

SERVICE DATE - APRIL 10, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33180

INDIANA & OHIO RAILWAY COMPANY--ACQUISITION EXEMPTION--
LINES OF THE GRAND TRUNK WESTERN RAILROAD INC.

PETITION TO COMPEL DISCOVERY

Decided: April 9, 1997

The Brotherhood of Locomotive Engineers (BLE) filed a petition to compel Indiana & Ohio Railway Company and Grand Trunk Western Railroad Inc. (jointly: applicants) to produce a copy of a "Commercial, Haulage and Operating Agreement" dated February 14, 1997 (agreement). BLE asserts that, pursuant to 49 CFR 1114.30, its counsel requested permission from applicants to inspect and copy the complete agreement. However, BLE alleges that it was furnished a heavily redacted copy of the agreement which, it claims, prevents a full understanding of its contents.

BLE notes that the Board served a protective order under 49 CFR 1114.14 on January 9, 1997, to protect confidential and proprietary information in materials sought by discovery. BLE indicates that it signed the undertaking prescribed by the protective order and thus should be furnished with the full agreement.

BLE further states that the full agreement is necessary to determine the scope of the haulage arrangement entered into by the parties. BLE views the agreement as a "train" haulage arrangement comparable to trackage rights or joint use which requires Board approval.

Applicants reply that they provided BLE with a redacted copy of the agreement under the terms of the protective order. The copy provided BLE blacked out rate, traffic routing, and shipper specific information. Applicants also did not produce attachments to the agreement identified as Tab D, Locomotive/Telemetry Caboose Run Through Agreement, and Tab F, a Contingent Trackage Rights Agreement, claiming that BLE did not request copies of the attachments.

Applicants contend that the redacted information is irrelevant to BLE's argument that the agreement was a trackage rights or joint use arrangement. Applicants further assert that they would be seriously harmed if the redacted proprietary and commercially sensitive information were disclosed. Applicants are concerned that the excised information could be inadvertently disclosed. They claim that BLE has already disclosed sensitive information by comparing "car" and "train" haulage arrangements. Applicants also submitted to the Board, under seal, a full copy of the agreement, but did not include the attached agreements identified as Tab D or Tab F.

BLE replied¹ to clarify that it also requested access to the agreements in Tab D and Tab F. BLE further disputes applicants claim that it disclosed any confidential information and claims that this argument is a subterfuge to avoid discovery.

DISCUSSION AND CONCLUSIONS

BLE's motion to compel will be granted. Apparently, the applicants consider the agreement to be highly confidential. As noted above, the Board issued a protective order on January 9, 1997, to protect against disclosure of highly confidential material. BLE executed the prescribed undertaking relating to highly confidential material when it requested permission to inspect the agreement. There is nothing of record indicating that BLE would improperly disclose any confidential material contained in the agreement. In these circumstances, applicants must produce the full agreement, with attachments.

¹ BLE's reply to applicants' replies will be accepted in the interest of a more complete record.

It is ordered:

1. BLE's motion to compel discovery is granted.
2. This decision is effective on the service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary