STB AB-457X

RLTD RAILWAY CORPORATION--ABANDONMENT EXEMPTION-- IN LEELANAU COUNTY, MI

Decided October 20, 1997

The Board denies a joint petition filed by RLTD Railway Corporation and the Leelanau Trails Association for stay, reopening, and reconsideration of an August 23, 1996 decision.

BY THE BOARD:[1]

For the reasons discussed below, we will deny the petition of RLTD Railway Corporation and the Leelanau Trails Association (jointly, RLTD/LTA) for stay,[2] reopening, and reconsideration of our decision served August 23, 1996 (*August 1996 Decision)*, finding that the ICC had no authority to entertain the notice of exemption RLTD filed in September 1995, or to issue a trail condition under the Trails Act, 16 U.S.C. 1247(d), and dismissing the proceeding for lack of jurisdiction.

[1] The *ICC Termination Act of 1995*, Pub. L. No. 104-88, 109 Stat. 803 (the *ICCTA*), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the *ICCTA* provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the *ICCTA*. This decision relates to a proceeding that was pending before the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903-04 and 16 U.S.C. 1247(d). Therefore, this decision applies the law in effect prior to the *ICCTA*, and citations are to the former sections of the statute, unless otherwise indicated.

[2] Our prior decision was not subject to stay. Under the ordering paragraph of the decision, it became effective and administratively final on its date of service. *See,* 49 CFR 1115.3(f)(1). When a decision becomes administratively final without having been stayed, a party's only avenue for contesting the decision is through filing a timely petition to reopen with the Board as an administrative appeal, or a court appeal.

PERTINENT BACKGROUND[3]

On September 29, 1995, RLTD, supported by the Leelanau Trails Association (LTA), filed with the ICC a notice of exemption under 49 CFR 1152 Subpart F to abandon the 24.04-mile line between Hatch's Crossing and Northport in Leelanau County, Michigan (the Leelanau Line). On October 19, 1995, a trail condition (a notice of interim trail use or abandonment (NITU)) applicable to a portion of the line was served and published at 60 Fed. Reg 54,087 (1995). By decision served November 14, 1995, the ICC stayed the effective date of the exemption and NITU pending disposition of petitions to reconsider and revoke the exemption.

At issue was whether there had been a consummation of the abandonment authorized in the ICC's 1975 decision in Finance Docket No. 26757, *Chesapeake & Ohio Ry. Co.--Abandonment*, 348 I.C.C. 343 (1975) (*Chesapeake*) permitting "abandonment" (more properly discontinuance) by the Chesapeake and Ohio Railway Company (C&O) of the lease and operation of the Leelanau Line and (2) abandonment by the Leelanau Transit Company (LTC) of the Leelanau Line.[4] If the abandonment already had been consummated, then the ICC had no jurisdiction over the line in 1995, when RLTD filed a notice invoking the ICC's class exemption that would permit it to abandon the line, and RLTD did not need any new or further authorization to stop service (that had not occurred in many years) and remove the line from the national rail system (from which it had been disconnected for many years).[5] *See, e.g., Hayfield Northern v. Chicago & N.W. Transp. Co.*, 467 U.S. 622, 633-34 (1984).

In the *August 1996 Decision*, we vacated the notice of exemption, finding that jurisdiction to entertain it, or to issue the NITU, was lacking because the property had already been abandoned. In that decision, we explained (at pages 3-5) that the issue of whether abandonment had been consummated was not

---

[3] More detailed information on the background of this case is set forth in the *August 1996 Decision* at pages 1-3. We incorporate that information by reference.

[4] That decision required C&O and LTC to notify the ICC of consummation of the discontinuance and abandonment respectively. The decision provided that if the abandonment authority was not exercised within one year from its effective date, it would be of no further force and effect. The ICC extended the date for effecting consummation of the abandonment to August 1, 1979, at the request of LTC. C&O sent a letter to the ICC advising that C&O had consummated its portion of the abandonment in May 1978 (reconfirmed by letter dated May 16, 1979). No similar letter was received from LTC.

[5] The ICC also would have lost jurisdiction to issue a NITU under the Trails Act.

settled by any single factor, including whether the original carrier, LTC, or its successor in interest, RLTD, had ever submitted a notification of consummation of abandonment. Rather, in determining intent we, like the ICC, look to the railroad's actions considered in their entirety, assessing both a carrier's stated intentions and the railroad's actions that may illuminate that intent. *See, Consolidated Rail Corporation v. STB*, 93 F.3d 793, 799 (D.C. Cir. 1996); *Birt v. STB*, 90 F.3d 580, 588 & n.15 (D.C. Cir.), *reh'g denied*, 98 F.3d 644 (D.C. Cir. 1996) (*Birt*).

Essentially for the following reasons, we found that LTC intended to abandon the line when it filed its application and that its subsequent behavior, and that of LTC's successor, RLTD, supported the conclusion that, rather than changing their minds, the railroads' actions, viewed in their entirety, supported the conclusion that the Leelanau Line had been abandoned long before the notice of exemption was filed in September 1995:

> (1) More than 20 years had passed since the ICC authorized LTC to abandon the Leelanau Line.
> (2) There had been no rail freight service subject to the ICC's jurisdiction over the track since the ICC issued its abandonment decision in 1975.[6]
> (3) There was no indication that LTC or RLTD ever held themselves out as willing to perform rail service as a common carrier to the public. Nor had either of them contracted with another operator to replace the C&O.
> (4) LTC took no action at the ICC to prevent the 1981 abandonment by the C&O of its entire Suttons Bay Subdivision, even though the exercise of that abandonment authority would sever the only connection that the Leelanau Line had with the interstate rail network (*i.e,* the ability to reach a CSXT main line via Rennies Station and Traverse City).[7]

---

[6] In this respect, we noted that: (1) although RLTD described itself as a "railroad," it was a newly formed corporation that had never provided rail service anywhere; and (2) the operation of the line as a passenger excursion scenic railroad did not require any authority from the ICC or constitute a holding out to provide interstate common carrier rail service.

[7] Specifically, we noted that LTC neither protested the abandonment, which was filed in 1980 and approved in 1981, nor offered to purchase or to subsidize the continued operation of the C&O (continued...)

(5) Following its severance from the national rail transportation system by 1981, the Leelanau Line remained unused for 10 years. The 2 ½ years of excursion passenger service that then was provided on the line did not require any authority from the ICC or constitute a holding out to provide interstate common carrier rail service.
(6) RLTD never provided interstate common carrier rail service on the Leelanau Line. It sold the line without seeking ICC authority and salvage operations began before the September 1995 notice of exemption had been filed at the ICC.[8]

After we issued the *August 1996 Decision*, RLTD/LTA filed its petition for stay, reopening, and reconsideration on September 12, 1996. On September 16, 1996, a reply in opposition to RLTD/LTA's petition was jointly filed by August and Barbara Sharnowski (the Sharnowskis)[9] and Leelanau County.[10] Numerous additional pleadings and statements also have been filed, almost all by RLTD/LTA. These pleadings are listed in the Appendix.[11]

---

[7](...continued)
connection under former 49 U.S.C. 10905. We also held (at pages 6-7) that LTC's filing of an "irregular petition" to intervene after the ICC had authorized C&O's abandonment in order to request trackage rights over the C&O connection could not be viewed as a "serious attempt to retain access to the interstate rail system."

[8] LTC's successor, RLTD, was not an operating railroad when it purchased the line. In 1994, RLTD sold the northern part of the line to a non-railroad, the Grand Traverse Band of Ottawa and Chippewa Indians, without seeking approval from the ICC, which approval would have been required if the line had still been an operating railroad. The track on that segment was then salvaged. On March 10, 1995, RLTD contracted to sell the southern part of the line to the Leelanau Trails Association (LTA), and salvage operations began the next month.

[9] The Sharnowskis are owners of land adjacent to the rail right-of-way and claim to be owners of land that is part of the right-of-way. RLTD and LTA challenge the Sharnowski's assertion of ownership to part of the right-of-way. The disputed landownership issue is not an issue for the Board, but is a matter to be decided by the courts applying Michigan law.

[10] On October 22, 1996, RLTD/LTA petitioned for judicial review of the *August 1996 Decision in RLTD Railway Corporation et al. v. STB,* U.S.C.A., 6th Cir. No. 96-4142. The court proceedings have been held in abeyance pending the conclusion of this administrative proceeding.

[11] We identify pleadings by their filing dates, *i.e.*, when they were date and time stamped on receipt by the Board. In contrast, the parties sometimes refer to the "filing" date as the date on the document.

PRELIMINARY MATTER

By motion filed on January 7, 1997, and renewed on January 24, 1997, the Sharnowskis request that we strike all RLTD/LTA filings after September 18, 1996. While we typically allow only for the filing of a petition to reopen and a reply, we have placed all the pleadings submitted to us here in the record in the interest of assuring that we have complete information and that the parties have had a full opportunity to present their views on the jurisdictional issues.[12]

DISCUSSION AND CONCLUSIONS

Parties may seek to reopen administratively final decisions such as our *August 1996 Decision*. However, under 49 CFR 1115.4, petitioners seeking to reopen a decision must "state in detail the respects in which the proceeding involves material error, new evidence, or substantially changed circumstances * * *." Moreover, the decision to grant or deny a petition to reopen is within the sound discretion of the agency, and only on a showing of a clear abuse of that discretion could a court overrule the agency. *See, e.g., ICC v. BLE,* 482 U.S. 270, 278 (1987); *Bowman Transp. Inc. v. Arkansas Best Freight System, Inc.*, 419 U.S. 281, 294-95 (1974) ("if upon the coming down of the order litigants might demand rehearing as a matter of law because some new circumstance has arisen * * * there would be little hope that the administrative process could ever be consummated"). For the reasons discussed below, we find that RLTD/LTA have not shown that our prior decision should be changed due to material error, new evidence, or changed circumstances. Therefore, the petition to reopen will be denied.

RLTD/LTA argue that the *August 1996 Decision* , in analyzing carrier intent in the aftermath of abandonment approval, placed too much emphasis on events in the mid-to-later years in the 20-year interval between 1975 and 1995, and not enough emphasis on events in the early years, especially LTC's failure to file a letter of consummation.[13] RLTD/LTA contend that it is more logical to base conclusions as to 1979 intent on activities or events that were closer to 1979 than activities or events as recent as 1994 or 1995.

---

[12] While we will not individually discuss all the pleadings, the entire record has been considered in reaching our decision.

[13] Until 1984, the ICC's policy was to require such letters.

RLTD/LTA have not shown that the approach taken in the *August 1996 Decision* was wrong.[14] As we explained there, we must view the facts in light of the entire record in order to determine whether the ICC still had authority over this property in 1995 when the notice of exemption and request for a trail condition were filed. In examining the totality of the circumstances, we can take into account both recent events and those that occurred at around the time that abandonment authority was granted.

Moreover, it is well settled that we should not allow line owners to manipulate the abandonment processes by invoking regulation only when it is convenient. *See, Modern Handcraft, Inc.--Abandonment in Jackson County, Mo.,* 363 I.C.C. 969, 972 (1981).

Here, it seems to us that RLTD/LTA are engaged in such manipulation. If the line's owners had consistently acted as if the line were part of the interstate rail network after 1979, the expiration of the deadline for filing a consummation letter in 1979 might have been sufficient to support a conclusion that LTC changed its mind about abandoning the line while it was still part of the national transportation system.[15] In this case, however, more than 20 years have passed since abandonment was authorized on this line, which now begins and ends in a single state and has no access to the interstate rail system. In all that time, there has been no resumption of interstate rail freight common carrier service (or holding out to provide such service) by LTC, RLTD or anyone else, nor since 1981 could there have been.[16] In addition, as explained in the *August 1996 Decision*, RLTD took actions in the 1990s that were inconsistent with continued federal jurisdiction over the track. For example, in 1994, RLTD sold the northern portion from Northport to Dumas Road to an Indian tribe without seeking ICC approval, and the track on that segment has now been salvaged. A

---

[14] RLTD/LTA contend that a state court acknowledged ongoing federal jurisdiction, but the state court did not decide that the line was subject to federal jurisdiction. Evidently, the court merely indicated that the Board had the authority to make that decision.

[15] It would be inappropriate for us to focus only on a single outward manifestation of the railroad's intent (*i.e.*, the failure to file a letter of consummation). As the courts have found, whether a line is fully abandoned is a question of the carrier's intent "as evidenced by a spectrum of facts varying as appropriate from case to case;" there is no one factor that is determinative. *Birt*, 90 F.3d 585, 588 n.15; *Black v. ICC*, 762 F.2d 106, 112-13 (D.C. Cir. 1985); *Grantwood Village v. Missouri Pac. RR Co.*, 95 F.3d 654, 658-59 (8th Cir. 1996), *cert. denied*, 117 S. Ct. 1082 (1997).

[16] RLTD/LTA have not documented their claim that "on at least one occasion" rail cars moved across its line and into the larger interstate rail system "with the eventual destination of California."

year later, RLTD signed a contract to sell the southern segment to LTA, again without seeking ICC approval, and a portion of the southern end of the track was paved over. These actions are not the sort of actions that would have been taken had petitioners viewed this property as an active rail line.

It should also be noted that RLTD expressly admitted in its September 1995 notice of exemption that it had "mistakenly assumed that the Railroad Corridor was not subject to ICC jurisdiction." LTC and RLTD's apparent assumption that the line had been abandoned is further shown by the fact that LTC and RLTD did not file the annual and other reports that the ICC required in the past. In short, the totality of the circumstances presented here supports the conclusion that RLTD/LTA became interested in invoking the ICC's jurisdiction only after they decided to use the right-of-way as a trail under the Trails Act, which would, if the ICC or the Board retained jurisdiction to issue a trail condition and a trail arrangement was reached, delay the vesting of any reversionary interests in the property for the duration of the interim trail use.

RLTD/LTA have offered evidence that, during the 1970s, ICC staff thought service would continue over the line. Specifically, RLTD/LTA rely on a 1978 decision by an Administrative Law Judge and a 1976 letter by agency counsel to the United States Court of Appeals for the Sixth Circuit, where petitions for review of the ICC's abandonment decision in *Chesapeake* had been filed, both of which reflect the expectation that an arrangement could be worked out under which service over the Leelanau Line would be continued.[17] RLTD/LTA also point to 1976 correspondence from the ICC's Deputy Director of the Section of Finance as the source of advice that LTC allegedly heeded that it did not need to seek reopening of the decision in *Chesapeake* if it wanted to avoid abandonment because abandonment authority is permissive. Moreover, they submit newspaper articles and various other documents that allegedly demonstrate LTC's continued interest in continued rail service on the Leelanau Line after the deadline for LTC's filing of a letter of consummation expired in 1979, including a claim that during an unspecified interval after May 5, 1981,

[17] In the court case, ICC counsel informed the court that the appeals of the abandonment approved in *Chesapeake* would become moot due to plans to keep the line operational. Petitioners subsequently moved to dismiss their appeals.

LTC entered into negotiations for the shipment of coal destined for Traverse City Light & Power Company's plant in Traverse City.[18]

RLTD/LTA point out that LTC (unsuccessfully) attempted, outside the auspices of the ICC, to get a $1 million grant from the State of Michigan that would have been used to lease or purchase the C&O connection between Rennie's Station and Traverse City, which, in 1981, constituted the Leelanau Line's only link to the interstate rail network.[19] RLTD/LTA also submit a November 30, 1979 agreement with the State of Michigan for funds to perform maintenance on the C&O track between Hatch's Crossing and Rennie's Station. They concede, however, that LTC did not itself file a protest at the ICC opposing the proposed abandonment of the C&O connection between Rennie's Station and Traverse City (which assured that C&O's unopposed application would be granted), and passed on the opportunity to assure continued access to the interstate rail system by not filing an offer of financial assistance to continue rail freight service on that line pursuant to 49 U.S.C. 10905.

RLTD/LTA's evidence does suggest that LTC may have had second thoughts about abandoning the Leelanau Line in the late 1970s and early 1980s. Moreover, LTC evidently explored options with the State that could have resulted in a revival of rail service on the C&O connection between Rennie's Station and Traverse City if adequate funding had been obtained (which did not occur).[20] But that does not mean that the ICC still had jurisdiction over the

---

[18] The fact that LTC, in correspondence to the ICC sent prior to the August 1, 1979 date set for the railroad's letter of consummation, indicated that it may have had second thoughts about abandoning the Leelanau Line is entitled to little weight. It also is not particularly significant that a locomotive may have been purchased with a December 1977 delivery date. The ICC granted LTC's request to extend the deadline for filing a letter of consummation to August 1, 1979. Thus, our primary focus here is on the events that took place on or after that time.

[19] C&O's abandonment of the 3.62 mile segment between Hatch's Crossing and Rennie's Station was consummated in 1978. However, LTC evidently repurchased that segment in 1981. C&O's application to abandon the 2.77 mile segment immediately to the south from Rennie's Station to Traverse City, which connects to a CSXT main line, was filed in 1980 and granted in 1981. *See, The Chesapeake and Ohio Railway Company — Aband. — Between Manistee and Bay View, MI and Between Traverse City and Rennies, MI,* 366 I.C.C. 53 (1981). When C&O exercised that authority, the Leelanau Line was severed from the national rail transportation system.

[20] If an agreement for continued common carrier rail service on the C & O connection between Rennie's Station and Traverse City had been reached outside the auspices of the ICC, the operator could have sought ICC authority to acquire and operate that line under 49 U.S.C. 10901, which request for authority, if granted, would have continued the ICC's jurisdiction over the C&O

(continued...)

property at issue here in 1995, some 14 years later, as RLTD/LTA claim. Rather, the determinative factor here--and the one that properly has been the primary focus of our analysis-- is that the Leelanau Line became irrevocably severed from the national rail transportation system in 1981 when the C&O connection from Rennie's Station to Traverse City was abandoned, thus forever eliminating LTC's ability (or anyone else's) to provide rail freight service in interstate commerce on the Leelanau Line. It is well settled that neither the ICC nor the Board has jurisdiction over lines that are not linked to and part of the interstate rail system.[21] *See, e.g., Magner-O'Hara Scenic Ry. v. ICC*, 692 F.2d 441 (6th Cir. 1982). Thus, once the Leelanau Line was severed from the interstate rail network, there was both a de facto and de jure abandonment of that line, and the ICC lost jurisdiction over the property. That is so notwithstanding LTC's failure to file a letter advising the ICC that the abandonment had been consummated and the evidence that supports RLTD/LTA's claim that LTC had changed its mind and did not wish to exercise the abandonment authority it had sought.

In short, by 1995 when the ICC's jurisdiction was invoked in this case, this track did not, and could not, provide transportation that is part of the interstate rail network. Moreover, the record contains no indication that the property is being, or can in the future be, used to transport goods moving in interstate intermodal service (*i.e*, using motor vehicle transportation to reach an interstate rail line). It would be inappropriate for us to assert continuing jurisdiction over the property based on the mere physical possibility that an intermodal terminal could someday be constructed on it.[22] Rather, because the Leelanau Line

---

[20](...continued)
line. However, interstate common carrier rail service was *not* resumed and the Leelanau Line was severed from the national rail transportation system in 1981. As discussed below, that deprived the ICC (and now the Board) of any jurisdiction over the property that the agency otherwise might have retained.

[21] Congress did not give the ICC or the Board authority to license the construction, acquisition, operation, abandonment or discontinuance of all railroad track, but only track that is part of the interstate rail system. *Compare* 49 U.S.C. 10901 and 10903 with 49 U.S.C. 10907(a), (b)(1) (now 49 U.S.C. 10906). Indeed, current 49 U.S.C. 10501(a)(2)(A) specifically provides that we lack jurisdiction over transportation that is not "part of the interstate rail network."

[22] If we were to assert jurisdiction on such a remote possibility, there could never be any single-state segments that would *not* be subject to our jurisdiction, and the jurisdictional limitations of 49 U.S.C. 10907(a) and (b)(1) of the Interstate Commerce Act and sections 10906 and 10501(a)(2)(A) of the *ICCTA* would be rendered a nullity.

previously had been severed from the interstate rail network, the ICC lost jurisdiction over the property many years before the notice of exemption was filed in this case.

We have carefully balanced the factors supporting a continuation of jurisdiction here against the factors supporting the conclusion that jurisdiction ceased prior to RLTD's filing of its notice of exemption in 1995. Although the material filed by the parties on reopening has given us a better understanding of the course of events that have taken place on this track,[23] we are not convinced that our earlier weighing was in error. For the reasons discussed above and in our *August 1996 Decision,* we continue to believe that the ICC had no jurisdiction to examine the notice of exemption and act on the trail use request that were filed in this case in 1995.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The Sharnowskis' motion to strike, filed January 24, 1997, is denied.
2. The petition for reopening and reconsideration is denied.
3. This decision is effective on October 30, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

[23] As a result, we have modified the discussion and focus of our prior decision where appropriate.

APPENDIX

ADDITIONAL PLEADINGS

1. On October 2, 1996, LTA filed by FAX a second supplemental statement (minus appendices). An identical non-FAX version with appendices was filed on October 8, 1996. On October 15, 1996, RLTD filed a brief statement concurring with LTA's statement filed on October 8, 1996.

2. On October 15, 1996, LTA filed a third supplemental statement. The statement was signed by Paul L. Benington, LTA's executive director. RLTD indicated its concurrence with this statement in a brief submission filed on October 31, 1996.

3. By motion filed October 25, 1996, the Sharnowskis request that LTA's second and third supplements be stricken and that RLTD/LTA be prohibited from filing additional pleadings. LTA filed a reply to this motion on November 5, 1996. RLTD filed a concurrence to this reply on November 7, 1996.

4. The Sharnowskis filed a reply to RLTD/LTA's second and third supplemental statements on October 25, 1996. LTA filed a reply to this reply on November 5, 1996. RLTD filed a concurrence with this reply on November 7, 1996. As noted below, these pleadings are subject to a motion to strike filed by the Sharnowskis.

5. On October 28, 1997, LTA filed a "fourth supplemental" statement correcting a typographical error in its initial petition to reopen and presenting additional evidence and argument.

6. On November 1, 1996, LTA filed a "fifth supplement" presenting additional evidence and argument.

7. On November 4, 1996, the Sharnowskis filed a motion for the production of documents and records under 49 CFR 1114.21 and 1114.30 to allow them to inspect the files of RLTD and LTA pertaining to this proceeding.

8. On November 6, 1966, the Bingham Township Board filed a statement in opposition to consideration of the supplemental filings submitted by RLTD/LTA.

9. On November 7, 1966, LTA filed what it terms an "amendment" to its November 5, 1996 reply to the Sharnowskis motion to strike.

10. On November 12, 1996, LTA filed a FAX motion for an order extending the time to reply to the Sharnowskis' November 4, 1996 discovery motion.[24] On November 13, 1996, RLTD replied to this motion, stating that they would have no objection to providing the requested documents if (a) the Board were to reopen the proceeding and (b) reasonable grounds for objection, such as attorney work product, were preserved.

11. On November 13, 1996, the Sharnowskis moved to strike LTA's November 5, 1996 reply and all of RLTD's concurrences with LTA's filings.

12. On November 13, 1996, the Sharnowskis filed a reply to LTA's fourth supplemental statement and typographical error correction (filed October 28, 1996) and LTA's fifth supplemental statement (filed November 1, 1996).

---

[24] An identical non-FAX version was filed on November 19, 1996.

13. On November 21, 1996, the Rails to Trails Conservancy filed a statement arguing that RLTD has demonstrated that its abandonment authority lapsed and that the Board improperly attempted to revive it retroactively.

14. On December 2, 1996, Bingham Township filed a one-page statement expressing its "strong opposition to the deceptive statements made by Mr. Paul Benington" in LTA's "reply" filing of November 5, 1996 and reserving a right to respond.

15. On December 10, 1996, the Sharnowskis filed a two-page statement of legal argument stating their position that the facts demonstrate that the abandonment authorized in Finance Docket No. 26757 has already been consummated.

16. By FAX received December 13, 1996, and hard copy filed on December 18, 1996, LTA submitted a list of documents that LTA allegedly received on December 12, 1996, in "a package from the RLTD Railway Corporation containing recently recovered files of the Leelanau Transit Company from the 1970's and 1980's." LTA offered to provide copies of these documents to the Board on request.

17. On December 23, 1996, LTA filed an additional statement of argument and evidence, called a response to the Sharnowskis pleading filed on December 10, 1996.

18. By motion filed January 7, 1997, the Sharnowskis asked the Board to strike all RLTD/LTA filings since September 18, 1996, including the preceding filing, and to order RLTD to cease filing additional claims and papers, or, alternatively, to grant the prior motion for discovery filed on November 4, 1996.

19. On January 14, 1997, LTA filed (1) an additional statement of argument (dated January 8, 1997) and (2) a "response" by FAX to the Sharnowskis' motion filed January 7, 1997 (dated January 13, 1997).[25]

20. By motion filed January 24, 1997, the Sharnowskis renewed their request to strike all RLTD/LTA filings since September 18, 1996, including LTA's two filings on January 14, 1997.

21. On January 28, 1997, LTA filed a statement "to clarify some of the evidence already submitted to the STB in previous filings."

22. On February 14, 1997, the Sharnowskis replied to LTA's "clarification" filed on January 28, 1997.

23. On February 21, 1997, and February 28, 1997, RLTD filed supplemental statements containing new evidence.

24. On March 19, 1997, the Sharnowskis filed a reply to RLTD's supplemental statement filed on February 28, 1997.

[25] A non-FAX version was filed on January 15, 1997.