

SURFACE TRANSPORTATION BOARD IN APPEAL OF ARBITRATOR'S DECISION SEEKS PUBLIC COMMENT ON LABOR ISSUE REGARDING MOVEMENT OF WORK AND RIGHT TO COMPENSATION FOLLOWING RAIL MERGERS

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board is requesting public comment on an important labor issue raised in an appeal of an arbitrator's ruling made to the Board by the Transportation Communications International Union (TCU). The appeal involves work moved from one location to another following a railroad merger. TCU asked the Board to determine whether employees whose work is moved may receive protective benefits in the form of compensation for the difference in their pay if they decline to follow their work and instead exercise their rights, under pre-merger collective-bargaining agreements, to take lower-paying jobs at their existing work locations.

The case involves the rights of 10 employees affected by the merger that created the Norfolk Southern Railway Company. TCU is appealing the arbitrator's decision that the employees were not displaced employees eligible for protective benefits. The question presented by the TCU appeal "goes to the heart" of applicable protective conditions--the bargain of allowing railroads to implement approved consolidation transactions while providing a level of protection to adversely affected employees. Thus, the Board has decided to hear the TCU appeal.

To resolve this issue, the Board will have to interpret the scope of the statutorily mandated labor protection that is imposed in merger and consolidation proceedings. The Board's formula for implementing this protection is referred to as "New York Dock protection" because it was established in 1979 by the Board's predecessor agency, the Interstate Commerce Commission (ICC), in a consolidation proceeding involving the New York Dock Railway. The applicable protection has its basis in industry agreements between rail management and rail labor dating back to the Washington Job Protection Agreement of 1936, as well as in statutory and case law, and provides for pay protection and other benefits for employees who are adversely affected by railroad mergers that have been approved by the ICC or the Board. The resolution of this fundamental matter appears to have an impact reaching beyond the original parties to this proceeding. The Board therefore is seeking additional comments to supplement the record. Comments are due by 60 days from the date of publication in the *Federal Register*, and replies by the current parties[FOOTNOTE 1: By separate decision issued today in this proceeding, the Board granted a petition to intervene in this proceeding by the Brotherhood of Maintenance of Way Employees. The Board's decision also resolved other interlocutory issues (issues arising before a final decision) that have arisen as a result of TCU's appeal.] to this proceeding are due by 90 days from *Federal Register* publication.

The Board's decision was issued and published in the *Federal Register* today in STB Finance Docket No. 29430 (Sub-No. 21), *Norfolk Southern Corporation--Control--Norfolk and Western Railway Company and Southern Railway Company (Arbitration Review)*. The text of both decisions is available on the Board's website at www.stb.dot.gov.

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