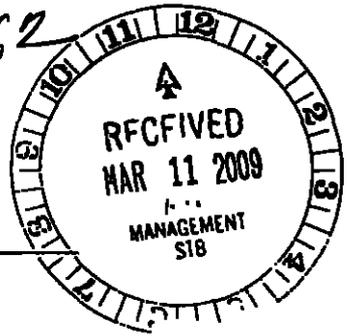


224662



BEFORE THE  
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35206

PART 1117

PETITION FOR INJUNCTIVE RELIEF

ENTERED  
Office of Proceedings

MAR 11 2009

Part of  
Public Record

MOTION TO IMPOSE SANCTIONS

1 Edwin Kessler ("Kessler"), pursuant to 49 CFR 1103.5, herewith files this Motion to Impose Sanctions jointly and severally against BNSF Railway Company ("BNSF") and Karl Morrell, counsel for BNSF, and for reasons 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 HTIX 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 HTIX 93507 to Kessler on or before August 19, 2008, (3) to enjoin BNSF from auctioning the locomotive that is on railcar HTIX 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 Rifkin, 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 and 49 CFR 1104.8

5. The issue before the STB is whether BNSF has a common carrier obligation to deliver railcar H1TX 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 1103.5, Kessler asks that the STB find that BNSF and Mr. Morrell, in the February 17, 2009 Reply of BNSF to Petition for Injunctive Relief, in the above entitled proceeding, did knowingly, and with intent to defame, "indulge in offensive personal attacks" on Mr. Riffin, in clear violation of 49 CFR 1103.25.

7. Kessler asks that the STB sanction BNSF and Mr. Morrell appropriately. [At a minimum, BNSF and Mr. Morrell should be required to publicly apologize to Mr. Riffin.]

Respectfully,



Edwin Kessler

#### CERTIFICATE OF SERVICE

I hereby certify that on this 11<sup>th</sup> day of March, 2009, a copy of the foregoing Motion to Impose Sanctions 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