

STB FINANCE DOCKET NO. 31700 (SUB-NO. 13)

CANADIAN PACIFIC LIMITED, ET AL.
- - PURCHASE AND TRACKAGE RIGHTS--
DELAWARE & HUDSON RAILWAY COMPANY

(ARBITRATION REVIEW)

Decided December 4, 1998

The Board orders the Canadian Pacific Limited, et al. and the Delaware & Hudson Railway Company to refrain from consummating their transaction by effecting the transfer of dispatch positions until the Board has been advised that the safety concerns of the Federal Railroad Administration have been satisfied.

BY THE BOARD:

This proceeding involves appeals by the American Train Dispatchers Department of the International Brotherhood of Locomotive Engineers (Train Dispatchers) of an arbitrator's decisions: (1) approving the transfer by Canadian Pacific Railway Company (Canadian Pacific) of five Delaware & Hudson Railway Company (Delaware & Hudson)¹ dispatch positions from Milwaukee, WI, to Montreal, Quebec, Canada; and (2) imposing an implementing agreement to effectuate the transfer.² The Train Dispatchers asked that the Board review and set aside the arbitrator's decisions. By decision served September 18, 1998, the Board declined to review the decisions. By decision served November 6, 1998, the Board denied a motion by the Train Dispatchers for stay pending judicial review.

¹ Canadian Pacific and Delaware & Hudson are collectively referred to as "the carriers."

² The awards resulted from arbitration between the parties conducted pursuant to Article 1, section 4, of the protective conditions set out in *New York Dock Ry.-Control-Brooklyn East, Dist.*, 360 I.C.C. 60 (1979), *aff'd sub nom. New York Dock Ry. v. U.S.*, 609 F.2d 83 (2d Cir. 1979) (*New York Dock*).

On December 3, 1998, the Train Dispatchers filed a petition requesting, in essence, that the Board reopen the proceeding to reconsider its prior decisions and that, pending further action, the Board order the carriers to refrain from consummating the transaction by effecting the transfer of dispatch positions. The Train Dispatchers base their pleading on new evidence of safety concerns and actions by the Federal Railroad Administration (FRA). They assert that the carriers intend to effect the transfers on December 5, 1998.

The Board now has in the record for the first time a definitive statement from the FRA that these positions should not be moved. Given this statement by FRA that the transfer of these positions could adversely affect rail safety, we will not allow their transfer to go forward under the authority of our labor conditions. Therefore, the carriers are hereby ordered to refrain from consummating their transaction by effecting these transfers until we have been advised that the safety concerns of FRA have been satisfied.

It is ordered:

1. A copy of this decision will be served on the Federal Railroad Administration.
2. The carriers shall refrain from consummating the transaction by effecting the transfer of dispatch positions.
3. This decision is effective on December 4, 1998.

By the Board, Linda J. Morgan, Chairman.