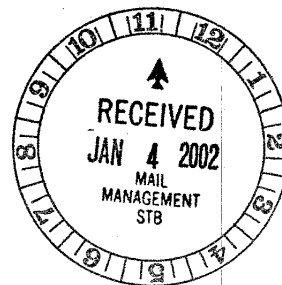


Interstate Dispute Resolution, LLC.

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204302

Via US Postal Service - Next Day Service
Parcel No. ET 939355715 US



December 31, 2001

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

Re: Ex Parte No. 586

Dear Mr. Williams:

Greetings. I would like to file comments in said proceedings. Enclosed you should find an original and eleven copies of comments. I understand that I was to submit an original and ten copies of comments. These have been sent to you since I understood that, in this instance, I did not need to serve them. I would appreciate being advised if this is erroneous.

Please "date stamp" the extra copy send it to me in the enclosed, addressed, stamped envelope. This will signify that these comments were received timely.

I would be pleased to submit further materials in response to questions.

Sincerely,

James P. Barron
James P. Barron

ENTERED
Office of the Secretary

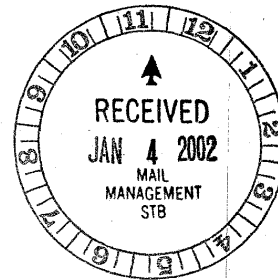
JAN 07 2002

Part of
Public Record

cc: Reese H. Taylor Jr., Esq.

204302

UNITED STATES OF AMERICA
SURFACE TRANSPORTATION BOARD



EX PARTE NO. 586

ALTERNATIVE DISPUTE RESOLUTION -- VARIOUS MATTERS RELATING TO ITS USE
AS AN EFFECTIVE MEANS OF RESOLVING DISPUTES
THAT ARE SUBJECT TO THE BOARD'S JURISDICTION

REPLY COMMENTS OF INTERSTATE DISPUTE RESOLUTION, L.L.C.

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Principal of IDR

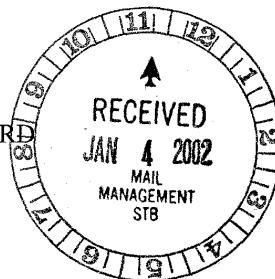
Due Date: January 3, 2002
Dated: December 31, 2001

ENTURED
Office of the Secretary

JAN 07 2002

Public Record

UNITED STATES OF AMERICA
SURFACE TRANSPORTATION BOARD



EX PARTE NO. 586

ALTERNATIVE DISPUTE RESOLUTION -- VARIOUS MATTERS RELATING TO ITS USE
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REPLY COMMENTS OF INTERSTATE DISPUTE RESOLUTION, LLC

Interstate Dispute Resolution ("IDR"), the organization of Transportation Alternative Dispute Resolution practitioners, hereby submits its Comments in this proceeding.

IDR was conceived to assist the transportation industry by filling the void anticipated subsequent to the ICC Termination Act ("ICCTA"). IDR was fortunate to receive attention and guidance from Reese H. Taylor, Jr., a former Chairman of the ICC. Many of IDR's neutrals were accepted by the Rail-Shipper Transportation Advisory Council but, to the present, IDR has not been called upon to adjudicate any disputes.

IDR's product is efficient, inexpensive alternative dispute resolution by knowledgeable, trustworthy practitioners. IDR produces both arbitration awards and mediated settlements. Based on the comments that have been made thus far, it seems apparent that IDR can make an invaluable contribution to the transportation industry. Proceeding before the Board requires the investment of significant resources which is not always justified since some disputes do not involve significantly pecuniary issues. Therefore, it is not always feasible to use the current mechanism for redress of some rail transportation disputes. Even though Alternative Dispute Resolution ("ADR") has become a popular way of resolving disputes, it behooves us to briefly define mediation and arbitration.

Mediation is a non-adversarial process by which a selected neutral helps the parties to find a solution to a dispute. It is typically privileged so the information that is presented and/or developed cannot be used in administrative or judicial events without participants' permission. The parties participate in the process, using reason and argument to construct a sensible, mutually acceptable outcome. If the parties cannot come to agreement, the mediation is simply terminated. Because mediation is non-binding, it can occur at any time. In the vast majority of cases it takes just three hours to get an accurate sense about whether or not settlement can be reached. Mediation is successful in most instances when it is utilized by the parties in good faith.

Arbitration is an adversarial process where disputing parties select a person (or persons) who will preside as a neutral and render a decision, thereby typically determining the outcome of the dispute, which is usually binding. The procedure is either a live hearing or submission of written materials. Arbitration provisions are written into many contracts and the Federal Courts routinely enforce arbitration agreements. Indeed, the comfort level with arbitration of transportation claims is reflected by the provision in ICCTA for the arbitration of many Household Moving Claims.

In general, the Federal Arbitration Act ("FAA") has been construed such that Courts have jurisdiction to review arbitral awards for a few reasons and the review is narrow. Due to empirical results, the use of arbitration has flourished over time and, actually, has recently been increased dramatically (see *Circuit City, Inc. v. Adams*, 2001 U.S. LEXIS 2459 (March 21, 2001), where the U.S. Supreme Court held that employment arbitration agreements are enforceable under the FAA).

Some contracts have both mediation and arbitration clauses. Effectively, the parties seek to resolve disputes with non-adversarial means before resorting to adversarial means. This can be the best of both worlds since the disputants benefit from the improved communication and reduced

animosity resulting from mediation and, if a consensus cannot be reached, a competent neutral will decide the outcome. Arguably, this duel, "escalating" arrangement should be good for the Rail Transportation industry where there is a dearth of communication amongst and between the players. Such a scheme would add significantly more communication and discussion amongst and between shippers and carriers.

IDR proposes that initially ADR be used on a limited basis and that, since there is such a substantial public interest component, that the Board be empowered and required to review all decisions. The role of the Board would be to review the agreements and arbitral awards to ensure that the public interest is not damaged and that there is not an apparent abuse of discretion. This review is analogous to the present regime under the FAA. In effect, the FAA procedure could be extended to rail matters.

Due to the narrowed scope of the review, the contemplated process should consume a fraction of the resources that Board proceedings presently consume. At the outset, the disputes subject to this regime could be small rate disputes, loss and damage claims, and disputes involving operational details, and the like. With such a system in place and after confidence is inspired by the quality of adjudicated results, it should then become desirable to arbitrate more significant disputes.

Such a system of review would prevent ADR from being used to circumvent institutions and practices to protect users of the rail system from known concerns. IDR believes that such a safety system would eventually enable ADR to be employed for all disputes, including: small rate disputes, loss and damage claims, disputes involving operational details, merger-related controversies, large rail rate disputes, abandonments, "build-outs," disputes involving the duty of

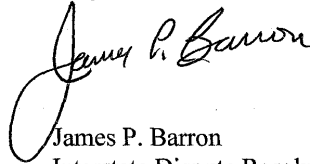
railroads to carry commodities and the conditions associated therewith, car supply orders, and the like.

Arguably, the proper approach for Congress to take, and thus for the Board to recommend, is that the Board should retain its existing authority and evolve into the role of reviewing arbitral decisions and mediated settlements based on ADR procedures and precedents.

Conclusion

IDR applauds the Board for this proceeding, and for conducting a legislative-type process for Congress during under currently existing circumstances. On the merits, subject to the creation of a Board review mechanism, IDR supports the implementation of ADR procedures in a phased-in approach for controversies lying within the Board's statutory jurisdiction.

Respectfully submitted,



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