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May 9, 2006
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Office of Proceedings

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Part of
Public Record



Vernon A. Williams
Secretary
Surface Transportation Board
Washington DC 20423

Re: F.D. No. 32760 (Sub-No. 42), 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).

Dear Mr. Williams:

This letter is on behalf of petitioner, John E. Grother, and is a request for leave to file a limited reply, and reply, to the response by Union Pacific Railroad Company (UP), filed April 26, 2006, in the entitled matter. This letter is directed to the second full paragraph on page 2 of UP's response.

The basis for this request, and rely, concerns the incorrect representation of the agency's decision contained in UP's response, although petitioner takes strong issue with the paragraph in its entirety. Ordinarily, a reply-to-reply, is impermissible. 49 CFR 1104.13(c); however, relief from the rule, 49 CFR 1117.1, is warranted so to protect the integrity of the agency decision.

To be sure, the ICC's decision in F.D. No. 28905 (Sub-No. 23), dated Sept. 15, 1989 (served Oct. 3), in its heading, states "arbitration decision rendered by the Neutral Member (arbitrator) of an arbitration panel established pursuant to Article I, section 4, of.... New York Dock." However, the ICC's heading language is incorrect. The arbitration and the arbitrator's decision were by a single-member Neutral Referee, and not by a panel. This is clear from an earlier decision in F.D. No. 28905 (Sub-No. 23), served March 30, 1989, and attached hereto. Cf. NYD, Art. I, §4.

It should be noted that F.D. No. 28905 (Sub-No. 23) was the subject of a further printed decision, and judicial review. CSX Corp.-Control-Chessie and Seaboard C.L.I., 8 I.C.C.2d 715 (1992); American Train Dispatchers Ass'n v. ICC, 26 F.3d 1157 (D.C. Cir. 1994).

Very truly yours,

Gordon P. MacDougall

Atty. for John E. Grother

cc: All counsel of record

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ED/1
SERVICE DATE

MAR 30 1989

INTERSTATE COMMERCE COMMISSION

DECISION

Finance Docket No. 28905 (Sub-No. 23)¹

CSX CORPORATION--CONTROL--CHESSIE SYSTEM, INC.
AND SEABOARD COAST LINE INDUSTRIES

Decided: March 27, 1989

On February 24, 1989, American Train Dispatchers Association (ATDA) filed a petition seeking review of an arbitration award of Neutral Referee Robert J. Ables dated November 11, 1988, and made final November 26, 1988. On March 16, 1989, CSX Transportation, Inc. (CSX), filed a motion to dismiss the petition. CSX also filed a reply to it.² On March 23, 1989, ADTA filed a reply to CSX's motion.

CSX states that in Norfolk & W. R. Co. and New York City, C. & St. L. R. Co. - Merger, 5 I.C.C.2d 234 (1989) (N&W) the Commission found as a general rule for the future that petitions to review arbitration awards must be filed within 20 days of the final award. CSX argues that the petition should be dismissed since the ADTA petition was tendered for filing on February 24, some 90 days after the arbitrator's award and 36 days after the January 19, 1989, service date of N&W, and ADTA has shown no good cause why its late-filed petition should be accepted.

I will deny the motion to dismiss. Until N&W was served, we had not established any deadline for filing appeals to arbitration decisions. Thus, it would have been impossible for ATDA to have complied with the 20-day deadline. It filed its appeal only 36 days after N&W was served. While a 20-day deadline from January 19th could be implicitly applied, N&W contained no such directive and, under that theory, ATDA's appeal would be only 16 days late. In these circumstances, granting the motion would not be equitable. See Finance Docket No. 28583 (Sub-No. 25), Burlington Northern, Inc. - Control and Merger - St. Louis-San Francisco Railway Company (not printed), served August 15, 1988.

This decision will not significantly affect either the quality of the human environment or energy conservation.

It is ordered:

1. CSX's motion to dismiss ADTA's petition for review of an arbitrator's award is denied.
2. This decision is effective on the date served.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee
Secretary

(SEAL)

¹ The petition to review that initiated this proceeding was filed bearing Finance Docket Nos. 30053, 31033 and 31106 while the reply bears Finance Docket Nos. 28905, 30053, 31033 and 31106. The petition has been renumbered as Finance Docket No. 28905 (Sub-No. 23).

² The merits of the matters contained in the ADTA petition and CSX reply will be the subject of a separate decision.