

Before the Surface Transportation Board
Washington, D.C. 20423

238051

ENTERED
Office of Proceedings
March 26, 2015
Part of
Public Record

Finance Docket No. 35914

Fort Transfer Company—Verified Petition for Expedited
Relief for Service Emergencies—Tazewell County, IL

Petition Seeking Relief Pursuant to 49 C.F.R. Part 1117
And Waiver of 49 C.F.R. § 1104.13 to Permit Filing Of
Reply to the Sur-Rebuttal of Toledo, Peoria &
Western Railway Corp. and, in the alternative, to Strike the
Sur-Rebuttal.

Fort Transfer Company (“Fort Transfer”), by and through its counsel of record, in response to the Reply and Sur-Rebuttal of Toledo, Peoria & Western Railway Corp. (“TP&W”), filed on March 25, 2015, respectfully requests the Board (i) to accept this Petition and Reply to Sur-Rebuttal and (ii) compel TP&W to immediately provide the Board and the parties with a true copy of the event recorder on its locomotive 3821 that was used to retrieve the empty cars from the Morton Branch line on Sunday, March 22, 2015. In the alternative, the Board is requested to strike the Sur-Rebuttal on the grounds that it is not authorized by the governing regulations in Part 146.

The request seeking the event recorder is based on the eye-witness observations of Mr. Dan LaKemper. Mr. LaKemper, who took the photographs that were filed with Fort Transfer’s Supplemental Rebuttal, was unquestionably in a position to observe whether or not the train was “walked” on its return trip

from Fort Transfer to Crandall Jct. As Mr. LaKemper has testified, the train, contrary to the TP&W's allegations, did not stop at the crossings on its return trip from Fort Transfer to Crandall Jct., and, in fact proceeded in a northbound direction at track speed (approximately 10 mph). It is respectfully submitted that the event recorder, when produced, will confirm Mr. LaKemper's position and otherwise repudiate the false assertion that the cars were "walked" "back to the diamond with NS." Sur-Rebuttal at 4.

Second, as Mr. LaKemper has also testified, he has confirmed that it would only require the one piece of track to repair the broken piece of rail located at the Harding Road crossing that was noted in the FRA Inspection Report. The actual replacement will take about four (4) hours. Even if it is true that it may take a few days for the asphalt to cure, at least the damaged rail will be replaced in an expedited manner without having to bid out the work (a step that TP&W could and should have taken well before now).

Third, although TP&W claims that it has never diverted any cars, the fact of the matter is that it has admitted that it "sent back three carloads," which is the functional equivalent of a diversion from the intended point of delivery to another destination.¹ Whether "diverted" or "sent back." the three tank cars at issue herein were not delivered to the original, desired destination. Most importantly, if TP&W had timely published a legal embargo, it would not have been necessary to divert or send back any cars. Instead, to cover its tracks, it

¹ TP&W Reply at 7.

finally decided to file its embargo six days after Fort Transfer filed its Petition for Relief on March 10.

Fourth, as Mr. LaKemper noted in his letter dated March 10 and in his Verified Statement filed March 20 in this matter, KJRY is well aware of the FRA's report. Furthermore, it will take all necessary steps to ensure that its operations over the line are safe and in full compliance with regulations governing the transportation by rail of hazardous materials.

Finally, the Board should reject the unworkable solution proposed by TP&W that KJRY should be limited to providing rail service only on the Morton Branch. As Mr. LaKemper has explained in detail in his Verified Statement of this date, that "would be inefficient, unnecessary, and financially unviable." Moreover, based on decades of personal observations of train movements in the "Peoria/East Peoria area, the TP&W's claims of congestion are bogus. In any given day, there are multiple hours in which there is no traffic on the approximately one-mile track segment between the NS and the TZPR yard. The operation proposed by Fort Transfer would, in fact, be more efficient than the TP&W's operation of the Morton Branch."² In the final analysis, TP&W should get out of the way and allow KJRY to provide interim service, and promptly enter into good faith negotiations to sell the line, rather than trying to bully Fort Transfer into accepting a trans-load operation that does not meet its reasonable needs.

² V.S LaKemper at 6 *infra*.

In the event that the Board does not accept this responsive pleading, Fort Transfer respectfully requests that the Board strike the TP&W's Sur-Rebuttal on the grounds that such pleading is not authorized under 49 C.F.R. Part 1146. Only the original party is authorized to file a Rebuttal.

Respectfully submitted,

/s/ Richard H. Streeter

Richard H. Streeter

Dated: March 26, 2015

VERIFIED STATEMENT OF
DANIEL A. LaKEMPER

Daniel A. LaKemper hereby respectfully submits this Verified Statement in response to the filing made by Toledo, Peoria & Western Railway Corp. ("TP&W") on March 25, 2015:

I observed much of the TP&W's operation on the Morton Branch on the morning of Sunday, March 22, 2015. Contrary to the representations in TP&W's filing, the train did not stop, or appreciably slow down, for the Jefferson Street crossing, or, to the best of my knowledge and belief, did it stop for the Jackson Street, Main Street, or Nebraska Street crossings. I observed, and photographed the train cross the Harding Road crossing, from the public road. The train did not stop at the Harding Road crossing. To the best of my observation, the train proceeded from Fort Transfer, at track speed (approximately 10mph), to Crandall Jct.

Based upon my discussions with KJRY's Roadmaster, repair of the Harding Road crossing will take approximately a half a day. Coordination with the road authority will be necessary, but Harding Road is a rural crossing, not heavily used, and detours are readily available.

Based upon my 27 years of experience in the shortline industry, it is my opinion that the Morton Branch trackage, with the exception of the broken rail

in the Harding Road crossing, is comparable to, or better, than the trackage of many Class III railroads, operated on a daily basis as excepted track.

The TP&W's suggestion that the Board limit its service order to the segment between Morton and Crandall Jct. is an attempt to offer illusory service. To the best of my knowledge and belief, TP&W has never interchanged cars with NS at Crandall Jct. The TP&W's service, and that of any alternative service provider, is dependent on the ability to receive cars directly from the area's terminal switch carrier, TZPR. Putting another line-haul carrier in the route (even if NS would agree, which is highly doubtful) would be inefficient, unnecessary, and financially unviable.

Based upon decades of personal observation of train movements in the Peoria/East Peoria area, the TP&W's claims of congestion are bogus. In any given day, there are multiple hours in which there is no traffic on the approximately one-mile track segment between the NS and the TZPR yard. The operation proposed by Fort Transfer would, in fact, be more efficient than the TP&W's operation of the Morton Branch.

FURTHER SAYETH THE AFFIANT NOT.

VERIFICATION

I, Daniel A. LaKemper, hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed March 26, 2015

/s/ Daniel A. LaKemper

Certificate of Service

I hereby certify that on this date a copy of the foregoing document was served on the parties, and by the method show below:

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/s/ Richard H. Streeter

Richard H. Streeter

Dated: March 26, 2015

