

SURFACE TRANSPORTATION BOARD

DECISION

STB Ex Parte No. 572 (Sub-No.1)

REMOVAL, REVISION, AND REDESIGNATION OF MISCELLANEOUS REGULATIONS

Decided: August 10, 2001

In a decision in this proceeding served on August 31, 1999, published in the Federal Register on September 1, 1999 (64 FR 47709), and effective on October 1, 1999, the Board, inter alia, removed the regulations at 49 CFR part 1000, revised language from that part concerning indexing and making documents publicly available, and removed reference to publication of the Interstate Commerce Acts Annotated (ICAA). We incorporated that revised rule into 49 CFR part 1001. The Board denied a petition for reconsideration of this decision on June 22, 2000 (Reconsideration Decision).

Joseph C. Szabo, for and on behalf of the United Transportation Union-Illinois Legislative Board (UTU-IL), filed a petition on February 26, 2001, to amend 49 CFR 1001. In particular, UTU-IL seeks to amend section 1001.1(a)¹ to require the maintenance of the card index of proceedings (card catalogue) at our Washington, DC offices. UTU-IL would prefer that the card catalogue be located in the Board's library, where it would be available to the public. UTU-IL proposes that section 1001.1(a) be amended by adding a new subsection 6:

(6) Card catalogue index of proceedings maintained by the former Interstate Commerce Commission prior to 1982.

¹ That section reads:

§1001.1. Records available at the Board's office.

(a) The following specific files and records in the custody of the Secretary of the Surface Transportation Board are available to the public and may be inspected at the Board's office upon reasonable request during business hours (between 8:30 a.m. and 5 p.m., Monday through Friday):

(1) Copies of tariffs and railroad transportation contract summaries filed with the Board pursuant to 49 U.S.C. 13702(b) and 10709(d), respectively.

(2) Annual and other periodic reports filed with the Board pursuant to 49 U.S.C. 11145.

(3) All docket files, which include documents of record in a proceeding.

(4) File and index of instruments or documents recorded pursuant to 49 U.S.C. 11301.

(5) Surface Transportation Board Administrative Issuances.

UTU-IL notes that, before 1982, the former Interstate Commerce Commission (ICC) published the ICAA, which indexed ICC decisions by subject matter. The ICC also kept in its library a card catalogue of proceedings, which was indexed by docket number, carrier, and, in some cases, subject matter. UTU-IL submits that the card catalogue was kept up-to-date until the discontinuance of the ICAA in the early 1980's.

UTU-IL claims that the card catalogue is the only mechanism for researching by docket number for proceedings before the mid to late 1970's, and that it is useful not only in retrieving documents from storage, but also in determining the nature of a proceeding and its development. Moreover, UTU-IL asserts that important information, either typewritten or handwritten, has been noted on the cards pertaining to significant data such as related proceedings and court cases. The card catalogue, according to UTU-IL, "contains information on particular proceedings which is not available by other resources, even if the correct docket number can be located for a particular matter."

UTU-IL notes that the Board now has information in computers which can be quickly retrieved. However, it states that pre-1982 information has not been transferred to the computer, which is unlike the course it asserts has been followed by many other libraries. Moreover, even where information from card catalogues has been transferred to computers, UTU-IL argues that much valuable data from the cards cannot be found by computer. UTU-IL claims that, based on an attached magazine article,² some libraries have decided not to destroy their card catalogues.

UTU-IL submits that it is interested in researching the history and relationships of ICC proceedings, and in many cases it is not seeking to obtain a file from storage. The information in the card catalogue, it asserts, is helpful "in obtaining leads to material submitted in various Board proceedings." It also argues that sources of information about Board law mentioned in the Reconsideration Decision are not sufficient without the card catalogue. For example, WESTLAW and LEXIS provide access on ICC decisions only as far back as 1977 and 1965, respectively. It asserts that the Hawkins Index-Digest-Analysis of Decisions (Hawkins), while containing indexing by docket number, is in disarray and that Hawkins "does not always contain the case development, and other useful information included . . . on the card index catalogue."

DISCUSSION AND CONCLUSIONS

We will deny UTU-IL's petition. Under the Federal Records Act, 44 U.S.C. 3102, federal agencies are required to efficiently and economically maintain and/or dispose of their records. See also generally 44 U.S.C. 2101 et seq., 2901 et seq., 3101 et seq., and 3301 et seq. Agency records are categorized by the National Archives and Record Administration (NARA) as either "permanent" or "temporary" for determining whether, and for how long, they are to be kept by the government. A permanent record is "any Federal record that has been determined by

² Nicholas Baker, Discards, The New Yorker, Apr. 4, 1994, at 64.

NARA to have sufficient value to warrant its preservation in the National Archives of the United States.” 36 CFR 1220.14. See Public Citizen, Inc. v. Lew, 127 F. Supp.2d 1, 11 (D.D.C. 2000). Permanent records are transferred to the legal custody of NARA. 36 CFR 1228.24 and 1228.272. See also 44 U.S.C. 2108.

In 1999, NARA approved the Board’s request to transfer to NARA as permanent records significant older ICC public dockets (including ex parte, formal, finance and abandonment dockets dating from before 1976, which had been stored by the agency offsite for many years³), as well as the card catalogue index to those dockets. The legal custody of the dockets was transferred to NARA’s College Park facilities in May 2000.⁴ With the transfer of legal custody of records to NARA went the responsibility to retrieve those records for their occasional use by agency employees and researchers. The card catalogue that was in the Board’s library is primarily an index for locating those pre-1976, ICC public dockets. It was reasonable therefore to transfer the card catalogue along with the dockets in accordance with the 1999 agreement, and the card catalogue was transferred to NARA in March 2001.⁵

The card catalogue was designated a permanent record in 1999 and is in the legal custody of NARA. The card catalogue is being used by NARA as an index for the significant public dockets that are permanent records. Because the card catalogue was accepted as a permanent record, it will not be destroyed. It is now located in College Park, MD, where it is available to the public and the Board.⁶

For many individuals, including Board personnel, having the card catalogue in the Board’s library would be more convenient. Nevertheless, College Park is relatively nearby, and,

³ Generally, agencies are required to maintain the minimum volume of current records in office space consistent with effective and efficient operations. 36 CFR 1128.24(c)(2). The agency had determined that the current use of those records was not sufficient to justify keeping them on site.

⁴ The custody of these records becomes the responsibility of the Archivist of the United States at the time of transfer of the records. 44 U.S.C. 2108.

⁵ Prior to the transfer of the catalogue, NARA had to call the Board’s library whenever one of those dockets was requested.

⁶ The College Park facility has longer hours than the Board, and a free shuttle for researchers is available between the main branch of the National Archives in Washington, DC and the College Park facility. In addition, information from the card catalogue is available over the phone.

in any event, the card catalogue was appropriately transferred to NARA.⁷ For document retrieval or any other use of the card catalogue, members of the public and Board personnel have the option of using the College Park facility, or finding other sources of information. Pre-1980 research resources found in the Board's library include the ICAA and Hawkins.⁸ Accordingly, we believe that there are ample research materials available.

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

It is ordered:

1. UTU-IL's petition is denied.
2. This decision is effective September 13, 2001.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary

⁷ See 44 U.S.C. 2909 (federal agency must submit evidence of need to retain records beyond period specified in disposal schedule). Compare 36 CFR 1228.264 (NARA will not accept a certification of need regarding 30 year old records where the purpose is to "[p]rovide to persons outside the agency access which can be provided by NARA.") 36 CFR 1228.264. See also 36 CFR 1228.280(b)(2).

⁸ Board staff has checked the Hawkins in the library, and it appears to be in order. UTU-IL should specify what its problems are with Hawkins to the library staff.