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May 28, 2002

BY HAND

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Room 715
Washington, D.C. 20423

Re: Finance Docket No. 33942 (Sub-No. 1)
USX Corporation -- Control Exemption -- Transtar, Inc.

Dear Mr. Williams:

Enclosed for filing in the above-referenced proceeding are the original and ten copies of Tracks, Traffic and Management Services, Inc.'s Petition For Leave To File Reply In Support Of Petition For Review Of An Arbitration Award and Reply In Support Of Petition For Review Of An Arbitration Award. I also enclose a diskette containing the text of the Petition and Reply in Word 97 format.

An additional hard copy of each filing are enclosed for acknowledgment of receipt. Please date-stamp the copies and return them to our messenger. Thank you for your attention.

Very truly yours,

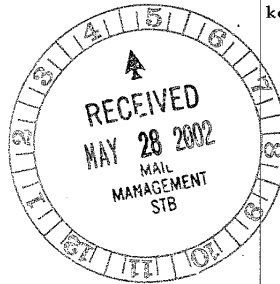


Krista L. Edwards

*Attorney for Tracks Traffic and
Management Services, Inc.*

Enclosures

cc: Mitchell M. Kraus



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Office of the Secretary
MAY 29 2002
Part of
Public Record



SURFACE TRANSPORTATION BOARD

Finance Docket No. 33942 (Sub-No. 1)

USX CORPORATION--CONTROL EXEMPTION--TRANSTAR, INC.

**PETITION FOR LEAVE TO FILE REPLY IN SUPPORT OF
PETITION FOR REVIEW OF AN ARBITRATION AWARD**

**ENTERED
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Public Record**

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(202) 736-8178

*Attorneys for Tracks Traffic and Management
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May 28, 2002

SURFACE TRANSPORTATION BOARD

Finance Docket No. 33942 (Sub-No. 1)

USX CORPORATION--CONTROL EXEMPTION--TRANSTAR, INC.

**PETITION FOR LEAVE TO FILE REPLY IN SUPPORT OF
PETITION FOR REVIEW OF AN ARBITRATION AWARD**

Pursuant to 49 C.F.R. § 1110.9, Tracks Traffic and Management Services, Inc. ("TTMS") requests that the Board waive its rule disallowing replies to replies (49 C.F.R. § 1104.13(c)) to the extent necessary to permit TTMS to file the accompanying memorandum, styled "Reply In Support of Petition For Review Of An Arbitration Award," in reply to the Response filed May 6, 2002 by the Transportation Communications International Union ("TCU") in this arbitration review proceeding. In support of its petition, TTMS states as follows:

1. On April 9, 2002, TTMS petitioned for review of an arbitration award (the "Fletcher Award") rendered under Article I, § 11 of the *New York Dock* conditions. Along with a copy of the Fletcher Award and TTMS' 23-page memorandum, TTMS filed copies of the parties' arbitration briefs and copies of certain arbitration awards, including those relied upon by the parties in the arbitration proceeding.

2. On May 6, 2002, TCU filed its Response, consisting of a 33-page memorandum, a copy of TCU's arbitration submission (TCU Exh. 1), copies of correspondence concerning the parties' dispute (TCU Exhs. 2 & 3), and copies of an additional nine arbitration awards that were not cited in the Fletcher arbitration proceeding (TCU Exhs. 8, 10-13, 15-18).

TCU did not seek leave to file a memorandum exceeding the applicable 30-page limitation (49 C.F.R. §§ 1115.8, 1115.2(d)).

3. TCU's Response relies on factual assertions, legal argument, and arbitration awards that were not in the record of the underlying arbitration proceeding and were not addressed in the Fletcher Award. Specifically, TCU's memorandum sets forth data concerning the "test period average" and post-transaction compensation for one TTMS employee (Anthony Falvo) who has filed a claim for *New York Dock* benefits with TTMS. TCU offers the data as a supposed "example" of the claims that gave rise to the underlying arbitration. Response at 3-4 & n.1. But the arbitration did not address any specific employee claims, and no evidence was introduced concerning the compensation history of Mr. Falvo or any other claimant.

4. TTMS could not have anticipated at the time that it filed its petition for review that TCU would seek to defend the award by reference to employee-specific data, much less data concerning Mr. Falvo's claim. As we explain in the tendered Reply, Mr. Falvo's experience was not at all representative of the claims that gave rise to the Fletcher Award. In the circumstances, fairness dictates that TTMS be heard in reply to TCU's reliance on extra-record "evidence."

5. Likewise, TTMS should be permitted to address the new arbitration awards and line of argument that TCU makes for the first time in its Response. In the underlying arbitration proceeding, TCU's position was based almost exclusively on the terms of the parties' implementing agreement and the supposed negotiating history of that agreement. In this review proceeding, TTMS seeks to defend the Fletcher Award on the ground that it supposedly is consistent with "long settled," generally applicable standards rooted in the Washington Job Protection Agreement of 1936. Response at 28.

6. The proffered reply is nine pages in length. Accordingly, if it is accepted, TTMS will have submitted memoranda totaling 32 pages in length, collectively shorter than TCU's 33-page Response.

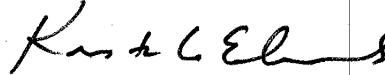
7. The Board has accepted replies to replies in arbitration review proceedings upon a showing of good cause, including when the party defending the award relies on matters outside the arbitration record. *CSX Corp.--Control--Chessie System, Inc. and Seaboard Coast Line Industries, Inc.*, 2 STB 554, 556-57 (1997) (accepting affidavit and argument offered in rebuttal to extra-record affidavit filed in opposition to petition for review of arbitration award); *CSX Corp.--Control--Chessie System, Inc. and Seaboard Coast Line Industries, Inc. (Arbitration Review)*, STB Finance Docket No. 28905 (Sub-No. 26), served April 29, 1996, 1996 STB LEXIS 136, at *3 (permitting filing of a reply to the opposition to the petition for review of a *New York Dock* award "in the interest of developing a full and complete record"); *Union Pacific Corp., et al.--Control--Missouri Pacific Corp. and Missouri Pacific R.R. (Arbitration Review)*, STB Finance Docket No. 30000 (Sub-No. 48), served July 31, 1996, 1996 STB LEXIS 213, at *10 ("Consistent with ICC precedent," permitting filing of a reply to the opposition to the petition for review of a *New York Dock* arbitration award); *cf. Canadian Pacific Ltd., et al.--Purchase and Trackage Rights--Delaware & Hudson Ry.*, STB Finance Docket No. 31700 (Sub-No. 13), served November 6, 1998, 1998 STB LEXIS 859, at *2 (permitting filing of a reply to the opposition to the petition for review of a *New York Dock* arbitration award; finding that "no party will be prejudiced by such action"); *see also, e.g., CSX Corp.--Control--Chessie System, Inc. and Seaboard Coast Line Industries, Inc., Arbitration Review*, ICC Finance Docket No. 28905 (Sub-No. 25), served January 11, 1994, slip op. at 1 n.3 (ICC permits filing of a reply to the opposition to the petition for review of a *New York Dock* arbitration award "[c]onsistent with our practice in

arbitration cases permitting the filing of a rebuttal"); *Norfolk & Western Ry. and New York, Chicago & St. Louis R.R.--Merger, Etc. (Arbitration Review)*, 9 I.C.C.2d 1021, 1021 n.1 (1993) (ICC has accepted and considered rebuttal briefs in arbitration review proceedings "in the interest of a more complete record"), *pet. for review denied sub nom. United Transportation Union v. United States*, 43 F.3d 697 (D.C. Cir. 1995).

CONCLUSION

For the foregoing reasons, the Board should accept and consider the accompanying Reply In Support Of Petition For Review Of An Arbitration Award.

Respectfully submitted,



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*Attorneys for Tracks Traffic and Management
Services, Inc.*

Dated: May 28, 2002

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Petition For Leave To File Reply In Support Of Petition For Review Of An Arbitration Award and accompanying Reply In Support Of Petition For Review Of An Arbitration Award have been served by facsimile and overnight delivery on Mitchell M. Kraus, General Counsel, Transportation Communications International Union, 3 Research Place, Rockville, Maryland 20850, this 28th day of May, 2002.

