

**SURFACE TRANSPORTATION BOARD PARTIALLY GRANTS UTU APPEAL TO
ARBITRATOR'S DECISION RE INVOLUNTARY CHOICE OF HEALTH BENEFIT PLANS
UNDER UP-SP MERGER IMPLEMENTATION**

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TO ARBITRATOR'S DECISION RE INVOLUNTARY CHOICE OF
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Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has concluded that an arbitrator exceeded his authority in requiring certain railroad employees to change health plans--instead of preserving their right to continue to be covered under a pre-existing plan--under agreements implementing the Board's 1996 decision granting the merger of the former "Union Pacific" (UP) and "Southern Pacific" (SP) railroad systems into the Union Pacific Railroad Company (UPRC) In the case entitled *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, issued to the public on August 12, 1996..

The Board's decision partially granted the United Transportation Union's (UTU) May 5, 1997, appeal of an arbitration decision issued by Arbitrator James E. Yost (Arbitrator) relative to four issues under the terms of certain agreements implementing the Union Pacific-Southern Pacific merger. Under its deferential standard for reviewing arbitration awards, the Board agreed to review the health benefits issue, but declined to review three other issues.

The Board imposed New York Dock--Referring to employee-protective conditions established in the case entitled *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 (2nd Cir. 1979). employee-protective conditions upon its granting of the merger. Under New York Dock, changes affecting employees in Board-approved railroad transactions are brought about through implementing agreements negotiated before the changes occur. If labor and management cannot agree on such changes, issues of disagreement are resolved by arbitration, with possible appeal to the Board.

At issue in this dispute was the inability of the parties to reach an implementing agreement on labor changes covering two geographical areas referred to by UPRC as the "Salt Lake Hub" and the "Denver Hub." The dispute was taken to arbitration and the Arbitrator issued his decision on April 14, 1997. That decision adopted implementing arrangements proposed by UPRC, with some exceptions that have not been appealed. The Arbitrator found that the implementing provisions adopted in his decision were necessary to carry out the merger. On May 5, 1997, the UTU filed an appeal of the Arbitrator's decision.

In its appeal, the UTU took issue with the Arbitrator's decision relative to four issues involving (1) representation during future negotiations, (2) the propriety of merging seniority districts and forcing employees to switch districts, (3) the propriety of a specific agreement serving as the uniform collective bargaining agreement, and (4) whether the Arbitrator properly approved provisions in the implementing arrangements requiring employees to switch health care providers. The Board found the first issue to be moot, in light of its interpretation of the Arbitrator's April 14 decision, and found that the second and third issues are matters that historically have been decided by an arbitrator and that the agency, with the approval of the courts, have traditionally deferred to the arbitrator's resolution of such issues in the absence of egregious error.

The Board said that only the fourth, health-care issue satisfied the criteria for its review on appeal. The Board stated that employees' rights to membership in the pre-merger health plan must be preserved as a fringe benefit pertaining to hospitalization and medical care protected under New York Dock. The Board concluded that the Arbitrator exceeded his authority in imposing provisions requiring affected employees to change from their existing health plan.

The Board issued its decision in the case entitled *Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company--Control and Merger--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), on June 26, 1997.

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