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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760, SUB-FILE 42



IN THE MATTER OF ARBITRATION BETWEEN UNION PACIFIC RAILROAD
COMPANY AND JOHN E. GROTH, JR.,
NEW YORK DOCK ARBITRATION

(Arbitration Review)

CARRIER'S RESPONSE TO PETITIONER'S
MOTION TO STRIKE

On February 27, 2006, this Board issued its decision denying John E. Grother's ("Petitioner") petition to review the decision of Arbitrator Lynette Ross denying his claim for displacement benefits under New York Dock Ry. - Control - Brooklyn E. Dist., 360 I.C.C. 60, aff'd sub nom. New York Dock Ry. v. United States, 609 F.2d 83 (2nd Cir. 1979) ("New York Dock"). Petitioner has petitioned for reconsideration of the Board's decision, and Respondent Union Pacific Railroad Company ("UP") has filed its reply to that petition.

On April 14, 2006, Petitioner filed a Motion to Strike, seeking to replace the word "arbitrator" as used in UP's reply with the word "arbitration committee." Specifically, Petitioner argues that UP's Reply "deliberately reinforces the hoax of a single member arbitral decision." This is not the first time Petitioner has raised this issue by way of a Motion to Strike. Specifically, on April 28, 2005, Petitioner moved to strike portions of UP's Response to Petitioner's Appeal (filed April 8, 2005), including those portions that referenced the award as being issued by a single arbitrator. Petitioner's Motion to Strike, filed April 28, 2005, at 8. In its February 27, 2006, Decision, this Board denied that Motion to Strike noting that Petitioner had

failed to show how he would be prejudiced by the materials he sought to be stricken. Board's February 27, 2006, Decision, at 4.

Just as Petitioner's first Motion to Strike did not merit a substantive response, nor does this one. 49 C.F.R. § 1104.8 provides that the Board may order that any redundant, irrelevant, immaterial, impertinent, or scandalous matter be stricken from any document." UP's use of the term "arbitrator" as opposed to "arbitration committee" does not meet this criteria or otherwise prejudice Petitioner.

It is a simple fact that arbitrations under New York Dock are ultimately decided by a single, neutral arbitrator. While there is an arbitration "panel," that panel is comprised of: (1) the railroad's representative, who votes in favor of the railroad; (2) the employee's representative, who votes in favor of the employee; and (3) the neutral appointed by the parties, who hears and decides the dispute. When a party seeks review of a New York Dock arbitration award, it is, as a practical matter, seeking review of the neutral arbitrator's decision, and this Board reviews or declines review of the decision of that arbitrator. See, e.g., CSX Corp. – Control – Chessie System, Inc., 1989 WL 239430, Finance Docket No. 28905 (Sub-No. 23) (Arbitration Review) (ATDA seeking review of arbitration decision issued by "Neutral Member (arbitrator) of an arbitration panel" under New York Dock; decision of the "arbitrator" upheld).

For whatever reason, Petitioner has some issue with the fact that Arbitrator Ross was the one who actually made the findings and rendered the award in this case denying his claim for benefits. Whatever those issues may be, however, they are not grounds to strike any portion of UP's Reply to his Petition for Reconsideration. For these reasons, UP respectfully requests that Petitioner's Motion to Strike be denied.

Respectfully submitted,

THOMPSON COBURN LLP

By  _____

Clifford A. Godiner
Rodney A. Harrison
One US Bank Plaza
St. Louis, Missouri 63101
314-552-6000
FAX 314-552-7000

Attorneys for Carrier

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served, via United States mail, first class postage prepaid, this 26th day of April 2006 on:

Gordon P. MacDougall
1025 Connecticut Ave., N.W., Suite 410
Washington, D.C. 20036

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