



BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35206

PART 1117

PETITION FOR INJUNCTIVE RELIEF

224659

ENTERED
Office of Proceedings

MAR 11 2009

Part of
Public Record

MOTION TO STRIKE

1 Edwin Kessler ("Kessler"), pursuant to 49 CFR 1104.8, herewith files this Motion to Strike the irrelevant, immaterial, impertinent, and scandalous matter contained in BNSF's February 17, 2009 Reply of BNSF Railway Company to Petition for Injunctive Relief ("Reply"), in the above entitled proceeding, and in support thereof states

2 Kessler filed a Petition for Injunctive Relief, asking the Surface Transportation Board ("STB") to enjoin the BNSF Railway Company ("BNSF") (1) from refusing to deliver railcar HTTX 93507 to either the Boardman Spur at MP 541.75, or to a point on the Chickasha Line adjacent to property Kessler owns, near MP 541.95, (2) to enjoin BNSF from charging Kessler demurrage, storage or any other charges associated with BNSF's failure to deliver railcar HTTX 93507 to Kessler on or before August 19, 2008, (3) to enjoin BNSF from auctioning the locomotive that is on railcar HTTX 93507, and (4) to enjoin BNSF from refusing to pay to Kessler \$50.00 per day for each day since August 20, 2008, BNSF has deprived Kessler from the use of said locomotive

3 On February 17, 2009, BNSF filed its Reply to Kessler's Petition for Injunctive Relief

4 Throughout its Reply, BNSF utters irrelevant, immaterial, impertinent and scandalous matter, in violation of 49 CFR 1104.8, to wit

BNSF mounted a vitriolic-laced defamatory diatribe against the character of James

Riffin, of Timonium, MD, who is not a party to this proceeding. This abuse of, and personal attack upon Mr. Riffin is in clear violation of 49 CFR 1103.25.

5. The issue before the STB in this Proceeding is whether BNSF has a common carrier obligation to deliver railcar HHTX 93507 to either Boardman's Spur, or to the alternate location specified by Kessler, namely, adjacent to Kessler's property near MP 541.95 on the Chickasha Line in Oklahoma City, OK. Rather than address this issue, BNSF chose to "indulge in offensive personal attacks" against Mr. Riffin.

6. Pursuant to 49 CFR 1104.8, Kessler would ask that the STB **STRIKE** all references to Mr. Riffin from BNSF's Reply, as being irrelevant, immaterial, impertinent and scandalous matter.

Respectfully,



Edwin Kessler

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of March, 2009, a copy of the foregoing Motion to Strike was mailed via first class postage, postage prepaid, to Karl Morell, Ball Janik, Ste 225, 1455 F St NW, Washington, D C 20005, counsel for BNSF Railway Company.



Edwin Kessler