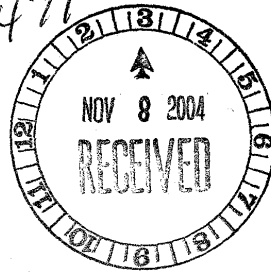


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Before the
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34335

KEOKUK JUNCTION RAILWAY COMPANY-FEEDER LINE ACQUISITION-
LINE OF TOLEDO PEORIA AND WESTERN RAILWAY CORPORATION BETWEEN
LA HARPE AND HOLLIS, IL

PETITION FOR STAY

ENTERED
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Public Record

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Due Date: November 8, 2004

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PETITION FOR STAY

Preliminary statement

Protestant, Joseph C. Szabo,^{1/} for and on behalf of United Transportation Union-Illinois Legislative Board (UTU-IL), submits this petition for stay of effective date, for the decision of the Surface Transportation Board (STB) in this proceeding, dated and served October 28, 2004.

United Transportation Union is the collective bargaining representative for most operating persons employed by Toledo, Peoria and Western Railway Corporation (TP&W).

The decision should be stayed pending disposition the UTU-IL's forthcoming petition for reconsideration of the aforesaid decision dated and served October 28, 2004.

^{1/} Illinois Legislative Director for United Transportation Union, with offices at 8 So. Michigan Avenue, Chicago, IL 60603.

REASONS FOR STAY

In addition to the reasons for stay, advanced by TP&W, the STB's October 28 decision should be stayed pending disposition of petitions for reconsideration, to prevent irreparable injury to employees. The decision failed to impose the appropriate employee protective conditions.

Statutory Employee Conditions. Under the feeder railroad development statute, 49 U.S.C. 10907, the STB is required to impose job protection for TP&W employees. Keokuk Junction Railway Company (KJRY), to the maximum practicable, is to use TP&W employees who would normally have performed work on the TP&W line.

(e) The Board shall require, to the maximum extent practicable, the use of the employees who would normally have performed work in connection with a railroad line subject to sale under this section.

The Decision's Employee Conditions. The STB's October 28 decision imposes an employment requirement upon the acquiring carrier, KJRY, which is entirely at odds with the terms of the statute. The STB's employee condition imposed upon KJRY only becomes operative in the event KJRY needs to hire new employees to operate or maintain the line; and in the event such new employees are needed, only then must KJRY offer employment to TP&W employees, with such offer being restricted to TP&W employees who previously worked on the line, citing Cheney R. Co.-Feeder Line Acq., 5 I.C.C.2d 250, 275 (1989). (Decision 24):

In the event it must hire new employees to operate or maintain the Line, we will require that KJRY, consistent with the statute and its own assurances, offer employment on a priority basis to qualified TP&W employees who previously worked on the Line. KJRY will not be required, however, to continue

the rates of pay, rules, and working conditions that existed under TP&W. See, e.g., Cheney R. Co.-Feeder Line Acq., 5 I.C.C.2d 250, 275 (1989),

This petition for stay is directed primarily to that portion of the STB's decision dealing with employee protection.^{2/}

I. UTU-IL HAS A HIGH PROBABILITY OF SUCCESS ON ITS CLAIM FOR EMPLOYEE PROTECTION.

1. Background. The Feeder Railroad Development Program, enacted by §401 of Staggers Rail Act of 1980, as amended in 1983, provided two forms of employee protection. These were embraced in the former 49 U.S.C. 10910(e) and 10910(j). The provisions of §10910(e), are identical with the present §10907(e), and are set forth above, supra, 3.

The provisions of the former 10910(j), imposed the standard employee protective conditions of §11347^{3/} upon the selling carrier:

(j) In the case of any railroad line sold pursuant to this section, the Commission shall require the selling carrier to provide a fair arrangement at least as protective of the interests of employees as that established under section 11347 of this title.

These two sets of employee conditions, one imposed on the purchasing carrier, and the other on the selling carrier, were

2/ UTU-IL has reviewed the petition for stay, filed by TP&W on November 4, 2004. UTU-IL endorses that petition, and will not attempt to repeat the contentions advanced by TP&W. TP&W employees have been engaged in preparations for the new business, and are dismayed at the October 28 action of the Board which has served to abort this sorely needed (and deserved) TP&W traffic.

3/ The appropriate conditions were those imposed in New York Dock. See: Cheney R. Co.-Feeder Line Acq., 5 I.C.C.2d 250, 275 (1989); Indiana Hi-Rail Corp.-Feeder Line Acq., 366 I.C.C. 42, 50 (1981).

primarily for the benefit of persons employed by the selling carrier.^{4/}

There has been little discussion of employee conditions in feeder development cases by either the former ICC or the present STB. The interpretation of §10910(e) as directed to new hires by the acquiring carrier, from among those employees who formerly worked on the line, was made at the time employees of the selling carrier also enjoyed New York Dock protection under §10910(j).

Congress in abolishing the ICC at the end of 1995, reenacted §10910 as 49 U.S.C. 10907, but without the mandatory employee protection of §11347, now §11326. In short, former §10910(j), with the New York Dock conditions, was not carried forward in ICC Termination Act of 1995.^{5/}

2. Current Situation. The STB did not issue revised rules, and did not invite rulemaking, following the 1995 amendments to the feeder railroad development program, now 49 U.S.C. 10907,^{6/}

3. Success on Merits. The October 28, 2004 decision errs in allowing KJRY to serve the line without regard to TP&W employees,

^{4/} Or course, it is possible that employees of the acquiring carrier could be adversely affected by the feeder sale, by the selection of forces or assignment of employees, or otherwise.

^{5/} The House committee report would have terminated the feeder railroad development program. H.Rept. 104-311, ICC Termination Act of 1995, 129, 269-72 (Nov. 6, 1995); The Senate committee would have retained the program. S.Rept. 104-176, Interstate Commerce Commission Sunset Act of 1995, 35 (Nov. 21, 1995). The House subsequently passed the bill, adding the feeder provisions, but without the mandatory New York Dock employee protection. In conference, and enactment, the House provisions prevailed. H.Rept. 104-422 (Conf.), ICC Termination Act of 1995, 182 (Dec. 18, 1995).

^{6/} The STB did make some numerical changes to 49 CFR 1151, primarily to change the statutory reference from §10910 to §10907. See: Ex Parte No. 572 (Sub-No. 2), Revision of Miscellaneous Regulations, 15-16 (served Oct. 1, 1999).

so long as such KJRY personnel are not new employees; and the decision further errs in providing that only TP&W employees who previously worked the line are entitled to work on the line under KJRY management.^{7/}

The October 28 decision is based upon the ICC's ruling, 15 years ago, in Cheney. (Decision 24). However, Cheney was decided at the time TP&W employees were eligible for full New York Dock and §10910(e) protection. Now that only §10907(e) is applicable, it is a perverse reading of the statute to require that TP&W employees may only be used on the line in the event TP&W would otherwise be required to hire new employees, and that such TP&W personnel must have previously worked on the line. Moreover, we point out that organized labor never approved of Cheney.

The language of §10907(e) does not require that TP&W personnel be hired by KJRY. It is only requisite that TP&W employees be used on the line. Although a hired employee is one kind of use, other arrangements are possible. Further, there is no requirement that a TP&W employee previously have worked on the line. The fact of the matter is that TP&W has an agreement whereby UTU personnel will perform certain work on the line. These TP&W employees would normally have perform work on the line.

UTU-IL has a high probability of success on the merits.

^{7/} At this time, UTU-IL defers comment on the "rates of pay, rules, and working conditions" proviso of the decision. The phrase runs throughout the Railway Labor Act. 45 U.S.C. §151, et seq.

II. OTHER FACTORS WARRANT A STAY
OF THE OCTOBER 28, 2004 DECISION.

KJRY projects initial service at 3-4 days per week, with^{8/} frequency to rise to 6-7 times per week after 12 months. This would be a loss of work for TP&W employees. If the line transfer is permitted to take place, there is no known way under the existing collective bargaining agreement for TP&W employees to be made whole for the loss of work in the event TP&W and/or TP&W employees subsequently were to succeed in setting aside the STB's order. The adverse effect is magnified in light of the new business which is anticipated to flow to TP&W but for the STB's October 28 decision.

Other parties would not be harmed by a stay; and the public interest would be served by a stay.

CONCLUSION

The STB should stay the effective date for its October 28, 2004 decision, pending disposition of petitions for reconsideration.

Respectfully submitted,


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November 8, 2004

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^{8/} See: UTU-IL Opposition to Application, Verified Statement of David M. Wegman, at 2 (10/16/03).

Certificate of Service

I hereby certify I have served a copy of the foregoing upon
all parties of record by first class mail postage-prepaid.

Washington DC


Gordon P. MacDougall