

SURFACE TRANSPORTATION BOARD DECLINES REVIEW OF ARBITRATOR'S AWARDS CONCERNING "CANADIAN PACIFIC'S" TRANSFER OF "DELAWARE & HUDSON" TRAIN DISPATCHING POSITIONS; HOLDS CARRIERS TO SAFETY REPRESENTATIONS

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that, applying the limited standard for review of arbitrators' decisions, and in accordance with the Board's policy of promoting negotiation and arbitration in labor matters, the Board has declined to review an arbitrator's October 1997 and May 1998 decisions to approve the transfer by the Canadian Pacific Railway Company (CP) of five Delaware & Hudson Railway Company (D&H) train dispatch positions from Milwaukee, Wisconsin, to Montreal, Quebec, Canada, and to impose an implementing agreement to bring about the transfer.

At issue in this matter was CP's proposal to transfer the dispatch positions as part of its plan to integrate D&H and CP into a single system. The transfer was one of a series of transactions begun in 1990 with the former Interstate Commerce Commission's (ICC) approval of CP's acquisition of the rail operating assets of formerly bankrupt D&H, subject to standard *New York Dock* labor protective conditions. The matter was decided by an arbitrator according to those conditions. The American Train Dispatchers Department of the International Brotherhood of Locomotive Engineers (Dispatchers) sought Board review of the arbitrator's decisions, arguing that the arbitrator lacked jurisdiction over the transfer and had failed to give adequate consideration to safety concerns. In June 1998, Chairman Morgan stayed the effectiveness of the arbitral awards pending Board consideration of the petitions for review.

The Dispatchers sought review based on the argument that the arbitrator had erroneously concluded that the dispatch position transfers fell within the scope and authority of the ICC's 1990 decision, and that removal of train dispatching from the authority of United States federal regulatory agencies, including the Federal Railroad Administration (FRA), raised safety questions.

Board review of an arbitrator's decision is limited to "recurring or otherwise significant issues of general importance regarding the interpretation of its labor protective conditions." In this case, the Board found that the Dispatchers had not established the existence of such issues and, consistent with Board policy in those instances, declined to review the arbitrator's decisions. The Board stated that, though it could set aside an arbitrator's egregiously erroneous decision on factual issues, it found that the Dispatchers had not shown that the arbitrator's factual determination regarding the relationship between the proposed changes in dispatching and the transaction approved by the ICC constitutes egregious error. Further, based on established court precedent, the Board found no merit in the Dispatchers argument that an event--the transfer of dispatching positions--could not be considered "reasonably related" to an approved transaction unless it specifically was mentioned in the decision by the agency (here, the ICC) granting authority.

On the issue of safety, the Board found that the record demonstrates that the Dispatchers' concerns in this area have been adequately addressed. The FRA, the agency with primary responsibility over railroad safety enforcement, had been made aware of CP's position transfer proposal and had been in contact with CP about it. Moreover, the Board stated that CP and D&H had submitted into the public record in this case a copy of a substantial filing made with the FRA detailing safety-compliance plans, and that CP and D&H have undertaken to comply with the highest Canadian and U.S. regulatory safety standards. The Board stated that it would hold the carriers to their representations in this regard.

The Board issued its decision in *Canadian Pacific Limited, et al.--Purchase and Trackage Rights--Delaware & Hudson Railway Company (Arbitration Review)*, STB Finance Docket No. 31700 (Sub-No. 13), on September 18, 1998.

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