

Date: December 27, 2006

Sent by U.S. priority mail, with delivery confirmation

From: Stephen J Thompson
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218368



To: Mr. Vernon Williams, Secretary
Surface Transportation Board
1925 K Street, Northwest
Washington DC 20423-0001

Re: Ex Parte 665: Rail Transportation of Grain

1. Written statement dated December 27, 2006, for inclusion in the record (one original plus 10 copies were sent to you today under separate cover)
2. Proof of service to parties of record in the proceeding

Dear Mr. Williams:

I sent you a letter on November 9, 2006, that gave you notice of my intent to participate as a party of record in STB Ex Parte 665: Rail Transportation of Grain. Enclosed with that letter was my written statement dated November 9, 2006, for inclusion in the record of Ex Parte 665. Thank you for accepting that written statement and making me a party of record in the present proceeding. I later sent you a 2nd written statement dated November 24, 2006.

The purpose of the present letter is to provide you with my 3rd written statement, executed today, that I would appreciate having included in the record of Ex Parte 665. Enclosed with the present letter is one copy of the statement dated today. One original and 10 copies of my written statement were sent to you today under separate cover for use by the Surface Transportation Board.

I have served today by U.S. mail all 30 parties of record in this proceeding (except myself) with a copy of my written statement executed today. Enclosed for reference is a copy of the service list containing the 31 names of parties of record in the present proceeding.

I appreciate the opportunity to participate in this proceeding.

Sincerely,


Stephen J Thompson

ENTERED
Office of Proceedings

JAN 03 2007

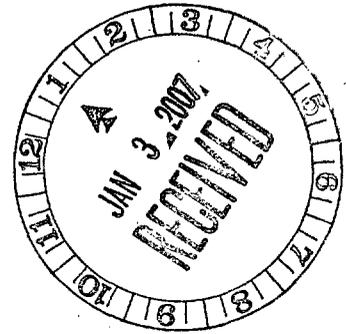
Part of
Public Record

Enclosures: Written statement executed December 27, 2006 (one copy)

SURFACE TRANSPORTATION BOARD

STB Ex Parte 665. Rail Transportation of Grain
EP_665_0

Written Statement # 3
by Stephen J Thompson
December 27, 2006



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SURFACE TRANSPORTATION BOARD

STB Ex Parte 665. Rail Transportation of Grain
EP_665_0

Written Statement # 3
by Stephen J Thompson
December 27, 2006

QUALIFICATIONS AND REPRESENTATION

My name is Stephen J Thompson. I stated my qualifications in my 1st written statement in the present proceeding. That statement is dated November 9, 2006. My 2nd written statement is dated November 24, 2006. The present paper is my 3rd written statement in the present proceeding. My 3 written statements are intended as a unified presentation. I suggest that the 3 statements be read in consecutive order. In this 3rd statement, I build on the presentation in the first 2 statements and I refer to those earlier statements. These 3 statements represent my own views and I did not write them with the intention of representing the views of any organization or other individual. I appreciate the opportunity to participate in this proceeding. My intention is to participate constructively in the national conversation regarding possible improvements in public policy toward the rail industry.

INTRODUCTION

There is broad agreement that enactment of the 4R Act of 1976 and the Staggers' Rail Act of 1980 contributed to the improved financial health and stability of rail carriers while providing more price and service options to rail customers. The general public benefits from the improved financial health and stability of rail carriers and from the increased price and service options utilized by rail customers. These 2 laws changed United States public policy toward the rail industry more significantly than any change since economic regulation of railroads began in the United States in the latter part of the 19th Century. The successful implementation of these 2 laws by the Interstate Commerce Commission, and subsequently by the Surface Transportation

Board (STB or Board), now provides the Board with the opportunity to further improve the financial health and stability of rail carriers while providing even more price and service options to rail customers. Continued strong financial health and stability of rail carriers will be a key determinant of whether rail carriers choose to invest sufficiently in plant and equipment to enable them to transport even more freight in the future. I think that greater intrarail competition is an important key to improving the efficiency of rail operations and lowering the cost of rail operations sufficiently to provide a strong incentive to railroads to invest in plant and equipment.

In the present written statement, I make 5 suggestions for consideration by the Board. For simplicity of presentation, I have numbered my suggestions 1 through 5. The numbers run consecutively across 3 topics: Staggers Act provisions, paper barriers, and work rules and labor compensation. I briefly state my justifications for making a suggestion following an explanation of each suggestion. Before I begin that discussion of suggestions for consideration by the Board, I would like to refer briefly to a topic that I raised in my 2nd written statement. The topic is FELA.

FELA

In my 2nd written statement, I discussed the Federal Employers' Liability Act (FELA). Three reports on that topic which might be helpful to the Board when considering possibly allowing (or requiring) rail carriers and/or rail employees to opt out of FELA are: *The Federal Employers' Liability Act: No Need for Change*, by Michael Oldfather and Michael W. Babcock, the title page of which contains the following: "This Material Presented by Fred A Hardin, President, United Transportation Union, 14600 Detroit Avenue, Cleveland, Ohio 44107, April, 1989; Transportation Research Board, National Research Council Special Report 241 entitled *Compensating Injured Railroad Workers Under the Federal Employers' Liability Act* (undated but released on May 26, 1994); and U.S. General Accounting Office, August 1996, Report Number GAO/RCED-96-199 entitled *Federal Employers' Liability Act: Issues Associated With Changing How Railroad Work-Related Injuries Are Compensated*.

THE BOARD COULD CONSIDER MORE FULLY UTILIZING STAGGER'S RAIL ACT PROVISIONS

As I discussed in my 1st and 2nd written statements, the Board probably could improve rail carrier financial health and stability while increasing the price and service options available to rail customers by more fully utilizing some Stagger's Rail Act provisions. I believe that more intrarail competition would result in more efficient and more cost effective rail operations. More efficient and more cost effective rail operations could benefit railroads and their customers, and help assure that railroads will make sufficient investments in new plant and equipment to haul more freight in the future. I discuss 3 such provisions of the Stagger's Rail Act next.

Suggestion 1. Section 213 of the Staggers Rail Act makes exemption from Board regulation easier. The Board could consider using this provision more fully.

Section 213 of the Stagger's Act, as now codified in 49 USC §10502, states, in relevant part, that the Board, to the maximum extent consistent with the U.S. Code relating to railroads, shall exempt a person, class of persons, or a transaction or service whenever the Board finds that the application in whole or in part of the provision is not needed to protect shippers from the abuse of market power.

The Board could use section 213 authority to exempt more rail transportation from its economic regulation and to promote the development of intermodal transportation companies. Such companies might be a stimulus to improved cost-effectiveness of rail transportation services -- and of rail-intermodal transportation services.

Suggestion 2. Section 221 of the Staggers Rail Act makes it easier for the Board to approve construction of new rail lines across the right-of-way of another railroad. The Board could consider using this provision more fully.

Section 221 of the Stagger's Act, as now codified at 49 USC §10901, states, in relevant part, that the Board shall authorize construction and operation of a rail line across the rail line of another rail carrier if: (A)

the construction does not unreasonably interfere with the operation of the crossed line; (B) the operation does not materially interfere with the operation of the crossed line; and (C) the owner of the crossing line compensates the owner of the crossed line. If the parties are unable to agree on the terms of operation or the amount of payment, the Board shall set the terms of operation or the amount of payment.

The Board could use section 221 to expand the price and service options that are available to rail customers who are paying rates above a particular threshold that could be set by the Board. The Board could use section 221 to reduce the number of rail customers who have access to only one Class I railroad.

Suggestion 3. Section 223 of the Staggers Rail Act authorizes the Board to require joint use of terminals, and to require switching of rail cars, in order to provide competitive rail service. The Board could consider using this provision more fully.

Joint use of terminals: Section 223 of the Staggers Act, as now codified at 49 USC §11102, states, in relevant part, that the Board may require terminal facilities, including main-line tracks for a reasonable distance outside of a terminal, to be used by another rail carrier if the Board finds that use to be practicable and in the public interest without substantially impairing the ability of the rail carrier owning the facilities or entitled to use the facilities to handle its own business. The Board may establish conditions and compensation if the rail carriers cannot agree on conditions and compensation. The Board could use Section 223 joint use of terminals authority to increase the number of rail carriers serving rail customers who are paying rates above a particular threshold that could be set by the Board. The Board could use Section 223 to reduce the number of rail customers who have access to only one Class I railroad.

Switching: “Switching” refers to moving rail cars from one spot to another, such as from a rail siding at a shipper’s plant site to a rail line. Switching also refers to moving rail cars from the tracks of one railroad to the tracks of another railroad. Section 223 of the Stagger’s Act, as now codified at 49 USC §11102, states, in relevant part, that the Board may require rail carriers to enter into reciprocal switching agreements when the Board finds such agreements to be practicable and in the public interest, or where such agreements are neces-

sary to provide competitive rail service. The Board may establish the conditions and compensation if the rail carriers cannot agree. The Board could use Section 223 switching authority to increase the number of rail carriers serving rail customers who are paying rates above a particular threshold that could be set by the Board. The Board could use Section 223 to reduce the number of rail customers who have access to only one Class I railroad.

These 3 provisions of the Stagger's Act -- Board authority to exempt rail traffic from Board economic regulation, Board authority to authorize construction of rail lines over the right-of-way of another railroad, and Board authority to require joint use of terminals and switching -- were most recently codified as a result of the ICC Termination Act enacted in 1995. President Clinton signed the ICC Termination Act legislation into law. In his signing statement (at 49 Stat. 933-1 and 933-2), President Clinton wrote that he was disappointed that Congress had not taken the opportunity provided by the consideration and passage of the ICC Termination Act to reduce much further the economic regulation of rail carriers. Indeed, reducing economic regulation in the United States economy has been a bipartisan objective for the past quarter-century. Enactment of the 4R Act and the Stagger's Act were a significant part of that bipartisan effort to reduce economic regulation of the United States economy.

"PAPER BARRIERS"

Suggestion 4. The Board could consider whether the public interest requires setting aside some "paper barriers" in order to promote healthy competition among railroads and to provide access to a second Class I railroad for shippers who currently have access to only one Class I railroad.

The public record in the present proceeding includes references to "paper barriers". The term "paper barriers" refers to provisions in a contract between a Class I railroad and a branch line railroad that prohibits the branch line railroad from competing in the transportation of rail services with the Class I railroad that created the branch line railroad. An example of such prohibited competition would occur if a branch line railroad

interlined freight with another Class I railroad. Class I railroads object to use of the expression “paper barriers”, preferring instead to call such non-competition provisions in a contract by the expression the “sanctity of private contracts”. Indeed, in United States jurisprudence, private contracts generally are not modified by a court for the purpose of addressing issues that are not covered in a private contract. However, in United States jurisprudence, transportation provided to the public (such as transportation provided by a rail carrier to a rail customer) is “affected with the public interest” (beginning with the U.S. Supreme Court decision in *Munn v. Illinois*, 94 U.S. 113, decided in 1877) to the extent that today provisions of private contracts in the rail industry can be modified when such actions are deemed by a court or the Board to be “in the public interest”. If the Board concludes that it does not currently have such authority regarding non-competition provisions in contracts between railroads, the Board could request Congress or the courts to clarify the authority that it has when the Board concludes that such action would be in the public interest.

The Board could consider removing paper barriers to increase the number of rail carriers serving rail customers who are paying rates above a particular threshold that could be set by the Board. The Board could consider removing paper barriers to reduce the number of rail customers who have access to only one Class I railroad.

WORK RULES AND LABOR COMPENSATION

Suggestion 5. The Board could consider allowing -- or requesting Congress to give it the authority to allow -- rail carriers to conduct their labor relations under the National Labor Relations Act rather than under the Railway Labor Act.

The headline in the daily newspaper *The Christian Science Monitor* for Friday, December 15, 2006, caught my attention as I was drafting the present written statement to submit to the Board. The headline read “To fix U.S. schools, panel says, start over”. The article went on to explain that the panel had not proposed starting over, but rather, the panel had made suggestions that would significantly affect U.S. schools. My

suggestion 5 seems to fall into the category of suggesting significant changes; if adopted by the Board and by Congress, the suggestion probably would significantly affect rail labor and rail carriers. I believe the change probably would meet strong resistance from some quarters, but that the change would likely result in a much stronger financial position and much greater financial stability for rail carriers. I believe that the change could greatly increase the likelihood that rail carriers would invest enough in plant and equipment to enable them to haul more rail traffic in the years ahead. That investment and increased traffic would be good for rail labor.

The change that I propose is to allow a rail carrier -- and a prospective new entrant into the rail carrier industry -- to conduct its labor relations under the National Labor Relations Act. The National Labor Relations Act governs labor relations in most industries in the United States with the exception of the railroad and airline industries.

Similarly, rail employees of each rail carrier could be given the power to request (in the form of vote by a written ballot process supervised under the provisions of the National Labor Relations Act or under the provisions of the Railway Labor Act) that their labor relations with their rail carrier employer be conducted under the National Labor Relations Act rather than under the Railway Labor Act.

The Railway Labor Act could be perpetuating rail operating practices that are outmoded, inefficient, and expensive, compared to what might occur under labor relations conducted under the National Labor Relations Act. The Railway Labor Act facilitates craft unions rather than company-wide unions. A result is lots of unions with which a rail carrier must negotiate, thus increasing the time and expense of reaching labor agreements. Another result is that there are lots of people in the rail industry who are devoted to union activities rather than devoted to conducting rail operations, compared to what might be the case under the National Labor Relations Act. These people doing union work rather than producing rail transportation services raise the cost of producing rail transportation services. Another result of rail transportation being provided under the Railway Labor Act compared to being provided under the National Labor Relations Act is that upward mobility of rail employees might be hampered or blocked altogether because their employment is confined to a narrow definition of

work, so that they are not able to learn and use new skills and knowledge that would benefit their paycheck and their employer. At the very least, an examination of these issues by the Board would seem to be appropriate if the Board sees itself as a “problem solver” regarding the financial health and stability of the rail industry and regarding the ability and willingness of railroads to invest in plant and equipment.

Perhaps a good way to find out whether the Railway Labor Act is adversely affecting the financial strength and stability of rail carriers would be to study the work rules, basis of employee compensation, and levels of employee compensation in the rail industry compared to the trucking industry. If the Board concludes from such a study that rail operations are relatively inefficient, or that rail labor costs are too high, for comparable levels of skill, experience and effort, compared to the trucking industry, then perhaps the best way to address the issue is to allow, or require, rail carriers to conduct their labor relations under the same statutes that govern the trucking industry. Part of the Board’s study could be an examination of ways to ameliorate the disruption to rail labor union employees and other rail employees that might result from a change from working under the Railway Labor Act compared to working under the National Labor Relations Act. The Board might decide that a change in labor laws governing the rail carrier industry would be sufficiently meritorious that rail employees who would be adversely affected by the change should be compensated. Such compensation could be part of the package of proposals the Board might provide to the Congress. Such compensation might come from rail carriers from savings they achieve from labor relations under the National Labor Relations Act.

FELA and Railroad Retirement were discussed in my earlier written statements. Similar reasoning, and similar suggestions for a smooth transition, could be applied to FELA compared to worker’s compensation, and applied to Railroad Retirement compared to retirement programs in the trucking industry and other industries.

ASSURING ADEQUATE RAIL INVESTMENT IN PLANT AND EQUIPMENT

The foregoing discussion in this and the 2 prior written statements addresses intrarail competition in the context of the present proceeding: making rail carriers stronger and more stable financially, and providing

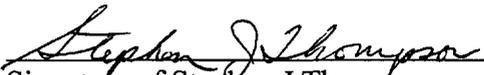
more price and service options to rail customers. Associated with this focus is the question of whether railroads will make sufficient investment to enable them to carry the rail traffic that could be tendered to them in the next decade or more. I hope that the foregoing suggestions are helpful and productive. In addition to these suggestions, in the broader context of assuring that rail carriers make adequate investment in plant and equipment to enable them to carry the traffic that could be tendered to them in the future, the Board should perhaps be aware of at least 2 other factors that probably have an adverse impact on the ability of rail carriers to provide adequately for their customers, and at the same time reduce highway congestion, improve highway safety and reduce the degradation of the planet's physical environment. One of these other factors is the possibility that trucks are not paying their fair share of the cost of providing the highways and roads they use. The other factor is the possibility that railroads are paying too much in property taxes to State and local governments. While these 2 public policy considerations may be beyond the authority of the Board to affect directly, the Board probably has sufficient authority to bring these 2 topics to the attention of the Congress and the President if, in the judgement of the Board, they are topics that impinge on the ability of rail carriers to provide adequately for rail customers, and indirectly to provide for the transportation needs of the general public now or in future years.

I, Stephen J Thompson, declare under penalty of perjury that the forgoing is true and correct. Further, I certify that I am qualified and authorized to file this pleading. Executed on December 27, 2006.


Signature of Stephen J Thompson

27 December 27 2006
Date signed

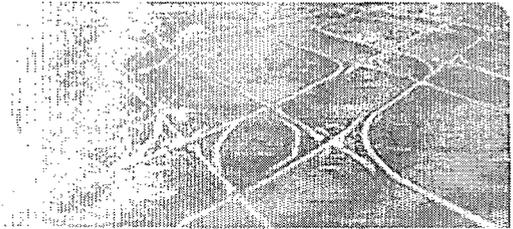
I, Stephen J Thompson, hereby certify that I have served all parties of record in this proceeding with this document by United States Mail.


Signature of Stephen J Thompson

December 27 2006
Date signed



Surface Transportation Board



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Docket #: **EP_665_0**

Case Title: **RAIL TRANSPORTATION OF GRAIN**
31 Service List entries found.

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- Party Of Record: Schuler, Dale
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