



Transportation Division

24950 COUNTRY CLUB BLVD., STE. 340 • NORTH OLMSTED, OHIO 44070-5333
PHONE: 216-228-9400 • FAX: 216-228-0937 • www.smart-union.org/td

LEGAL DEPARTMENT

KEVIN C. BRODAR
General Counsel

ERIKA A. DIEHL-GIBBONS
Associate General Counsel

SHAWN M. MCKINLEY
Assistant General Counsel

TRACEY L. NEIGHBORS
Paralegal

JOHN PREVISICH
President

246056

July 9, 2018

ENTERED
Office of Proceedings
July 9, 2018
Part of
Public Record

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20006

RE: Docket No. FD 36179
Lake State Railway Co. – Lease
Exemption – Line of Grand Trunk
Western R.R. Co.

Dear Ms. Brown,

Enclosed is a copy of the International Association of Sheet Metal, Air, Rail and Transportation Workers – Transportation Division's Petition to Revoke the above-captioned transaction.

Sincerely,

A handwritten signature in black ink, appearing to read "Shawn M. McKinley".

Shawn M. McKinley
Assistant General Counsel

Cc: Thomas Litwiler, Attorney for Lake State Railway Co.
J.M Karakian, BLET General Chairman
Jerry Gibson, SMART-TD Michigan State Legislative Director
Chris Hart, SMART-TD Local Chairman

FILED
July 9, 2018
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
July 9, 2018
SURFACE
TRANSPORTATION BOARD

BEFORE THE SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD 36179

**LAKE STATE RAILWAY COMPANY – LEASE EXEMPTION – LINE OF GRAND
TRUNK WESTERN RAILROAD COMPANY**

**INTERNATIONAL ASSOCIATION OF SHEET METAL, AIR, RAIL AND
TRANSPORTATION WORKERS – TRANSPORTATION DIVISION’S PETITION TO
REVOKE**

The International Association of Sheet Metal, Air, Rail and Transportation Workers submits the following Petition to Revoke the above-captioned transaction between Lake State Railway Company (“LSRC”) and Grand Trunk Western Railroad Company (“GTW”), involving approximately 3.9 miles of track in Port Huron, MI.

FACTS

On April 12, 2018, LSRC posted a Notice pursuant to 49 CFR § 1150.42(e) that it intended to enter into a lease with GTW for the operation of the above-described track. See Ex. 1. In said Notice, LSRC unambiguously states that “[GTW] will retain responsibility for the Black River drawbridge at milepost 58.2.” Id. In its May 10, 2018, Notice of Exemption filing, LSRC again states that GTW “will retain responsibility for the Black River drawbridge located at milepost 58.2 on the [Port Huron] track.” See Notice of Exemption at pg. 2.

After the Notice of Exemption was granted, by email dated June 15, 2018, Phillip Tassin, Jr., General Manager for GTW, informed SMART-TD officers that “[t]he bridge will be controlled by LSRC in accordance with the lease; therefore, they will be responsible for the operation of the bridge in conjunction with their movement over it.” See Hart Decl. at Ex. 1.

Thereafter, on June 19, 2018, LSRC employees operated the Black River Drawbridge. See Hart Decl. at Ex. 2. To the best of SMART-TD's knowledge, this has been a continuing practice since that date. See Hart. Decl. #4.

ARGUMENT

“[T]he Board may revoke an exemption, in whole or in part, if the Board finds that regulation is necessary to carry out the rail transportation policy... of 49 U.S.C. § 10101.” *Delaware & Hudson Ry. Co., Inc. – Discontinuance of Trackage Rights Exemption – In Broome Cty, et al.* Docket No. AB 156. “If the notice of exemption contains false or misleading information, the use of the exemption is *void ab initio* and the Board shall summarily reject the exemption notice. 49 CFR § 1152.50(d)(3); *see also Terminal Warehouse, Inc. v. CSX Transportation, Inc.*, 175 Fed App’x 715, 717 (6th Cir. 2006). “The party seeking revocation has the burden of proof, and petitions to revoke must be based on reasonable, specific concerns.” *Grenada Ry. – Acquis. & Operation Exemption – Ill. Cent. R.R.*, FD 35247 et al., slip op. at 6 (STB served Sept. 10, 2013).

Based on the misrepresentations made in the Notice of Exemption by LSRC, SMART-TD respectfully requests that said Notice of Exemption be declared *void in abnitiio* in accordance with 49 CFR § 1152.50(d)(3). Both the Notice posted pursuant to 49 CFR § 1150.42(e) and the Notice of Exemption falsely claimed that the Black River Drawbridge would remain in the control of GTW. Despite these clear statements in the filings with the STB, it is clear that GTW has not retained control over the bridge as claimed by LSRC in its Notice of Exemption. GTW's own corporate officer unreservedly made that statement, and such was confirmed by subsequent, documented activity at the bridge. While SMART-TD was not privy to the terms of the lease

between LSRC and GTW at the time the Notice of Exemption was filed¹, Mr. Tassin asserted in his email that the terms of the lease granted LSRC the authority to operate the bridge. See Hart Decl. at Ex. 1. If this was indeed a term of the lease, the filings before the STB can be considered nothing but fraudulent. Moreover, LSRC employees have been operating the bridge since the transaction was approved. Id. at Ex. 2. Based on the foregoing, SMART-TD has “reasonable, specific concerns” related to the operation of Black River Drawbridge that justify granting the present Petition to Revoke on the grounds that the Notice of Exemption filed by LSRC contained false or misleading information.

CONCLUSION

Based on the misrepresentations made in the Notice of Exemption by LSRC, SMART-TD respectfully requests that its Petition to Revoke be granted and LSRC’s Notice of Exemption be declared *void in abnito* in accordance with 49 CFR § 1152.50(d)(3).

Respectfully submitted,

/s/ Shawn M. McKinley

Shawn McKinley
Assistant General Counsel
SMART-Transportation Division
24950 Country Club Blvd., Ste. 340
North Olmsted, OH 44070
Tel: (216) 228-9400
Fax: (216) 228-0937
smckinley@smart-union.org

¹ SMART-TD was aware of conversations involving GTW management that the bridge would be under the control of LSRC once the transaction was approved, but was unable to file a Petition to Stay at that time due to the lack of any concrete evidence.

CERTIFICATE OF SERVICE

The undersigned hereby certifies on the 9th day of July, 2018, I served the foregoing
upon the following parties via first class mail:

J.M Karakian
General Chairman
Brotherhood of Locomotive Engineers & Trainmen
General Committee of Adjustment – Grand Trunk Western
43422 West Oaks Drive, PMB 137
Novi, MI 48377-3300

Thomas J. Litwiler, Esq.
Fletcher & Sippel LLC
29 North Wacker Drive, Ste. 920
Chicago, IL 60606-2832
Attorney for Lake State Railway Co.

s/ Shawn M. McKinley

Shawn McKinley

BEFORE THE SURFACE TRANSPORTATION BOARD

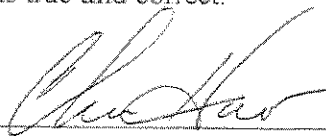
STB DOCKET NO. FD 36179

LAKE STATE RAILWAY COMPANY – LEASE EXEMPTION – LINE OF GRAND
TRUNK WESTERN RAILROAD COMPANY

DECLARATION OF CHRIS HART

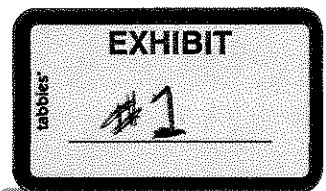
1. I, Chris Hart, am a Local Chairman of Local 1183 with the Transportation Division of the International Association of Sheet Metal, Air, Rail and Transportation Workers (“SMART-TD”), and have served in that capacity since August 1, 2012. I understand that this Declaration is being offered in support of SMART-TD’s Petition to Revoke the Notice of Exemption filed by Lake State Railway Company (“LSRC”) regarding the transaction between LSRC and Grand Trunk Western Railroad (“GTW”), STB Docket No. FD 36179, involving the lease of some 3.9 miles of track in Port Huron, MI. This Declaration is based on personal knowledge and I am competent to testify to the matter set forth herein.
2. Attached as Exhibit 1 is a true and correct photograph of an email from GTW General Manager Phillip Tassin, Jr., stating that LSRC will be responsible for the operation of the Black River Drawbridge.
3. Attached as Exhibit 2 are six (6) photographs taken by me from a public space showing an LSRC employee operating the Black River Drawbridge on June 19, 2018.
4. To the best of my knowledge, LSRC employees have continued operation of the Black River Drawbridge since that date.

I declare under the penalty of perjury that the foregoing is true and correct.

A handwritten signature in cursive script, appearing to read "Chris Hart", is written over a horizontal line.

Chris Hart

Executed this 9 day of July, 2018.



Verizon

7:28 AM

100%



4 Messages

Question



Phillip Tassin Jr

6:34 AM



To: Jason & 2 more...

Details

Jason,

The bridge will be controlled by LSRC in accordance with the lease; therefore, they will be responsible for the operation of the bridge in conjunction with their movement over it.

Kind regards,

Phillip



EXHIBIT

tabbles

#2



