

SURFACE TRANSPORTATION BOARD HOLDS THAT SCOPE OF ARBITRATORS' AUTHORITY TO MODIFY COLLECTIVE BARGAINING AGREEMENTS TO IMPLEMENT APPROVED CONSOLIDATIONS IS LIMITED

Surface Transportation Board (Board) Chairman Linda J. Morgan today announced that the Board has answered the question left open by the Supreme Court in the Court's decision affirming the right of arbitrators to modify collective bargaining agreements (CBAs) as necessary to permit implementation of Board-approved transactions. In its decision issued today, the Board held that such authority is limited to the authority exercised by arbitrators giving effect to the Washington Job Protection Agreement of 1936 (WJPA) and Interstate Commerce Commission (ICC) labor conditions derived from that agreement during the period 1940-1980. In reaching its decision, the Board employed the reasons and standards initially adopted by the ICC in the decision commonly known as *Carmen II*, as modified to reflect certain developments in the law following the issuance of that decision.

As explained by the Board in its decision, there are four critical limitations upon the CBA modifications that can be effected by arbitrators under Article I, section 4 of the *New York Dock* conditions. First, the modification must be of the kind that was effected by arbitrators during the period 1940-1980. Second, the transaction sought to be implemented must be an approved transaction or sufficiently related to an approved transaction. Third, the modification must be necessary to the implementation of the approved transaction, i.e., there must be transportation benefits from the proposed transaction such as enhanced efficiency, greater safety, or some other gain independent of CBA modification, as more fully discussed in the Board's decision issued today in *Delaware and Hudson Railway Co.--Lease and Trackage Rights--Springfield Terminal Company*, Finance Docket No. 30965 (Sub-Nos. 1 and 2). And, fourth, the modification cannot invade the "rights, privileges and benefits" of employees which are absolutely protected by Article I, section 2 of *New York Dock*.

The Board's decision resolves two longstanding disputes involving employee rights in agency-approved rail consolidations. In resolving these disputes, the Board rejected the position of the railroads that the *Carmen II* decision should be treated as a nullity. The Board also concluded that it was unnecessary and would be inappropriate to attempt to decide in the abstract what constraints there are on the modification of CBAs under the immunity provision, currently at 49 U.S.C. 11321(a) [FOOTNOTE 1: That provision immunizes a rail carrier from all other laws, including obligations imposed by a CBA, as necessary to carry out an approved transaction.], in connection with implementing Board-approved transactions not subject to the *New York Dock* labor conditions.

The Board's decision was issued in *CSX Corporation--Control--Chessie System, Inc. and Seaboard Coast Line Industries, Inc. (Arbitration Review)*, Finance Docket No. 28905 (Sub-No. 22), and *Norfolk Southern Corporation--Control--Norfolk and Western Railway Company and Southern Railway Company (Arbitration Review)*, Finance Docket No. 29430 (Sub-No. 20).

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