

Surface Transportation Board Lets Stand Arbitrators' Rulings in Four Rail Labor Cases

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has recently issued four decisions in which it turned down petitions by railroad companies seeking to have the Board review and overturn arbitral awards favoring railroad employees. In doing so, the Board applied its "*Lace Curtain*" standard of review (named after the case that set the standard) under which the agency shows deference to the rulings of arbitrators who decide labor disputes arising under the Board's jurisdiction. The Board let the arbitrator's decision stand in each case.

The *Lace Curtain* standard of review provides that an arbitral award will be reviewed only if it raises recurring or otherwise significant issues of general importance regarding the interpretation of the Board's labor conditions. In applying that standard, the Board does not review issues of causation, the calculation of benefits, or the resolution of factual questions in the absence of egregious error. The four arbitration decisions--the "Fredenberger Award," the "Fletcher Award," the "Peterson Award," and the "Ver Ploeg Award"--each named after the neutral member of the arbitral panel that issued it--addressed claims by rail employees. In three of the cases, the employees claimed that they were entitled to benefits prescribed by the agency pursuant to the rail labor protective provision of the statute, 49 U.S.C. 11326. In one case, the Peterson Award, the employees had argued that they were entitled to benefits provided in a collective bargaining agreement, rather than those imposed by the Board's predecessor agency, the Interstate Commerce Commission.

The Board declined to review the Fredenberger Award involving the question of whether a railroad's decision to outsource the work of 310 management information specialists (specialists) was related to a rail merger. In refusing to review Arbitrator Fredenberger's holding that the outsourcing was driven by the merger and thus that the employees affected by the outsourcing were entitled to protective benefits in place for those employees affected by the merger, the Board noted that issues of causation are not set aside under the *Lace Curtain* standard unless an arbitrator commits egregious error. Likewise, the Board held that the arbitrator was not in error in finding that the specialists were not managerial employees (and thus were not excluded from qualifying for the benefits).

The Board also declined to review the Fletcher Award, involving the interpretation of an implementing agreement, and the Peterson Award, relying on a collective bargaining agreement. Neither decision involved recurring or otherwise significant issues, presented an issue of general importance, nor exhibited egregious error. The Fletcher Award relied on a negotiated implementing agreement in determining that an employee is entitled to a displacement allowance for those months when the employee's actual earnings, after a transfer because of a Board-approved transaction, fall below the employee's average monthly compensation for the 12-month period immediately preceding the date of the transfer. The Peterson Award addressed the issue of whether the reassignment of employees was the result of a Board-approved transaction or could have been effected regardless of the transaction and found that the changes at issue were interdivisional changes of an existing railroad, and hence were covered by a collective bargaining agreement that had been in place for several years.

The Board upheld Arbitrator Ver Ploeg's Award holding that an individual rail employee's claim had been timely filed. The arbitrator interpreted a letter sent by the employee, within the time specified for filing claims, as constituting a request for benefits. This finding "mooted" (rendered irrelevant) a claim by the railroad that a two-year statute of limitations applied to such claims and barred this one. The Board also refused to set aside the arbitrator's finding that the employee's delay in prosecuting the claim after it was filed did not prejudice the railroad's ability to defend itself.

The Fredenberger Award was challenged in the case entitled *Rio Grande Industries, SPTC Holding, Inc. and the Denver and Rio Grande Western Railroad Company--Control--Southern Pacific Transportation Company (Arbitration Review)*, STB Finance Docket No. 32000 (Sub- No. 12), issued to the public on September 19, 2002. The Union Pacific Railroad appealed the arbitrator's award in favor of the specialists personnel. The Board's decision on the Fletcher Award was

issued in *USX Corporation--Control Exemption--Transtar, Inc. (Arbitration Review)*, STB Finance Docket No. 33942 (Sub-No. 1), issued September 24, 2002. Tracks, Traffic and Management Services, Inc. (TTMS) appealed the Fletcher Award in favor of the Transportation Communications International Union (TCU). The affected employees had been transferred to TTMS from the Bessemer and Lake Erie Railroad (BLE) pursuant to the acquisition of BLE's parent, Transtar Inc., by USX Corporation.

Both the Peterson Award and the Ver Ploeg Award were appealed to the Board by The Burlington Northern and Santa Fe Railway Company (BNSF) in *Burlington Northern Inc. and Burlington Northern Railroad Company--Control and Merger--Santa Fe Pacific Corporation and The Atchison, Topeka and Santa Fe Railway Company (Arbitration Review)*, STB Finance Docket No. 32549 (Sub-No. 23), issued September 25, 2002, and *The Burlington Northern and Santa Fe Railway Company--Petition for Review of Arbitration Award*, STB Finance Docket No. 32549 (Sub-No. 24), issued September 25, 2002, respectively.

A printed copy of each decision is available for a fee by contacting **D~ 2 D~ Legal Copy Service, Suite 405, 1925 K Street, N.W., Washington, DC 20006, telephone (202) 293-7776**, or via da2dalegal@earthlink.net. The decision also is available for viewing and downloading via the Board's website at <http://www.stb.dot.gov>.

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