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Office of Proceedings

RICHARD A. ALLEN

AUG 28 2002

August 28, 2002

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BY HAND DELIVERY

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



206123
Re: STB Finance Docket No. 34209, *Norfolk So. Ry. Co.—Trackage Rights Exemption—Delaware and Hudson Ry. Co.*

206125
STB Finance Docket No. 34225, *Norfolk So. Ry. Co.—Trackage Rights Exemption—Reading Blue Mountain and Northern Ry. Co.*

Dear Secretary Williams:

We write in response to the August 26, 2002 letter to you from Gordon P. MacDougall, counsel for UTU-NY in the referenced cases, which we received today (Attachment A hereto).

In that letter, counsel asserts that NS "has not complied with the Board's August 16 protective order decision." Although the asserted basis for that alleged failure is not particularly clear, UTU-NY appears to claim that NS has somehow failed to respond properly to a letter from UTU-NY's counsel dated August 16, 2002 (see Attachment B hereto). In that letter (which enclosed copies of the Confidential and Highly Confidential undertakings pertaining to the protective orders entered in these cases, executed by UTU-NY's outside counsel), counsel requested "unredacted versions of the NS-RBMN and the NS-CPR agreements mentioned in today's decisions, i.e., the trackage rights and restructuring agreements."

Any suggestion by UTU-NY that NS has failed to live up to its obligations under the protective orders is false. As UTU-NY's counsel acknowledges, his August 16, 2002 letter request and executed undertakings were served by U.S. mail only.¹ NS first became aware of the August 16 request and the executed undertakings on the

¹ The postmark indicates the letter was posted on August 19, 2002.

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afternoon of August 26, 2002, when NS' in-house counsel received them in the mail. Within one hour of receiving counsel's letter and the undertakings on August 26, NS' in-house counsel called counsel for UTU-NY and deposited with an overnight delivery service a package containing the documents the August 16 letter requested – the NS-RBMN trackage rights agreement, the NS-CPR trackage rights agreement, and the Restructuring Agreement. See Attachment C. NS thus produced the requested documents (under a Highly Confidential designation) in full and prompt compliance with the applicable protective orders.

As the Board knows, last month UTU-NY's counsel also requested certain additional documents from NS – namely, three haulage agreements between NS and CPR, one executed in 1998 and two in 1999. The question of the discoverability of those agreements is presently before the Board, as reflected in UTU-NY's motion to compel dated August 12, 2002 and NS' opposition dated August 26. For present purposes, we note that those haulage agreements were *not* requested in UTU-NY's August 16 letter that accompanied the executed undertakings. Moreover, NS' withholding of the haulage agreements pending resolution of the dispute over their status does not violate the relevant protective orders or any decision of the Board, but rather is entirely appropriate and correct. For the reasons already discussed in NS' August 26 opposition, those haulage agreements are not relevant to the issues before the Board in these cases, and UTU-NY's motion to compel their production should be denied.

Sincerely,

A handwritten signature in dark ink, appearing to read "Richard A. Allen". The signature is fluid and cursive, with the first name "Richard" being more prominent.

Richard A. Allen
Scott M. Zimmerman

Attachments

cc (w/att., by hand): Gordon P. MacDougall, Esq.

Attachment A

LAW OFFICES
GORDON P. MACDOUGALL
1085 CONNECTICUT AVE. N. W.
WASHINGTON, D. C. 20036

TELEPHONE
AREA CODE 202
223-9708

August 26, 2002

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
Washington DC 20423

Re: F.D. No. 34209, NS Ry. Co.-Tr.Rts.-D&H Ry. Co., Inc.
F.D. No. 34225, NS Ry. Co.-Tr.Rts.-Rdg. Blue Mtn. & Nor. RR

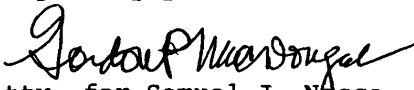
Dear Mr. Williams:

Protestant on August 12 filed its Motion to Compel and to Extend Time for Filing Supplemental Petition to Revoke. (Motion). NS Ry. has today responded to that pleading (NS Reply), but has not complied with the Board's August 16 protective order decision.

This letter is to supplement the Motion to advise that protestant on August 16--10 days ago--served the attached 5-page undertaking, by depositing the same at the U.S. Post Office during collection hours. (Cf. NS Reply, at pp. 6, 7n.6, 11, 12).

Today I received a telephone communication that one of the discovery requests--the restructuring agreement--would be furnished, perhaps by overnight mail. Of course, this does not in any way moot the remaining discovery requests, i.e., the agreements of May 5, 1998, April 11, 1999, and June 16, 1999. (Motion, App. A)

Very truly yours,


Atty. for Samuel J. Nesca

cc: John V. Edwards
Scott M. Zimmerman

Attachment B

LAW OFFICES
GORDON P. MACDOUGALL
1008 CONNECTICUT AVE. N. W.
WASHINGTON, D. C. 20006

TELEPHONE
AREA CODE 202
223-9738

August 16, 2002

Mr. John V. Edwards
Norfolk Southern Corporation
Law Department
Three Commercial Place
Norfolk VA 23510-9241

Re: F.D. No. 34209, NS Ry. Co.-Tr.Rts.-CPR.
F.D. No. 34225, NS Ry. Co.-Tr.Rts.-RBMN

Dear Mr. Edwards:

I enclose executed originals of Undertaking-Confidential Material, and Undertaking-Highly Confidential Material, for each of the above two captioned proceedings.

These undertakings are pages 7-8 of the STB's two decisions issued today.

I would appreciate unredacted versions of the NS-RBMN and the NS-CPR agreements mentioned in today's decisions, i.e., the trackage rights and restructuring agreements.

Very truly yours,





Attachment C

Norfolk Southern Corporation
Law Department
Three Commercial Place
Norfolk, Virginia 23510-9241

John V. Edwards
General Attorney

Writer's Direct Dial Number

(757) 629-2838
(757) 533-4872 (Fax)
john.edwards@ns.com

August 26, 2002

Via Overnight Courier

Gordon P. MacDougall, Esq.
1025 Connecticut Avenue, N.W.
Washington, D.C. 20036

Re: F.D. No. 34209, NSR – Trackage Rights – Canadian Pacific
F.D. No. 34225, NSR – Trackage Rights – Reading Blue Mountain

Dear Mr. MacDougall:

Per your request dated August 16, 2002, just received in my offices today, I am sending to you the unredacted copies of: (1) the trackage rights agreement covering NSR's trackage rights over the Reading Blue Mountain, and (2) the so-called Restructuring Agreement between NSR and D&H. For your convenience I also include a copy of the agreement covering NSR's trackage rights over the D&H, which was filed with the Notice of Exemption in F.D. No. 34209. The Restructuring Agreement is provided to you pursuant and subject to the protective order published by the Board in F.D. No. 34209. The NSR-RBMN trackage rights agreement is provided to you pursuant and subject to the protective order published by the Board in F.D. No. 34225.

Sincerely,

A handwritten signature in black ink, appearing to be "J. Edwards", written over a horizontal line.

John V. Edwards

Enclosures

cc: The Honorable Vernon A. Williams
Richard A. Allen
Scott M. Zimmerman

Operating Subsidiary: Norfolk Southern Railway Company.