

ORIGINAL

230677

Before the
SURFACE TRANSPORTATION BOARD



Ex Parte No. 705
COMPETITION IN THE RAILROAD INDUSTRY

POST-HEARING SUBMISSION

ENTERED
Office of Proceedings
JUL 25 2011
Part of
Public Record

GORDON P. MacDOUGALL
1025 Connecticut Ave., N.W.
Washington DC 20035

Attorney for Samuel J. Nasca

Dated: July 25, 2011

Before the
SURFACE TRANSPORTATION BOARD

Ex Parte No. 705
COMPETITION IN THE RAILROAD INDUSTRY

POST-HEARING SUBMISSION

Preliminary Statement

Samuel J. Nasca,^{1/} for and on behalf of United Transportation Union-New York State Legislative Board (UTU-NY), submits this post-hearing submission, in accordance with the Surface Transportation Board (STB) June 30, decision, served June 30, 2011.

UTU-NY filed initial and reply comments, dated April 12 and May 27, 2011, respectively, and presented testimony at the June 22-23, 2011, hearings conducted by the STB at Washington, DC.^{2/}

This post-hearing UTU-NY submission is responsive to questions/comments from STB Members^{3/} at the hearings.

^{1/} New York State Legislative Director for United Transportation Union, with offices at 35 Fuller Road, Albany, NY 12205.

^{2/} June 22 session, panel X.

^{3/} One suggestion concerning STB procedure, is to discontinue permitting agency staff to term an agency "Member" as "Commissioner," particularly at public hearings. The Interstate Commerce Commission (ICC) was abolished over 15 years ago. Staff impropriety in dealing with the overcharge/undercharge controversy, notably that of its General Counsel, seemingly was a factor in closing the agency, e.g., 232 Traffic World 13, at 36 (Dec. 28, 1992).

1. Competition/Instability. The cited source at the hearing should be shown as Soros, George: My Philanthropy (58 The New York Review of Books, No. 11, at 12, 14, 16) (June 23, 2011).

UTU-NY would add that the "efficient market" and "rational expectations" theories for competitive results are no longer in vogue. The concept of "creative destruction" with instability resulting from competition should be recognized--the leading exponent said to be the late Joseph A. Schumpeter.^{4/}

The danger in unleashing greater "railroad competition" in the context of the current economic recession, would be to create greater instability in national and regional markets. Such increase in "railroad competition" could seriously harm the network railroad industry, in addition to other adverse effects such as wasteful duplication of facilities, equipment, and resources. The instability augmented by competition would likely visit destructive impacts on shippers and industries, both served and non-served by rail carriers.

Experience from past economic difficulties suggests caution over any dramatic increase in competition or reduction in rail rates during economic depression/recession. Latham, Earl, The Politics of Railroad Coordination, 1933-36. (Cambridge, 1959); Fuess, Claude M., Joseph B. Eastman-Servant of the People (Columbia, 1952).

^{4/} Schumpeter, Capitalism, Socialism and Democracy (1942). More recently, see: The Father of Creative Destruction-Why Joseph Schumpeter is Suddenly All the Rage in Washington (Wired, March 3, 2002). In 1949, Schumpeter gave as example "the railroadization of the Middle West as it was initiated by the Illinois Central." See: Wikipedia, Creative Destruction.

2. Rate Cases. The Chairman at the hearing inquired of most parties how a different freight rate resolution process might be preferable to, or a substitute for, an increased availability of competitive access, or other operating invasion. UTU-NY opposes changes in the rules for competitive access and other operating invasions. UTU-NY has not had recent experience in freight rate proceedings to comment on the freight rate proceedings. As mentioned at the hearing, to our knowledge, the only UTU participation in freight rate proceedings since Staggers^{5/} was the joint efforts of the Chicago Board of Trade and UTU-IL in Ex Parte No. 347 (Sub-No. 2), Rate Guidelines--Non-Coal Proceedings, 1 S.T.B. 1004, 1020n.48, 1034n.88 (1996), to suggest the rate comparison methodology, familiar with traffic managers, to test the reasonableness of freight rates, in lieu of the STB's cost-finding scheme of cost comparisons.

Respectfully submitted,


GORDON P. MacDOUGALL
1025 Connecticut Ave., N.W.
Washington DC 20036

Attorney for Samuel J. Nasca

July 25, 2011

^{5/} Of course, there was a considerable participation by employee organizations in the now-repealed light-density line rate surcharge provisions, which were seen as an underhanded effort for quick line abandonment, rather than revenue maximization.