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SERVICE DATE - OCTOBER 10, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 32760 (Sub-No. 40)[1]

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. 41)

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 8, 2003

The Brotherhood of Locomotive Engineers (BLE)[2] has appealed two arbitration awards entered on May 19, 2003, by neutral and sole member John B. LaRocco. The awards denied claims for relocation benefits that had been sought by M. O. Coats and C. W. Kerr (Claimants), who are employed as engineers by Union Pacific Railroad Company (UP).[3] UP filed replies on July 2, 2003.[4] The Board will not review the awards.

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[1] These proceedings are not embraced. A single decision is being issued for administrative convenience.

[2] Union Pacific Railroad–Central Region.

[3] Case No. 1, Award No. 1 addressed the claims of claimant Coats; Case No. 2, Award No. 2 addressed the claims of claimant Kerr.

[4] In its reply, UP asserts that BLE's appeals were not timely filed. Under 49 CFR

(continued...)

BACKGROUND

In 1996, the Board approved the common control and merger of the rail carriers controlled by the Southern Pacific Rail Corporation and the rail carriers controlled by the Union Pacific Corporation, including UP,[5] subject to the standard New York Dock conditions for the protection of employees[6] and various other conditions. Subsequent to the transaction, UP and BLE entered into the Kansas City Hub Implementing Agreement (the Agreement), which created a hub at Kansas City, MO.[7]

The Agreement, at Article VII(B), provided that engineers who relocated were entitled to elect either the relocation benefits in New York Dock or "in lieu of" benefits consisting of a $20,000 cash payment, if the employee is a homeowner, and an additional $10,000 allowance, if the employee has sold a home at the location from which he was relocated. The Agreement required the employee to provide proof of his relocation and sale of his home. Also the employee was obligated to remain in the new location for 2 years, seniority permitting.

Attachment D to the Agreement lists individual engineers who resided and had their home terminal at Jefferson City, MO. Side Letter No. 7 and other provisions of the Agreement enable individual engineers listed in Attachment D to relocate voluntarily to Kansas City and collect the "in lieu of" benefits in Article VII(B). The record here indicates that Claimant Coats and Claimant Kerr are listed in Attachment D as engineers whose residence and home terminal were in Jefferson City.

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[4](...continued)
1115.8, an appeal of an arbitration decision must be filed within 20 days after the arbitration decision is issued. BLE's appeals were filed on June 10, which was one day late. BLE responded that its filings were timely under 49 CFR 1104.6, which provides: "Other express mail, received by the private express mail carrier at least one day prior to the due date, also will be accepted as timely filed." BLE submitted copies of documents showing that its filings were picked up by a private express mail carrier on June 6, 2003, and delivered to the Board on June 10, 2003. Thus, BLE's petitions are considered timely filed under the Board's procedures.

[5] 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).

[6] New York Dock Ry.–Control–Brooklyn Eastern Dist., 360 I.C.C. 60 (1979) (New York Dock), aff'd sub nom. New York Dock Ry. v. United States, 609 F.2d 83 (2d Cir. 1979).

[7] BLE and UP submitted copies of the Agreement with their respective pleadings.

Both Claimants submitted applications for "in lieu of" relocation allowances under Article VII(B), each asserting that he was relocating to Kansas City. Claimant Coats submitted his application on March 31, 2000, seeking the $20,000 allowance and the $10,000 additional allowance for sale of his home.[8] When he received his relocation benefits, Claimant Coats owned a house in New Bloomfield, MO, which is near Jefferson City. To support his claim, Claimant Coats submitted a copy of a six-month lease that was signed on April 5, 2000, for an apartment located in Independence, MO, near Kansas City. The lease term started on May 5, 2000. On April 17, 2000, UP paid Claimant Coats a net amount of $20,700 as a relocation benefit.

In a letter dated June 2, 2000, UP advised Claimant Coats that he was not entitled to the relocation allowance. UP stated that carrier records indicated that Claimant Coats did not relocate to Kansas City, but instead retained his primary residence in the Jefferson City area. UP indicated further that the relocation allowance was not intended to be paid to employees who did not fully relocate their residences to Kansas City. Claimant Coats was directed to repay the net relocation allowance of $20,700 that he had been previously paid.

Claimant Kerr submitted his application on December 30, 1999, seeking the $20,000 benefit. Apparently, Claimant Kerr owned a home in Jefferson City. To support his claim for the relocation allowance, Claimant Kerr submitted a copy of a six-month lease for an apartment in Kansas City. On February 11, 2000, UP paid Claimant Kerr a net amount of $13,134.80 as a relocation benefit.

In a letter dated June 2, 2000, UP advised Claimant Kerr that he was not entitled to the relocation allowance. UP stated that carrier records indicated that Claimant Kerr did not relocate to Kansas City, and that he had changed his address back to his Jefferson City home. UP advised Claimant Kerr that the relocation allowance was not intended to be paid to an employee who did not truly relocate his residence to the new work location. UP directed Claimant Kerr to repay the $13,134.80 relocation allowance paid previously.

The record indicates that UP and each Claimant continued to exchange correspondence but were unable to resolve the disputes. The disputes were then submitted to arbitration.

Arbitration. The awards, which were issued on May 19, 2003, determined that Claimant Coats and Claimant Kerr did not qualify for "in lieu of" relocation benefits, because they had not in fact relocated to Kansas City.

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[8] Apparently, Claimant Coats sold his home on or about August 14, 1998, approximately a year and a half prior to the submission of his claim for relocation benefits. However, Side Letter No. 14 to the Agreement provides that an engineer is still eligible for relocation benefits as long as he sold his home after July 2, 1998, which was the date the Agreement was signed.

In making that determination, the arbitrator applied a standard established by arbitral precedent.[9] Under that standard, the employee must actually move from the old work location to the new work location and then manifest the present intent to maintain his or her principal and permanent place of residence at the new work location in order conclusively to effect a relocation from the employee's old work point to the employee's new work point.

After reviewing correspondence between UP and each Claimant and copies of UP's records that were submitted in each proceeding, the arbitrator found that the Claimants did not relocate to Kansas City. The arbitrator referred to specific letters in which each Claimant had admitted that he did not actually relocate to Kansas City. The arbitrator noted further that these employees were not obligated to sell their homes in Jefferson City and were not barred from owning multiple parcels of property in both Kansas City and Jefferson City. However, to be eligible for "in lieu of" benefits, the arbitrator stated, the employee must actually move to Kansas City and manifest the present intent to maintain a permanent residence in Kansas City, seniority permitting, for a period of 2 years. The arbitrator indicated that, while each Claimant has submitted evidence that he paid utility expenses, neither Claimant submitted evidence that he intended to establish a primary and permanent residence in Kansas City.

In the arbitration proceedings, BLE pointed out that there were four instances where UP had initially denied "in lieu of" relocation allowances submitted by other employees, but subsequently permitted those employees to retain the allowances. BLE asserted that the Claimants should be treated in the same manner as these other employees. The arbitrator rejected this argument, finding that Claimants were not subject to disparate treatment and that the cited instances were distinguishable. The arbitrator noted further that UP's failure to recoup the improperly paid relocation allowances in a few instances did not constitute a past practice that would enable the Claimants to retain monies that were improperly paid to them.

Appeal. In both appeals BLE contends that review of the arbitration decisions is warranted. BLE reiterates its assertion that each Claimant should be treated in the same manner as other UP employees, citing the same examples it submitted to the arbitrator, where UP initially denied relocation claims of employees, but subsequently either granted the benefits or did not seek repayment.

UP responds that the awards drew their essence from the Agreement and that an arbitrator's findings that Claimants were not entitled to receive relocation benefits were factual determinations that do not warrant review by the Board.

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[9] Union Pacific Railroad Company v. Allied Service Division, Transportation Communications Union (2000) (Suntrup, Arb.).

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) (Lace Curtain), aff'd sub nom. International Broth. of Elec. Workers v. ICC, 862 F.2d 330 (D.C. Cir. 1988). Under Lace Curtain, the Board accords 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." 3 I.C.C.2d. at 736. The Board generally does 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 that it is outside the scope of authority granted by the conditions.

Under the Lace Curtain standards, the Board finds no basis to review the arbitrator's decisions here. The arbitrator's decisions do not involve the general applicability of the New York Dock conditions. Rather, the arbitrator's decisions are founded on factual determinations involving whether the Claimants actually relocated so as to qualify for relocation benefits under the Agreement. The arbitrator considered and rejected BLE's assertion that Claimants were the victims of disparate treatment. As noted, the Board accords strong deference to an arbitrator's factual determinations, and BLE has not shown any egregious error warranting review of the arbitrator's decisions. For these reasons, the Board declines to review the awards.

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

It is ordered:

1. BLE's petitions to review the awards are denied.

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

By the Board, Chairman Nober.

Vernon A. Williams
Secretary

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Records: 4