

May 6, 2019

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Ms. Allison C. Davis
Acting Director
Office of Proceedings
U.S. Surface Transportation Board
395 E Street, Southwest
Washington, DC 20023

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Office of Proceedings
May 6, 2019
Part of
Public Record

Re: **STB Finance Docket 36299**
Soo Line Railroad Company Petition for Declaratory Order and Preliminary Injunction - Interchange with Canadian National

Dear Ms. Davis:

Soo Line Railroad Company d/b/a Canadian Pacific ("CP") asks that the Board accept this submission in the interest of a full and complete record. CP submits this letter to address Canadian National's ("CN") new designation in its reply submission of Clearing Yard as the location at which it will receive cars in interchange from CP.

In its reply to CP's Petition for Declaratory Order and Preliminary Injunction, CN contends that there is no risk of irreparable harm because CP can acquiesce to CN's demand that it receive cars at either Clearing Yard or Kirk Yard. There are two fundamental problems with CN's argument. First, although the parties previously discussed Clearing, CN designated Kirk and not Clearing as the location at which it will receive cars from CP. On its face, Kirk is unreasonable – CP would be required to operate more than 84 miles on CN's own rail line (84 miles is approximately twice the distance between Washington and Baltimore) to reach Kirk. Now, after acknowledging that Kirk is unreasonable in correspondence with CP and after CP filed the instant petition, CN seeks to change its designation to Clearing.

That brings us to the second problem with CN's shifting its designation to Clearing. CP does not have its own direct connection to Clearing. Rather, CP must use trackage rights over the Belt Railway Company of Chicago (BRC) to reach Clearing, something which it cannot be required to do as a matter of law. See *Burlington N. R.R. Co. v. United States*, 731 F.2d 33, 39 (D.C. Cir. 1984) (holding that a delivering carrier is under no obligation to exercise trackage rights on behalf of the receiving carrier to effect interchange; the exercise of trackage rights is permissive with their holder), citing, *Chicago, Rock Island & Pacific Railway v. Denver & Rio Grande Railroad*, 143 U.S. 596, 609, 12 S.Ct. 479, 483 (1892). Because CP does not have its own direct route to Clearing, CN cannot lawfully

designate Clearing as the location at which it will receive cars from CP. CP has offered as a compromise to interchange at Clearing but only if CN assumes responsibilities for the trackage rights fees that CP would incur using trackage rights on CN's behalf. CN rejected CP's offer.

Absent a lawful replacement interchange location, CP is entitled to continue to deliver CN's cars to Spaulding, and that is what CP intends to do. Should CN follow through with its refusal to pull cars spotted at Spaulding after May 9, 2019, CN's action -- not CP's -- will cause irreparable harm. Accordingly, the Board should issue an injunction that requires, at least until the matter is resolved on the merits, CN to continue to accept cars in interchange from CP at Spaulding, a location where the parties physically connect and currently interchange traffic. Alternatively, CN can assume responsibility for the BRC trackage rights fees, or the Board can order CN to assume such responsibility at least for the pendency of the proceeding subject to further relief as the Board may deem necessary and appropriate.

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read 'David F. Rifkind', written in a cursive style.

David F. Rifkind

Counsel for Soo Line Railroad Company

cc: Ray A. Atkinson (via e-mail)
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