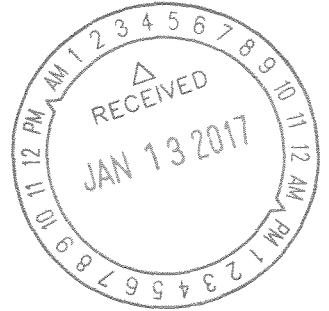


ORIGINAL

Before the
SURFACE TRANSPORTATION BOARD



Ex Parte 711 (Sub-No. 1)

RECIPROCAL SWITCHING

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January 13, 2017
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REPLY COMMENTS

Gordon P. MacDougall
1025 Connecticut Ave., N.W.
Washington DC 20036

Attorney for Samuel J. Nasca

January 13, 2017

Before the
SURFACE TRANSPORTATION BOARD

Ex Parte 711 (Sub-No. 1)

RECIPROCAL SWITCHING

REPLY COMMENTS

Preliminary Statement

Samuel J. Nasca,^{1/} for and on behalf of
SMART/Transportation Division, New York State
Legislative Board (SMART/TD-NY), submits these reply
comments pursuant to the Surface Transportation Board
(STB or Board) Notice of Proposed Rulemaking (NPRM),
served July 27, 2016, 81 Fed. Reg. 51149-65 (Aug.3,
2016).

SMART/TD-NY served its initial comments October 26.
2016. Subsequent thereto, the Board by its Director,
Office of Proceedings, in decision dated December 23,
2016 (served December 27), indefinitely extended the

^{1/} New York State Legislative Director for SMART/TD,
with offices at 35 Fuller Road, Albany, NY 12205

period for requests by parties seeking individual ex parte meetings with Board members and agency staff, as well as the occurrences of those meetings.

Reply to Initial Comments

1. Private Ex Parte Secret Meetings. The Comments filed by SMART/TD-NY on October 26, 2016, requested the Board vacate that part of the NPRM which waived the STB's ex parte prohibition rule so as to set up closed meetings between private parties and individual agency Members along with their staff employees, concerning the reciprocal switching proposals. Requests for such meetings were to be made at the conclusion of the reply comments due January 13, 2017, with such meetings to occur between January 30 and February 17, 2017. The SMART/TD-NY Comments strongly opposed these private meetings as improper and prejudicial to railroad employees. See: SMART/TD-NY Comments at 3-5 (10/26/16).

The Board's December 27, 2016 decision indefinitely postponed the deadlines for these ex parte meeting requests and the occurrence of these meetings.

The initial comments of the many parties filed

during the period October 13-October 31, 2016 have been examined. They consist of approximately 65 individual submissions. Yet we found only a single party expressed a desire to follow-up its comments with private closed meetings at the STB in Washington, DC.^{2/} The many thousands of pages embraced in the 65 filings should obviate any need for post-filing secret meetings.

The Board should agree with SMART/TD-NY, and completely vacate the ex parte private meeting request and occurrence provisions of the NPRM. If there is to be an oral exchange of views, the Board should follow its customary practice of conducting one-day or two-day open public hearings in its Washington DC hearing room, with all parties invited to attend and present oral views.

2. The NPRM Should Not Be Adopted. SMART/TD-NY in its October 26, 2016 Comments indicated it would review the Class I carrier positions, and advise the Board. SMART/TD-NY Comments at 5-6 (Oct. 26, 2016). This review has been accomplished. The organization supports the industry position that the reciprocal switching

^{2/} Runyon industries, Inc., para. 4, filed Oct. 25, 2016. ID 241860.

proposal would be harmful and should not be adopted.^{3/}

Respectfully submitted,



GORDON P. MacDOUGALL
1025 Connecticut Ave. N.W.
Washington DC 20036

Attorney for Samuel J. Nasca

January 13, 2017

^{3/} SMART/TD-NY does not necessarily concur in all of the rail carrier contentions or arguments, or those issues which may arise later, such as employee impacts and protection, among other significant and perhaps very costly matters.