

STB

FD-32760 (SUB 37)

8-16-00

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SERVICE DATE - AUGUST 16, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 32760 (Sub-No. 37)

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: August 11, 2000

The Brotherhood of Locomotive Engineers, General Committee of Adjustment for the Union Pacific Railroad--Eastern Region (BLE-UPER), has petitioned for review<sup>1</sup> of an arbitration award (the Award) entered by a panel (the Panel) chaired by neutral member Ekehard Muessig. We decline to review the Award.

BACKGROUND

In 1996, we approved the acquisition and control of the Southern Pacific Rail Corporation and its rail carriers by the Union Pacific Corporation and its rail carriers, including the Union Pacific Railroad Company (UP or the Carrier),<sup>2</sup> subject to our standard New York Dock conditions for the protection of employees.<sup>3</sup> Under New York Dock, changes affecting rail employees and related to approved transactions must be implemented by agreements negotiated before the changes occur. If the parties cannot reach agreement or disagree on the interpretation of an implementing agreement, the issues are resolved by arbitration, subject to appeal to the

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<sup>1</sup> Appeals of arbitration decisions are permitted under 49 CFR 1115.8.

<sup>2</sup> Union Pacific/Southern Pacific Merger, 1 S.T.B. 233 (1996), aff'd sub nom. Western Coal Traffic League v. STB, 169 F.3d 775 (D.C. Cir. 1999).

<sup>3</sup> See New York Dock Ry. — Control — Brooklyn Eastern Dist., 360 I.C.C. 60, 84-90 (1979) (New York Dock), aff'd sub nom. New York Dock Ry. v. United States, 609 F.2d 83 (2d Cir. 1979).

Board under our deferential Lace Curtain standard of review.<sup>4</sup> Once the scope of the necessary changes is determined by negotiation or arbitration, employees adversely affected by them are entitled to receive comprehensive displacement and dismissal benefits for up to 6 years.

In accordance with New York Dock, BLE and UP entered into implementing agreements concerning the coordination of BLE engineers in various hubs established by UP. The implementing agreement at issue here is the Kansas City Hub Merger Agreement (the Agreement). A dispute arose as to whether the Agreement requires that "prior rights" in Zone 2 of the Kansas City Hub be granted to 12 employees who responded to an October 10, 1998 bulletin for bids to enter engineer training.<sup>5</sup> BLE-UPER maintains that the employees should be on the prior rights roster; the Carrier argues that they should not.

When the parties could not agree, the dispute was taken to arbitration.<sup>6</sup> The case was docketed as "Case No. 7." On February 8, 2000, the arbitrator entered an award disposing of this case and the six other cases. The arbitrator phrased and disposed of the issue in Case No. 7 as follows (Award at 15):

Question: "Are the twelve engineers who responded to the October 10, 1998 promotion notice at Kansas City entitled to prior rights in Zone 2 of the Kansas City Hub?"

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<sup>4</sup> Under 49 CFR 1115.8, the standard for review is provided in Chicago & North Western Tptn. Co. — Abandonment, 3 I.C.C.2d 729 (1987) (Lace Curtain), aff'd sub nom. IBEW v. ICC, 862 F.2d 330 (D.C. Cir. 1988). Under Lace Curtain, we generally defer to arbitrators' decisions in the absence of "egregious error," and limit our review to "recurring or otherwise significant issues of general importance regarding the interpretation of our labor protective conditions." Id. at 735 - 36.

<sup>5</sup> "Prior rights" generally refer to seniority rights based on pre-merger status vis-a-vis other employees on a division that once constituted another separate carrier.

<sup>6</sup> In the arbitration proceeding, a statement in support of BLE-UPER's position was filed by the Brotherhood of Locomotive Engineers General Committee of Adjustment for the Union Pacific Railroad--Eastern District.

<sup>7</sup> The arbitration also involved six other cases, Case Nos. 1-6, which are not at issue in this petition. An appeal was also filed in Case No. 1, which is addressed in a separate decision served today in 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), STB Finance Docket No. 32760 (Sub-No. 38) (STB served August 16, 2000) (herein, Sub-No. 38).



Answer: "... for the same reasons as in Case No. 1, the trainees are not prior righted and the answer to the above question is in the negative."

On March 3, 2000, BLE-UPER filed a petition for review of this disposition of Case No. 7, and on March 23, 2000, UP replied.

#### DISCUSSION AND CONCLUSIONS

This case does not present an issue of general importance regarding the interpretation of our labor conditions, but rather the interpretation of a specific labor agreement, a matter which is well within the expertise of arbitrators. Therefore, the Panel's construction of the agreement is entitled to our deference under Lace Curtain, absent egregious error.<sup>8</sup>

The Agreement here provides that: (1) prior rights are granted to "engineers holding seniority in the territory comprehended by this Agreement on the effective date thereof;"<sup>9</sup> and, (2) "engineers in training on the effective date of this Agreement shall also participate in the formulation of the [prior rights] roster described above" (emphasis added).<sup>10</sup> Thus, under the Agreement, the cutoff date for determining an employee's eligibility for prior rights is the "effective date" of the Agreement.

Article X of the Agreement, which is entitled "Effective Date," provides: "This agreement implements the merger of the Union Pacific and SSW/SPCSL railroad operations in the area covered by Notice dated January 30, 1998. Signed at Denver, CO this 2nd day of July, 1998."

The dispute concerns the "effective date" of the Agreement. The Panel accepted UP's argument that the effective date of the Agreement was its July 2, 1998 signature date, i.e., before the October 10, 1998 bulletin for bids to enter engineer training. BLE-UPER argues that the effective date was the January 16, 1999 date of operational implementation announced in UP's letter of intent dated October 26, 1998.<sup>11</sup>

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<sup>8</sup> We typically defer to the arbitrator's determination on seniority matters. See Norfolk and Western Railway Company and New York, Chicago and St. Louis Railroad Company - Merger, Etc., Finance Docket No. 21510 (Sub-No. 5) (STB served Dec. 22, 1998), at 6.

<sup>9</sup> Agreement, Article II.A. The Agreement is reproduced in BLE Exhibit A of Appendix C of BLE-UPER's petition for review.

<sup>10</sup> Agreement, Article II.F.

<sup>11</sup> See: BLE-UPER's petition at 5; Appendix C of BLE's petition, BLE Exhibit C.



BLE-UPER has not shown that the Panel egregiously erred in finding that the effective date of the Agreement for the purpose of determining eligibility for prior rights was the July 2, 1998 signature date. In its discussion of Case No. 1, the Panel cited examples of other hub agreements where the parties intended to adopt cutoff dates that were (unlike the January 16, 1999 date favored by BLE-UPER here) fixed and known at the time of signing. The Panel reasonably presumed that the parties had a similar intention here. In the absence of a fixed and known cut-off date, employees would have been faced with having to vote on an implementation agreement without knowing exactly how every employee would be affected by the Agreement.

The Panel in Case No. 1 also reasoned that the parties expressed their intent to use the signature date of the agreement in a side letter bearing the same signature date, which stated that employees who were "currently" in training would be added to the roster. The Panel's application of this reasoning to Case No. 7 did not involve egregious error. A side letter that is almost identical to the one cited by the Award in Case No. 1 was also agreed upon by the parties in Case No. 7.<sup>12</sup> That side letter reveals that the parties were referring to a known group of employees who were in training at the time, not employees who would enter training in the future.

BLE-UPER points out that page 1 of the Award includes a broad statement suggesting that the BLE General Chairmen were in disagreement as to the issues involved in all seven of the cases, when, in fact, the record indicates that there was no disagreement between the General Chairmen concerning the issues involved in the instant Case No. 7. However, the reasoning of the Panel in Case No. 7 is not dependent on a disagreement between the General Chairmen. The principal issue in both Case No. 1 and Case No. 7 was whether trainees who entered training after the signature date of an implementing agreement but prior to its actual implementation could claim prior rights. This issue remains the same regardless of which parties are in dispute. The Panel's generalized statement as to the positions of the BLE General Chairmen, which is generally accurate, provides no grounds for reversing this decision.

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<sup>12</sup> See Side Letter No. 21, reproduced on p. 65 of Appendix C of BLE-UPER's Petition which reads in pertinent part as follows:

As discussed, there are currently a group of engineers in training for Dalhart/Pratt. Under the SSW Agreement and seniority provisions, some of these trainees bid the training vacancies from Kansas City with the hope that they could hold seniority in the Kansas City Hub after implementation of the merger. It was agreed that these trainees would stand to be canvassed for establishment of seniority in the Kansas City Hub if the roster sizing numbers are such that there are roster slots for them. If not, there is no requirement that they be added to the Kansas City Hub roster.

Nor has BLE-UPER demonstrated that the Panel egregiously erred by failing to address BLE-UPER's argument that the carrier's October 10, 1998 bulletin misled the 12 employees into believing that they would be entitled to prior rights.<sup>13</sup> The bulletin merely announced a training program. It did not purport to touch upon contractual rights under the Agreement. Nor, contrary to what BLE-UPER maintains, did the carrier's July 16, 1999 letter discussing the controversy admit that the bulletin was misleading. That letter stated merely that "while the employees may have perceived prior rights would be provided, the Merger Agreement language does not support such position."<sup>14</sup>

For the foregoing reasons, we decline to review the decision of the Panel.

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 review of the Award will not be heard.
2. This decision is effective on its date of service.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams  
Secretary

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<sup>13</sup> The bulletin is reproduced in BLE Exhibit D of Appendix C of BLE-UPER's petition.

<sup>14</sup> This letter is reproduced in BLE Exhibit F of Appendix C of BLE-UPER's petition.

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Records: 2



STB

FD-32760 (SUB 33)

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**SERVICE DATE - JUNE 28, 2000  
SURFACE TRANSPORTATION BOARD  
Washington, D.C. 20423**

**June 26, 2000**

*Finance Docket No. 32760 (Sub-No. 33)*

**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)**

**NOTICE**

A court action, entitled as shown below,  
was instituted on or about June 16, 2000,  
involving the above-entitled proceeding:

**No. 00-9518**

**Lyn Swonger, et al**

**v.**

**Surface Transportation Board  
and  
United States of America**

*before the*

*United States Court of Appeals for the 10<sup>th</sup> Circuit*

**VERNON A. WILLIAMS  
Secretary**

SERVICE LIST FOR: 26-jun-2000 STB FD 32760 33 UNION PACIFIC CORPORATION, UNION PAC

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Records: 3



STB

FD-32760 (SUB 33)

5-1-00

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SERVICE DATE - MAY 1, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 32760 (Sub-No. 33)

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: April 27, 2000

We are denying a petition filed by Lyn Swonger and James Spaulding (petitioners) who are seeking review of an arbitration decision that had been issued by neutral referee William E. Fredenberger, Jr. on March 25, 1999. The arbitrator imposed an implementing agreement between Union Pacific Railroad Company (UP) and the United Transportation Union (UTU) that permitted UP to create "the Salina Hub" in Salina, KS, and to relocate a home terminal from Pratt, KS, to Herington, KS.

BACKGROUND

We approved the common control and merger of the rail carriers controlled by the Union Pacific Corporation and the rail carriers controlled by the Southern Pacific Rail Corporation (SP) in 1996.<sup>1</sup> In our decision, we imposed the employee protective conditions in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979) (New York Dock). The UP is the surviving rail carrier following the merger.

The operating plan submitted by the applicants in UP/SP indicated that UP intended to use a "hub and spoke" system to implement the merger, with one hub located at Salina. On June 4, 1998, UP gave notice to UTU, pursuant to Article 1, section 4 of New York Dock, that it intended to create the hub in Salina. UTU and UP then tentatively agreed on an implementing agreement for the Salina Hub. The tentative agreement provided that employees would be dovetailed into the seniority roster based upon their date of hire on the property at which they were last employed.

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<sup>1</sup> Union Pacific/Southern Pacific Merger, 1 S.T.B. 233 (1996) (UP/SP), aff'd sub nom., Western Coal Traffic League v. STB, 169 F.3d 775 (D.C. Cir. 1999).

The UTU Associate General Chairperson representing employees of SP's subsidiary, the St. Louis Southwestern Railway Company (SSW), objected to the agreement. Employees who had been originally hired by the former Chicago, Rock Island and Pacific Railroad Company (RI) to work on the Tucumcari line, and who were then subsequently hired by SSW when it acquired the line, apparently did not agree with the hire dates that would be used to form the new seniority roster. The matter was then submitted to arbitration. In his decision, the arbitrator adopted the tentative agreement that UP and UTU had negotiated and authorized UP to close its terminal in Pratt and transfer the affected employees to Herington.

On April 14, 1999, petitioners Swonger and Spaulding, who are members of UTU, appealed the arbitrator's decision on behalf of themselves and all other trainmen who had been employed by the RI and SSW.<sup>2</sup> UP and UTU responded in opposition to the appeal on May 4, 1999.

#### ARGUMENTS OF THE PARTIES

Seniority. Swonger and Spaulding assert that the arbitrator improperly modified their seniority when he adopted the implementing agreement between UP and the UTU for the Salina Hub. Under the implementing agreement, the petitioners' seniority is based on the date that they were hired by SSW when it acquired the Tucumcari line, which was March 24, 1980. They claim that their seniority should be based on the date they were originally hired by the RI. They note that, in contrast, the agreement bases seniority dates for UP employees on their original dates of hire with UP. Petitioners allege further that the change in their seniority rights was not necessary to carry out the approved transaction.

Petitioners contend further that they have a contractual right to preserve their RI seniority under court orders entered in Jerry W. Volkman v. United Transportation Union, Case No. 83-6025-T (D. Kan. July 21, 1993, and Dec. 15, 1993) (Volkman).<sup>3</sup> Volkman involved claims by former RI employees for benefits under a labor protection agreement dated March 4, 1980, which applied to the sale of former RI rail lines. According to petitioners, their court-sanctioned seniority rights should be preserved above and beyond rights under a collective bargaining agreement.

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<sup>2</sup> We will grant petitioners' request for leave to file a supplemental appendix that exceeds the 30-page limit established in 49 CFR 1115.2(d). The supplemental filing contains material that was submitted in the arbitration proceeding and is relevant to the issues raised in the appeal. We will, however, deny petitioners' request for oral argument. We can resolve the legal issues here without oral argument, as no issues have been presented that cannot be decided based on the written record. A request by petitioners to stay the effect of the arbitration decision pending a ruling on their petition to review the arbitration decision was denied in a decision served on April 30, 1999.

<sup>3</sup> The background of the dispute is discussed in Volkman v. United Transp. Union, 724 F. Supp. 1282 (D. Kan. 1989). The July 21, 1993 order was the court's final judgment on the claims. The court then issued an order on December 15, 1993, approving a settlement agreement.



Petitioners assert further that paragraph 2 of the New York Dock conditions requires that their rights must be preserved "unless changed by future collective bargaining agreements or applicable statutes." Petitioners state that the arbitrator did not address whether their seniority rights should be preserved under applicable law. Nor, they claim, did he determine whether the specific changes were "necessary" for the transaction.

In its response, UP contends that the arbitrator did not violate the court's orders in Volkman or exceed any limits on his authority when he adopted the agreement that UP and UTU had reached for the Salina Hub. The carrier notes that the court, in Volkman, rejected a request by former RI employees for full "carryover" seniority and confirmed that the seniority date of former RI employees was March 24, 1980, the date they were hired by SSW. Volkman, 724 F. Supp. at 1335. UP points out further that the court's July 21, 1993 order provides that "those prior rights may be modified by future collective bargaining as are prior rights granted under the existing labor contracts between the defendants SSW and UTU." UP maintains that the petitioners' prior rights were modified through the process of collective bargaining, as had been contemplated by the court in Volkman.

UP asserts that the arbitrator had explained that the "hub and spoke" operations at Salina would enable UP to achieve public transportation benefits and operating efficiencies and that modifying petitioners' seniority was necessary to implement the coordination. UP further notes that the implementing agreement modifies the prior rights of all employees in the Salina Hub, and that petitioners were treated no differently than any other employees.

In replying to the petitioners, UTU makes many of the same arguments as UP. The union adds that, for nearly 20 years, the former RI employees have used their 1980 seniority date with SSW. In UTU's view, to permit petitioners to resurrect their original RI seniority date now would be exceedingly unfair to the other employees involved in this and prior mergers. UTU asserts that the arbitrator found that the method agreed to by UTU and UP was a fair and equitable method of blending the rights of the former SSW and RI trainmen with those of other UP affected employees. UTU contends that petitioners have asserted no basis for the Board to disturb that finding.

Relocation of terminal. In their appeal, the petitioners contend that UP has not demonstrated a public transportation benefit by relocating the Pratt terminal to Herington. They argue that the public, including affected employees, would not benefit by requiring trainmen to drive 135 miles to report to work. They assert that the employee fatigue factor is inconsistent with the public transportation benefit determined by the arbitrator.

UP says that the petitioners have not presented any evidence to support their claims of inadequate housing and public facilities at Herington. To the contrary, UP submitted letters from city officials in Herington, indicating there is more than an adequate supply of housing and public facilities in and around Herington. UP states further that employees who did not believe that

suitable housing or public facilities are available in Herington have the option of remaining in Pratt.<sup>4</sup> UP further notes that employees are accorded relocation benefits under the New York Dock conditions.

The UTU states that the petitioners have not demonstrated that egregious error occurred to warrant review of the arbitrator's findings on the relocation of the Pratt terminal.

### DISCUSSION AND CONCLUSIONS

Under 49 CFR 1115.8, the standard for review of arbitration decisions is provided in Chicago & North Western Tptn. Co.-Abandonment, 3 I.C.C.2d 729 (1987), aff'd sub nom., International Broth. of Elec. Workers v. ICC, 862 F.2d 330 (D.C. Cir. 1988) (Lace Curtain). Under Lace Curtain, we accord deference to arbitrators' decisions and will not review "issues of causation, calculation of benefits, or the resolution of factual questions" in the absence of egregious error. Review of arbitral decisions has been limited to "recurring or otherwise significant issues of general importance regarding the interpretation of our labor conditions." We generally do not overturn an arbitral award, unless it is shown that the award is irrational or fails to draw its essence from the imposed labor conditions or it is outside the scope of authority granted by the conditions. Id. at 736.

Swonger and Spaulding ask us to review the arbitrator's determination regarding the seniority roster at Salina. Typically, the Board defers to the arbitrator's determination on seniority matters. See Norfolk and Western Railway Company and New York, Chicago and St. Louis Railroad Company—Merger, Etc., Finance Docket No. 21210 (Sub-No. 5) (STB served Dec. 22, 1998).

The arbitrator found that the seniority provisions in the implementing agreement fairly and equitably blended the rights of the petitioners with those of other affected employees, and that it was consistent with the court orders in Volkman. Petitioners have not demonstrated that the arbitrator's decision was irrational, that it exceeded his authority or that egregious error occurred warranting review under the Lace Curtain standard. To the contrary, Volkman supports the arbitrator's use of March 24, 1980, as the seniority date for the former RI employees.

The arbitrator determined that there were public transportation benefits from implementing the "hub and spoke" operations at Salina that warranted modifying the seniority rights of employees. These are factual findings to which we must accord deference to the arbitrator under the Lace Curtain standard of review. See Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation.

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<sup>4</sup> UP states that, as early as November 1998, only nine employees elected to remain at Pratt, while 28 employees agreed to relocate to Herington. UP notes further that the employees who elected to remain in Pratt will not be required to commute to Herington for their assignments.



Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. and The Denver and Rio Grande Western Railroad Company, STB Finance Docket No. 32760 (Sub-No. 22) (STB served June 26, 1997). Petitioners have failed to show that the arbitrator committed egregious error in making these findings. Therefore, we decline to review these findings.

Petitioners' claim that there is no public transportation benefit from relocating UP's terminal from Pratt to Herington also is without merit. In UP/SP, 1 S.T.B. at 362-64, we noted that, to meet the statutory requirement that the transaction be found to be consistent with the public interest, we had to examine the effect of the transaction on the adequacy of transportation to the public (see former 49 U.S.C. 11344(b)(1)(A) and current 49 U.S.C. 11324(b)(1)). This, in turn, required us to determine the public benefits that would result from the transaction. We defined "public benefits" as efficiency gains, such as cost reductions and service improvements. We then determined that the applicants should realize public benefits of \$534 million per year from more efficient operations. Id. at 376. Among the efficiencies specifically discussed were the streamlining and consolidation of transportation functions and operations at major terminals. Consequently, the arbitrator found that UP's "hub and spoke" operation at Salina is an obvious public transportation benefit.

Petitioners claim that the purported unavailability of housing and other non-transportation related facilities should have been weighed against the "public benefits" of the transaction. It is too late for petitioners to raise such issues. In any event, these matters are properly compensated by moving allowances and other benefits under New York Dock. Thus, petitioners have not met our standard for review under Lace Curtain for these matters, as well.

Accordingly, we decline to review the arbitrator's decision.

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

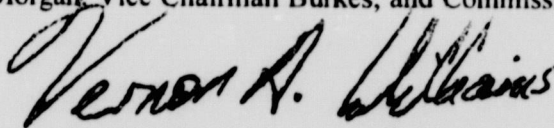
It is ordered:

1. Petitioners' request to exceed the page limitation in 49 CFR 1115.2(d) is granted. Petitioners's request for oral argument is denied.
2. We decline to review the arbitrator's decision.
3. This decision is effective on its date of service.



STB Finance Docket No. 32760 (Sub-No. 33)

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

A handwritten signature in black ink, reading "Vernon A. Williams". The signature is written in a cursive, flowing style with a large initial "V".

Vernon A. Williams

Secretary

SERVICE LIST FOR: 01-may-2000 STB FD 32760 33 UNION PACIFIC CORPORATION, UNION PAC

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Records: 3

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(Sub33)

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SERVICE DATE - APRIL 30, 1999

**SURFACE TRANSPORTATION BOARD**

**DECISION**

**STB Finance Docket No. 32760 (Sub-No. 33)**

**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: April 29, 1999**

In an arbitration decision that was issued on March 25, 1999, an implementing agreement was imposed, permitting the Union Pacific Railroad Company (UP) to create the Salina Hub in Salina, KS, and to relocate a home terminal from Pratt, KS, to Herington, KS. On April 14, 1999, Lyn Swonger and James Spaulding (petitioners), who are members of the United Transportation Union (UTU), appealed the arbitrator's decision on behalf of themselves and all other similarly situated trainmen. Petitioners assert that they have been notified by UP that it intends to implement the arbitration decision on May 1, 1999. Responses to the appeal are due May 4, 1999.

On April 21, 1999, petitioners filed a motion to stay the effect of the arbitration decision pending a ruling on their petition to review the arbitration decision. Petitioners contend that there would be irreparable harm if the arbitration decision were not stayed because, if the arbitration decision takes effect, it would result in the relocation of the home terminal, requiring many employees to relocate and/or to travel a substantial distance to and from work. UTU and UP oppose the stay request.

UTU and UP state that this dispute involves the establishment of a hub in Salina on the former Tucumcari Line, which had been owned by the Chicago, Rock Island and Pacific Railroad Company (RI) and subsequently by the St. Louis Southwestern Railway Company (SSW). According to UTU and UP, when SSW purchased the Tucumcari Line in 1980, an implementing agreement was negotiated in which RI employees were considered to have severed their employment relationship with RI and were given a new seniority date on the SSW, which was the date they were hired by the SSW. In addition, those employees were given point seniority on the Tucumcari Line with prior rights at such points, including Salina. The two individuals, who appealed the arbitrator's decision in this proceeding, had been employed by the RI and SSW on the Tucumcari Line.



UTU and UP state further that UP's operating plan in the UP-SP merger proceeding<sup>1</sup> indicated that the carrier intended to use the "hub and spoke" system to implement the merger, with one hub at Salina. UTU and UP indicate in their replies that they conducted negotiations under Article I, section 4 of the New York Dock conditions,<sup>2</sup> and tentatively agreed on an implementing agreement for the Salina Hub. Apparently, the tentative agreement provided that employees would be dovetailed into the roster based upon their date of hire on the property at which they were last employed. UTU and UP state, however, that the UTU Associate General Chairperson representing former SSW employees refused to initial this agreement, because the employees from the RI objected to the seniority dates that would be used to form the new seniority roster. The matter was then submitted to arbitration under Article I, section 4 of New York Dock. UTU and UP indicate that the arbitration decision adopted the tentative agreement that UP and UTU had negotiated and authorized UP to close its terminal in Pratt and transfer the affected employees to Herington.

#### DISCUSSION AND CONCLUSIONS

The standards governing a stay request are: (1) whether petitioner is likely to prevail on the merits of the appeal; (2) whether petitioner will be irreparably harmed in the absence of a stay; (3) whether issuance of a stay would substantially harm other parties; and (4) whether issuance of a stay is in the public interest. Washington Metropolitan Area Transit Comm. v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977); and Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958).

Petitioners have not addressed the stay criteria *per se*, and more importantly have not met the evidentiary burden that those criteria impose. A review of their petition and the replies of UTU and UP leads to the conclusion that the sought relief has not been shown to be warranted. Accordingly, the motion for stay will be denied.

1. Likelihood of success on the merits. The standard for review of arbitration decisions is provided 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). Under Lace Curtain, we accord deference to arbitrators' decisions and will not review "issues of causation, calculation of benefits, or the resolution of factual questions" in the absence of egregious error. Review of arbitral decisions has been limited to "recurring or otherwise significant

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<sup>1</sup> See 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, Finance Docket No. 32760, Decision No. 44 (STB served Aug. 12, 1996).

<sup>2</sup> The UP-SP merger was subject to the employee protection conditions in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

issues of general importance regarding the interpretation of our labor conditions." We generally do not overturn an arbitral award, unless it is shown that the award is irrational or fails to draw its essence from the imposed labor conditions or it is outside the scope of authority granted by the conditions. Id. at 736.

Petitioners challenge the arbitrator's factual determinations. They deny that the proposed implementing agreement represents a fair and equitable method of blending the rights of the RI trainmen with those of other affected employees. In addition, petitioners seek to set aside the arbitrator's finding that the transfer of employees from Pratt to Herington will not require them to report for work beyond a reasonable driving distance from their present locations.

Typically, the Board defers to an arbitrator's determination regarding the manner of integrating seniority. Moreover, the arbitrator relied upon the prior award regarding similar issues arising out of the creation of the Salt Lake City and Denver Hubs. See 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, STB Finance Docket No. 32760 (Sub-No. 22) (STB served June 26, 1997), which the Board declined to review with respect to the issues petitioners seek to raise here. These circumstances indicate that it is unlikely that the Board will entertain petitioners' appeal, let alone that petitioners will prevail on their appeal of the arbitrator's decision.

2. Whether the petitioners will suffer irreparable harm in the absence of a stay. Petitioners assert that certain employees will be harmed because they will have to relocate or will be required to travel a substantial distance. While the Board recognizes that relocations can be inconvenient, and under some circumstances rise to the level of irreparable injury, that is not the case here. UTU, in its reply, accurately observed that any such inconvenience here clearly will be adequately remedied by monetary compensation under the New York Dock protective conditions. Moreover, the implementing agreement imposed by the arbitrator provides for the payment of relocation benefits to any employee who either volunteers or is forced to relocate to Herington. UP notes that, as early as November 1998, 28 employees volunteered to relocate from Pratt to Herington and that no employees have been forced to relocate. Given these protections and the circumstances present here, petitioners have not met their burden of showing that they will suffer irreparable harm absent a stay of the arbitrator's decision.

3. Whether a stay will substantially harm other interested parties. UTU asserts that, if a stay were granted, all the other affected employees, as well as UP, would be harmed. The union notes that petitioners are a small minority who seek to improve their own position at the expense of other employees and do not represent the best interests of all of the UTU's membership on each of the merged lines. Instead, UTU argues that petitioners seek to thwart implementation of a fair and rational integration of pre-existing seniority rosters.



In addition, UP states that it will not realize the cost savings associated with the coordination, if a stay is imposed. UP claims that it has incurred considerable expense to prepare to implement the coordination and is paying lodging costs for engineers who have relinquished their leases in Pratt in anticipation of relocating to Herington. In addition UP says that it is reprogramming computers and training employees and adjusting train schedules to coincide with the May 1 implementation. Thus, this standard also weighs in favor of denying the stay request.

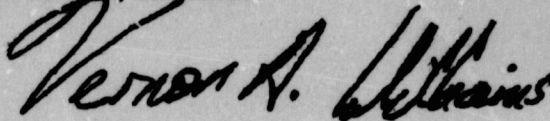
4. Whether a stay is in the public interest. Petitioners have not explained how issuance of a stay would further the public interest. On the other hand, the arbitrator's decision determined that implementation of the "hub and spoke" operations at Salina would have public transportation benefits by increasing efficiencies. The increased efficiencies arguably result in reduced rates and improved service to the public without undue disruption of employees. A stay would likely delay the public transportation benefits. On balance, this standard weighs in favor of denying the stay request as well.

For the reasons discussed above, petitioners' motion for stay will be denied.

It is ordered:

1. Petitioners' motion for stay is denied.
2. This decision is effective on its service date.

By the Board, Linda J. Morgan, Chairman.



Vernon A. Williams  
Secretary

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