

SURFACE TRANSPORTATION BOARD ANNOUNCES APPEALS COURT RULING PARTIALLY AFFIRMING BOARD IMPLEMENTATION OF EMPLOYEE PROTECTION FOR CLASS II RAIL LINE PURCHASES; NO COURT APPEALS FILED IN 2 OTHER MAJOR DECISIONS AFFECTING RAIL LABOR

Surface Transportation Board (Board) Chairman Linda Morgan announced today that the United States Court of Appeals for the District of Columbia Circuit has affirmed in part and reversed in part an important Board decision determining appropriate labor protection for imposition in railroad line purchases by Class II railroads [FOOTNOTE 1: Generally, a railroad with annual operating revenues between \$20 million and \$250 million.]. In that decision, the Board had interpreted a new statutory provision, 49 U.S.C. 10902, limiting labor protection in such cases to one year's severance pay. A divided court affirmed the Board's decision on two points and reversed it on another.

First, the majority rejected as inconsistent with new statutory language the Board's decision not to limit compensation to employees terminated by a selling carrier. The Board believed an expansive interpretation more appropriately reflected the group of affected employees that should be entitled to labor protection. The court determined that Congress plainly intended that only employees who actually lose their jobs, and not those who are placed in a worse position, are entitled to protective payments. Judge Wald, dissenting, would have affirmed the Board's reading as a reasonable interpretation of new statutory language by an expert agency charged with administering the pertinent statute.

The majority affirmed, however, the Board's decision that in calculating an offset to severance pay based upon employment with the new carrier, earnings attributable to hours worked in excess of those worked in the preceding year are not included, which more accurately reflects the harm from the transaction on the severed employees. Finally, the court unanimously determined that the Board, consistent with its longstanding approach to labor protective conditions, has the authority under circuit precedent to commit disputes about such protective conditions to arbitration, which the Board will review on a limited basis under the deferential *Lace Curtain* standard of review.

The court issued its decision in *Association of American Railroads and Wisconsin Central Ltd. v. STB*, Nos. 97-1384 and 97-1397, affirming *Wisconsin Central Ltd.--Acquisition Exemption--Lines of Union Pacific R.R. Co.*, Finance Docket No. 33116 (STB Nov. 15, 1996). This appeals court ruling follows the recent affirmation on appeal of another rail labor decision by the Board providing for a 60-day notice period in connection with smaller railroad line acquisitions.

In other labor-related developments, Chairman Morgan noted that the 60-day period for appealing two other important decisions of the Board has now passed, indicating that those decisions involving Board administration of labor conditions will not be appealed. Those decisions were issued on September 25, 1998, in *CSX Corporation--Control--Chessie System, Inc. and Seaboard Coast Line Industries, Inc. (Arbitration Review)*, Finance Docket No. 28905 (Sub-No. 22) [FOOTNOTE 2: That decision also embraced *Norfolk Southern Corporation--Control--Norfolk and Western Railway Company and Southern Railway Company (Arbitration Review)*, Finance Docket No. 29430 (Sub-No. 20).], popularly known as the *Carmen* proceeding, and in *Delaware and Hudson Railway Co.--Lease and Trackage Rights--Springfield Terminal Railway Company*, Finance Docket No. 30965 (Sub-Nos. 1 and 2).

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