

**COURT OF APPEALS REJECTS EFFORT OF SURFACE TRANSPORTATION BOARD TO BLOCK TRANSFER OF TRAIN
DISPATCHING FUNCTION TO MONTREAL**

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that, in a decision issued on December 10, 1999, the United States Court of Appeals for the District of Columbia Circuit vacated a Board decision blocking Canadian Pacific Railway Company (CP) from transferring train dispatching functions performed by employees of the American Train Dispatchers Department of the International Brotherhood of Locomotive Engineers to Montreal, Canada.

When the Board approves a railroad consolidation application, the law requires it to take certain steps to protect the interests of affected rail employees. One of the conditions the Board typically imposes in consolidation proceedings requires a railroad to reach an implementing agreement with employees before carrying out an operating change that may result in the dismissal or transfer of employees. If the railroad and employees are unable to reach agreement, they must go to arbitration, as a result of which an arbitrator may impose an agreement. Arbitrators' decisions may be challenged before the Board, but only on very narrow grounds.

This case involved CP's acquisition of the assets of the bankrupt Delaware and Hudson Railway Company (D&H). As part of its plan to integrate the operations of the two carriers, CP decided to move D&H's train dispatching functions from Milwaukee, Wisconsin, to Montreal. The union representing the affected employees did not agree to the move, so the matter was sent to arbitration. The arbitrator imposed an agreement that permitted the transfer, and the union appealed to the Board.

Just before the transfer was to take place, the union submitted to the Board letters from officials of the Federal Railroad Administration (FRA) at the Department of Transportation (DOT) expressing concerns about the safety implications of moving the dispatching function to Canada. The FRA letters noted, among other things, that Canadian "hours of service" (hours-on-the-job) laws are different from those in the United States, and that workers in Canada are not subject to random drug testing. In light of the safety concerns of the union and the FRA, the Board blocked the transfer.

The court rejected the Board's action, finding that there was no lawful basis in the context of review of an arbitral decision for blocking the transfer of the dispatching function. Although the Board is organizationally housed in the DOT, the court pointed out that it is a decisionally independent body not subject to the control or will of the Executive Branch. Therefore, notwithstanding the position of the FRA (and the union), the court vacated the Board's order blocking the transfer, effectively mooting any further action by the Board in this matter.

The Board's decision was issued on December 4, 1998, in *Canadian Pacific Limited, Et Al.--Purchase and Trackage Rights--Delaware & Hudson Railway Company (Arbitration Review)*, Finance Docket No. 31700 (Sub-No. 13). The court's decision was issued December 10, 1999, in *Canadian Pacific Railway v. Surface Transportation Board*, No. 98-1600.

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