



238857

ENTERED  
Office of Proceedings  
July 21, 2015  
Part of

Law Department  
500 Water Street, J150  
Jacksonville, Florida 32202  
Tel. 904-359-3276  
Fax 904-245-3650  
Email: John\_Patelli@csx.com

July 21, 2015

Public Record

**John P. Patelli**

SENIOR COUNSEL  
CORPORATE & TRANSPORTATION LAW

*Via Electronic Filing*

Admitted in FL & CO

Honorable Cynthia T. Brown  
Chief, Section of Administration  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20423-0001

Re: *STB Ex Parte No. 727; Petition of Norfolk Southern Railway Company to Institute a Rulemaking Proceeding to Address Abuses of Board Processes*

Dear Ms. Brown:

CSX Transportation, Inc. (“CSXT”) supports Norfolk Southern Railway Company’s (“NS’s”) above-referenced petition (the “Petition”) for institution of a rulemaking to explore ways to prevent abuse of the Board’s processes.

The essence of the Petition is immensely reasonable. CSXT is unaware of any formal mechanism in existence today that adequately serves to defend and discourage abusive filings and vexatious litigation before the Board.

While the Board strives to “provide for the expeditious handling and resolution of all proceedings,”<sup>1</sup> there can be no question that certain litigants can—and do—threaten valuable administrative resources and the legitimate business pursuits of other parties.

In some instances, CSXT has felt constrained to intervene to assist in clarifying the record even when not directly involved. To briefly cite one example, CSXT refers the Board to *James Riffin D/B/A The Northern Central Railroad—Acquisition and Operation Exemption—In Baltimore City, MD* FD 34982 (Oct. 5, 2007). In that proceeding, NCR attempted to acquire and operate a line in Baltimore City, MD, but its notice of exemption failed to:

- (i) indicate the current owner of the subject property;
- (ii) provide a clear description of the property, leaving the Board and other parties without the ability to discern the precise location;
- (iii) provide mileposts of the line in question; and
- (iv) indicate that some understanding had been reached between NCR and the owner of the property pursuant to 49 CFR 1150.43(c).

---

<sup>1</sup> 49 USC § 10101 (15).

The Board ultimately found that the notice was incomplete and rejected NCR's notice of exemption. *Id.* at 4. The Board further noted that "any new filing should be in the form of a petition for exemption, or a full application, to allow the level of scrutiny the Board would need to accord to the proposed acquisition in light of the questions and concerns" that had been presented. *Id.*

Before the issuance of the final decision, however, CSXT retained outside counsel and assembled in-house personnel to support the submission of two filings. *See* CSXT Reply, Feb. 2, 2007; CSXT Reply, Feb. 8, 2007. While not directly involved, CSXT was indirectly implicated. Any presence of NCR on the theoretical line in question could conceivably connect to CSXT mainline in the general vicinity. CSXT, therefore, felt constrained to review the matter and clarify that the City of Baltimore appeared to own the property in question; that CSXT believed such property was leased to the Baltimore Streetcar Museum; that the rail in question was not standard gauge, but far wider to accommodate historic streetcars; and that NCR had apparently filed its notice without regard to the owner or lessee. At the end of the day, the Board reached the appropriate conclusion, but it did not come without meaningful expenditure of resources by other entities and STB staff.

CSXT agrees, therefore, that certain circumstances call for the Board to protect the integrity of its proceedings. The Indiana Supreme Court's statement, cited in the Petition, articulated this concept well: "Every resource that courts devote to an abusive litigant is a resource denied to other legitimate cases with good-faith litigants."<sup>2</sup>

Gatekeeper rules are not new, and they are an important tool of judicial economy relied upon by other courts and agencies. Further, CSXT submits that the Board's Canons of Ethics already make litigants well aware that they have an ethical code to follow in appearances before the Board, including the duty to:

- (i) maintain a respectful attitude toward the Board and the importance of the functions it administers;
- (ii) regard themselves as officers of the Board and uphold its honor and dignity; and
- (iii) be punctual, and concise and direct in the disposition of causes.<sup>3</sup>

CSXT views the Petition as a natural and meaningful extension of the Canons of Ethics that every practitioner is already obligated to follow.

Accordingly, CSXT requests the Board to grant the Petition and institute a proceeding to determine whether certain processes are necessary to preserve and protect the limited resources of the Board and parties against abusive and vexatious litigation.

Respectfully,



John P. Patelli

cc: Gordon P. MacDougall, Esq., Michael F. McBride, Esq., David Reeves, Esq., John Scheib, Esq.

---

<sup>2</sup> *Zavodnik v. Harper*, 17 N.E.3d 259, 264 (Ind. 2014).

<sup>3</sup> *See* 49 C.F.R. § 1103.12.