

JOHN D. HEFFNER, PLLC
1920 N ST., N.W.
SUITE 800
WASHINGTON, D.C. 20036
(202) 263-4180
FAX (202) 296-3939
j.heffner@verizon.net



ORIGINAL

BY HAND

March 29, 2005

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings

MAR 29 2005

RE: FD No. 34549, Illinois RailNet, Inc. -
Acquisition and Operation Exemption - The
Burlington Northern And Santa Fe Railway Company

Part of
Public Record

**Reply of Illinois RailNet, Inc. to the United
Transportation Union's Motion to Compel**

Dear Mr. Williams:

On behalf of Illinois RailNet, Inc., I am filing an original
and ten copies of the Reply of Illinois RailNet, Inc., to the
Motion to Compel submitted by the United Transportation Union.

I am also enclosing a computer disk formatted in WordPerfect
8.0 containing these filings.

Please date stamp and return one copy of this filing.

Sincerely yours,

John D. Heffner

cc: Daniel R. Elliott, III, Esq.
Sarah Bailiff, Esq.
Mr. Robert F. McKenney

213634

BEFORE THE
SURFACE TRANSPORTATION BOARD

ORIGINAL

STB FINANCE DOCKET NO. 34549

ILLINOIS RAILNET, INC.
-ACQUISITION AND OPERATION EXEMPTION-
THE BURLINGTON NORTHERN
AND SANTA FE RAILWAY COMPANY



ENTERED
Office of Proceedings

MAR 29 2005

Part of
Public Record

REPLY OF ILLINOIS RAILNET, INC.
TO THE UNITED TRANSPORTATION UNION'S
MOTION TO COMPEL

ORIGINAL

ORIGINAL

Respectfully submitted,

John D. Heffner
John D. Heffner, PLLC
1920 N Street, N.W.
Suite 800
Washington, D.C. 20036
(202) 263-4180

Counsel for Illinois
RailNet, Inc.

Dated: March 29, 2005

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 34549

ILLINOIS RAILNET, INC.
-ACQUISITION AND OPERATION EXEMPTION-
THE BURLINGTON NORTHERN
AND SANTA FE RAILWAY COMPANY

REPLY OF ILLINOIS RAILNET, INC.
TO THE UNITED TRANSPORTATION UNION'S
MOTION TO COMPEL

INTRODUCTION

This proceeding involves the continuing effort by Petitioner United Transportation Union (UTU) to revoke the exemption granted in 2004 to Respondent Illinois RailNet, Inc. (Illinois), for a small rail line acquisition in northern Illinois. Dissatisfied with documents furnished by Illinois, UTU asks the Board to compel Illinois to provide it with the "unredacted" version of the line sale agreement between Burlington Northern and Santa Fe Railway Company (BNSF).¹ UTU's motion should be denied.

¹ Effective January 20, 2005, BNSF changed its name to "BNSF Railway Company" and references to BNSF shall mean and include The Burlington Northern and Santa Fe Railway Company prior to January 20, 2005, as well as BNSF Railway Company for any references on or after January 20, 2005.

BACKGROUND
AND STATEMENT OF FACTS

Illinois is an existing class III short line rail carrier operating trackage in the State of Illinois. As relevant here, on October 18, 2004, the Board served two decisions (1) exempting Illinois' acquisition and operation of two short BNSF railroad lines in Illinois and (2) granting Illinois trackage rights² over a short segment of BNSF track. Following the grant of these exemptions, Illinois consummated these transactions.

Three months later on January 26, 2005, UTU filed a "Petition to Revoke Exemption," to which Illinois filed a timely reply. By letter, UTU also asked Illinois in accordance with 49 CFR 1121 and 49 CFR 1114 to provide "[a]ll purchase agreements and other written arrangements between [Illinois] and [BNSF] including leases, loans, and other arrangements between BNSF that bear upon the [Illinois] purchases, leases, and operations...[and] all documents or agreements regarding [Illinois] operations on the trackage between milepost 98.49 near Oregon, Illinois and milepost 101-2 (sic) near the sand plants..." Out of an abundance of caution, Illinois asked UTU's counsel to sign a confidentiality agreement. Illinois promptly provided UTU's counsel with a redacted copy of all documents (other than the trackage rights agreement) pertaining to

² Limited local trackage rights for the purpose of servicing customers on BNSF in and around Oregon, IL.

this transaction and advised UTU's counsel that he could find a copy of the trackage rights agreement³ on the Board's website.

STATEMENT OF POSITION

The UTU has not justified its request for a copy of the unredacted sale agreement. Section 1114 of the Board's Rules of Practice allow discovery of any matter, not privileged, which is relevant to the subject matter in a proceeding other than an informal proceeding or which will lead to the discovery of admissible evidence.⁴ Moreover, Part 1121 of the Board's rules pertaining to Rail Exemption Procedures merely states that a party filing a petition to revoke must state in the petition whether it seeks discovery and must file its discovery requests at the same time it files its petition to revoke. Those rules require the completion of discovery within 30 days after the petition to revoke is filed in order to allow the petitioner to supplement its petition within 45 days after the original petition was filed. But the Board's Rules are silent on whether or when a party seeking discovery has a right to the unredacted version of a document containing sensitive commercial information. Just because a party asks for it does not mean that it is entitled to receive it.

³ The trackage rights agreement filed with the Board in STB FD No. 34559, Illinois RailNet, Inc.-Trackage Rights Exemption-The Burlington Northern and Santa Fe Railway Company

⁴ Informal proceedings are those matters not required to be determined on the record after hearing. See, 49 CFR 1112.14.

.
:
.

Nowhere does UTU's Motion provide any explanation as to why the proffered redacted documents fail to meet its need. The UTU's scant four page petition to revoke describes the transaction and the trackage rights that are the subject of these two verified notices of exemption. UTU then claimed that the Board's exemption requirements are inadequate for determining whether a particular transaction is consistent with the Rail Transportation Policy. Finally, UTU asserted that Illinois has been providing common carrier service to certain sand plants over BNSF's mainline track. In fact, all that the reader can discern from UTU's Petition is that "it is impossible to ascertain if [the subject transactions] are arm's length transactions which carry out the Rail Transportation Policy set forth at 49 U.S.C. 10101, particularly concerning employee wages and safety and suitable working conditions."

While Petitioner suggests that employee concerns, shipper needs, the transportation system, and maintenance of fair and reasonable rates are matters the STB considers in determining whether a transaction meets the "public convenience and necessity," there is no showing that Illinois' operation here does not satisfy either the Rail Transportation Policy or the public convenience and necessity. Presumably, the UTU is concerned about some sort of adverse effect on the interests of rail labor but its petition contains no discussion and presents

no evidence regarding job loss or impacts on working conditions, employee safety, or other employee harm. Providing the UTU with a copy of its sale agreement revealing the purchase price and other commercial arrangements between BNSF and Illinois is totally irrelevant as to employee impacts or the public convenience and necessity.

Illinois notes that UTU's Petition to Revoke is very similar to a spate of filings it has submitted in several other short line railroad acquisition transactions where it suggests that the these transactions are "less than arms length."⁵ The instant transaction is "arms length" because there is no corporate relationship between BNSF and Illinois. BNSF is a publicly owned New York Stock Exchange listed corporation with a fiduciary obligation to maximize its return to its shareholders. Illinois is a subsidiary of a closely held entrepreneurial corporation under similar pressure to maximize shareholder return. Both BNSF and Illinois have every incentive to maintain a vigorous, "arms length" commercial relationship.

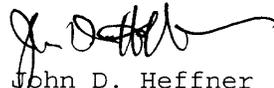
CONCLUSION

Accordingly, UTU has shown no basis for its Motion to Compel. Illinois has been totally cooperative in providing the UTU with copies of all transaction documents. The only "gap" between what

⁵ See, e.g., The Columbus & Ohio Rail Road Company-Acquisition And Operation Exemption-Rail Lines of CSX Transportation, Inc., STB Finance Docket No. 34540 (STB served Feb. 22, 2005).

the UTU seeks and what Illinois has provided is that the documents furnished to the UTU lack the purchase price and commercial terms of the transaction. But UTU does not explain why the proffered documents are unsatisfactory for its need. Accordingly, the Board should deny its Motion.

Respectfully submitted,



John D. Heffner
John D. Heffner, PLLC
1920 N Street, N.W.
Suite 800
Washington, D.C. 20036
(202) 263-4180

Counsel for Illinois
RailNet, Inc.

Dated: March 29, 2005

CERTIFICATE OF SERVICE

I, John D. Heffner, hereby certify that I have this 29th day of March, 2005, served a copy of the Reply to UTU's Motion to Compel upon all parties of record by First Class United States Mail.



John D. Heffner