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Before the
SURFACE TRANSPORTATION BOARD

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Ex Parte No. 699

ASSESSMENT OF MEDIATION AND ARBITRATION PROCEDURES

REPLY COMMENTS

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Attorney for Samuel J. Nasca

June 18, 2012

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Preliminary Statement

Samuel J. Nasca,^{1/} for and on behalf of United Transportation Union-New York State Legislative Board (UTU-NY), submits these Reply Comments, in response to comments which were filed by various parties following the Board's Notice of Proposed Rulemaking (NPRM).^{2/}

Some 13 initial comments were submitted, in addition to those by UTU-NY. Two of the comments appear misdirected and filed in error in this docket, instead of elsewhere, by the Office of Proceedings.^{3/} Of the eleven comments, five came from the railroad industry, indicating severe opposition to key elements of the

^{1/} New York State Legislative Director for United Transportation Union, with offices at 35 Fuller Road, Albany NY.

^{2/} 77 Fed. Reg. 19591-96 (Apr. 2, 2012).

^{3/} Comments of Mike Petz (Macomb, MI), and Ron Ahles (Rathdrum, ID).

ARGUMENT

UTU-NY will not burden the record with additional comments in opposition to the NPRM. The Board's statutory responsibilities should not be abrogated in favor of secret tribunals and non-public outcomes. The existing arbitration procedures have never been utilized, in over a decade, as the National Industrial Transportation League and Western Coal Traffic League comments emphasize. (NITL, 6; WCTL, 7). Arbitration, particularly as suggested by the NPRM, is contrary to the fundamental purposes of the Interstate Commerce Act. Mediation should go no further than the traditional pre-hearing conferences, and certainly not extended to employee protective matters.

The NPRM, and SNPRM, should not be adopted. The proceeding should be discontinued.

Respectfully submitted,



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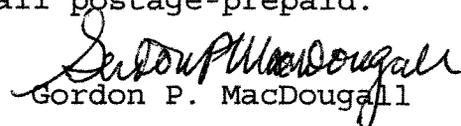
June 18, 2012

Attorney for Samuel J. Nasca

Certificate of Service

I hereby certify I have served a copy of the foregoing upon all parties of record by first class mail postage-prepaid.

Washington DC



Gordon P. MacDougall

NPRM.^{4/} The UTU-NY comments also were in opposition. The remaining six comments were from disparate interests.^{5/}

It is abundantly clear that the NPRM's suggested revision of mediation and arbitration regulations have not received an enthusiastic reception; indeed, the basic scheme is opposed by the preponderance of the parties filing comments, including this respondent, UTU-NY.

Supplemental NPRM

These Reply Comments also embrace the UTU-NY response to the Supplemental Notice of Proposed Rulemaking (SNPRM), posted in the Federal Register. 77 Fed. Reg. 23208-9 (Apr. 19, 2012). There should be no need for additional record collection if the NRPM is not adopted. UTU-NY urges that the NPRM not be adopted. In the event the STB nevertheless elects to impose the proposed additional record collection, UTU-NY suggests that Class II and Class III carriers be required to file an annual report in accordance with Form R-1. See: 49 CFR 1241.11.^{6/}

^{4/} Association of American Railroads (AAR), Union Pacific Railroad Company (UP, Burlington Northern Railway Company (BNSF), Norfolk Southern Railway Company (NSR), and Amtrak.

^{5/} U.S. Dept. of Agriculture, Western Coal Traffic Association, National Industrial Transportation League, National Grain and Feed Association, Montana Grain Growers Association, and David Gambrel.

^{6/} UTU-NY is aware that comments were not filed by any Class II or Class III carrier, or by American Short Line & Regional Railroad Association. However, if these carriers are to be brought into the arbitration program, directly or indirectly, non-carrier participants likely will need additional data.