

198341

UNION PACIFIC RAILROAD COMPANY

Law Department

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ROOM 830
OMAHA, NEBRASKA 68179-0001
FAX (402) 271-5610

ENTERED
Office of the Secretary

APR 27 2000

Part of
Public Record



April 26, 2000

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FAX (402) 271-5610

Via UPS Overnight

Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: Docket NOR 42052; Union Pacific Railroad Company -- Declaratory
Order -- Unilaterally Imposed Interchange Charges

Dear Mr. Williams:

This refers to Union Pacific's Petition for Declaratory Order in the above proceeding dated February 11, 2000.

At p. 14, the Petition states that the Tacoma Municipal Belt Line Railway ("TMBL") filed a lawsuit in Washington state court seeking collection of its interchange charges. The Petition further states that Union Pacific had removed the case to Federal Court and was moving to dismiss it based on the Board's exclusive jurisdiction over car service.

This letter is to advise the Board that, on April 20, 2000, the Court granted UP's motion and dismissed the case without prejudice, based on the exclusive jurisdiction of the Board. A copy of the Court's decision is attached.

An additional ten copies of this letter are enclosed for the Board's files.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Robert T. Opal". The signature is fluid and cursive, with the first name "Robert" being more prominent and the last name "Opal" following in a similar style.

Robert T. Opal
General Commerce Counsel
Direct dial: (402) 271-3072
Fax: (402) 271-5610

cc: Persons shown on Certificate of Service

CERTIFICATE OF SERVICE

I certify that I have this date served a copy of the foregoing document on each of the persons listed below by First Class U.S. mail with postage prepaid.

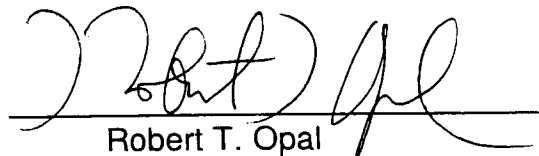
Paul Brachvogel
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(Attorney for TMBL)

R. E. Serpe, General Counsel
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(Attorney for IAIS)

William C. Sippel
Thomas J. Litwiler
Oppenheimer Wolff & Donnelly (Illinois)
Two Prudential Plaza, 45th Floor
180 North Stetson Avenue
Chicago, IL 60601-6710
(Attorneys for IHB)

Dated this 26th day of April, 2000.


Robert T. Opal

ENTERED
ON DOCKET

APR 20 2000

By Deputy 

FILED	LOGGED
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APR 20 2000	
CLERK U.S. DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT TACOMA	

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CITY OF TACOMA, TACOMA PUBLIC
UTILITIES,

Plaintiff,

v.

UNION PACIFIC RAILROAD COMPANY,

Defendant.

Case No. C00-~~5033EDB~~

5054FDB

ORDER GRANTING MOTION
TO DISMISS

The City operates a short-line railroad, known as the Tacoma Municipal Beltline. The Beltline is a switching railroad serving the Port of Tacoma, switching cars on and off the mainline track of Union Pacific and Burlington Northern Santa Fe Railway Company. The City alleges that the defendant has since 1994 engaged in "a business practice of storing its railcars on the property of the plaintiff without authority or permission." Complaint at 2. In response to this "business practice", the City published a tariff in May, 1995, assessing storage fees against the defendant. The defendant through April, 1997, paid the assessed fees, but refused to pay such fees after April, 1997. The City filed a Complaint alleging Unjust Enrichment and Breach of Express and Implied Contract in the Pierce County Superior Court. The defendant removed this action, and seeks dismissal for lack of jurisdiction.

Under 49 U.S.C. § 10501(b)(1), the Surface Transportation Board has exclusive jurisdiction over transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, *interchange*, and other operating rules), practices, routes, services, and facilities of such carriers

(Emphasis added.) The defendant characterizes this dispute arising out of car interchange; the plaintiff argues that the defendant's practices were not interchange, but car storage. The defendant cites documents which help reveal the difficulty in distinguishing between these two concepts: Item 100 of the City's tariff, under which the City is attempting to obtain payment, provided that connecting carriers

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1 (including the defendant) "shall be billed storage monthly, accrued daily, for failure to pull interchange . .
2 .." (Emphasis added.) The contract between the City and the defendant provides that interchange of cars
3 shall be in accordance with AAR¹ Interchange Rules and Code of Car Service. Defendant's Exhibit 2.
4 The AAR Interchange Rules make provision governing "delays in interchange". Defendant's Exhibit 3.

5 At what point in time does a left railroad car stop being a delayed interchange, and become an
6 improperly stored railroad car? I do not see that I can make this determination without offending the
7 exclusive jurisdiction of the Surface Transportation Board. It is hereby

8 ORDERED that the defendant's Motion to Dismiss is GRANTED and this action DISMISSED
9 without prejudice.

10 DATED this 20 day of April, 2000.

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14 FRANKLIN D. BURGESS
UNITED STATES DISTRICT JUDGE
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¹Association of American Railroads.

United States District Court
for the
Western District of Washington
April 20, 2000

dk

* * MAILING CERTIFICATE OF CLERK * *

Re: 3:00-cv-05054

True and correct copies of the attached were mailed by the clerk to the following:

Paul A Brachvogel, Esq.
TACOMA CITY ATTORNEY
DEPT OF PUBLIC UTILITIES
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Timothy David Wackerbarth, Esq.
LANE POWELL SPEARS LUBERSKY
STE 4100
1420 FIFTH AVE
SEATTLE, WA 98101-2338
FAX 223-7107

Judge Burgess