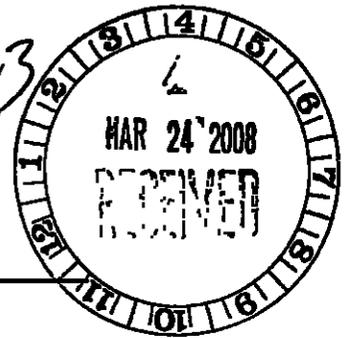


221883

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



STB DOCKET NO. AB-6 (Sub- No. 430X)

**BNSF RAILWAY COMPANY
ABANDONMENT EXEMPTION
IN OKLAHOMA COUNTY, OK**

ENTERED
Office of Proceedings

MAR 24 2008

Part of
Public Record

MOTION FOR CEASE AND DESIST ORDER

1. Edwin Kessler ("Kessler"), herewith files this Motion for Cease and Desist Order, and says:
2. On **February 7, 2008**, Chairman Nottingham ordered BNSF not to consummate the abandonment of the Line of railroad which is the subject of the above entitled proceeding.
3. On **February 14, 2008**, Tom Elmore, a party to this proceeding, observed, photographed, and spoke with an individual who identified himself as "Wesley," who was the foreperson of a crew that was salvaging the Line, and who stated his salvaging activities were pursuant to a salvage contract with BNSF. Mr. Elmore also had a conversation with Corey Burkhardt, the BNSF Oklahoma City Roadmaster, who stated to Mr. Elmore that the Line was being salvaged pursuant to a BNSF salvage contract.
4. On February 15, 2008, Kessler filed his initial Comments of Edwin Kessler, wherein he stated the J.B.F. Tie and Rail Company had been engaged to begin dismantling the line. He attached black and white photocopies of color photographs Mr. Elmore had taken on February 14, 2008.

5. On February 19, 2008, Kessler filed color photocopies of the color photographs Mr. Elmore had taken on February 14, 2008, and filed a Verified Affidavit of Thomas Elmore, wherein Mr. Elmore testified that he had taken the photographs and had spoken with Wesley and Corey Burhhart.

6. On February 19, 2008, BNSF filed its Reply to February 15, 2008 Edwin Kessler Comments. BNSF attached to its Reply, a Verified Statement of Susan L. Odom, Manager – Network Strategy. In her Verified Statement, Ms. Odom stated “to her **current actual** knowledge, information, and belief:”

- A. A portion of the Line “was cut by BNSF forces on January 25, 2008.”
- B. No additional salvage work has since been performed by BNSF or any BNSF authorized contractor.
- C. BNSF has not issued a signed contract for the salvage work.
- D. “Any salvage activity performed on the subject line on February 14, 2008 was done so without the permission of and without direction from this office, which is responsible for doing so. Further, this office has no knowledge of or information on a company by the name of J.B.F. Tie and Rail Co. Mr. Kessler’s speculative statement that BNSF has engaged J.B.F. Tie and Rail Co. to begin dismantling the line is false.”

7. On February 20, 2008, Kessler filed a Supplement to his Initial February 15, 2008 Comments, wherein he provided the Board with the telephone numbers of the individuals who were actually cutting the Line, and the telephone number of Jason Shaw, who stated he had a salvage contract with BNSF to salvage the Line.

ADDITIONAL CONTINUING SALVAGING ACTIVITIES

8. On the afternoon of **February 26, 2008**, Tom Elmore observed and photographed a newly constructed cantilevered railway crossing signal at the S. Agnew Avenue crossing of the Chickasha / former Frisco Line, near MP 542.8, which is about 600 feet from the end of the portion of the Line that BNSF proposes to abandon (at MP 542.91). A copy of Mr. Elmore’s

February 26, 2008 photograph of the signal pole in the middle of the Frisco tracks, is reproduced below. Mr. Elmore spoke with Don R. Moad of Ram Products, Inc., which is located at 1731 S. Agnew Avenue, Oklahoma City, Ok. Ram Products' business is located about 200 feet north of the Frisco Line / S. Agnew crossing. Mr. Moad told Mr. Elmore that he witnessed the erection of the signal pole in the middle of the tracks on February 22, 2008, or just 8 days after Mr. Elmore observed a salvage crew salvaging the Line near MP 540.4.

9. On February 26, 2008, Mr. Elmore also photographed the Frisco / Chickasha Line at MP 540.2. [The signal box in the photograph is clearly labeled "Santa Fe MP 540.20."] This photograph, which is reproduced below, clearly shows a portion of the Frisco / Chickasha Line had been removed prior to the date the photograph was taken. This photograph also clearly shows that on February 26, 2008, the turnout to the Shields Spur [on the right of the photograph] was still in place, as was about 100 feet of Frisco Line.

10. On March 17, 2008, when Mr. Elmore revisited the Frisco / Chickasha Line at MP 540.20, he observed, and photographed, that portion of the Frisco Line that he had photographed on February 26, 2008. Mr. Elmore's March 17, 2008 photograph clearly shows the turnout to the Shields Spur, and an additional 100 feet of the Frisco / Chickasha Line had been removed sometime between February 26, 2008 and March 17, 2008, contrary to Chairman Nottingham's February 7, 2008 Order directing BNSF to stop salvaging the Frisco / Chickasha Line.

11. BNSF obviously has no intention of complying with Chairman Nottingham's February 7, 2008 Order, for BNSF has continued with its destruction of the Line not once, but on three separate occasions, and continues to defy Chairman Nottingham's Order, even though BNSF's unlawful activities were first reported to the Board on February 15, 2008.

12. WHEREFORE, Kessler would respectfully request the Board issue a Cease and Desist Order, Ordering BNSF to cease and desist from any further activities anyplace on the Line which is the subject of this proceeding, which would in anyway make it more difficult to provide service on the Line were BNSF's abandonment authority to be reversed. If the Board were to issue a Cease and Desist Order, then Kessler could file that Cease and Desist Order in the U.S.

District Court for the District of Oklahoma, and could obtain injunctive relief against BNSF and any parties acting under putative BNSF authority.

Respectfully,



Edwin Kessler

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of March, 2008, a copy of the foregoing Motion for Cease and Desist Order, was served by first class mail, postage prepaid, upon the parties of record noted below.



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