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June 7, 2002

Via Federal Express Delivery

Secretary
Surface Transportation Board
1925 K Street
Washington, DC 20423



Re: *Newell Window Furnishings, Inc. and Newell Rubbermaid, Inc. v. United Parcel Service, an Ohio corporation, and United Parcel Service, a New York Corporation, STB Docket No. 42073*

Dear Sir or Madam:

Enclosed please find an original and ten (10) copies of Petitioners' Motion to Strike Respondents' Reply Brief in Support of Respondents' Motion to Dismiss Petition for filing with the Surface Transportation Board. Copies of this document are being served on opposing counsel, via Federal Express delivery, as contemplated by the regulations governing practice before the Board.

If you have any questions regarding the enclosed filing, please contact me at your convenience.

Sincerely,

Henry M. Perlowski

Enclosure

cc: William J. Augello, Esq. (w/ encl.)
Barry S. Alberts, Esq. (w/ encl.)
Cari K. Dawson, Esq. (w/ encl., via Federal Express)
James F. Moriarity, Esq. (w/ encl., via Federal Express)
Robert L. Rothman, Esq. (w/o encl.)

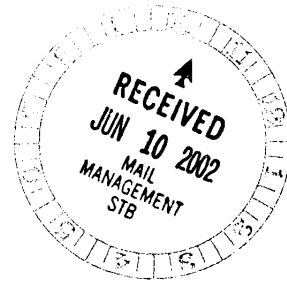
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JUN 10 2002

Part of
Public Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. 42073



NEWELL WINDOW FURNISHINGS, INC. and NEWELL RUBBERMAID, INC.

v.

**UNITED PARCEL SERVICE, INC., an Ohio Corporation, and UNITED
PARCEL SERVICE, INC., a New York Corporation**

**PETITIONERS' MOTION TO STRIKE RESPONDENTS' REPLY BRIEF IN SUPPORT
OF RESPONDENTS' MOTION TO DISMISS PETITION**

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Attorneys for Petitioners

Dated: June 7, 2002

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Come Now Petitioners, Newell Window Furnishings, Inc. and Newell Rubbermaid, Inc., including Levolor Home Fashions, a division of Newell Window Furnishings, Inc. (collectively "Levolor" or "Petitioners"), and file this Motion to Strike Respondents' Reply Brief in Support of Respondents' Motion to Dismiss Petition, showing this tribunal as follows:

Introduction

On March 27, 2002, Levolor filed a Petition for Declaratory Order and Other Relief ("the Petition"), which followed Levolor's filing of a letter complaint and the referral order issued by the United States District Court for the Northern District of Georgia on January 25, 2002. On April 18, 2002, Respondents United Parcel Service, Inc., an Ohio corporation, and United Parcel Service, Inc., a New York corporation (collectively "UPS"

or "Respondents"), moved to dismiss the Petition. In reply to this motion, Levolor timely filed Petitioners' Response in Opposition to Respondents' Motion to Dismiss Petition on May 7, 2002. In contravention of the rules governing cases before the Surface Transportation Board ("the Board"), Respondents then filed their Reply Brief in Support of Motion of UPS (OH) and UPS (NY) to Dismiss Petition on or about May 23, 2002 and a corrected version of the same on or about May 28, 2002 (hereinafter collectively "the Reply to Reply Brief"). In short, the Reply to Reply Brief should be stricken because, pursuant to 49 C.F.R. § 1104.13(c), as well as applicable case law, a party may not file a reply to a reply in a proceeding before the Board.

Argument and Citation of Authorities

The procedural rules governing cases before the Surface Transportation Board clearly state that "a reply to a reply is not permitted." 49 C.F.R. § 1104.13(c). Accordingly, the Board has stricken reply briefs on a number of occasions, especially when such briefs do not add to an understanding of the issues before the Board. See Central Kansas Railway, L.L.C., STB Docket No. AB-406, 2001 WL 1143636 (striking a reply to a reply on grounds that it was impermissible); Lackawanna Co. R.R. Auth., STB Finance Docket No. 33906, 2001 WL 1260815, n.3 ("A reply to a reply under our rules at 49 C.F.R. 1104.13(c) is impermissible. In appropriate circumstances, we construe our rules liberally to allow such replies where they will contribute to a complete record without prejudicing any party or delaying the proceeding The rebuttal does not add to our understanding of the issues and its consideration would not alter the outcome in this proceeding.").

In the matter at bar, Respondents' Reply to Reply Brief, as originally filed and as corrected, should be stricken because it is not permitted pursuant to 49 C.F.R. § 1104.13(c). The Reply to Reply Brief furthermore merely reiterates the flawed arguments set forth in Respondents' Motion to Dismiss Petition that seek to eviscerate the referral order issued by the United States District Court for the Northern District of Georgia and avoid Board scrutiny of UPS' unlawful and coercive billing practices. Thus, the procedurally improper Reply to Reply Brief submitted by UPS does not contribute to the Board's understanding of the issues in this case and should be stricken from the record.

Conclusion

In sum, Respondents' Reply to Reply Brief, as originally filed and as corrected, should be stricken because it contravenes the rules of practice before the Board.

This the 7th day of June, 2002.

Respectfully Submitted,

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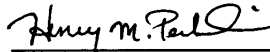
CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing
**PETITIONERS' MOTION TO STRIKE RESPONDENTS' REPLY BRIEF IN SUPPORT
OF RESPONDENTS' MOTION TO DISMISS PETITION** by overnight mail, via Federal
Express delivery, with sufficient postage affixed thereon, addressed as follows:

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James F. Moriarity, Esq.
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This the 7th day of June, 2002.



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