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Before the
SURFACE TRANSPORTATION BOARD

Ex Parte No. 582 (Sub-No. 1)
MAJOR RAIL CONSOLIDATION PROCEDURES

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REPLY COMMENTS

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Due Date: December 18, 2000

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SURFACE TRANSPORTATION BOARD

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REPLY COMMENTS

John D. Fitzgerald,^{1/} for and on behalf of United Transportation Union-General Committee of Adjustment (UTU/GO-386), submits these reply comments pursuant to Notice of Proposed Rulemaking (NPR), dated September 25, 2000 (served October 3, 2000), 65 Fed. Reg. 58974-81 (October 3, 2000). These reply comments are directed to comments filed by certain other parties, on or about November 17, 2000.

1. BNSF-Excess Capacity Myth. This Commentor agrees with the argument advanced by The Burlington Northern and Santa Fe Railroad Company (BNSF) that "excess capacity"^{2/} was not the predicate for prior railroad mergers. (BNSF, 11/17/00, 23-24). See: UTU/GO-386, 11/17/00, 10-12. This commentor suggests that railroad consolidations in recent decades generally have tracked

^{1/} General Chairman for United Transportation Union on lines of The Burlington Northern and Santa Fe Railway Company, with offices at 400 E. Evergreen Boulevard, Vancouver WA 98660.

^{2/} The various STB issuances do not advise the elements considered in evaluating railroad capacity, i.e., trackage, car supply, locomotives, signalling, other equipment, etc.

merger and acquisition trends in the overall U.S. economy--with a primary thrust being monopolistic greed in a rising stock market.

2. USDOT-Employee Matters. The U.S. Department of Transportation (USDOT) notes proposed revisions to 49 CFR § 1180.1(e), and (m), concerning "Labor." (USDOT, 11/17/00, 12-13). This commentor leaves the substantive analysis of the various "Labor" proposals to other employee representatives who have filed comments and who may continue to do so in this proceeding. However, the right to participate in STB proceedings, and the statutory right to receive protection, should not be confused and subverted by twisting the terms "labor" and "employee."

A. Employee Participation. The statute requires the STB to consider "the interest of rail carrier employees affected by the proposed transaction." 49 U.S.C. 11324(b)(4). Yet the proposal to permit participation in STB rail consolidation proceedings, as noted by USDOT (USDOT, 11/17/00, 12), would displace "employee" for another entity, "rail labor." See: NPR, 49 CFR 1180.1(m). This commentor urges that if the proposed rules are to set forth specific categories of participants, the rule should track the statutory term "employee."

B. Employee Protection. The protective conditions imposed by the U.S. Congress are "employee" conditions. The term "employee" is set forth in the text of 49 U.S.C. 11326, as well as in its caption. The USDOT notes the NPR would instead continue the term "labor protection" in the caption. (USDOT, 11/17/00, 13). See: NPR, 49 CFR 1180.1(e).

This commentor urges that the term "employee protection" be substituted for "labor protection" in the caption. The term

"employee" would be consistent with the statute, both caption and text; and also would be consistent with the proposed text of § 1180.1(e).

The confusion between "employee" and "labor" appears to stem from efforts to deprive "management" personnel who may not be "officials" from their statutory right to employee protection. This is of concern since UTU members may be involved. The terms "officials" and "employees" over the years have been the dividing lines for "employee protection," under the Interstate Commerce Act, contrary to any inference of "management vs. labor" which might characterize other statutes. The attitude of the STB's Chairman in promoting the disentanglement of so called "management employees" is regrettable, and should not be adopted by the Board. See: U.S. Senate, Hearings before a Subcommittee of the Committee on Appropriations, S. Hrg. 105-514, Conrail Merger Implications, 60, 62, 65, 69-70 (Mar. 20, 1997).

Respectfully submitted


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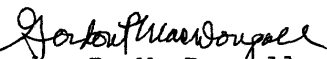
December 18, 2000

Attorney for John D. Fitzgerald

Certificate of service

I hereby certify I have served a copy of the foregoing upon all parties of record shown on the Board's special service list for this proceeding.

Washington DC


Gordon P. MacDougall