

ENTERED  
Office of Proceedings

JUN - 8 2009

Part of  
Public Record

BEFORE THE  
SURFACE TRANSPORTATION BOARD



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FINANCE DOCKET No. 35206

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PART 1117

PETITION FOR INJUNCTIVE RELIEF

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225217

MOTION TO DISMISS  
PART 1117 PETITION FOR INJUNCTIVE RELIEF

1. Edwin Kessler ("Kessler"), herewith files this Motion to Dismiss Part 1117 Petition for Injunctive Relief, and in support thereof says:

2. On January 27, 2009, Kessler filed a Part 1117 Petition for Injunctive Relief ("Petition"), which Petition was docketed STB Finance Docket No. 35206.

3. Counsel for BNSF has given notice that BNSF has placed advertisements in several newspapers, advertising for sale at public auction, the Locomotive that is the subject of this proceeding.

4. Sale of the locomotive is imminent, and will occur unless BNSF is ordered not to sell the Locomotive.

5. To date, the Board has not acted on Kessler's Petition.

6. Since the Board has failed to take any action since Kessler's Petition was filed five months ago, and since Kessler needs to have BNSF enjoined from selling the Locomotive, Kessler has decided to pursue whatever legal remedies are available in a court of law.

7. Since Kessler is not permitted to pursue his legal remedies before the Board and in a court at the same time, Kessler has decided to **Dismiss his Part 1117 Petition for Injunctive Relief**, so that he may pursue his legal remedies in a court of law.

8. **WIHEREFORE**, Kessler herewith respectfully moves to **Dismiss his Part 1117 Petition for Injunctive Relief**.

Respectfully submitted,



Edwin Kessler

**CERTIFICATE OF SERVICE**

I hereby certify that on this 6<sup>th</sup> day of June, 2009, a copy of the foregoing Motion to Dismiss Part 1117 Petition for Injunctive Relief, was mailed by first class mail, postage prepaid, to Kristy Clark, BNSF Railway Company, 2500 Lou Menk Drive, Fort Worth, TX 76131-2828, to Craig Richel, 315 W. 3<sup>rd</sup> Street, Pittsburg, KS 66762, attorney for the Stillwater Central Railroad Company, and to Fritz Kahn, 8<sup>th</sup> Floor, 1920 N Street, N.W., Washington, DC 20036-1601.



Edwin Kessler