

STB FD 32760 (Sub 25) 112-30-97 C 28762

SERVICE DATE - LATE RELEASE DECEMBER 30, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 32760 (Sub-No. 25)

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY,
AND MISSOURI PACIFIC RAILROAD COMPANY--CONTROL AND MERGER--
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP., AND THE DENVER AND RIO GRANDE
WESTERN RAILROAD COMPANY

Decided: December 30, 1997

By decision served August 12, 1996, in Finance Docket No. 32760 [Decision No. 44], the Board approved the common control and merger of the rail carriers controlled by Union Pacific Corporation and the rail carriers controlled by Southern Pacific Rail Corporation. The controlling operating railroad is now the Union Pacific Railroad Company (UP), the respondent in this proceeding. In its decision, the Board imposed the employee protective conditions established in New York Dock Ry.--Control--Brooklyn Eastern Dist., 360 I.C.C. 60, 84-90 (1979) (New York Dock).

The Brotherhood of Maintenance of Way Employees (BMWE) and UP were unable to reach an implementing agreement on labor changes involving the selection and assignment of forces to implement the consolidation of certain maintenance-of-way functions in the western territory of the merged system. The dispute was taken to arbitration under New York Dock. On October 15, 1997, arbitrator Peter R. Meyers issued his decision. On November 12, 1997, BMWE filed an appeal of the arbitrator's decision.¹ On December 5, 1997, UP filed a reply to the appeal.² On December 19, 1997, BMWE filed a petition to stay the arbitrator's decision,

¹ Under the Board's rules, an appeal must be filed within 20 days of an arbitration decision unless a later date is authorized by the Board pursuant to 49 CFR 1115.8. Accordingly, the due date for filing an appeal was November 4, 1997. On October 31, 1997, BMWE requested an extension of time until November 12, 1997, to file its appeal. UP did not object and by decision served on November 10, 1997, the Board granted the extension request.

² UP's reply was due on December 2, 1997. At UP's request, the time for filing its reply was extended to December 5, 1997, by decision served December 2, 1997.

which is scheduled to become effective on January 1, 1998.³ On December 24, 1997, UP filed a reply to the petition for stay.

DISCUSSION AND CONCLUSIONS

Under the arbitration award, employees of the merged carriers will be dovetailed into ten UP system gang rosters using UP selection and assignment rules instead of rules negotiated at the national level by BMW and certain other railroads. BMW seeks a stay of the award pending Board review of its appeal to ensure that BMW-represented employees do not lose their jobs or seniority if they do not accept recall to system gangs created under the terms of the award. BMW's main concern appears to be that junior employees may be forced to take system gang jobs, or lose their seniority, if not enough employees volunteer for those jobs.⁴

In reply, UP asserts that no harm of any kind will result to employees if the award is implemented on schedule. It avers that no employees will be dismissed and that no employees will have to relocate their homes or families. In response to BMW's concern about the loss of seniority, UP states that during the pendency of the appeal no employee will forfeit his or her seniority and that the system gang rosters can be filled strictly through volunteers. In fact, it is so confident of its ability to fill the new gangs with volunteers that UP promises that it will not revoke the seniority of any employee who refuses to accept a system gang position. UP submits that granting a stay would disrupt planned work on the Los Angeles corridor that is scheduled to begin on January 5, 1998, and would preclude completion of track repair and rehabilitation work programmed for the 1998 season, which is an essential part of a complete cure for some of the track congestion experienced following the merger.

Given UP's commitment, to which it will be held, that no employee members of BMW will lose their jobs or seniority or will have to relocate their homes or families as a result of creating system gangs pursuant to the arbitration award, there has been no showing of irreparable harm under the applicable stay criteria. See Washington Metropolitan Transit Comm'n. v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977). To the contrary, UP has demonstrated that, rather than harm to employees from allowing the arbitration award to go into effect as scheduled, substantial harm may result to UP's recovery program if a stay is granted and

³ The filing of an appeal did not automatically stay the arbitrator's decision.

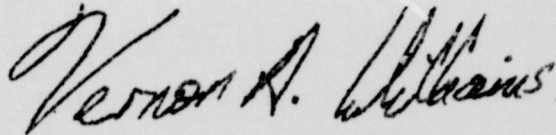
⁴ At the time the stay was filed, BMW had assertedly not been given the opportunity to review the rosters and this was proffered as an additional reason in support of a stay. In its reply, UP assures that all affected BMW General Chairmen were given the opportunity to review the rosters.

employees who would have been called back to perform the work in question would be denied employment for the duration of the stay. Accordingly, BMW's petition will be denied.

It is ordered:

1. BMW's petition for stay is denied.
2. This decision is effective on its date of service.

By the Board, Linda J. Morgan, Chairman.

A handwritten signature in cursive script, reading "Vernon A. Williams".

Vernon A. Williams
Secretary

EUGENIA LANGAN
SHEA & GARDNER
1800 MASSACHUSETTS AV NW
WASH DC 20036 US

J M BRUNRENHOEFER
NATIONAL LEGISLATIVE DIRECTOR UTU
400 N CAPITOL AVE NW STE 856
WASHINGTON DC 20001 US

Records: 2

STB FD 32760 (Sub 25) 12-11-98 C 28598

28598
EB

SERVICE DATE - DECEMBER 11, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 32760 (Sub-No. 25)

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY,
AND MISSOURI PACIFIC RAILROAD COMPANY--CONTROL AND MERGER--
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP., AND THE DENVER AND RIO GRANDE
WESTERN RAILROAD COMPANY

(ARBITRATION REVIEW)

Decided: December 9, 1998

In this decision, we are granting the Brotherhood of Maintenance of Way Employees' (BMWE) petition to dismiss its appeal of the decision issued by arbitrator Peter R. Meyers (Arbitration Award) and to vacate the Arbitration Award.

BACKGROUND

By decision served on August 12, 1996, in Finance Docket No. 32760 (Decision No. 44), we approved the common control and merger of the rail carriers controlled by Union Pacific Corporation and the rail carriers controlled by Southern Pacific Rail Corporation. The controlling operating railroad is now the Union Pacific Railroad Company (UP), the respondent in this proceeding. In Decision No. 44, we imposed the employee protective conditions established in New York Dock Ry.--Control--Brooklyn Eastern Dist., 360 I.C.C. 60, 84-90 (1979) (New York Dock).

BMWE and UP were unable to reach an implementing agreement on labor changes involving the selection and assignment of forces to implement the consolidation of certain maintenance-of-way functions in the western territory of the merged system. The dispute was taken to arbitration under New York Dock. On October 15, 1997, arbitrator Peter R. Meyers issued his

Arbitration Award. On November 12, 1997, BMW filed an appeal to the Arbitration Award.¹ On December 5, 1997, UP filed a reply to the appeal.²

On December 19, 1997, BMW filed a petition to stay the Arbitration Award, pending our decision on the appeal.³ By decision served on December 30, 1997, BMW's petition for stay was denied, based on UP's assurance that no employee members of BMW would lose their jobs or seniority or would have to relocate their homes or families as a result of implementation of the Arbitration Award.

By decision served on February 11, 1998, we found that the record was insufficient to allow us to make a decision on the merits of the appeal, and we required the parties to submit additional evidence and argument, particularly concerning the September 26, 1996 Mediation Agreement (the Mediation Agreement) between the railroads represented by the National Carriers' Conference Committee (NCCC) and BMW. UP was a party to the NCCC and signed the Mediation Agreement. Under Article XVI of the Mediation Agreement, carriers that opted in 1991 to retain their old collective bargaining agreements with BMW, rather than to operate under system-gang rules derived from Presidential Emergency Board No. 219, would be obligated to continue operations under their old agreements. The Denver and Rio Grande Western Railroad Company (DRGW) and Southern Pacific Transportation Company (SPT) also retained their old agreements.

The arbitrator found that it was necessary to abrogate BMW's collective bargaining agreements with SPT and DRGW, as well as Article XVI of the Mediation Agreement, in order to carry out the merger transaction in an efficient and economic manner. BMW objected to this finding, and argued that, because UP signed the Mediation Agreement after we approved the merger, UP was estopped from overriding SPT's and DRGW's collective bargaining agreements. Accordingly, we asked UP to explain whether it was fair under 49 U.S.C. 11347⁴ to allow UP, after signing the Mediation Agreement, to abrogate SPT's and DRGW's collective bargaining

¹ Under our rules, an appeal must be filed within 20 days of an arbitration decision unless we authorize a later date pursuant to 49 CFR 1115.8. Accordingly, the due date for filing an appeal was November 4, 1997. On October 31, 1997, BMW requested an extension of time until November 12, 1997, to file its appeal. UP did not object, and by decision served on November 10, 1997, the extension request was granted.

² UP's reply was due on December 2, 1997. At UP's request, the time for filing its reply was extended to December 5, 1997, by decision served on December 2, 1997.

³ The filing of an appeal did not automatically stay the arbitrator's decision, which was scheduled to become effective on January 1, 1998.

⁴ Now 49 U.S.C. 11326(a), which is essentially the same provision as reenacted by the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803.

agreements, and required UP to provide whatever evidence existed that would support such a conclusion. Both parties were encouraged to brief us more thoroughly on the fair and equitable issue.

In our February 11, 1998 decision, we also noted UP's position that the reorganization of the maintenance-of-way operations for the western portion of its system was essential for its recovery from the track congestion problems that it was experiencing at that time, and asked BMW to demonstrate what transportation benefits relating to the reorganization of system gangs were possible if UP was not allowed to abrogate its existing labor agreements. We also required BMW to provide a copy of one of its coordination agreements for UP operations over the former Western Pacific Railroad and to explain what type of system operations were possible under such an agreement. A procedural schedule was established for the simultaneous filing of supplemental statements and of replies. On February 25, 1998, BMW filed a motion for an extension of time in which to file opening supplemental statements. BMW stated that the parties required additional time in order to engage in negotiations to reach a settlement of BMW's appeal. On March 2, 1998, the procedural schedule was extended as requested. Subsequently, the procedural schedule was extended four more times by decisions served on March 26, April 7, May 15, and June 30, 1998.

On July 29, 1998, BMW and UP reached a voluntary settlement regarding the disputed implementing agreement. On August 10, 1998, BMW filed a petition to dismiss its appeal of the October 15, 1997 Arbitration Award and for an order of vacatur of the Arbitration Award. On September 3, 1998, UP replied in opposition to BMW's request for vacatur of the Arbitration Award.⁵

PROCEDURAL MATTER

By motion filed on August 10, 1998, BMW requests that we place under seal its petition to dismiss its appeal and the related exhibits. BMW states that both parties have agreed to make their agreement non-referable and argue that there is no general public interest in the disclosure of the implementing agreements. BMW states that it will file a redacted version of its petition for inclusion in the public record in this proceeding. UP did not oppose this request and, accordingly, it will be granted.

Because BMW inadvertently filed the exhibits to its petition, which it requests be placed under seal, with its separately filed motion for a protective order, we have placed both documents under seal. Accordingly, BMW will be required to file a corrected copy of its motion, without the exhibits, with its redacted version of its petition for inclusion in the public record.

⁵ By decision served on September 1, 1998, we granted UP's request for an extension of time in which to file its statement of opposition.

DISCUSSION AND CONCLUSIONS

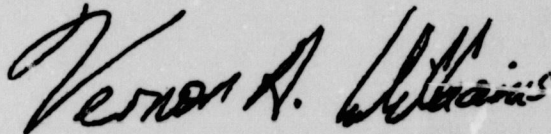
Our handling of this proceeding has provided an opportunity for a voluntary settlement of this matter, which the parties have achieved. In light of the settlement, we will dismiss the appeal as requested and discontinue this proceeding. Because the settlement agreement renders the Arbitration Award moot, we will vacate the Arbitration Award.

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

It is ordered:

1. The Brotherhood of Maintenance of Way Employees' appeal, filed on November 12, 1997, is dismissed.
2. The Arbitration Award issued on October 15, 1997, by arbitrator Peter R. Meyers, is vacated.
3. The Brotherhood of Maintenance of Way Employees must file a corrected copy of its motion for a protective order filed on August 10, 1998, and a redacted version of its petition to dismiss its appeal by December 31, 1998.
4. This proceeding is discontinued.
5. This decision is effective on January 10, 1999, except for our ordering paragraph 3, which is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.



Vernon A. Williams
Secretary

SERVICE LIST FOR: 14-dec-1998 STB FD 32760 25 UNION PACIFIC CORPORATION, UNION PAC

DONALD F GRIFFIN
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
10 G STREET NE STE 460
WASHINGTON DC 20002 US

EUGENIA LANGAN
SHEA & GARDNER
1800 MASSACHUSETTS AV NW
WASH DC 20036 US

ROGER HORD
GREATER HOUSTON PARTNERSHIP
1200 SMITH STE 700
HOUSTON TX 77002-4309 US

HON MARIC GALLEGOS
P O BOX 12068
STATE CAPITOL ROOM E1 706
AUSTIN TX 78711 US

Records: 4

STB FD 32760 (Sub 25) 12-2-97 C 28676

28676
SEC

SERVICE DATE - DECEMBER 2, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 32760 (Sub-No. 25)

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY,
AND MISSOURI PACIFIC RAILROAD COMPANY--CONTROL AND MERGER--
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP., AND THE DENVER AND RIO GRANDE
WESTERN RAILROAD COMPANY

Decided: December 1, 1997

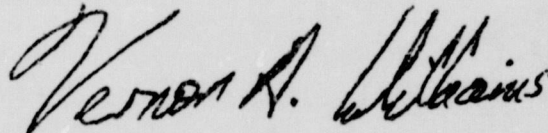
On November 12, 1997, the Brotherhood of Maintenance of Way Employees (BMWE) filed a petition under 49 CFR 1115.8 seeking review of an arbitration decision rendered under the New York Dock Ry.--Control--Brooklyn Eastern Dist., 360 I.C.C. 60 (1979) labor protection conditions. Under 49 CFR 1104.13(a), responses are due December 2, 1997.

By motion filed on November 26, 1997, the Union Pacific Railroad Company (UP) requests a 3-day extension to December 5, 1997, to file its response. UP states that additional time is necessary because of counsel's other obligations and the Thanksgiving holiday. The request is reasonable and will be granted.

It is ordered:

1. UP's extension request is granted.
2. UP's response is due December 5, 1997.
3. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.



Vernon A. Williams
Secretary

EUGENIA LANGAN
SHEA & GARDNER
1800 MASSACHUSETTS AV NW
WASH DC 20036 US

MARK H SIDMAN
WEINER & BRODSKY, SIDMAN & KIDER
1350 NEW YORK AVE., NW., STE. 800
WASHINGTON DC 20005 US

Records: 2

STB FD 32760 (Sub 25) 11-10-97 C. 28573

28573
SEC

SERVICE DATE - NOVEMBER 10, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 32760 (Sub-No. 25)

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY,
AND MISSOURI PACIFIC RAILROAD COMPANY--CONTROL AND MERGER--
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP., AND THE DENVER AND RIO GRANDE
WESTERN RAILROAD COMPANY

(ARBITRATION REVIEW)

Decided: November 7, 1997

By motion filed October 31, 1997, Brotherhood of Maintenance of Way Employes (BMWE), requests an extension until November 12, 1997, to file a petition for review of the arbitration decision issued on October 15, 1997.

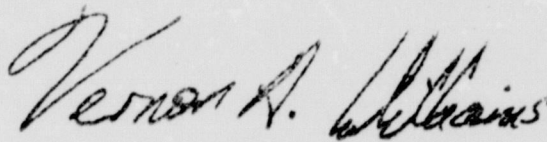
Under our rules, an appeal must be filed within 20 days of an arbitration decision unless a later date is authorized by the Board pursuant to 49 CFR 1115.8. The due date for filing an appeal was November 4, 1997. Counsel for BMWE states that he has been working on several other pressing matters on behalf of BMWE and that he needs additional time to prepare the petition for review. He also states that Union Pacific Railroad Company's (UP) Director of Labor Relations stated that UP will not oppose this extension request.

The request is reasonable and will be granted.

It is ordered:

1. BMW's extension request is granted.
2. BMW's appeal is due on November 12, 1997.
3. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

A handwritten signature in cursive script, reading "Vernon A. Williams".

Vernon A. Williams
Secretary

SERVICE LIST FOR: 11/10/1997 STB FD 32760 25 UNION PACIFIC CORPORATION-CONTROL &

DONALD F GRIFFIN
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
10 G STREET NE STE 460
WASH DC 20002 US

FRITZ R KAHN
1100 NEW YORK AVENUE NW SUITE 750 WEST
WASHINGTON DC 20005-3934 US

Records: 2

STB FD 32760 (Sub 25) 9-1-98 C 29571

29571
SEC

SERVICE DATE - LATE RELEASE SEPTEMBER 1, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 32760 (Sub-No. 25)

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY,
AND MISSOURI PACIFIC RAILROAD COMPANY--CONTROL AND MERGER--
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP., AND THE DENVER AND RIO GRANDE
WESTERN RAILROAD COMPANY

Decided: September 1, 1998

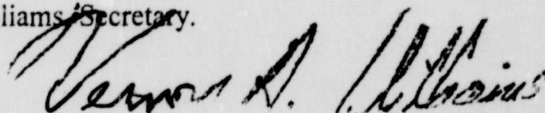
On August 10, 1998, the Brotherhood of Maintenance of Way Employees (BMWE) filed a petition to dismiss its appeal of the October 15, 1997 Arbitration Award and for an order of vacatur of the arbitration award. Replies to the petition were due, under 49 CFR 1104.13(a), on August 30, 1998. On August 27, 1998, respondent, Union Pacific Railroad Company (UP), filed a motion requesting a 1-week extension of time in which to file a reply in opposition to the motion for vacatur of the arbitration award. UP states that the extension is necessary because its General Director-Labor Relations and UP's in-house counsel were traveling on company business and were unable to review the draft reply. UP is of the opinion, based on a recent telephone conversation with BMWE's counsel, that BMWE does not object to the extension request.

The motion will be granted, and UP's reply will be due on September 3, 1998.

It is ordered:

1. UP's motion for a 1-week extension of time to file a reply to BMWE's petition for an order of vacatur of the October 15, 1997 Arbitration Award is granted.
2. UP's reply is now due on September 3, 1998.
3. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.



Vernon A. Williams
Secretary

SERVICE LIST FOR: 01-sep-1998 STB FD 32760 25 . UNION PACIFIC CORPORATION, UNION PAC

DONALD F GRIFFIN
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
10 G STREET NE STE 460
WASHINGTON DC 20002 US

EUGENIA LANGAN
SHEA & GARDNER
1800 MASSACHUSETTS AV NW
WASH DC 20036 US

HON MARIO GALLEGOS
P O BOX 12068
STATE CAPITOL ROOM E1 706
AUSTIN TX 78711 US

Records: 3

STB FD 32760 (Sub 25) 6-30-98 C 29384

29384
SEC

SERVICE DATE - JUNE 30, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 32760 (Sub-No. 25)

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY,
AND MISSOURI PACIFIC RAILROAD COMPANY--CONTROL AND MERGER--
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP., AND THE DENVER AND RIO GRANDE
WESTERN RAILROAD COMPANY

Decided: June 29, 1998

By decision served on February 11, 1998, the Board ordered Union Pacific Railroad Company (UP), the respondent in this proceeding, and the Brotherhood of Maintenance of Way Employees (BMWE) to submit supplemental statements addressing certain concerns arising from BMWE's appeal of the October 15, 1997 Arbitration Award. A procedural schedule was established for the simultaneous filing of supplemental statements and of replies. By decisions served on March 2, March 26, April 7, and May 15, 1998, the parties' previous requests for extensions of time in which to file supplemental statements and responses were granted. As a result of the most recent extension of time, supplemental statements were due on June 25, 1998, and replies were due on July 7, 1998.

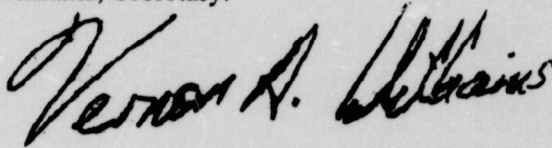
On June 24, 1998, UP and BMWE filed a joint motion for a fifth extension of time to file opening supplemental statements. The parties state that they have reached a tentative agreement that would dispose of the issues in this case and that also would implement the consolidation of maintenance of way forces in UP's Eastern Territory, which is not subject to BMWE's appeal of the October 15, 1997 Arbitration Award. The tentative agreement has been submitted to BMWE's ratification process. The count of the ratification vote is scheduled for July 6, 1998, and the results will be known shortly thereafter. If the agreement is ratified, the consolidation of maintenance of way forces throughout the merged system will have been accomplished voluntarily by the parties, without the need for further arbitration or review by the Board. If, however, the agreement is not ratified, the parties state that they will need an additional 30 days to prepare their opening statements. Accordingly, they request an extension of time for filing their opening statements until August 5, 1998.

The motion will be granted, and the procedural schedule established in the May 15 decision will be modified as set forth below.

It is ordered:

1. The parties' supplemental statements are due August 5, 1998.
2. The parties' responses are due August 17, 1998.
3. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

A handwritten signature in cursive script, appearing to read "Vernon A. Williams".

Vernon A. Williams
Secretary

SERVICE LIST FOR: 29-jun-1998 STB FD 32760 25 UNION PACIFIC CORPORATION, UNION PAC

DONALD F GRIFFIN
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
10 G STREET NE STE 460
WASHINGTON DC 20002 US

EUGENIA LANGAN
SHEA & GARDNER
1800 MASSACHUSETTS AV NW
WASH DC 20036 US

Records: 2

STB FD 32760 (Sub 25) 4-7-98 C 29102

29102
SEC

SERVICE DATE - APRIL 7, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 32760 (Sub-No. 25)

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY,
AND MISSOURI PACIFIC RAILROAD COMPANY--CONTROL AND MERGER--
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP., AND THE DENVER AND RIO GRANDE
WESTERN RAILROAD COMPANY

Decided: April 6, 1998

By decision served on February 11, 1998, the Board ordered Union Pacific Railroad Company (UP), the respondent in this proceeding, and the Brotherhood of Maintenance of Way Employees (BMWE) to submit supplemental statements addressing certain concerns arising from BMWE's appeal of the October 15, 1997 Arbitration Award. A procedural schedule was established for the simultaneous filing of supplemental statements and of replies. By decision served on March 2, 1998, BMWE's motion for an extension of time in which to file supplemental statements and replies was granted. Subsequently, the parties filed a joint motion for a second extension of time. By decision served March 26, 1998, the joint motion was granted. Supplemental statements were due on March 30, 1998, and replies are due on April 9, 1998.

On March 27, 1998, UP filed a motion for a third extension of time to file opening supplemental statements. UP states that the negotiations with BMWE have been broadened to include the issue of establishment of system-wide gangs in UP's Eastern Territory that are not subject to BMWE's appeal of the October 15, 1997 Arbitration Award. UP requests an extension of time until May 9, 1998, in which to file opening supplemental statements. UP states that BMWE does not oppose the extension request.

The request is reasonable and will be granted. Because May 9, 1998, is a Saturday, supplemental statements will be due on the following Monday. Accordingly, the procedural schedule established in the March 26 decision will be modified as set forth below.

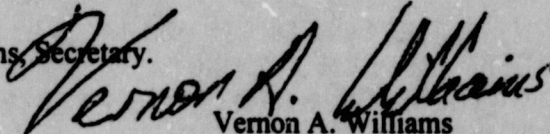
It is ordered:

1. The parties' supplemental statements are due May 11, 1998.

2. The parties' responses are due May 21, 1998.

3. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.


Vernon A. Williams
Secretary

DONALD F GRIFFIN
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
10 G STREET NE STE 460
WASH DC 20002 US

EUGENIA LANGAN
SHEA & GARDNER
1800 MASSACHUSETTS AV NW
WASH DC 20036 US

Records: 2

STB FD 32760 (Sub 25) 3-25-98 C 29077

SERVICE DATE - MARCH 26, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 32760 (Sub-No. 25)

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY,
AND MISSOURI PACIFIC RAILROAD COMPANY--CONTROL AND MERGER--
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP., AND THE DENVER AND RIO GRANDE
WESTERN RAILROAD COMPANY

Decided: March 25, 1998

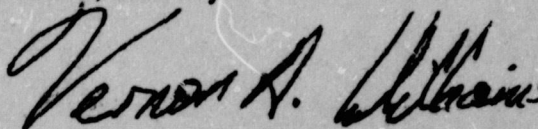
By decision served on February 11, 1998, the Board ordered Union Pacific Railroad Company (UP), the respondent in this proceeding, and the Brotherhood of Maintenance of Way Employees (BMWE) to submit supplemental statements addressing certain concerns arising from BMWE's appeal of the October 15, 1997 Arbitration Award. A procedural schedule was established for the simultaneous filing of supplemental statements and of replies. The parties' supplemental statements were due on March 3, 1998, and their replies were due on March 13, 1998. By decision served on March 2, 1998, we granted BMWE's motion for an extension of time in which to file supplemental statements and replies. The parties' supplemental statements were due on March 23, 1998, and their replies were due on April 2, 1998.

On March 23, 1998, BMWE and UP jointly filed a motion for another extension of time to file opening supplemental statements. The parties state that they have engaged in negotiations that may lead to a settlement of BMWE's appeal but have not yet reached an agreement. They request an additional 7 days in which to file their opening supplemental statements. We will grant the motion, and the procedural schedule established in the March 2 decision will be modified as set forth below.

It is ordered:

1. The parties' supplemental statements are due March 30, 1998.
2. The parties' responses are due April 9, 1998.
3. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.



Vernon A. Williams
Secretary

DONALD F GRIFFIN
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
10 G STREET NE STE 460
WASH DC 20002 US

EUGENIA LANGAN
SHEA & GARDNER
1800 MASSACHUSETTS AV NW
WASH DC 20036 US

Records: 2

STB FD • 32760 (Sub 25) 3-2-98 C 28993

28993
SEC

SERVICE DATE - MARCH 2, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 2760 (Sub-No. 25)

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY,
AND MISSOURI PACIFIC RAILROAD COMPANY--CONTROL AND MERGER--
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP., AND THE DENVER AND RIO GRANDE
WESTERN RAILROAD COMPANY

Decided: February 27, 1998

By decision served February 11, 1998, the Board ordered Union Pacific Railroad Company (UP), the respondent in this proceeding, and the Brotherhood of Maintenance of Way Employees (BMWE) to submit supplemental statements addressing certain concerns arising from BMWE's appeal of the October 15, 1997 Arbitration Award. A procedural schedule was established for the simultaneous filing of supplemental statements and of replies. The parties' supplemental statements are due on March 3, 1998, and their replies are due March 13, 1998.

On February 25, 1998, BMWE filed a motion for the extension of time to file opening supplemental statements. BMWE states that the parties require additional time in order to engage in negotiations that may lead to a settlement of BMWE's appeal. BMWE states that UP does not oppose the motion. Accordingly, the motion will be granted and the procedural schedule established in the February 11 decision will be modified as set forth below.

It is ordered:

1. The parties' supplemental statements are due March 23, 1998.
2. The parties' responses are due April 2, 1998.
3. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

DONALD E. GRIFFIN
875 MEADOW STREET
CHICOPEE MA 01013-1874 US

DONALD F GRIFFIN
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
10 G STREET NE STE 460
WASH DC 20002 US

EUGENIA LANGAN
SHEA & GARDNER
1800 MASSACHUSETTS AV NW
WASH DC 20036 US

Records: 3

STB FD 32760 (Sub 25) 2-11-98 C 28801

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SERVICE DATE - FEBRUARY 11, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 32760 (Sub-No. 25)

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY,
AND MISSOURI PACIFIC RAILROAD COMPANY--CONTROL AND MERGER--
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP., AND THE DENVER AND RIO GRANDE
WESTERN RAILROAD COMPANY

Decided: February 9, 1998

By decision served August 12, 1996, in Finance Docket No. 32760 (Decision No. 44), we approved the common control and merger of the rail carriers controlled by Union Pacific Corporation and the rail carriers controlled by Southern Pacific Rail Corporation. The controlling operating railroad is now the Union Pacific Railroad Company (UP), the respondent in this proceeding. In Decision No. 44, we imposed the employee protective conditions established in New York Dock Ry.--Control--Brooklyn Eastern Dist., 360 I.C.C. 60, 84-90 (1979) (New York Dock).

The Brotherhood of Maintenance of Way Employees (BMWE) and UP were unable to reach an implementing agreement on labor changes involving the selection and assignment of forces to implement the consolidation of certain maintenance-of-way functions in the western territory of the merged system. The dispute was taken to arbitration under New York Dock. On October 15, 1997, arbitrator Peter R. Meyers issued his decision (Arbitration Award). On November 12, 1997, BMWE filed an appeal to the Arbitration Award.¹ On December 5, 1997, UP filed a reply to the appeal.²

¹ Under our rules, an appeal must be filed within 20 days of an arbitration decision unless we authorize a later date pursuant to 49 CFR 1115.8. Accordingly, the due date for filing an appeal was November 4, 1997. On October 31, 1997, BMWE requested an extension of time until November 12, 1997, to file its appeal. UP did not object, and by decision served on November 10, 1997, the extension request was granted.

² UP's reply was due on December 2, 1997. At UP's request, the time for filing its reply
(continued...)

On December 19, 1997, BMW filed a petition to stay the Arbitration Award, pending our decision on the appeal.³ By decision served December 30, 1997, BMW's petition for stay was denied, based on UP's assurance that no employee members of BMW would lose their jobs or seniority or would have to relocate their homes or families pending our determination of the appeal of the Arbitration Award. This decision addresses BMW's appeal.

DISCUSSION AND CONCLUSIONS

We have reviewed the evidence and arguments of both BMW and UP and find that the record is insufficient to allow us to make a decision on the merits at this time. Accordingly, we are requiring the parties to submit additional evidence and argument, particularly concerning the September 26, 1996 Mediation Agreement (the Mediation Agreement) between the railroads represented by the National Carriers' Conference Committee (NCCC) and BMW. UP was a party to the NCCC and signed the Mediation Agreement. The Mediation Agreement specifically provides that carriers that opted in 1991 to retain their old collective bargaining agreements with BMW, rather than to operate under system-gang rules derived from Presidential Emergency Board No. 219, would continue to operate under their old agreements.⁴ The Denver and Rio Grande Western Railroad Company (DRGW) and Southern Pacific Transportation Company (SPT) also retained their old agreements.

²(...continued)

was extended to December 5, 1997, by decision served December 2, 1997.

³ The filing of an appeal did not automatically stay the Arbitration Award, which was scheduled to become effective on January 1, 1998.

⁴ Article XVI of the Mediation Agreement, as pertinent, states:

Section 5

Existing property-specific agreements on a covered carrier, whether arrived at voluntarily or through arbitration, will continue to control the terms and conditions of regional and system-wide gangs on each covered carrier or sub-section of covered carrier property.

Section 6

This Article is intended to continue the use of regional and system gangs on carriers which timely opted to create such gangs after the implementation of the recommendations of PEB No. 219, but not to extend their use to carriers which opted to operate under other local provisions.

The arbitrator, nevertheless, found that it was necessary to abrogate BMW's collective bargaining agreements with SPT and DRGW, as well as Article XVI of the Mediation Agreement, in order to carry out the merger transaction in an efficient and economic manner. See Arbitration Award at 23. BMW objects to this finding, arguing that, because UP signed the Mediation Agreement after we approved the merger, UP is estopped from overriding SPT's and DRGW's collective bargaining agreements.⁵

Under 49 U.S.C. 11347,⁶ we are required to ensure a fair and equitable arrangement for the protection of employee interests. E.g., United Transp. Union v. I.C.C., 43 F.3d 697, 698 (D.C. Cir. 1995). BMW has raised a legitimate issue of whether it is fair to allow UP, after signing the Mediation Agreement, to abrogate SPT's and DRGW's collective bargaining agreements. UP's response is that it signed the Mediation Agreement because a national strike was looming and with BMW's knowledge that, after the merger, UP intended to conduct consolidated system-gang operations under a single system-gang agreement (i.e., the existing "UP-proper" agreement). UP is directed to provide whatever evidence exists that supports this assertion, including a complete, unredacted copy of its existing "UP-proper" collective bargaining agreement with BMW. Both parties are encouraged to brief us more thoroughly on the fair and equitable issue.

UP argues, and arbitrator Meyers found, that the changes in the combined system's maintenance-of-way forces are in the public interest. UP states that the reorganization of the maintenance-of-way operations for the western portion of its system is essential for its ongoing recovery from the track congestion problems that it has experienced since we approved this merger and to avoid such problems in the future. BMW states that transportation benefits are possible without permitting UP to abrogate its existing labor agreements. BMW states that it is flexible when the situation requires and, as an example, points to its coordination agreements with UP to operate UP system gangs over the former Western Pacific Railroad (WP). Our examination of the current record indicates, however, that the creation of system gangs might be precluded if the SPT and DRGW agreements are not abrogated as arbitrator Meyers found they should be. Accordingly, we will require BMW to provide a copy of one of its coordination agreements for UP operations over WP and explain what type of system operations over the entire western part of UP's system is or may be possible under such an agreement.

⁵ Generally, we expect arbitrators to hold both parties to any contracts that they have voluntarily signed. See CSX Corp.--Control--Chessie and Seaboard C.L.L., 6 I.C.C.2d 715, 749 (1990).

⁶ Now 49 U.S.C. 11326(a), which is essentially the same provision as reenacted by the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803.

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

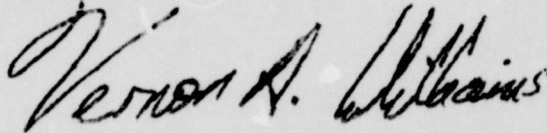
It is ordered:

1. UP and BMW E shall submit supplemental statements addressing our concerns by March 3, 1998 and each shall serve a copy of its statement on the other. UP must also provide a copy of its collective bargaining agreement with BMW E for "UP-proper." BMW E must also provide a copy of its coordinating agreement for UP operations over WP.

2. Both parties may file responses by March 13, 1998.

3. This decision is effective on its date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

A handwritten signature in black ink, appearing to read "Vernon A. Williams". The signature is written in a cursive, flowing style.

Vernon A. Williams
Secretary

SERVICE LIST FOR: 12-feb-1998 STB FD 32760 25 UNION PACIFIC CORPORATION, UNION PAC

DONALD F GRIFFIN
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
10 G STREET NE STE 460
WASH DC 20002 US

EUGENIA LANGAN
SHEA & GARDNER
1800 MASSACHUSETTS AV NW
WASH DC 20036 US

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