

FINANCE-30400

3392

OH

INTERSTATE COMMERCE COMMISSION

ALJ 7*

DECISION

SERVICE DATE
APR 3 1985

FINANCE DOCKET NO. 30400**

SANTA FE SOUTHERN PACIFIC CORPORATION - CONTROL -
SOUTHERN PACIFIC TRANSPORTATION COMPANY

Decided: April 1, 1985

By a motion filed March 6, 1985, International Brotherhood of Teamsters' ("Teamsters"), seeks to compel the applicants to respond to the intervenor Teamsters first informal document request to applicants, served December 19, 1984.

In the document request of December 19, 1984, Teamsters requested several documents relating to the relationship between the applicants and Santa Fe Trail Transportation Company (SFTT). SFTT was a motor common carrier subsidiary of Santa Fe Industries, prior to the sale of the entire stock of SFTT by Santa Fe Industries on July 6, 1984, to Rail Services Inc. Teamsters contends that the applicants sold SFTT in anticipation of the merger and that the requested documents directly relate to the manner in which SFTT employees would be affected by the proposed merger. Therefore they claim the documents requested and the information contained therein, are relevant to the Teamsters request for labor protection provisions and that the documents are necessary to allow the Teamsters to engage in a meaningful cross-examination of the applicants' rebuttal witnesses.

Applicants contend in their response to the motion that the requested information is utterly irrelevant to any labor protection issue over which the Commission has jurisdiction in these proceedings, and even if the information were somehow deemed relevant the motion directed to applicants is misplaced, because the data sought is not in the custody or control of applicants but rather in the custody of SFTT which is not a party to the proceedings.

The Judge believes and finds that the motion to compel should be denied. The Commission in its Decision No. 9 in this proceeding, in an order issued June 28, 1984, determined that it lacked jurisdiction over the sale of SFTT by its parent corporation, Santa Fe Industries, to Rail Services, Inc., because neither Santa Fe Industries nor Rail Services, Inc. were carriers, citing 49 U.S.C. §11343(a). Later Teamster Local 315 sought an order compelling applicants to provide information about SFTT. In a notice dated August 15, 1984, the Commission advised the parties that it would not act on Local 315's request because the Commission lacked jurisdiction over the sale. Accordingly, it is the Judge's finding that in view of the Commission's previous decisions on the points at issue a finding must be made to deny the request. Even if the request was found to concern relevant information the applicants do not have custody or control over such information and therefore could not provide the Teamsters with the sought information.

*The decision served February 6, 1985, was mistakenly labeled ALJ 5, it should have been labeled ALJ 6.

**Embraces F.D. Nos. 30400 (Sub-No. 1-20) and MC-F-15628.

It is therefore ordered:

That the motion for an order requiring the applicants to respond to the request set forth in the International Brotherhood of Teamsters first informal document request to the applicants is denied.

James E. Hopkins
By the Commission James E. Hopkins, Administrative Law Judge.

JAMES H. BAYNE
Secretary

(SEAL)