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BEFORE THE SURFACE TRANSPORTATION BOARD

PENNSYLVANIA RAILROAD COMPANY

—MERGER—

NEW YORK CENTRAL RAILROAD
COMPANY

Finance Docket No. 21989 (Sub-No. 4)

(Arbitration Review)

CLAIMANTS' MOTION TO STRIKE PENN CENTRAL'S MOTION FOR LEAVE TO FILE
SUR-REPLY BRIEF AND SUBMIT ADDITIONAL AUTHORITY

ENTERED
Office of Proceedings

DEC - 7 2009

Part of
Public Record

Claimants move this Board to deny Penn Central's Motion for Leave to File Sur-reply and strike Penn Central's Sur-reply brief and its Motion to Supplement the Record. 49 C.R.F. §1104.13 (c) specifically prohibits a reply to a reply brief. This procedural rule may only be waived when good cause has been shown, pursuant to 49 C.R.F §1100.3 and §1110.9. *Ocean Logistics Management, Inc. v. NPR, Inc. and Holt Cargo Systems, Inc.* STB Docket No. WCC-102, Service Date January 14, 2000. In this case Penn Central has failed to meet the standard for good cause. Its pleading is simply a duplication of the arguments it has made at least twice previously: before the Arbitration Panel and before this Board in its Petition for Review.

In light of the prolonged and torturous history of this case it is particularly ironic that Penn Central would invoke code section 1100.3 that requires "just, speedy and inexpensive determination of the issues." Penn Central's *modus operandi* has been delay, at which it has been most successful, to the severe prejudice of the claimants, any of whom will be fortunate to be alive at the conclusion of this litigation.

In fact the Sur-reply Brief states almost *verbatim* the arguments raised in Penn Central's Petition for Review and Post Arbitration Brief, i.e. compare the same quoted testimony of Dr. Rosen at page 30 of the Petition for Review and again at page 26 of the Post Arbitration Brief (Appendix Vol. 5 page 3333.) with page 15 of the Sur-Reply Brief. See also citation of testimony of defense expert Weinman at page 15 of Petition for Review and again at page 3 of Post Arbitration Brief (Appendix Vol. 5 page 3310) with page 3 of the Sur-reply Brief.

This Sur-reply imparts no new information. It does nothing to clarify the issues.

The case has been briefed *ad nauseum* for forty years. The one, and perhaps the only issue upon which the parties agree, is that a "measure of finality" must be imposed on this litigation both as to the number of briefs permitted and as to the conclusion of this matter.

Accordingly, the Claimants move this Board to strike Penn Central's Sur-reply Brief and Motion to Supplement the Record. This Board should follow its *Lace Curtain* standard and affirm the arbitration award in its entirety, based on the arguments raised in Penn Central's Petition for Review and the Claimants' Brief in Opposition.

Respectfully submitted,

/s/ Carla M. Tricarichi

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CERTIFICATE OF SERVICE

A copy of the foregoing was sent via electronic mail to:

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on this 7th day of December, 2009.

/s/ Carla M. Tricarichi
Carla M. Tricarichi
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