

Voting Conference, July 27, 2005

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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. 44)

Good morning Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

In the case before you, the Brotherhood of Locomotive Engineers and Trainmen has appealed the April 14, 2005 decision of an arbitrator finding lack of jurisdiction under the Board's New York Dock employee protective conditions to review certain employee actions by the Union Pacific Railroad Company. The union has also asked the Board to stay the carrier's actions pending a ruling on the merits by an arbitration panel.

At issue in this arbitration review proceeding is whether the carrier's actions relating to the reassignment of certain employees at Dexter, MO, fall under New York Dock. The union claims that the carrier's actions are contrary to an October 18, 1999 Memorandum of Understanding that interprets Side Letter No. 11 to the Merger Implementing Agreement for the St. Louis Hub, which is one of the agreements implementing the 1996 UP-SP merger. The arbitrator found that the matter was not subject to New York Dock arbitration, because he concluded that Side Letter No. 11 lacks a clear connection to the merger implementing agreement.

The draft decision before you would vacate the arbitrator's decision. As argued by the union, the arbitrator's finding that Side Letter No. 11 lacks a clear connection to the merger is unexplained. The lack of explanation, coupled with the fact that Side Letter No. 11 specifically

references the St. Louis Hub Merger Implementing Agreement, is sufficient reason to review and vacate the arbitrator's decision. Contrary to what the carrier maintains, the missing explanation cannot be supplied after-the-fact here. The draft notes that the carrier's position is inconsistent with agency precedent holding that parties to agreements implementing mergers may pursue arbitration of issues arising over the interpretation and application of merger-related provisions of those agreements.

To the extent that the draft decision vacating the arbitrator's decision does not moot BLET's request for a stay or other preliminary relief, the draft decision would deny the stay request. The draft points out that, under Board precedent, preliminary relief is improper where a matter has not first been properly taken to arbitration.

The draft would, however, urge UP to minimize any negative effects on affected employees to the extent possible until the New York Dock processes have concluded.

This concludes our presentation. We would be happy to answer any of your questions.