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SERVICE DATE – LATE RELEASE DECEMBER 23, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42083

GRANITE STATE CONCRETE CO., INC.  
and  
MILFORD-BENNINGTON RAILROAD COMPANY, INC.

v.

BOSTON AND MAINE CORPORATION  
and  
SPRINGFIELD TERMINAL RAILWAY COMPANY

Decided: December 23, 2003

In a motion filed on November 13, 2003, complainants, Granite State Concrete Co. and Milford Bennington Railroad Company, Inc. (M-B), allege that defendant carriers, Boston and Maine Corporation and its operating subsidiary Springfield Terminal Railway Company (jointly, BM/ST), have been discouraging employees from testifying truthfully in depositions. Complainants ask the Board to take the following remedial steps: (1) order BM/ST to refrain from penalizing employees for truthful testimony; (2) require BM/ST to disclose the identity of any person(s) who may have directed any employee(s) to testify untruthfully, threatened any employee(s) who failed to follow instructions concerning testimony, or created an atmosphere in which truthful testimony is discouraged; and (3) allow complainants to take new depositions of BM/ST employees who have already been deposed. Complainants' motion is predicated on the attached verified statement of Peter R. Leishman, President of M-B, explaining why he believes that Andrew Zompa, a BM/ST employee, was coerced into giving false testimony in a deposition on October 31, 2003.

On December 2, 2003, BM/ST filed a reply in opposition to complainants' motion. BM/ST denied that any employee has testified untruthfully or been coerced in any way into doing so. BM/ST also argued that Mr. Leishman's statement is not credible because he has a "history of misconstruing conversations" with BM/ST personnel.

DISCUSSION AND CONCLUSIONS

Complainants' motion will be denied because they have not shown that BM/ST attempted to influence any employee to testify untruthfully. In support of their allegation of undue influence, complainants rely primarily on the verified statement of Mr. Leishman. In his statement, Mr. Leishman asserts that Mr. Zompa told him privately that his deposition testimony was not truthful in certain respects and that he feared losing his job if he had not testified as he did. However, in a statement submitted with BM/ST's reply, Mr. Zompa denies being coerced in any way or communicating the existence of any coercion to Mr. Leishman. Mr. Zompa provided a detailed explanation of what he says transpired between the parties and why Mr. Leishman may have mistakenly concluded that Mr. Zompa was being less than truthful. In view of Mr. Zompa's denial of the testimony of Mr. Leishman, the Board lacks sufficient grounds for granting the relief sought by complainants.

It is ordered:

1. Complainants' motion for discovery sanctions and other relief is denied.
2. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary