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UNITED STATES OF AMERICA
RAILROAD RETIREMENT BOARD
844 NORTH RUSH STREET
CHICAGO, ILLINOIS 60611-2092

GENERAL COUNSEL

March 27, 2014

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423



RE: FD 35582

Rail-Term Corp. Petition for a
Declaratory Order

Dear Ms. Brown:

Pursuant to the Surface Transportation Board decision in the above captioned proceeding served on February 12, 2014, please find an original and ten copies of the Comments of the United States Railroad Retirement Board.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rachel L. Simmons".

Rachel L. Simmons
Assistant General Counsel

Enclosures



BEFORE THE SURFACE TRANSPORTATION BOARD

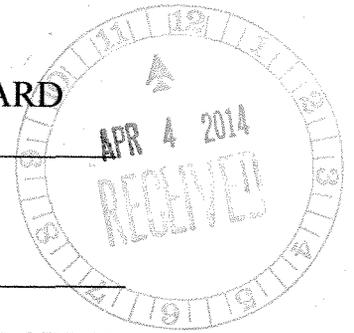
Docket No. FD 35582

RAIL-TERM CORP. – PETITION FOR DECLARATORY ORDER

COMMENTS OF THE UNITED STATES RAILROAD RETIREMENT BOARD

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Introduction

The Railroad Retirement Board (“RRB”) files these comments pursuant to a decision of the Surface Transportation Board (“STB”) served February 12, 2014, in which the STB granted in part the requests filed by the American Short Line and Regional Railroad Association (“ASLRRA”), the Association of American Railroads (“AAR”), and the National Railroad Construction and Maintenance Association, Inc. (“NRC”) that they and others be allowed to intervene in this proceeding. In its decision served February 12, 2014, the STB allowed the ASLRRA, AAR, and NRC and others to participate in this proceeding as *amicus curiae*, filing written comments in support or opposition to the Petition for Reconsideration filed by Rail-Term Corp. (“Rail-Term”), with the direction that such “comments must be limited to the scope of the existing proceeding”. The ASLRRA, AAR, NRC, as well as CSX Transportation have all filed comments in support of Rail-Term’s Petition for Reconsideration. Because the 2013 STB decision supports the earlier 2011 decision by the RRB, the RRB opposes the Petition for Reconsideration filed by Rail-Term of the STB’s decision served on November 19, 2013, in which the STB found Rail-Term to be a rail carrier.

Background

In the underlying decision at issue in this appeal, *Rail-Term Corp.*, Board Coverage Decision (B.C.D.) 11-14, rendered on January 28, 2011, the majority of the

RRB (Management Member dissenting) determined that Rail-Term is an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts (the Acts).

Section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)), insofar as relevant here, defines a covered employer as:

(i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under Part A of subtitle IV of title 49, United States Code;

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (45 U.S.C. §§ 351(a) and (b)) contain substantially similar definitions, as does section 3231 of the Railroad Retirement Tax Act (26 U.S.C. § 3231).

In B.C.D. 11-14, the RRB found that Rail-Term is a covered rail carrier employer because its dispatching services are an inextricable part of a rail carrier fulfilling its common carrier obligation. The RRB found that it must construe the Railroad Retirement Act and Railroad Unemployment Insurance Acts broadly to satisfy the Congressional intent of the Acts that employees performing integral services within the railroad industry are to be covered under the Acts. The RRB also made an alternative finding that the employees performing dispatching services were statutory employees of the carrier for whom dispatching was performed.

Rail Term filed a Petition for Review of the RRB's decision in the United States Court of Appeals for the District of Columbia Circuit ("the D.C. Circuit").

Oral arguments were heard in the case on October 24, 2011. In an Order dated November 14, 2011, the D.C. Circuit ordered that the Petition for Review be held in abeyance pending further order of the Court to allow Rail-Term to petition the STB for a declaratory order on the question of whether Rail-Term is a “rail carrier” under 49 U.S.C. §10102(5).

Rail-Term filed a Petition for Declaratory Order with the STB, and in its decision served November 15, 2013, a majority of the STB denied Rail-Term’s petition, finding that Rail-Term is a “rail carrier” under 49 U.S.C. §10102(5), and that its dispatching services are subject to the STB’s jurisdiction. Following this decision, the RRB filed a Motion for Affirmance with the D.C. Circuit. Rail-Term filed a Motion to Hold the Proceedings in Abeyance with the D.C. Circuit, while it filed a Petition for Reconsideration of the STB decision. In an Order dated December 19, 2013, the D.C. Circuit ordered Rail-Term’s Petition for Review be held in abeyance pending a decision by the STB on Rail-Term’s petition for reconsideration. The parties are directed to file motions with the D.C. Circuit to govern further proceedings in the case no later than 30 days after the STB serves its decision on Rail-Term’s Petition for Reconsideration.

Comments of the Railroad Retirement Board

In the absence of an STB decision regarding Rail-Term’s status as a carrier, the

RRB relied on applicable precedent and Congressional intent to determine that Rail-Term met the Railroad Retirement Act's definition of "rail carrier employer" at 45 USC Section 231(a)(1). The case law and analysis used by the STB in its decision of November 19, 2013 is consistent with the RRB's analysis that dispatching services are a necessary part of carrier operations under 49 U.S.C. § 10102(5).

Accordingly, the RRB respectfully requests the STB deny Rail-Term's Petition for Reconsideration, and not reconsider the decision of November 19, 2013.

Respectfully submitted,

A handwritten signature in cursive script, reading "Karl T. Blank", written in black ink. The signature is positioned above a horizontal line.

Karl T. Blank,
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CERTIFICATE OF SERVICE

I hereby certify that I have today served by first-class mail, a copy of the
Comments of the United States Railroad Retirement Board upon the following parties:

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Date: *March 27, 2014*



Rachel L. Simmons
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