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March 2, 2010

E-Filing

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW,
Washington, DC 20423-0001

03/02/2010
P. 11:33 AM

**Re: STB Docket No. AB-290 (Sub-No. 311X), Norfolk Southern Railway Company -
Petition for Exemption - Abandonment of Rail Freight Service Operation - In the
City of Baltimore, MD and Baltimore County, MD**

Dear Ms. Brown:

I attach for electronic filing the Reply of Norfolk Southern Railway Company to the Motion of Riffin to Amend in the subject proceeding.

Very truly yours

John V. Edwards

Attachment

cc: jimriffin@yahoo.com James Riffin
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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. AB-290 (SUB-NO. 311X)

NORFOLK SOUTHERN RAILWAY COMPANY –
- PETITION FOR EXEMPTION –
ABANDONMENT OF RAIL FREIGHT SERVICE OPERATION –
IN THE CITY OF BALTIMORE, MD AND BALTIMORE COUNTY, MD

NORFOLK SOUTHERN RAILWAY COMPANY'S
REPLY TO RIFFIN'S MOTION TO AMEND

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Dated: March 2, 2010

Before the
Surface Transportation Board

STB Docket No. AB-290 (Sub-No. 311X)

Norfolk Southern Railway Company
– Petition for Exemption –
Abandonment of Rail Freight Service Operation –
In the City of Baltimore, MD and Baltimore County, MD

Norfolk Southern Railway Company's
Reply to Riffin's Motion to Amend

Norfolk Southern Railway Company (“NSR”) hereby opposes the Motion to Amend (“Riffin Motion”) filed with the Surface Transportation Board (the “STB” or the “Board”) on February 24, 2010 by James Riffin (“Riffin”) in the above referenced proceeding. The Riffin Motion seeks to correct fatal flaws identified by NSR with regard to certain Comments filed by Riffin, but the Riffin Motion suffers from the exact same flaws it seeks to resolve. Specifically, Riffin, for *sixth* time¹ purports to act on behalf of other, unidentified persons. If the STB grants the Riffin Motion, the STB would be sanctioning action that is nothing short of a flouting of the Board’s representation regulations, bolstered by a decision served in this very case, all without good cause. Compliance with the Board’s regulations in this regard does not constitute a hardship. Nor does compliance with the Board’s regulations in this regard require any degree of sophistication. It is simple. The Board should deny the Riffin Motion. Further, the Board often

¹ Riffin also filed a document entitled “Reply to Motion to Strike MTA’s Comments” (“Riffin Reply”), which suffers from the same flaws.

holds resolution of “procedural” motions such as Riffin’s Motion to Amend until a final decision on the merits is served. The Board should not do so here, as this procedural motion goes to the integrity of the Board’s processes.

BACKGROUND AND ARGUMENT

On December 16, 2009, NSR submitted a Petition for Exemption to abandon its common carrier obligation over a section of track in Maryland, over which Maryland Transit Administration (“MTA”) operates. On January 5, 2010, Riffin submitted to the STB four documents purported filed by himself and four other persons, namely, Zandra Rudo, Carl Delmont, Louis Lowe and Eric Strohmeyer. These documents were a Notice of Intent to Participate as a Party of Record; a Notice of Intent to File an Offer of Financial Assistance; Motion for a Protective Order Pursuant to 49 CFR 1104.14; and Comments and Opposition to Request for Exemption from the Offer of Financial Assistance Procedures.

Each of the four documents were submitted in violation of the Board’s rules of practice, insofar as the documents were filed by Riffin purportedly on behalf of four other persons, at that time only identified by name.² In the Riffin Reply, Riffin continues to sign for, and apparently attempts to represent, the four other persons, despite being admonished by the Board not to.

² Riffin claims that “[t]he Board’s rules do not require participants to provide the Board, or other parties, with the participant’s Taxpayer’s Identification Number, Social Security Number, Driver’s License Number, Passport Number, Voter’s Registration Number, Medicare or Medicaid Number, Age Sex, Race, Nationality, Religious affiliation or preference, blood type, photograph, or any other form of identifying information.” Riffin Reply at 3. That simply is not true, for the reasons provided in NSR’s Motion to Strike. The fact that a party must be identified is basic to the fair administration of justice, and its purpose is specifically proved by Riffin’s pleadings. Riffin claims to file documents on behalf of person who are so unidentified as to preclude any inquiry as to whether they exist at all.

STB Docket No. AB-290 (Sub-No. 311X), *Norfolk Southern Railway Company - Petition for Exemption - Abandonment of Rail Freight Service Operation – In the City of Baltimore, MD and Baltimore County, MD*, decision served January 29, 2010 (“January Decision”), at note 1. Riffin fails to identify the other persons, despite his acknowledgement that the persons “intend to participate in their individual capacities.”³ Riffin Reply at 2. Riffin fails to provide *any* further identification regarding Zandra Rudo, Carl Delmont, and Louis Lowe.

In the Riffin Reply, Riffin (not Eric Strohmeyer) claims that the “Eric Strohmeyer” that Riffin identifies in the pleadings is the COO of CNJ Rail Corporation, lives in New Jersey, and is participating in the proceeding in his individual capacity....” Riffin Reply at 3. Mr. Strohmeyer, however, does not sign either the Riffin Reply or the Riffin Motion, so there is no indication that the Mr. Strohmeyer partially identified in the Riffin pleadings is the person so identified.⁴ Because Riffin is not permitted to represent Mr. Strohmeyer, see *January Decision*, at note 1, he may not submit or execute submissions on behalf of Mr. Strohmeyer (in this case, verifications supposedly made under penalty of perjury⁵). But that is precisely what he has done.

³ Riffin’s subsequent statement that the named persons intend to participate “Jointly, in their individual capacities,” Riffin Reply at 2, further demonstrates the issue. Five individuals may hold all of the shares in a corporation in their individual capacities, but if the corporation seeks to be a party to a proceeding, it may not hide its identity by filing pleadings under the names of the five individuals who then claim to be acting “jointly.”

⁴ Riffin claims that the Eric Strohmeyer is the COO of CNJ Rail Corporation, living somewhere in the state of New Jersey, who is “participating in this proceeding in his individual capacity.” Riffin Reply at 3. While identifying someone as living in New Jersey or “in the Chicago area” (concerning someone identified as “John Kessler”) is better than identifying someone as living “anywhere in the universe” (Riffin Motion at 3), it still is not sufficient to identify the party Riffin purports to submit material on behalf of in this proceeding.

⁵ Riffin claims under penalty of perjury and on behalf of Mr. Strohmeyer, that Mr. Strohmeyer is currently the chief operating officer of CNJ Rail Corporation, a defunct and dissolved company. See, Exhibit A hereto. There is no evidence that Mr. Strohmeyer would today claim to be the COO of a company that has not had any legal existence since 2007.

In the Riffin Motion, Riffin submits a request to amend a pleading with the following:

We, the undersigned Offerors, declare under the penalty of perjury that the information contained in the foregoing Comments and Opposition to Request for Exemption from the Offer of Financial Assistance Procedures, is true and correct to the best of our respective knowledge, information and belief. Further, we certify that we are qualified and authorized to file this Reply.

Riffin Motion at 2. But then Riffin, himself, signs the pleading (note that after each signature is the notation "by JR") on behalf of each of the other purported participants. Riffin cannot represent any of the other persons named, whomever they are, and he certainly cannot "declare under penalty of perjury" anything on behalf of other persons, whether that relates to facts claimed in a pleading or as to authorization to submit a document. The facts that (1) Riffin is an experienced litigant before the Board and other venues and (2) *in this proceeding* the STB itself stated that Riffin was not allowed to represent others, only compounds the violation and takes the violation far beyond any leeway normally granted to *pro se* litigants.

In the Riffin Reply at 4, Riffin cites *Boag v. MacDougall*, 454 U.S. 364, 365 (1982), for the proposition that *pro se* litigants are to be accorded some leeway when they do not comply with all of the technical rules of procedure. Neither that case, nor the other cases cited, stand for the proposition that the rules of procedure should be thrown out altogether, especially when the litigant is as experienced as Riffin is with the rules. Boag was an inmate in the Arizona Department of Corrections claiming to be unlawfully confined to solitary detention. The plaintiff in *Estelle v. Gamble*, 429 U.S. 97, 106 (1976), was an inmate in the Texas Department of Corrections. The plaintiff in *Haines v. Kerner*, 404 U.S. 519 (1972), was an inmate in the Illinois Department of Corrections. The plaintiff in *Warren v. District of Columbia*, 353 F.3d 36, 37 (2004), was an inmate in an Ohio prison.

To the undersigned's knowledge, Riffin is not currently in jail. Further, Riffin is not the normal *pro se* litigant. He claims that he has a law degree from the University of Pennsylvania School of Law. In addition, he claims that he has several other degrees; from the University of Pennsylvania he has a M.B.A. and a L.L.M, from the Wharton School of Business he has a Ph.D (abd), and from the University of California at Berkeley he has an "eye doctor decree." "Reply to Norfolk Southern's Motion to Strike Comment and Notice of Intent," STB Docket No. AB-290 (Sub-No. 293X), page 7, note 1, submitted by Riffin on October 1, 2007.

Further, Riffin not only acknowledged the Board's January Decision, but evidenced his understanding of that decision. *See*, Riffin Motion at 1 ("49 CFR 1104.4(b)(3) states that documents filed by individuals not authorized to represent others before the Board, must verify all documents that contain allegations of facts.").

The rule that ought to apply here is not that compliance with the Board's regulations is not necessary, simply because one is a *pro se* party, but instead should be that applied in *Baasch v. Reyer*, 827 F. Supp. 940 (E.D.N.Y. 1993), to the effect that the *pro se* litigant who has been "made fully aware of the legal and factual requirements of his claims" should not be insulated from sanctions for violations of those requirements simply because that litigant is *pro se*. *See also*, *Chien v. Skystar Bio Pharmaceutical Co.*, 2009 U.S. Dist. LEXIS 71985 (D. Conn. August 12, 2009) (same); and *Smith v. Educ. People, Inc.* 233 F.R.D. 137, 142 (S.D.N.Y. 2005) (same, imposing sanctions on person that, "[a]lthough not themselves attorneys, ... have shown great energy and self-professed sophistication in the various areas of federal copyright law, corporate law, agency law, and contract law, as well as the differences in state law on these subjects"). To decide otherwise would end in "a result [that] is unfair to the *pro se* litigant's adversary."

Baasch at 944.

Here, Riffin was specifically warned that he was not to submit materials in this proceeding on behalf of others, yet within a month he did precisely that.⁶ Because he is not able, under the Board's rules, to submit a pleading on behalf of others, any pleading so submitted should not be accepted. The Motion to Amend was submitted by Riffin purportedly on behalf of others, and so should be denied. Denial of the Motion to Amend would not be a sanction on the order of dismissing a complaint, ordering a frivolous litigant not to file without clearance of a court, or the imposition of a monetary fine. Instead, the sanction of denial of the Motion to Amend would be a carefully crafted and measured sanction specifically related to the issue at hand.

This is not simply a procedural matter. Should the Board grant the Motion to Amend, the Board will have accepted a pleading, signed by Riffin purportedly on behalf of others, which others have not yet been identified, in direct contravention to the Board's January Decision. The decision by the Board to grant the Motion to Amend could be used by Riffin in this and other proceedings as precedent for pulling the same maneuver again and again.⁷

⁶ See also, *Edwin Kessler - Petition For Injunctive Relief*, STB Finance Docket No. 35206 (STB served June 12, 2009) ("*Kessler*"), appeal docketed, *sub nom.*, *Kessler and Riffin v. STB*, No. 09-1188 (D.C. Cir. June 30, 2009). In *Kessler*, the Board did not find it necessary to rule on assertions that Riffin secretly prepared and filed Kessler's pleadings with the Board in that proceeding. Nonetheless, Kessler and Riffin did not deny the assertions. In that proceeding, the Board stated: "we remind Kessler that if he chooses to file a complaint, the complaint and all subsequent filings must be prepared and signed (1) by an attorney, see 49 CFR 1103.2; (2) by a registered non-attorney practitioner who has successfully completed the practitioner's examination, see 49 CFR 1103.3; or (3) by Kessler himself. Only attorneys or non-attorney practitioners may represent others in Board proceedings." *Kessler, slip op.* at 6-7.

⁷ See, e.g., Riffin Reply at 4 (erroneously claiming that "[t]he Board accepted [Riffin's Motion for a Protective Order] on behalf of James Riffin. That is sufficient to admit the document into the Record.>").

Further, this is not simply a matter of identification of the other persons named in Riffin's pleading. Even if those persons were specifically identified, Riffin *still* would not be allowed to represent them.

CONCLUSION

For the reasons set forth above, NSR contends that the Board should deny Riffin's Motion to Amend.

VERIFICATION

I, John V. Edwards, declare under the penalty of perjury that the information contained in the foregoing Reply of Norfolk Southern Railway Company to the Motion of Riffin to Amend ("Reply") is true and correct to the best of my knowledge, information and belief. Further, I certify that I am qualified and authorized to file this Reply. Executed on this 2nd day of March, 2010.

Respectfully submitted,

NORFOLK SOUTHERN RAILWAY COMPANY

By: 

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Dated: March 2, 2010



New Jersey State Business Gateway Service
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Business Entity Status Report

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Status Report For: CNJ RAIL CORPORATION	
Business Name: CNJ RAIL CORPORATION	Report Date: 09/02/2010
Business ID Number: 0400060070	Transaction Number: Sequence: 1627057: 1
Business Type: DOMESTIC PROFIT CORPORATION	
Status: DISSOLVED WITHOUT ASSETS	
Filing Date: 09/13/2004	Home Jurisdiction: NJ
Status Change Date: 01/19/2007	Stock Amount: 1000000
DOR Suspension Start Date:	DOR Suspension End Date:
Tax Suspension Start Date:	Tax Suspension End Date:
Annual Report Month: 9	
Last Annual Report Filed:	
For Last Annual Report Paid Year:	
Incorporator: ERIC S. STROMMEYER	
Agent: ERIC S. STROMMEYER	
Agent Address: 833 CANNONSTIC LANE	
BRIDGEWATER, NJ 08807	
Office Address Status: Deliverable	
Main Business Address: 11 NORTH AVENUE	
DUNELLEN, NJ 08812	
Principal Business Address:	
Associated Names	
Name:	Type Description:
Officers/Directors/Members	
1) Title: OTHER	10
Name: ERIC S. STROMMEYER	

Address:	81 CENTURY LANE WATCHUNG, NJ 07088
2) Title:	OTHER
Name:	WILLIAM STRONMEYER
Address:	833 CARNOUSTIE LANE BRIDGEWATER, NJ 08907

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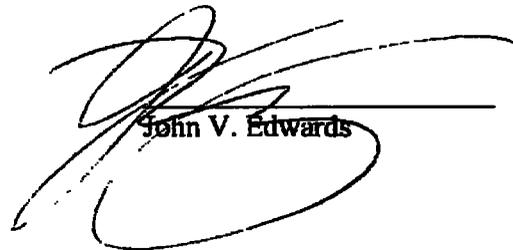
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via e-mail on this 2nd day of March, 2010.


John V. Edwards