STB FD 32760(SUB35) 12-14-99 C 30691

30691
SEC

SERVICE DATE - LATE RELEASE DECEMBER 14, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 32760 (Sub-No. 35)

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 14, 1999

By petition filed on December 6, 1999, Kathleen Sullivan requests an additional 30-day extension of time to file an appeal of an arbitration award issued on September 17, 1999.[1] Ms. Sullivan requests the additional extension because the person she was expecting to assist her has been hospitalized. On December 6, 1999, the Union Pacific Railroad Company filed a reply in opposition to Ms. Sullivan's request for an additional extension.

In view of the reported hospitalization and the current holiday season, the request for a 30-day extension, until January 5, 2000, will be granted. Because Ms. Sullivan will have had an extension of 90 days from the original appeal due date, no further extensions will be granted.

It is ordered:

1. The deadline for filing an appeal from Ms. Sullivan is extended until January 5, 2000.

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

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

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[1] By decision served on October 22, 1999, the Board granted an extension of 60 days, until December 6, 1999, to file the appeal.

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30593
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SERVICE DATE - OCTOBER 22, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 32760 (Sub-No. 35)

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: October 21, 1999

By petition filed by FAX on October 7, 1999, Ms. Kathleen Sullivan requests a 60-day extension of time to file an appeal of an arbitration award issued on September 17, 1999. Ms. Sullivan requests the extension to provide time for her to obtain assistance from an experienced individual whose aid was unavailable prior to the due date for filing appeals.

Under 49 CFR 1115.8, appeals were due by October 7, 1999. The requested extension will be granted in this instance to permit Ms. Sullivan to avail herself of the described assistance.

It is ordered:

1. The deadline for filing an appeal from Ms. Sullivan is extended until December 6, 1999.

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

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

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SERVICE DATE – FEBRUARY 5, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 32760 (Sub-No. 35)

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: January 28, 2002

We are denying an appeal from an arbitration panel's decision finding that Kathleen Sullivan (Claimant) had voluntarily accepted a severance package and waived any potential claim to labor protection benefits.

BACKGROUND

In our decision in Union Pacific/Southern Pacific Merger, 1 S.T.B. 233 (1996), we approved the acquisition and control of the Southern Pacific Transportation Company (SP) by the rail carriers controlled by the Union Pacific Corporation, including the Union Pacific Railroad Company (UP or the carrier), subject to the standard New York Dock conditions for the protection of affected employees.[1] Under those conditions, employees who are adversely affected by labor changes related to approved transactions are entitled to receive comprehensive displacement and dismissal benefits for up to 6 years. Under Article IV of the New York Dock conditions, adversely affected non-managerial employees who are not represented by a labor organization "shall be afforded substantially the same levels of protection as are afforded to members of labor organizations." If there is disagreement over an application of, or eligibility under, the New York Dock conditions, the dispute may be taken to arbitration pursuant to

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[1] 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).

Claimant signed the application for severance benefits on February 13, 1996, and an SP official executed the severance agreement on February 16, 1996.[6]

On August 28, 1997, Claimant requested compensation under the New York Dock conditions for her dismissal. After UP rejected her claim, she took the matter to arbitration. UP argued that she freely waived any right to possible benefits under the New York Dock conditions when she accepted the lump sum payment and signed the release. Claimant argued that the agreement was invalid because her consent to the waiver was induced by misrepresentation, lack of knowledge of her rights, and economic distress. In reply, UP denied misrepresentation. It also maintained that Claimant had ample time to weigh her options, including the opportunity to obtain counsel, and, in light of the fact she had previously received employee protective benefits, she knew what was involved in waiving any claim to benefits. UP also responded that Claimant would have been ineligible for benefits under the New York Dock conditions, even if she had not accepted the severance package, for two reasons: first, because her discharge was not caused by the merger; and second, because she was a managerial employee. Claimant maintained that she was not a managerial employee and that the UP/SP merger was in fact the cause of her discharge.

In an award issued on September 17, 1999, by neutral member John B. LaRocco (the Award), the arbitration panel denied Claimant's request for benefits under the New York Dock conditions. The panel rejected Claimant's argument that the waiver was invalid, finding that (1) Claimant had not shown that UP had "intentionally misrepresented a material fact" to induce her to sign the release and (2) "the evidence does not show that Claimant justifiedly relied on the representations made by UP officials." Award, at p. 19. The panel did not determine whether Claimant would have otherwise been eligible for New York Dock benefits because the panel concluded that Claimant had voluntarily waived her rights to any such benefits when she accepted the severance package.

On January 5, 2000, Claimant filed an appeal of the LaRocco Award. UP filed a reply in opposition to the appeal on January 24, 2000.

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[5](...continued)

> In consideration of the separation allowance that I will receive, ... I release and discharge [SP] from any and all [claims] ... arising from my ... separation from employment ....

[6] Claimant's evidence on appeal indicates that she initially (but unsuccessfully) attempted to add a proviso to the agreement that would have specified that she accepted the settlement "provided that my severance package is no less than it would have been had it been calculated using the formula applicable to other similar Management personnel that lose their positions during the first year after the merger with Union Pacific becomes effective."

agreement waiver, and found that Claimant had failed to show that carrier officials had intentionally misled her when they discussed the issue of her eligibility with her. As the panel noted, SP officials did not unequivocally state that Claimant would not be eligible for benefits.[10] Rather, they expressed their opinion, based on their knowledge of her managerial responsibilities as well as SP's previous downsizing efforts, that she was probably not entitled to labor protection as a matter of right. Finally, the panel noted that Ms. Sullivan was encouraged to seek legal advice, and she was given ample time to do so and to consider her course of action.

Claimant acknowledges that she was afforded more than 2 months to decide whether to sign the agreement and that she consulted with several attorneys during that time.[11] The panel reasonably found that Claimant, after receiving advice from attorneys, made a calculated decision to sign the waiver and to collect the severance payment rather than to bear the risks of litigation. Thus, the panel's conclusion that the carrier did not commit fraud or unduly pressure Ms. Sullivan to waive her potential employee protection clearly did not constitute egregious error, if it was error at all.

Furthermore, contrary to Ms. Sullivan's arguments, it was entirely reasonable for the panel to suggest that her prior experience in receiving New York Dock benefits should have put her on notice that these benefits might be available to her again and that she should refrain from signing a severance agreement without first weighing all her options.[12] Indeed, Claimant's entire case is premised on allegedly fraudulent statements by SP officials that were made in response to inquiries from her about her eligibility for New York Dock benefits.

Finally, it was not incumbent upon the panel, as Ms. Sullivan suggests, to determine whether she would have been eligible for benefits absent the waiver. The panel correctly

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[10] According to petitioner's own pleading, SP's Vice President-Human Resources, in response to Claimant's enquiry about possible New York Dock benefits, had told her that "as far as she knew [Sullivan] was not covered." (Emphasis added). Petition, at page 6.

[11] Claimant specifies in her submission to the Board that she "contacted [four] qualified labor attorneys" before signing her severance. According to Claimant, at least one of these attorneys was familiar with proceedings involving New York Dock matters.

[12] As the panel stated (Award, at 19-20):

> Claimant had experience with New York Dock protective conditions. If, as she asserts, she was performing exactly the sort of clerical duties that she had performed on the former Western Pacific, Claimant should have known that she might be covered by New York Dock Conditions and thus, she should have refrained from signing the release.

a binding agreement, which she voluntarily entered into, and the panel reasonably found that Claimant knowingly did so in order to avoid the risk of litigation and to ensure that she receive some level of compensation. She was offered a settlement option by the carrier, and chose to accept it rather than pursue a questionable claim for potentially more advantageous labor protection conditions. We also find reasonable the panel's conclusion that, under these circumstances, no useful purpose would be served by determining whether Ms. Sullivan would or would not have been entitled to New York Dock benefits absent the settlement agreement. She voluntarily gave up whatever protections, if any, may otherwise have been available to her.

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

It is ordered:

1. The appeal is denied.

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

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams
Secretary

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