

230765

BEFORE THE SURFACE TRANSPORTATION BOARD

IAM - 3

In the Matter of:

STB Docket No. AB-1075X

**MANUFACTURERS RAILWAY COMPANY - DISCONTINUANCE
EXEMPTION - IN ST. LOUIS, MO**

**ENTERED
Office of Proceedings**

AUG 05 2011

**Part of
Public Record**

**MOTION TO ALLOW FILING OF REPLY AND REPLY TO PETITION FOR STAY
MOTION**

The International Association of Machinists and Aerospace Workers ("IAM") moves the Board to permit the filing of its Reply one business day late. Section 1152.25(e)(7)(iii) provides that reply to petitions for stays in discontinuance cases "must reach the Board no later than five days after the petition is filed." Manufacturers Railway Company ("Manufacturers") filed a Petition to Stay Pending Judicial Review on July 27, 2011. Five days later would be August 1. IAM counsel was attending IAM's annual Transportation Conference in Las Vegas August 1-3 and was unable to file this Reply before his return on August 4. We submit this constitutes good cause for permitting this Reply to be filed and considered, particularly since two weekend days were part of the 5-day period.

REPLY

The Carrier's Petition should be rejected. First, the petition for review has little likelihood of success. The Carrier concedes that it does not intend to abandon the line at issue, it merely intends to discontinue service on it at this time. The Board's decision recognizes that the ICCTA Section 10903(b)(2) requires the imposition of labor protection "as a condition of any abandonment or discontinuance." This case presents a discontinuance. The Board's decision further recognizes that it has as a matter of policy developed two very limited exceptions to this otherwise applicable statutory obligation: (1) where a carrier's entire system is being abandoned, and (2) where the discontinuance will occur on lines the requesting carrier does not own. Manufacturers' proposed discontinuance does not fall into the first category because this is not an

abandonment. Nor does it fall into the second because Manufacturers owns the line on which it proposes to discontinue service.

For whatever reason, this Carrier does not want to abandon the line and will be retaining its common carrier obligation. Consequently, it will remain in business, albeit for now not using its own employees to provide service on the line. Because Manufacturers concedes these important facts, it has little if any likelihood of succeeding on its argument on judicial review that the Board's decision should set aside as somehow violating the statute or arbitrarily departing from existing policy.

As for the weighing of harm component of any stay consideration, the stay clearly will harm the employees. Manufacturers baldly states that the employees will not be harmed by a stay because the Carrier has no intention to pay them the protection in any event. The Carrier alleges it would be unable to do so, but offers no evidence whatsoever that it is not holding funds that would enable it to satisfy a protection obligation. Rather, the Carrier simply says that once it discontinues service it will "have no shipper revenues with which to fund the labor protective conditions." This seeming threat to leave the employees in the lurch should alone be a basis for denying the stay.

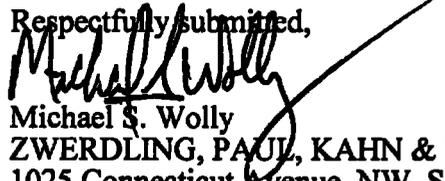
But even if the Board were to grant the stay, the Carrier's blunt remark should cause the Board to require Manufacturers to escrow the estimated costs of protection or at the very least post a bond to cover that amount. (The Carrier suggests, without any data to support its representation, that the labor protection the Board has imposed will cost \$7,820,711. Petition, p. 1, fn. 1). Furthermore, the Board also should condition any stay on the requirement that the Carrier continue to provide health insurance to the employees in accordance with the collective bargaining agreement during the pendency of its attempts to have the Board's Decision set aside. If not, employees may well find themselves in a position where they or their families are in need of costly medical care that they cannot afford in the absence of the health insurance they currently enjoy, and may even have to defer necessary medical care, while the appeal is pending. This is

precisely the kind of irreparable injury that easily overcomes the Carrier's purely financial considerations. Manufacturers' statements to the contrary notwithstanding, these employees clearly would be "worse off if the stay is granted." Such a requirement also would serve the public interest as these employees would not be forced to seek government assistance in such event.

An entity seeking a stay must satisfy all four of the components this Board applies: likelihood of success on the merits, irreparable harm to the movant, harm to others who would be affected by the stay, and the public interest. We submit that Manufacturers has not satisfied these requirements.

For these reasons, BLET requests that the Carrier's Petition for Stay be denied.

Respectfully submitted,



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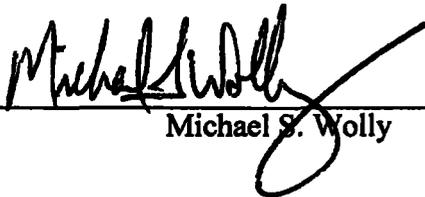
CERTIFICATE OF SERVICE

This is to certify that the foregoing Comment was served upon the following parties of record in this proceeding by fax and first-class mail this 4th day of May 2011.

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