

BEFORE THE SURFACE TRANSPORTATION BOARD

PENNSYLVANIA RAILROAD COMPANY
--MERGER--
NEW YORK CENTRAL RAILROAD
COMPANY

Finance Docket No. 35289
(Arbitration Review)

MOTION TO STAY

Plaintiffs move this Board, pursuant to 49 CFR §1115.5 for a stay of proceedings pending the disposition of the Motion to Confirm Arbitration Award currently pending before Judge Solomon Oliver of the Federal District Court of the Northern District of Ohio attached hereto as Exhibit 1.

PROCEDURAL HISTORY

Plaintiffs are former railroad employees who have sought for the last forty years to recover damages for the failure of the Petitioner Defendant Penn Central to provide them benefits to which they are entitled under the 1964 Merger Protection Agreement [hereinafter the MPA] and its implementing agreements.

The respective Plaintiffs' groups filed four lawsuits in the Federal District Court for the Northern District of Ohio at various times between 1969 and 1974 alleging breach of the MPA and the application of the negotiated collective bargaining agreements. In 1979 the District Court referred all four cases to binding arbitration.

After two intervening arbitrations, in 2005 the District Court denied the Plaintiffs' request for the District Court to resume jurisdiction and ordered the parties back to arbitration.

In 2006, the District Court appointed the neutral arbitrator of the three member panel. The parties stipulated that all four matters would go forward before the aforementioned arbitration panel. A four day evidentiary hearing was held in December of 2007. The parties submitted post hearing briefs and proposed findings of fact and conclusions of law.

On July 30, 2009 the Arbitration Panel issued a one hundred eighty page opinion favorable to the Plaintiffs.

On July 31, 2009 the Plaintiffs filed a motion to confirm the arbitration decision in the District Court which appointed the panel. Attached hereto as Exhibit 1.

On August 19, 2009 the Penn Central filed a petition to review the same arbitration decision with the Board.

On August 28, 2009 the Penn Cental filed a motion to strike the Plaintiffs' motion to confirm the arbitration decision in the District Court, arguing that the District Court lacked jurisdiction to confirm the decision. That motion is currently pending.

ARGUMENT

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. The District Court must have the opportunity to determine whether it has jurisdiction to confirm the arbitration decision. The District Court has jurisdiction to manage its proceedings, vindicate its authority, and effectuate its decrees. *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991).

CONCLUSION

Accordingly, Plaintiffs move the Board to stay the proceedings before the STB until such time as the District Court has determined its jurisdiction to confirm the arbitration decision

rendered in this matter. At that time the Plaintiffs further move the Board to establish a new briefing schedule on the merits of the case.

Respectfully submitted,

/s/ Carla M. Tricarichi

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CERTIFICATE OF SERVICE

A copy of the foregoing was sent via electronic mail to:

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on this 1st day of September, 2009.

/s/ Carla M. Tricarichi
Carla M. Tricarichi
Attorney for Plaintiffs

IN THE U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

ROBERT WATJEN, ET AL.,
PLAINTIFFS,
V.
PENN CENTRAL,
DEFENDANT.

CASE NO. 69-675

MICHAEL J. KNAPIK, ET AL.,
PLAINTIFFS,
V.
PENN CENTRAL,
DEFENDANT.

CASE NO. 69-722

DAVID C. BUNDY, ET AL.,
PLAINTIFFS,
V.
PENN CENTRAL,
DEFENDANT.

CASE NO. 69-947

G. V. SOPHNER, ET AL.,
PLAINTIFFS,
V.
PENN CENTRAL,
DEFENDANT.

CASE NO. 74-914

JUDGE SOLOMON OLIVER, JR.

PLAINTIFFS' MOTION TO CONFIRM
ARBITRATION DECISION

Plaintiffs respectfully request that this Court enter an order confirming the decision of the Arbitration Panel in this matter. A copy of the 214-page opinion is attached as Exhibit D to the accompanying memorandum in support. The grounds for this motion are that the Arbitration Panel fully and fairly adjudicated the dispute between the parties. There are no grounds for vacating, modifying, or correcting an arbitration award enumerated in 9 U.S.C. §§10-11, the Railway Labor Act or equitable considerations, and Respondent has not made any motion to

vacate, modify, or correct the award. Accordingly, Plaintiffs request that this Court enter an order, with the arbitration opinion attached as an exhibit (as modified to reflect the updated interest calculations requested by the Panel), confirming the decision of the Arbitration Panel.

Respectfully submitted,



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on this 31st day of July, 2009.



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Attorney for Plaintiffs