

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760, SUB-FILE **43**



IN THE MATTER OF ARBITRATION BETWEEN UNION PACIFIC RAILROAD
COMPANY AND BROTHERHOOD OF LOCOMOTIVE ENGINEERS, NEW YORK DOCK
ARBITRATION, CASE NO. 03/074

(Arbitration Review)

ENTERED
Office of Proceedings

AUG - 2 2004

CARRIER'S MOTION FOR EXTENSION OF TIME
TO FILE APPEAL FROM ARBITRATION AWARD

Part of
Public Record

COMES NOW Union Pacific Railroad Company ("Carrier"), by and through counsel,
and requests that the Board permit the Carrier until August 31, 2004, to file its appeal from the
arbitration award of Arbitrator Ann S. Kenis in the above-referenced docket. The Carrier needs
this additional time due to the medical condition of the attorney originally retained to prosecute
this appeal.

FACTS

This matter arises out of a dispute between the Carrier and Brotherhood of Locomotive
Engineers ("BLE") regarding the Carrier's right to establish interdivisional service between
(among other locations) North Little Rock, Arkansas, and Memphis, Tennessee, under the 1986
BLE National Agreement, and the effect of the North Little Rock/Pine Bluff Hub Merger
Implementing Agreement ("Hub Merger Agreement") on that right. The dispute began when, on
May 16, 2003, in accordance with Article IX of the 1996 BLE National Agreement, the Carrier
served notice advising the BLE of its intent to establish this new interdivisional service. The

BLE objected, arguing that the Hub Merger Agreement, negotiated to implement the economies and efficiencies made possible, as well as the labor protections required, by the Board's approval of the merger between the Carrier and Southern Pacific in Union Pacific Corp. – Control and Merger – Southern Pacific Transportation Co., STB Finance Docket No. 32760 (served August 12, 1996), barred the Carrier from exercising its Article IX right to establish interdivisional service.

The parties were unable to resolve their differences and, on September 22, 2003, the BLE requested the National Mediation Board ("NMB") provide a selection list for the appointment of a New York Dock arbitrator to hear the dispute. Subsequently, the Carrier requested that the NMB appoint an Article IX arbitrator to establish the terms and conditions of the North Little Rock-Memphis interdivisional service. The NMB furnished a single selection list for an arbitrator to hear both the BLE's New York Dock dispute and Union Pacific's Article IX dispute. The parties selected Arbitrator Ann S. Kenis. A hearing on both disputes was held on February 12, 2004. Arbitrator Kenis issued a New York Dock Award and an Article IX Award. The New York Dock Award was dated as follows: "Dated this ____ day of March, 2004." The Article IX Award was dated March 12, 2004.

Upon receipt of Arbitrator Kenis' Awards, the Carrier requested an Executive Session. Arbitrator Kenis granted the Carrier's request and the Arbitration Committee met in Executive Session on April 19, 2004, to address the Carrier's objections to the Awards. On April 26, 2004, Arbitrator Kenis notified the parties that the Awards would "stand as issued." Union Pacific received its copy of Arbitrator Kenis' letter on April 29, 2004.

On May 4, 2004, the Carrier's Assistant Vice President-Labor Relations, R. D. Meredith, met with the Carrier's in-house attorney, Henry N. Carnaby, and the Carrier's retained labor law

counsel, Brenda J. Council. Mr. Meredith requested Ms. Council be assigned to handle the Carrier's appeal of the Kenis Awards. Mr. Carnaby authorized Ms. Council to handle the matter and Ms. Council accepted the assignment. Ms. Council said she would immediately seek an extension of time to appeal the Kenis New York Dock Award, and that she would then prepare, file, and prosecute that appeal.

This process is the standard process for assigning labor issues to outside counsel at Union Pacific. Labor Relations identifies a labor issue that requires legal assistance and requests the Law Department assign someone to handle the case. Mr. Carnaby then assigns the case to outside counsel. Because Ms. Council is in Omaha, she has handled the majority of the Carrier's Railway Labor Act and New York Dock legal cases for over a decade, both as an in-house and a retained outside counsel. Typically, Ms. Council would handle such cases with minimal contact with the Carrier given her longstanding relationship and prior employment with the Union Pacific. During this long relationship, Ms. Council has always provided excellent service. The Carrier therefore believed that its interests were fully protected in this matter following the meeting of May 4, 2004.

However, on or about July 19, 2004, a partner at the law firm with which Ms. Council was associated advised the Carrier for the first time that Ms. Council had failed to seek an extension from the Board to appeal the Kenis Award, and had failed to take any other action to pursue this appeal. Over the next week, the Carrier made numerous unsuccessful attempts to contact Ms. Council, including calling her home, her office and her cell phone. When the Carrier finally did speak to Ms. Council, it learned that she has been suffering from medical problems that have caused her to be unable to pursue this appeal.

Upon confirming that Ms. Council had not filed a motion to extend the time to file an appeal of the Kenis Award, or taken any other action to pursue the matter, the Carrier promptly retained the undersigned counsel, who prepared the present motion and who will represent the Carrier throughout this appeal.

ARGUMENT

Pursuant to 49 C.F.R. § 1115.8, appeals of final arbitration decisions under New York Dock “must be filed within 20 days of a final arbitration decision *unless a later date is authorized by the Board.*” (emphasis added). This regulation codified the Board’s decision in Norfolk & Western Ry. Co., et. al. – Merger, 5 I.C.C.2d 234, 237 (1989), in which the Board held “we find that petitions to review arbitration awards must be filed within 20 days of the final award. . . . However, we do note that extensions are available for good cause on request.” See Deadline for Requesting Commission Review of Arbitration Awards, Ex. Parte 55 (Sub-No. 75) (decided April 28, 1989). Under 49 C.F.R. § 1104.7, the Board is authorized to grant extensions of filing deadlines “for good cause.”

Consistent with these regulations, the Board has repeatedly permitted parties to file untimely appeals of arbitration awards upon a showing of good cause. In Union Pacific Corp. – Control and Merger – Southern Pacific Transportation Co., STB Finance Docket No. 32760, Sub. No. 35, for example, the Board, on two occasions, granted extensions for filing an appeal where the requests for the extensions were not filed until after the deadline to request extensions had passed. On October 21, 1999, the Board granted a request for a 60 day extension of time to file an appeal of an arbitration award, where the party wishing to appeal desired “assistance from an experienced individual whose aid was unavailable prior to the due date for filing appeals.” See Order attached as Exhibit A. A few months later, this same party asked for another 30 day

extension because "the person she was expecting to assist her has been hospitalized." The Board, in authorizing the extension, stated that, "in view of the reported hospitalization and the current holiday season, the request for a 30-day extension, until January 5, 2000, will be granted." See Order attached as Exhibit B.

In other instances, the Board has similarly permitted untimely appeals and filings where the requesting party has made a showing of good cause. See, e.g., Brotherhood of Maintenance of Way Employees v. Union Pacific R.R. Co., Finance Docket No. 30964 (Sub-No. 1) (March 21, 1991) (allowing untimely appeal of arbitration award by employee where he claimed he received award late and that union counsel advised him that he had 45 days to appeal); TBS Industries v. P.I.E. Nationwide, Inc., No. 40762 (April 14, 1992) (waiving requirements of § 1104.6 and accepting untimely filing); Display Unlimited, Inc. – Petition for Declaratory Order, Docket No. 40698 (April 17, 1992) (granting petition to waive default as to time and extend by 30 days the filing deadline where petitioner argued that heavy volume of cases in office prevented timely filing).

Here, the Carrier has met its burden of showing good cause for the granting of its proposed extension. Specifically, the Carrier failed to previously request an extension and failed to timely file an appeal of the Kenis Award because of the medical problems and resulting unavailability of its attorney. As soon as the Carrier became aware of Ms. Council's failure to timely request an extension to appeal the Kenis Award, the Carrier promptly retained the undersigned to request this extension.

Union Pacific should not suffer because of Ms. Council's medical condition. It relied upon Ms. Council to successfully progress this matter as she had so often done in the past. Mr. Carnaby, her Law Department supervisor, and Mr. Meredith, her Labor Relations client, had no

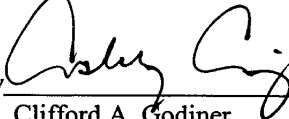
reason to believe anything was amiss with this appeal. It was only when Ms. Council's law firm notified Mr. Carnaby that no appeal or request for extension had been filed that Union Pacific became aware of what had happened. Union Pacific responded promptly upon learning of Ms. Council's medical condition.

Moreover, the BLE will not suffer any prejudice if this request is granted. This is not a case where the BLE relied upon the Kenis Award to take any action. To date, the only consequence of the Kenis Award is that Union Pacific has not been able to establish the interdivisional service it desires. The harm has fallen and will continue to fall on Union Pacific and its customers, not on the BLE.

WHEREFORE, and for good cause as shown, the Carrier respectfully request that the Surface Transportation Board enter an Order granting the Carrier until August 31, 2004, to file its appeal of the Kenis Award and for such other relief as is warranted.

Respectfully submitted,

THOMPSON COBURN LLP

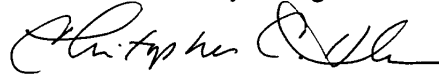
By 

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Attorneys for Carrier

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served upon Charles R. Rightnowar, General Chairman, Brotherhood of Locomotive Engineers, 320 Brooke Drive, Suite 115, Hazelwood, Missouri 63042, this 2nd day of August 2004.



30691
SEC

SERVICE DATE - LATE RELEASE DECEMBER 14, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 32760 (Sub-No. 35)

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY, AND
MISSOURI PACIFIC RAILROAD COMPANY
— CONTROL AND MERGER —

SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC TRANSPORTATION
COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP., AND
THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

(Arbitration Review)

R.D.M.

Decided: December 14, 1999

JAN 4 2000

By petition filed on December 6, 1999, Kathleen Sullivan requests an additional 30-day extension of time to file an appeal of an arbitration award issued on September 17, 1999.¹ Ms. Sullivan requests the additional extension because the person she was expecting to assist her has been hospitalized. On December 6, 1999, the Union Pacific Railroad Company filed a reply in opposition to Ms. Sullivan's request for an additional extension.

In view of the reported hospitalization and the current holiday season, the request for a 30-day extension, until January 5, 2000, will be granted. Because Ms. Sullivan will have had an extension of 90 days from the original appeal due date, no further extensions will be granted.

It is ordered:

1. The deadline for filing an appeal from Ms. Sullivan is extended until January 5, 2000.
2. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary



¹ By decision served on October 22, 1999, the Board granted an extension of 60 days, until December 6, 1999, to file the appeal.

30593
SEC

SERVICE DATE - OCTOBER 22, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 32760 (Sub-No. 35)

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY, AND
MISSOURI PACIFIC RAILROAD COMPANY

— CONTROL AND MERGER —

SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC TRANSPORTATION
COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, SPCSL CORP., AND
THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

(Arbitration Review)

Decided: October 21, 1999

By petition filed by FAX on October 7, 1999, Ms. Kathleen Sullivan requests a 60-day extension of time to file an appeal of an arbitration award issued on September 17, 1999. Ms. Sullivan requests the extension to provide time for her to obtain assistance from an experienced individual whose aid was unavailable prior to the due date for filing appeals.

Under 49 CFR 1115.8, appeals were due by October 7, 1999. The requested extension will be granted in this instance to permit Ms. Sullivan to avail herself of the described assistance.

It is ordered:

1. The deadline for filing an appeal from Ms. Sullivan is extended until December 6, 1999.
2. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

