

Voting Conference, February 23, 2005

Statement of Maynard Dixon
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Boston and Maine Corporation
and
Springfield Terminal Railway Company
v.
New England Central Railroad, Inc.
STB Finance Docket No. 34612

Good morning Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

In this proceeding, Boston and Maine Corporation and Springfield Terminal Railway Company have filed a complaint for damages, and request a declaratory order, arising out of the derailment of a Springfield Terminal train operating pursuant to trackage rights over track owned by the defendant New England Central Railroad, Inc. Complainants allege that the derailment was caused by New England Central's failure to maintain the track as required by the trackage rights order adopted by our predecessor agency, the Interstate Commerce Commission. New England Central asks the Board to dismiss the complaint, arguing that it is barred by a provision of the trackage rights order that allegedly assigns responsibility for losses due to a derailment to the party operating over the track, which would here be the complainants.

The draft decision before you would dismiss the complaint and petition for a declaratory order, finding that the courts are the appropriate forum to resolve the dispute presented here. The dispute here does not involve the rights of shippers receiving service under a trackage rights agreement. Rather, it is founded primarily on claims of breach of contract and tortious actions. This agency has recognized that resolution of contract disputes should typically be pursued before the courts or through arbitration, and we believe that deference to the courts should apply here.

This concludes our presentation. We would be happy to answer any of your questions.