appeals.¹ *Cf. United Transp. Union v. I.C.C.*, 43 F.3d 697 (D.C. Cir. 1995) (discussing ICC review of arbitration awards pursuant to merger agreement).

This conclusion is consistent with the objectives of the Interstate Commerce Act to promote economy and efficiency in interstate transportation. The ICC has broad power to exempt parties from various laws as necessary to carry out an approved transaction. 49 U.S.C. § 11341(a). This power permits the ICC to exempt parties from Railway Labor Act procedures and to impose an alternative set of procedures in connection with a merger. *Norfolk and Western Ry. v. American Train Dispatcher's Assn.*, 499 U.S. 117, 133 (1991). While *Dispatchers* does not directly address the issue here, the policy reasons which supported that decision are equally applicable. If Railway Labor Act dispute resolution procedures applied to disputes over the provisions of the MPA, the efficiencies which the Interstate Commerce Act was designed to achieve would be defeated.

¹The ICC's authority to review arbitration awards concerning labor protective conditions was never addressed until the District of Columbia Circuit's decision in *International Bhd. of Elec. Workers v. I.C.C.*, 862 F.2d 330 (D.C. Cir. 1988). The Court in that case noted that "[w]hile arbitration boards previously have operated . . . without ICC review, the ICC has never before been asked to review an arbitration award, nor has it addressed its authority to do so." *Id.* at 337. The Court further noted that the Interstate Commerce Act was "silent with respect to the ICC's reviewing powers in arbitration cases," so that "[n]othing in the Act either requires or forecloses the agency's use of arbitration in employee disputes, or limits agency review of arbitration decisions." *Id.*, at 336.

For the foregoing reasons, the Court concludes that it lacks subject matter jurisdiction over the petition to vacate the arbitration award. Therefore, the petition will be dismissed.


UNITED STATES DISTRICT JUDGE