

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 132X)

UNION PACIFIC RAILROAD COMPANY  
– ABANDONMENT EXEMPTION –  
IN RIO GRANDE AND MINERAL COUNTIES, CO

Decided: December 18, 2003

On December 4, 2003, counsel for the Denver & Rio Grande Railway Historical Foundation (D&RGHF) brought to the Board's attention correspondence that another attorney in this matter sent to opposing counsel. In that letter, the attorney expressed the view that certain statements made during an earlier phase of this proceeding were inaccurate. The attorney warned of various actions, including "RICO" actions and personal lawsuits that could be instituted, against any counsel who submits pleadings that the attorney finds objectionable.

The Board's Canons of Ethics, 49 CFR 1103, Subpart B, which govern the conduct of practitioners before the agency, are designed both to elicit the truth and to maintain decorum in Board proceedings. Thus, the Canons (49 CFR 1103.21) direct a practitioner to be honest but at the same time to "put forth his best effort to . . . defend . . . his client." The Canons further provide that a practitioner must always treat adverse witnesses and other litigants with fairness and due consideration (49 CFR 1103.25(a)) and state that a practitioner must not attempt to obstruct Board investigations (49 CFR 1103.25(b)).

It is not appropriate for parties to chill either advocacy or the presentation of evidence before the Board. The correspondence that is the subject of this decision, however, appears designed to have that effect. Such actions detract from this agency's ability to carry out its statutory responsibilities, and are therefore viewed with great disfavor. If a party in a proceeding believes that a filing misstates the facts of the case, that party should express that view in its filing before the Board. The Board will then evaluate the arguments made before it. That is the process that is expected to take place in all cases.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The parties in this proceeding are directed to adhere to the Board's Canons of Ethics and the guidance set out in this decision.

2. This decision is effective on the date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary