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ORIGINAL

Before the
SURFACE TRANSPORTATION BOARD

Docket No. 42076

ALBANY & EASTERN RAILROAD COMPANY

v.

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

SUPPLEMENT TO
PETITION FOR LEAVE TO INTERVENE



GORDON P. MacDOUGALL
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Washington DC 20036

Attorney for John D. Fitzgerald

Dated: February 6, 2003

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SURFACE TRANSPORTATION BOARD

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John D. Fitzgerald, ^{1/} for and on behalf of United Transportation Union-General Committee of Adjustment (UTU/GO-386), submits this Supplement to his petition for leave to intervene, filed December 11, 2002, and for good cause therefor states as follows:

1. The UTU/GO-386 petition for leave to intervene has not been opposed by either plaintiff, Albany & Eastern Railroad Company (AERC), or by defendant, The Burlington Northern and Santa Fe Railway Company (BNSF). The Board has not acted upon the UTU/GO-386 petition for intervention.

2. Certain events have transpired since the UTU/GO-386 filing on December 11, 2002, which bear on the interest of railroad employees in this proceeding; first, in Finance Docket No. 34255, Portland & Western Railroad, Inc.-Lease and Operation Exemp-

^{1/} General Chairman for United Transportation Union (UTU), on lines of The Burlington Northern and Santa Fe Railway Company (BNSF), with offices at 400 E. Evergreen Blvd., Vancouver, WA 98660.

tion-The Burlington Northern and Santa Fe Railway Company,^{2/} the STB Chairman on December 24, 2002 (served December 26), denied a stay of the lease by BNSF of its line between Quinaby-Salem-Albany-Eugene, OR, to Portland & Western Railroad, Inc. (PNWR),^{3/} and the Board upheld the Chairman's action on appeal, by decision dated and served December 31, 2002; second, in Finance Docket No. 34304, The Burlington Northern and Santa Fe Railway Company-Track-age Rights Exemption-The Portland & Western Railroad, Inc.,^{4/} involving BNSF's operation by trackage rights over the portion of the line being acquired by PNWR, between Bush and Albany, OR, the Board denied BNSF's motion to dismiss, by decision dated January 31, 2003 (served February 3, 2003).

3. These recent developments have further crystallized intervenor's thinking with regard to this complaint for arbitration. Intervenor now does not accept the notion that two or more rail carriers can enter into an agreement to arbitrate disputes between themselves, claiming to do so under the Board's rules, and to be administered in any part by the Board, where the guidelines for resolution of the inter-carrier dispute to be arbitrated, differ from the applicable guidelines for decision under applicable statutory provisions administered by the Board.

4. The instant agreement guidelines concern features of concern to private railroad parties, whereas the Board is to be

^{2/} See: 68 Fed. Reg. 396-97 (Jan. 3, 2003), as corrected at 68 Fed. Reg. 1218 (Jan. 9, 2003).

^{3/} This proceeding was mentioned in the UTU/GO-386's December 11, 2002 petition to intervene, at pp. 4-5.

^{4/} See: 68 Fed. Reg. 1214-15 (Jan. 9, 2003).

primarily concerned with the statutory standards for the public which embrace elements--including the interest of carrier employees--which are not addressed in the agreement and, indeed, go beyond the agreement guidelines.

WHEREFORE, the Board should grant intervention for UTU/GO-386 in this proceeding, to the extent requested in the December 11, 2002 petition, and thereafter dismiss the complaint.

Respectfully submitted,


GORDON P. MacDOUGALL
1025 Connecticut Ave., N.W.
Washington, DC 20036

February 6, 2003

Attorney for John D. Fitzgerald

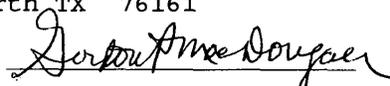
Certificate of Service

I hereby certify I have served a copy of the foregoing upon the following by overnight mail:

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