

ORIGINAL

Before the
SURFACE TRANSPORTATION BOARD



Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY,
MISSOURI PACIFIC RAILROAD COMPANY
-CONTROL AND MERGER-
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP., AND THE DENVER AND RIO GRANDE
WESTERN RAILROAD COMPANY

PETITION FOR RECONSIDERATION

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Due Date: May 21, 2008

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Preliminary Statement

Jay L. Schollmeyer,^{1/} for and on behalf of United Transportation Union-General Committee of Adjustment GO-386 (UTU/GO-386), petitions the Board that the agency reconsider its Decision No. 103, dated April 30, 2008 (served May 1), which denied the request by Mr. John D. Fitzgerald^{2/} for "labor" protective conditions.^{3/}

Upon reconsideration, the Board should impose the so-called New York Dock and Oregon Short Line conditions for the protection

^{1/} General Chairman for United Transportation Union on lines of BNSF Railway Company, with offices at 400 E. Evergreen Blvd., Vancouver WA 98660.

^{2/} Jay L. Schollmeyer is the successor to Mr. Fitzgerald, effective January 1, 2008.

^{3/} The statutory provision is for "employee" protective conditions. 49 U.S.C. 11326. The term "labor" is considered pejorative, but seems endemic with agency staff personnel.

of railroad employees who may be affected by the transactions covered in the Board's decision requiring the discontinuance of service.

This petition for reconsideration is based upon material error and/or changed circumstances. 49 CFR 1115.3.

ARGUMENT

This phase in the aftermath of the UP/SP Merger,^{4/} involves a condition imposed by the Board under the terms of a Board-approved agreement between UP, SP, and BNSF, providing trackage rights for BNSF over certain rail lines of the merged UP/SP system. BNSF for several years has operated over UP lines under the UP/BNSF agreement. However, a dispute recently arose between UP and BNSF concerning the terms approved by the STB. UP sought to reform the UP/BNSF agreement, and when unsuccessful, instituted the present proceeding for reformation of the STB-approved condition. John D. Fitzgerald (now succeeded by Jay L. Schollmeyer), on behalf of certain UTU-represented BNSF employees (UTU/GO-386), sought the standard employee-protective conditions imposed in the UP/SP Merger, the so-called New York Dock conditions, if the Board revised or interpreted the UP/BNSF agreement adverse to BNSF traffic flows.

The Board's April 30, 2008 decision was adverse to BNSF; however, instead of reforming the STB-imposed UP/BNSF merger agreement condition, the Board ruled that it never intended to accord BNSF the disputed trackage rights, and that BNSF must cease certain trackage rights operations. In addition, the Board

4/ Union Pacific/Southern Pacific Merger, 1 S.T.B. 233 (1996).

declined to impose protective conditions for those BNSF employees who might be adversely affected by the forced discontinuance. The Board reasoned that it was not required to impose conditions for operations that were not authorized by the Board in the first place, and that there was no basis for imposing new protective conditions, or expanding conditions for protection previously imposed. Finally, the Board speculated that owing to alternate lines, it was unlikely any BNSF employees would be adversely affected. (Decision, 8):

"In this case, we recognize that BNSF has been operating certain intermodal trains over the Cal-P and Elvas-Stockton lines in the mistaken belief that it has Board authorization to do so and those operations much change given the clarification contained in this decision. But there is no requirement that the Board impose conditions here to protect BNSF employees whose jobs may be affected by BNSF now having to cease operations that were not authorized by the Board in the first place. Further, no other basis has been shown for imposing new employee protective conditions as a result of our decision here, and there is no basis for expanding coverage of employee protective conditions previously imposed in this proceeding. In any event, BNSF has a nearby, alternative route over its own lines for the trains that it no longer will be able to route over UP's rail lines. Consequently, it is unlikely that any BNSF employees would be adversely affected as a result of the route change."

The Board's decision constitutes material error. Moreover, the decision's theory that it may requiring discontinuance of service constitutes a changed condition.

1. The Board's decision in favor of UP, is upon a ground not advanced by either UP or BNSF. The parties considered this a contest for reformation of an agreement approved by the Board as a condition to the UP/SP Merger approval. Instead, the Board has

taken an approach apparently aimed at railroad employees, saying the trackage rights had never been authorized, and will now be discontinued, without the mandatory employee conditions required for a merger (New York Dock), or for a discontinuance (Oregon Short Line). The term mandatory is stressed, because Congress did not require causal connection, or speculation as to probable harm, as a prerequisite to imposition of employee conditions. Where a consolidation or discontinuance is authorized or required, the Board must impose conditions--questions of causal connection or adverse affect go to the subsequent implementation of the conditions.

2. The Board should impose the New York Dock conditions originally requested by UTU/GO-386, and also the Oregon Short Line conditions in light of the Board's April 30, 2008 reasoning.

The Board's action thus far tracks the all too familiar "doubletalk" and "nonsense" associated with agency treatment of Congressional concern and mandatory requirements for railroad employees. See: United Transp. Union v. Surface Transp. Bd., 363 F.3d 465 (D.C. Cir. 2004).

Respectfully submitted,



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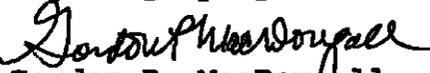
May 21, 2008

Attorney for Jay L. Schollmeyer

Certificate of Service

I hereby certify I have served a copy of the foregoing upon
all parties of record by first class mail postage-prepaid.

Washington DC


Gordon P. MacDougall