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WLF Urges Eighth Circuit To Vacate Surface Transportation Board Rule

(Union Pacific v. STB; Association of American Railroads v. STB)

“The Surface Transportation Board lacked statutory authority to promulgate the Final Rule, which in all events is arbitrary and capricious.”

—John Masslon, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Court of Appeals for the Eighth Circuit to vacate a Surface Transportation Board rule. WLF argues that the Board lacked statutory authority to issue the Final Rule and that the Final Rule is arbitrary and capricious.

The Final Rule governs rate disputes between shippers and railroads when the amount in controversy is less than \$4 million. Seeking to streamline the process of resolving those disputes, the Board issued a Final Rule that requires the parties to engage in final-offer arbitration. This is the same system used in Major League Baseball salary arbitration. Both sides present a rate, and the Board then picks one of those two rates; the Board cannot pick a rate between the two parties’ offers.

In its amicus brief supporting the challengers, WLF explains why the Board lacks statutory authority to issue the Final Rule. As the Board admits, it cannot force parties to arbitrate their rate disputes. So instead of calling the Final Rule’s process arbitration, the Board calls it Final Offer Rate Review. Case law is clear, however, that a litigant cannot avoid a statutory bar on certain activity by simply renaming that activity.. The Final Rule requires that parties arbitrate their rate disputes. That is beyond the Board’s statutory authority.

WLF’s brief also argues that the Final Rule is arbitrary and capricious. It incorporates the worst aspects of Major League Baseball’s salary-arbitration system and casts the best parts aside. For example, unlike the artificial pressure on the parties to settle MLB salary disputes, there is no artificial pressure on the shippers to settle their rate disputes. There are also easily quantifiable statistics for parties in MLB to use but no such statistics for railroad disputes. Finally, when there is no universal agreement on the proper methodology, there are no concrete factors for MLB arbitrators or Board members to consider when picking a final offer.

Celebrating its 46th year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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