

ORIGINAL

Before the

SURFACE TRANSPORTATION BOARD



Ex Parte No. 665 (Sub-No. 2)

242035

EXPANDING ACCESS TO RATE RELIEF

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COMMENTS

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Preliminary Statement

Larry R. Miller, Jr.^{1/} for and on behalf of SMART/TD General Committee of Adjustment GO-386 (SMART/TD GO-386), submits these Comments, pursuant to the Surface Transportation Board (STB or Board) Advance Notice of Proposed Rulemaking (ANPRM), dated August 30, 2016 (served August 31, 2016), 81 Fed. Reg. 61647-57 (Sept.

^{1/}General Chairman for SMART/TD, with offices at 1436 A Street, Washougal, WA. Mr. Miller is the successor to previous General Chairmen GO-386 participants (John D. Fitzgerald; Jay L. Schollmeyer) in these Ex Parte No. 665 proceedings. SMART/TD GO-386 is the successor to UTU GO-386. Merger of United Transportation Union and SMART was implemented in August 2014.

7, 2016).

Background

SMART/TD GO-386 represents persons employed by BNSF Railway (BNSF) and Montana Western Ry. in train and engine service, including operations on the so-called "northern lines."^{2/} Railroad employees on the northern lines have a strong interest in grain transportation, not only for their employment opportunities, but also as members of communities located on or adjacent to the northern lines, of which most are vitally concerned with grain production, marketing, and transportation as a way of livelihood and economic well-being.

Considerable unrest has arisen over railroad grain transportation matters, particularly a perceived anomaly or unfairness in rail grain rates, which prompted announcement by the STB's Chairman during his attendance at a meeting held at Great Falls, MT, on October 11, 2006, that the STB would open an inquiry into current rail grain issues, which the STB did that very day,

^{2/}For a description of the northern lines, with accompanying map, see: Northern Lines Merger Cases, 396 U.S. 391 (1970).

accompanied by news release.^{3/} Ex Parte No. 665, Rail Transportation of Grain.^{4/}

UTU GO-386 became active in Ex Parte 665, not taking a position on the reasonableness of grain rates, but using its knowledge of the railroad matters to ensure that grain interests are able to have STB as an effective forum to air their grievances.^{5/} The active participation by UTU GO-386 in the initial hearing held November 2, 2006 for Ex Parte No. 665, Rail Transportation of Grain (ID 217898; 217979), as supplemented January 12, and September 14, 2007 (ID 218459; 220257), was continued in Ex Parte No. 665 (Sub-No. 1), Rail Transportation of Grain, Rate Regulation Review. (ID 236512, Aug. 25, 2014; ID 238508, May 29, 2015).

In addition to Ex Parte No. 665, STB instituted a

^{3/}STB No. 06-15.

^{4/}See also: Great Falls Tribune (Great Falls, MT Oct. 12, 2006).

^{5/}In another STB rulemaking proceeding, UTU GO-386 has pointed out that BNSF operating employees come in contact with shippers and receivers of freight in the course of their railroad duties, and frequently BNSF train personnel are the primary contact between the shipper and the carrier. This is particularly true for small shippers. Ex Parte No. 646, Rate Challenges in Small Cases, Stmt. of UTU GO-386, April 16, 2003. (ID 207643).

number of other rulemaking proceedings concerned with easier access by small shippers to the agency process for rail rate evaluation. UTU GO-386 participated in these matters. Ex Parte No. 646, Rate Challenges in Small Cases (April 22, 2003, ID 207643; July 8-9, 2004, ID 212521, 211536; July 16, 2004, ID 211587). Ex Parte No. 646 (Sub-No. 1), Simplified Standards For Rail Cases (August 31, 2006, ID 217414; November 30, 2006, ID 218179).

For further GO-386 involvement in rail rate evaluation, Ex Parte No. 638, Procedures to Expedite Resolution of Rail Rate Challenges to be Considered Under the Stand-Alone Cost Methodology, UTU GO-386 Comments, October 11, 2002, ID 206401; Written Testimony, February 19, 2003, ID 207249; February 24, 2003, 207284; Comments, June 9, 2003, ID 208004; Reply Comments, June 19, 2003, ID 208120; Letter, July 17, 2003, ID 208426.

See: Ex Parte No. 657, Rail Rate Challenges Under the Stand-Alone Cost Methodology. GO-386 Stmt., April 15, April 26, 2005, ID 213782, 213824.

SMART/TD GO-386 is not alone among rail employee

groups concerned with proper rail rate regulation. See:
Ex Parte No. 715, Rate Regulation Reforms, Reply
Comments by SMART/TD-NY, August 22, 2012 and December 7,
2012, ID 232824, 233474.

The background clearly indicates that SMART/TD GO-386, although not a shipper or receiver of freight, has a continuing interest in this proceeding, so as to support proper procedures for resolving rate disputes affecting the public interest and the various criteria of the rail transportation policy. 49 U.S.C. §10101.

Suggested Considerations

For the purposes of initial comments in this ANPRM seeking simplified procedures in an inexpensive manner, SMART/TD GO-386 believes the Board might best limit the cost evidence requirement, as we understand this is the major stumbling block to seeking evaluation in rate cases at the STB.

1. Market Dominance. A determination of market dominance can be made by the Board or by complaint. However, the calculation of revenue-variable cost percentage may appear a necessary element in establishing ultimate authority in the STB process. The

Board might establish a process to lift the market dominance revenue-variable cost calculation from the shoulder of a complainant. 49 U.S.C. §10707.

2. Rate Comparisons. Once market dominance is established, rate comparison over the years has been the best test of reasonableness. However, we understand that the STB today does not use actual rates, but rather employs R/VC cost comparisons in lieu of actual rates. It is suggest that actual rates be utilized, which is something a shipper can better understand.

SMART/TD GO-386 and its predecessor have been highly critical of the STB and General Accounting Office rate calculations, based upon railroad ton-mile data, rather than actual rates as published by the Department of Labor BLS. See: Ex Parte No. 665, Stmt. Of John D. Fitzgerald, October 30, 2006, ID 217979; Letter dated September 14, 2007, ID 220257.

The Congressional Budget Office (CBO) recognized the inconsistency between the GAO and BLS freight rate indicies. See: Ex Parte No. 671, Rail Capacity and Infrastructure Requirements, Stmt. Of John D. Fitzgerald, April 5, 2007, ID 219002.

Shippers or their representatives can readily secure rate information from rail carriers, either directly by telephone or through discovery. 49 CFR §1300.2.

Rate comparisons are familiar. Shinn, Glenn L., Reasonable Freight Rates (Traffic Service Corp., 1952).^{6/}

The use of rate comparisons, rather than revenue-cost comparisons, would greatly simplify and reduce the expense of rate litigation at the STM. Moreover, the so-called "costs" are not actual costs, and are undergoing review in other STB proceedings.

Respectfully submitted,



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^{6/} Mr. Shinn served as Attorney-Examiner with the former ICC, and was the author of numerous articles. See also: Freight Rate Application (Simmons-Boardman, 1948); Routing and Misrouting of Freight (Simmons-Boardman, 1949).