appropriate replacement windshield should that need arise.

The affected windshields also meet all performance requirements of FMVSS No. 205 and ANSI Z26.1. The stated purposes of FMVSS No. 205 are to reduce injuries resulting from impact to glazing surfaces, to ensure a necessary degree of transparency in motor vehicle windows for driver visibility, and to minimize the possibility of occupants being thrown through the vehicle windows in collisions. Because the affected windshields fully meet all of the applicable performance requirements, the absence of the AS1 mark has no effect upon the ability of the windshield glazing to satisfy these stated purposes and thus perform in the manner intended by FMVSS No. 205.

On February 11, 1999, and July 8, 1999, Ford mailed letters to appropriate state authorities identifying the missing marking and certifying that the windshields fully meet the marking and performance requirements of FMVSS No. 205 followed by letters to vehicle owners on March 5, 1999, and August 3, 1999.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of proof that the noncompliance it describes is inconsequential to motor vehicle safety. Accordingly, Ford's petition is granted, and it is exempted from providing notification and remedy of the noncompliance as required by 49 U.S.C. 30118 and 30120.

Issued on December 10, 1999.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 99–32464 Filed 12–14–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 29430 (Sub–No. 21)]

Norfolk Southern Corporation—Control—Norfolk and Western Railway Company and Southern Railway Company (Arbitration Review)

ACTION: Request for comments.

SUMMARY: The Transportation • Communications International Union (TCU) has filed with the Board an appeal of an arbitration panel's decision holding that the Norfolk Southern Railway Company (NSR) is not required to pay displacement allowances to claimant employees after (1) their work was transferred to a new location as a result of the railroad consolidation that created NSR and (2) they exercised their seniority rights to take lower paying jobs at their current locations rather than follow their jobs to the new location. We are requesting comments from the public to develop a more complete record on the fundamental issue raised here concerning displacement allowances under our labor protective conditions imposed in rail consolidation approvals.

DATES: Comments are due by February 14, 2000. By March 14, 2000, TCU, NSR, and intervener, Brotherhood of Maintenance of Way Employes, may file replies to the comments.

ADDRESSES: Send an original and 10 copies of comments referring to STB Finance Docket No. 29430 (Sub-No. 21) to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, send one copy of comments to the representatives of TCU and NSR and to intervener, Brotherhood of Maintenance of Way Employes:

Mitchell M. Kraus, Christopher Tully, Transportation • Communications International Union, 3 Research Place, Rockville, Maryland 20850

Jeffrey S. Berlin, Krista L. Edwards, Sidley & Austin, 1722 Eye Street, N.W., Washington, DC 20006

Donald F. Griffin, Brotherhood of Maintenance of Way Employes, Suite 460, 10 G Street, N.E., Washington, DC 20002

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION:

By this notice, we are requesting public comments on issues presented by the record on the appeal of an arbitration award issued by a panel chaired by neutral member William E. Fredenberger, Jr. (the Award).

Background

In Finance Docket No. 29430 (Sub-No. 1), *Norfolk Southern Corp.—Control—Norfolk & W. Ry. Co.,* 366 I.C.C. 173 (1982), our predecessor agency, the Interstate Commerce Commission (ICC), approved the railroad consolidation that resulted in the creation of NSR. This consolidation was approved subject to the standard labor protective conditions established in *New York Dock Ry.—Control—Brooklyn Eastern Dist.,* 366 I.C.C. 60, 84–90 (1979) (*New York Dock*), *aff'd, New York Dock Ry.* v. *United States,* 609 F.2d 83 (2d Cir. 1979). Under *New York Dock,* labor changes related to approved transactions are implemented by agreements negotiated before the changes occur. If the parties cannot agree on the nature or extent of the changes, the issues are resolved by arbitration, subject to appeal to the Board under our deferential *Lace Curtain* standard of review.[1] Once the scope of the necessary changes is determined by negotiation or arbitration, employees adversely affected by them are entitled to receive comprehensive displacement and dismissal benefits for up to 6 years.

As a recent initiative in continuing to carry out that consolidation, NSR developed a plan to coordinate and to centralize certain crew calling functions performed at various locations throughout the merged system into a Crew Management Center located in Atlanta, GA. On July 3, 1996, the carrier and TCU reached an agreement to implement this plan (the Implementing Agreement).[2] On May 13, 1997, NSR notified TCU of its intention to transfer work in accordance with the Implementing Agreement. Specifically, the carrier announced that crew calling work performed on the Tennessee Division at Knoxville, TN, would be transferred to the Atlanta Crew Management Center. Positions would be abolished at Knoxville and similar positions would be established in Atlanta. On July 21, 1997, the carrier announced a similar transfer of work from the Kentucky Division to the Atlanta Crew Management Center.

Claimants worked on the Tennessee and Kentucky Divisions before their positions on those divisions were abolished. Claimants were offered similar positions in Atlanta, carrying the same rate of pay. Acceptance would have required claimants to change their residences to Atlanta. Rather than move to Atlanta, the claimants exercised seniority under their collective bargaining agreement to obtain positions on the Tennessee and Kentucky Divisions that carried rates of pay that were less than the rates in Atlanta, but that did not require them to move.

Claimants subsequently requested displacement allowances under *New York Dock* in order to recoup the difference between (1) the salaries they received on those divisions for the year before their positions were abolished and (2) their reduced salaries on the

[1] Under 49 CFR 1115.8, the standard of review is provided in *Chicago & North Western Tptn. Co.—Abandonment,* 3 I.C.C.2d 729 (1987), *aff'd sub nom. IBEW* v. *ICC,* 826 F.2d 330 (D.C. Cir. 1988) (*Lace Curtain*).

[2] TCU submitted the Implementing Agreement in pages 8–15 of Exh. 9 of its submission to the arbitration panel.

Tennessee and Kentucky Divisions. The carrier denied claimants' requests, arguing that employees who accept lower paying jobs in their current locations rather than following their work to a new location, which would have paid them at the same level as they were previously compensated, are ineligible for displacement allowances under *New York Dock.* TCU then took the issue to arbitration under Article I, Section 11 of *New York Dock.*

The arbitration panel ruled that claimants were not entitled to benefits under *New York Dock.* The panel based its decision on two grounds: (1) that benefits were precluded by a footnote in a prior Board decision; [3] and (2) that claimants were not ''displaced'' employees under *New York Dock* because their displacement resulted from their refusal to follow their work rather than from the transaction that created NSR. [4] The employee member of the panel dissented from this ruling but did not issue a separate opinion.

TCU filed an appeal of the panel's Award. The Brotherhood of Maintenance of Way Employes (BMWE) filed a petition to intervene and tendered a separately filed brief in support of TCU's appeal.[5] NSR replied in opposition to TCU's appeal and BMWE's petition.

In a separate decision served contemporaneously with the publication of this notice, we granted BMWE's petition to intervene, denied a motion by NSR to reject part of BMWE's evidentiary submission, and denied BMWE's motion to disqualify Arbitrator Fredenberger.

[3] The panel referred to the first sentence of note 10 of our decision in *CSX Corporation—Control—Chessie System, Inc., and Seaboard Coast Line Industries, Inc.* (*Arbitration Review*), STB Finance Docket No. 28905 (Sub-No. 28) (STB served Sept. 3, 1997), where we stated: ''The ICC has in the past referred to the fundamental bargain underlying the Washington Job Protection Agreement of May 1936 (WJPA), upon which the *New York Dock Conditions* are based, as being that an employee must accept any comparable position for which he or she is qualified regardless of location in order to be entitled to a displacement allowance.''

[4] In particular, Article I, Section 1(b) of *New York Dock* provides the following definition: ''(b) 'Displaced employee' means an employee of the railroad who, as a result of a transaction is placed in a worse position with respect to his compensation and rules governing his working conditions.''

[5] BMWE argued that we must vacate the Award for the reason that neutral member William E. Fredenberger, Jr., was convicted of tax evasion in federal court in April 1999. BMWE also argues that the TCU claimants are lawfully entitled to benefits under *New York Dock* as displaced employees and should receive them as a matter of sound policy.

Comments and Information Requested

Overview

Under our *Lace Curtain* standard of review, we do not review issues of causation, the calculation of benefits, or the resolution of other factual questions in the absence of egregious error. As opposed to those types of issues, TCU presents a fundamental question of interpretation of our *New York Dock* labor protective conditions. Specifically, TCU argues that the Award fails to draw its essence from the *New York Dock* labor protection conditions by denying claimants a displacement allowance for exercising their seniority to take lower paying jobs in their current locations to avoid having to move. This question goes to the heart of the *New York Dock* bargain of allowing railroads to implement approved consolidation transactions while providing a level of protection to adversely affected employees. Accordingly, we will hear the appeal brought by TCU.

This appeal raises a major issue concerning the interpretation of our *New York Dock* conditions, that is, whether employees whose positions are abolished as a result of a *New York Dock*-conditioned transaction may receive a displacement allowance when they exercise their seniority to take lower paying positions at their current locations rather than following their work to new locations established as a result of the transaction. The record currently before us indicates that some in the rail industry have interpreted this issue one way while others have interpreted it the other way. The resolution of this issue appears to have an impact reaching beyond the original parties to this proceeding. Thus, we are seeking additional comments to supplement the record.

To keep the delay caused by our procedure from unduly harming employees if they are ultimately found eligible for displacement allowances, we propose to award interest on any sums owed, calculated from the date that any compensation should have been paid. *See Burlington Nor., Inc.—Cont. and Mer.—St. L.-San Fran. Ry. Co.,* 6 I.C.C.2d 351, 355–56 (1990). The rates of interest would be determined and compounded as provided in 49 CFR part 1141.[6]

We are also aware that rail labor and rail management have been engaged in private discussions regarding labor issues related to Board approval of railroad consolidations. If any agreements that are reached pursuant to those discussions, or the discussions themselves, have relevance to what we are doing here, the parties are invited to advise us of the effect, if any, of those agreements or discussions on the case before us.

Issues Raised by the Parties

Appearing below is a summary of what we believe to be the most important issues raised by the parties and the questions or sub-issues arising out of these issues. This list is not intended to be exclusive. Commenters are invited to discuss any other issues and to submit evidence bearing on them.

Article I, Section 1(b)

Article I, Section 1(b) of *New York Dock*, 360 I.C.C. at 84, provides the following definition of a ''displaced employee'':

(b) ''Displaced employee'' means an employee of the railroad who, as a result of a transaction is placed in a worse position with respect to his compensation and rules governing his working conditions.

NSR argues that claimants are ineligible for displacement allowances because they are not displaced employees under this provision, and that any displacement was voluntary in that they could have followed their work to its new location in Atlanta. TCU argues that claimants are displaced employees because their pre-transaction jobs were abolished and they were unable to exercise their seniority to obtain jobs with the same pay at their current locations. We seek comments on the proper interpretation of this provision.

Article I, Section 5(a)

TCU and NSR seem to agree that an employee may not receive a *dismissal* allowance if the employee refuses both to follow his or her work and to exercise any of his or her prior seniority rights at all.[7] TCU's position, however, is that *New York Dock* provides different rules for dismissed employees and displaced employees and that preserving seniority is an important consideration in the granting of displacement allowances. TCU relies on the following language in Article I, Section 5(a) of *New York Dock*, which provides in pertinent part as follows:

5. *Displacement allowances.*—(a) So long after a displaced employee's displacement as he is unable, *in the normal exercise of his seniority rights under existing agreements, rules and practices,* to obtain a position producing

[6] *See Procedures to Calculate Interest Rates,* 9 I.C.C.2d 528 (1993).

[7] *See* TCU's Petition, at 3 and 10 n.4.

compensation equal to or exceeding the compensation he received in the position from which he was displaced, he shall, during his protected period, be paid a monthly displacement allowance. * * * [Emphasis added.]

Relying on the language emphasized above, TCU argues that an affected employee has a right to the ''normal exercise of his seniority rights'' and that the definition provision of Section 1(b) does not void this right.

TCU's approach raises various subsidiary issues. Is this provision, with its reference to the exercise of seniority rights, intended to trump the general definition of ''displaced employee'' in Section 1(b) in determining when displacement allowances may be awarded? What is meant by the ''normal exercise'' of seniority rights under ''existing agreements, rules and practices''? Does this require observance of *pre*-transaction agreements, rules and practices? Or does the language refer to post-transaction arrangements that are negotiated or arbitrated to carry out the transaction at issue?

In its submission to the panel at 15–16, NSR responds by citing the ICC's refusal to modify Article I, Section 5(a) of *New York Dock* so as to insert the following phrase between the words ''position'' and ''producing': '', which does not require a change in his place of residence,'' (see note below).[8] We ask for comments on the import of this item. Does it support the proposition that there is a duty to relocate in every situation, or does it establish merely that an employee must relocate only if it is necessary for the employee to find a new job ''in the normal exercise of his seniority rights under existing agreements''?

Article I, Section 5(b)

TCU also cites Article I, Section 5(b) of *New York Dock*, which provides a special restriction on the award of displacement allowances. Under this provision, an affected employee does not receive an allowance if he or she refuses to take another position that pays more and that does not require a change of residence.[9] This provision raises the question of why the drafters of *New York Dock* and its predecessors would have carved out such a narrow class of employees who would be ineligible for displacement allowances, specifically mandating that the promotion not require the employee to relocate, if they had intended to deny allowances to everyone who refuses to follow his or her work for whatever reason.

The Implementing Agreement

During the arbitration, TCU alleged that the Implementing Agreement ensures that employees assigned to the Atlanta Crew Management Center may exercise their pre-transaction seniority rights to avoid moving to Atlanta. TCU cited Article III of the Implementing Agreement. Also, Article II, Section 5 of the Implementing Agreement allows affected employees to bid for positions under ''former seniority roster(s).'' These provisions are silent, however, as to whether this means that employees may always exercise their seniority rights as they choose without risking loss of compensation under *New York Dock*. What is the effect of these provisions?

Merger Efficiencies and Effects on Employees Under New York Dock

NSR argues that TCU's approach would effectively negate many operating efficiencies of railroad consolidations. The carrier asserts that TCU's approach would create unprecedented chains of bumpings and displacements, with each employee in the chain receiving a displacement allowance.

We seek comments on NSR's position on this issue. Would TCU's approach actually create unusual chains of bumpings and displacements or a need for carriers to hire extra employees when affected employees displaced junior employees without relocating? Have such results been avoided in practice for various reasons?[10] Evidence pertaining to actual practice on NSR and throughout the rail industry would be helpful in answering these questions. Even if NSR's position is valid in other contexts, can NSR claim that the economies of the merger would be destroyed here in view of its apparent agreement in the Implementing Agreement that affected crew calling employees may exercise prior seniority rights?

Industry Practice Under New York Dock

TCU and BMWE submit statements from union officers alleging that common rail industry practice has been for carriers to grant displacement allowances to employees seeking to exercise their seniority to take lower paying positions in their pre-merger seniority districts. NSR does not dispute these statements insofar as they apply to practices of other railroads, but responds that its own practice has been to deny displacement allowances in this situation.

We seek more definitive information as to the extent to which carriers have granted displacement allowances to employees who have exercised their seniority to take lower paying positions rather than following their work to locations that would require them to move. Especially useful would be examples of implementing agreements, testimony about specific situations where displacement allowances may have been granted in this situation with or without the need for arbitration, and testimony from knowledgeable industry and labor officials about general practice.

Arbitration Precedent

In the case before us, employees affected by a transaction exercised their pre-transaction seniority rights to take lower paying jobs at their pre-transaction location rather than follow their work to a new location where they had no seniority rights before the transaction. Are precedents cited by the parties involving situations where the employees affected by a transaction declined the opportunity to move to accept jobs for which they did have seniority rights before the transaction useful with respect to our consideration of the present case?

Decided: December 8, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 99–32475 Filed 12–14–99; 8:45 am]

BILLING CODE 4915–00–P

[8] If this change had been adopted, Section 5(a) would have read as follows (proposed addition underscored): ''5. *Displacement allowances.*—(a) So long after a displaced employee's displacement as he is unable, in the normal exercise of his seniority rights under existing agreements, rules and practices, to obtain a position, *which does not require a change in his place of residence,* producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, he shall, during his protected period, be paid a monthly displacement allowance. * * *'' [Emphasis added.]

The language was rejected by the ICC in the 1978 decision in *New York Dock*, 354 I.C.C. 399 (1978).

[9] The language of this provision does not ''deny'' a displacement allowance but provides that the employee will be treated as ''occupying the position he elects to decline.'' The effect on the employee appears to be the same (no payments).

[10] Has the effect on carriers typically been mitigated through practices such as the dismissal or relocation of junior employees who were unable to displace anyone, carrier elimination of the positions into which the employees chose to displace rather than move, or the creation of new positions to stop chains of bumpings?