

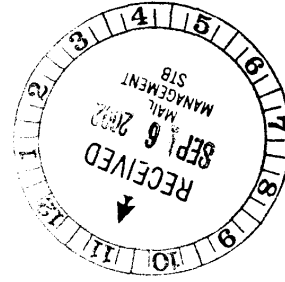
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BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.



STB Finance Docket No. 34004

CANADIAN PACIFIC RAILWAY COMPANY AND NAPIERVILLE JUNCTION RAILWAY
COMPANY – CORPORATE FAMILY TRANSACTION – ST. LAWRENCE & HUDSON
RAILWAY COMPANY LIMITED

VERIFIED STATEMENT OF ROBIN MULLANEY

1. My name is Robin Mullaney. I am employed by Canadian Pacific Railway as Director Employee & Labor Relations. In my position, I oversee Human Resources and Labor Relations functions for Canadian Pacific Railway.
2. I am familiar with the claims being made by Ms. Karen Cline, a former border services employee of Canadian Pacific Railway in Detroit, Michigan. Ms. Cline was among those employees whose positions were eliminated as a result of a reorganization of the border services unit in February 2002.
3. Pursuant to the agreement entered into by Ms. Cline's union and the railroad, her position was abolished as of February 4, 2002. I have examined Canadian Pacific's records regarding Ms. Cline and know that she elected under that agreement to receive a monthly benefit because of the elimination of her position, and that she is, in fact, receiving those benefits.
4. Despite receiving this benefit, Ms. Cline has attempted to seek labor protection under New York Dock – Control – Brooklyn Eastern District, 360 ICC 60 (1979). She initially presented a letter dated April 19, 2002 to the Canadian Pacific Railway attempting to claim such

protection. The appropriate individual for Ms. Cline to make such a claim to would be her immediate supervisor, A. J. Roberts. The letter was instead addressed to two managers, Mr. Don Brazier and Mr. A. J. Roberts.

5. Despite the fact that the claim was not handled in the usual and customary manner on the property and given the particular legal aspects involved in determining applicability of New York Dock, I instructed the legal counsel for the railroad who had been involved with the negotiations with Ms. Cline's union to respond on behalf of CPR directly to Ms. Cline to explain to her why New York Dock benefits were inappropriate for this situation and to inform Ms. Cline that her request for New York Dock protections was being denied. Ms. Cline's initial letter is attached hereto as Exhibit A. Counsel's letter to Ms. Cline denying benefits and explaining why is attached hereto as Exhibit B.

6. Ms. Cline followed the April 19 letter and the response with another letter to the same two managers of the railroad dated May 30, 2002, this one questioning why she was receiving a letter from counsel and presenting the same claim. That letter is attached hereto as Exhibit C. This letter was followed up with another on July 9, 2002, directed again to Mr. Brazier, who at this point had retired from the railroad. This letter, attached as Exhibit D, insisted that a response come directly from Mr. Brazier.

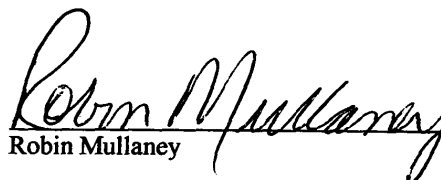
7. On July 25, 2002, Assistant Vice President of Labor Relations and Human Resources-U.S., Cathryn Frankenberg, responded in two letters to Ms. Cline. Those letters are attached as Exhibits E and F. In those letters, Ms. Frankenberg reiterates the stance of Canadian Pacific that the reorganization of the border services was not an action that was subject to approval of the Surface Transportation Board, and that New York Dock protective conditions

were inapplicable. In those letters, Ms. Frankenberg again denied the claim for New York Dock labor protective conditions.

8. Ms. Cline's union had been informed in late 2001 that any request for New York Dock labor protections was inappropriate and unavailable in this situation, and indeed the Union dropped such claims and proceeded to negotiate an agreement that provided a level of protection for employees who would be affected by the reorganization of border services. Ms. Cline was informed as to the unavailability of New York Dock protection on May 8, 2002 in a letter from counsel for the railroad and again on July 25, 2002. At no time has Ms. Cline requested that this dispute be referred to the mandatory arbitration process used to settle disputes that arise under New York Dock claims.

9. I, Robin Mullaney, Canadian Pacific Railway Company, verify under penalty of perjury under the laws of the United States of America that I have been authorized by Canadian Pacific Railway to verify and file with the Surface Transportation Board, the foregoing statement, that I know the contents thereof and the facts asserted therein, and that I declare the foregoing is true and correct.

Dated: 9-4-02


Robin Mullaney

April 19, 2002
15128 Gage Street
Taylor, MI 48180

Mr. D. V. Brazier
Director, Labour Relations
Canadian Pacific Railway Company
Suite 300, Windsor Station
P. O. Box 6042, Station Centre-ville
Montreal, Quebec, Canada H3C 3E4

Mr. A. J. Roberts
Area Manager Transportation Services
Canadian Pacific Railway Company
1405 Caron Avenue
Windsor, Ontario, Canada N8X 4T6

Dear Sirs:

Consider this a claim on behalf of Ms. Karen Cline stating as follows:

A) Pursuant to the decision of the Surface Transportation Board (STB) in Finance Docket No. 34004, and related filings, Claimant Karen Cline was directly affected by Carriers' transfer of work from Detroit, Michigan, USA, to Winnipeg, Manitoba, Canada, on February 4, 2002 and was placed in a worse position in respect to compensation and rules as defined in Article I, Section 1 of the New York Dock (NYD) conditions.

B) Claimant Karen Cline is therefore entitled to an election of benefits as prescribed by Article I, Sections 5 & 6 of NYD and pursuant to the imposition of protection by the Surface Transportation Board.

Statement of Facts:

The Canadian Pacific (CPR) and Napierville Junction Railway Company (NJRC) filed a verified notice of exemption under 49 CFR 1180.2(d)(3) to absorb the St. Lawrence & Hudson Railway Company Limited (St.L&H) and place the assets it holds back into CPR. This transfer of assets included the rail operations of St.L&H in the United States.

EXHIBIT NO.

A

This transfer included the St.L&H overhead trackage rights over CSX Transportation, Inc. (CSXT) lines between Delray Interlocker (CSXT) and Rougemere Yard, Detroit, Michigan. This transaction was a reorganization designed to dissolve St.L&H and absorb its properties and operations into CPR. Importantly, the parties asserted that the transaction would not result in adverse changes in service levels, operational changes, or a change in the competitive balance with carriers outside the corporate family.

On February 16, 2001 the Surface Transportation Board (STB) in Finance Docket No. 34004,¹ stated that: "[a]pplicants state that there will be no change in operations as a result of this transaction, and they do not anticipate any labor impacts will occur within the United States." In so finding, the STB approved the transaction in: "[a]pplicants state that they recognize the Board's obligation to impose employee protective conditions pursuant to 49 U.S.C. 11326(a) for the benefit of their U.S. railroad employees, and that they agree to imposition of the conditions imposed in New York Dock Ry.-Control-Brooklyn Eastern Dist., 360 I.C.C. 60 (1979) (New York Dock)."

Subsequently, by notice dated October 15, 2001, the CPR issued notice to the Employees that:

It is the intent of the Carrier to initiate an organizational change and operational change by relocating the customs and border service work now performed in Detroit, MI to Winnipeg, MB. The change will take place on or about February 01, 2002.

All positions in the bargaining unit now located in Detroit will be abolished on the effective date of the change. These are eleven permanently assigned positions, the two permanently unassigned positions and the one spare unassigned position.

¹The STB gives a finance docket designation to: "Cases involving transactions or arrangements to restructure rail companies and rail lines including merger, control, trackage rights, lease, acquisition, construction, pooling, interlocking offices and directors and feeder line development, as well as labor and environmental issues arising therefrom, and certain non-rate related complaint and declaratory order cases." See 49 USC 10901-02, 10907, 11101-03 and 11322-28.

Consequently, on January 14, 2002, the Carrier served notice (Bulletin LAC1102) informing all employees at Detroit, Michigan, that all assignments were being abolished and their work transferred to the Winnipeg Terminal Service Center (TCS). Four (4) Transportation Service Representative assignments located at the Winnipeg TSC were established effected February 5, 2002 to accommodate the transfer/coordination of the United States employees' work.

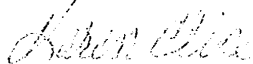
As a result of all these actions, all United States employees at Rougemere Yard, Detroit, Michigan, lost their jobs and became dismissed employees as defined by the New York Dock protective conditions.

Position of Claimant:

It Claimant Cline's position that the imposition of the protective conditions set forth in New York Dock - Control - Brooklyn Eastern District Terminal, 360 I.C.C. in the corporate transaction between Canadian Pacific Railway Company and St. Lawrence & Hudson Railway Company mandates an extension of protection entitlement. Claimant Cline under the circumstances outlined in the statement of claim as well as the statement of facts is entitled to an election as prescribed by NYD.

Your prompt compliance and response is requested.

Yours,



Karen Cline
Claimant
(ID#653907)

cc: Harry Gray, USWA

49515-5

LEONARD, STREET AND DEINARD

PROFESSIONAL ASSOCIATION

May 8, 2002

Diane P. Gerth

612-335-1463

diane.gerth@leonard.com

Karen Cline
15128 Gage Street
Taylor, Michigan 48180

Re: April 19, 2002 Letter

Dear Ms. Cline:

Canadian Pacific Railway ("CPR") has asked me to respond to your letter of April 19, 2002, in which you purport to make a claim for employee protective benefits that can be available under New York Dock - Control - Brooklyn Eastern District, 360 ICC 60 (1979). Although your claim was not presented to the officer designated to handle such claims, CPR directed it to me for reply. We don't intend for this direct response to you to be a waiver of the proper procedures, but rather we wanted to respond quickly and directly to you about the issues you have raised. Because the adverse action of which you complain did not come about as a result of any STB regulated transaction as required under New York Dock, CPR declines your request for benefits.

It is fundamental law that in order for these labor protections to come into play, there must be a causal connection between the STB regulated transaction and any claimed adverse impact. See, Employees of the Butte, Anaconda & Pacific Railway Co. v. United States, 938 F.2d 1009 (9th Cir., 1991), cert. denied, 503 U.S. 936, 112 S.Ct. 1474 (1992). Absent a "causal nexus" between the transaction and any adverse effects, New York Dock benefits are not appropriate. It is the role of the STB in transactions that it oversees to protect employees from the adverse effects of that transaction, not from adverse effects of other unrelated events. See, 938 F.2d at 1014. Because the Border Services reorganization that resulted in the relocation of your position was a company decision independent of the STB approved transaction in Finance Docket No. 34004 you mentioned in your letter, New York Dock benefits are inapplicable.

The reabsorption of the St. Lawrence & Hudson corporate entity back into CPR is unrelated to CPR's reorganization of border services. The amalgamation of St. Lawrence & Hudson took place as of December 31, 2000, and the actions leading up to it took place prior to that. It was merely a change in corporate organization that resulted in no operational changes. Just as the creation of the St. Lawrence & Hudson in 1996 did not change operations, neither did the amalgamation.

150 SOUTH FIFTH STREET SUITE 2300 MINNEAPOLIS, MINNESOTA 55402 TEL 612-335-1500 FAX 612-335-1657

LAW OFFICES IN MINNEAPOLIS, SAINT PAUL, MANKATO, SAINT CLOUD AND WASHINGTON, D.C.

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WWW.LEONARD.COM

EXHIBIT NO.

B

Page 2
May 8, 2002

The Border Services Reorganization that took place in February 2002 was commenced nearly a year later and was undertaken to effectuate operational efficiencies within the CPR network. The reorganization was not the result of the reabsorption of the St. Lawrence & Hudson. It cannot be shown that there was a causal nexus between the two actions because there is no causal nexus.

For this reason, the claim you make in your letter of April 19, 2002 is declined.

Very truly yours,

LEONARD, STREET AND DEINARD
Professional Association



Diane P. Gerth
DPG:km

cc: Bill Tuttle
Robin Mullaney
Don Brazier
Howard Buchanan

May 30, 2002

Mr. D. V. Brazier
Director, Labour Relations
Canadian Pacific Railway Company
Room 370, Windsor Station
P. O. Box 6042 Station Centre Ville
Montreal, Quebec, Canada H3C 3E4

Mr. A. J. Roberts
Area Manager Transportation Services
Canadian Pacific Railway Company
1405 Caron Avenue
Windsor, Ontario, Canada N8X 4T6

Dear Sirs:

This is in reference to the claim previously filed with the Carrier stating as follows:

A) Pursuant to the decision of the Surface Transportation Board (STB) in Finance Docket No. 34004, and related filings, Claimant Karen Cline was directly affected by Carriers' transfer of work from Detroit, Michigan, USA, to Winnipeg, Manitoba, Canada, on February 4, 2002 and was placed in a worse position in respect to compensation and rules as defined in Article I, Section 1 of the New York Dock (NYD) conditions.

B) Claimant Karen Cline is therefore entitled to an election of benefits as prescribed by Article I, Sections 5 & 6 of NYD and pursuant to the imposition of protection by the Surface Transportation Board.

As of this date, I have yet to receive a response to my claim from the Carrier. Instead, I received a letter dated May 8th from Ms. Diane P. Gerth (title unknown) from the firm of *Leonard, Street and Denard* (business unknown).

In her letter, Ms. Gerth states that my claim for protective entitlement was directed to her for reply -- attached is a copy for your ready reference. Although Ms. Gerth states that "*CPR directed it to me for reply*", she does not indicate who at CPR asked her to address my claim. Again, Ms. Gerth does not even identify herself or how she is connected with CPR. Moreover, Ms. Gerth's letter copies numerous other individuals that I have no knowledge of, nor what their connection to this matter may be -- they likewise are not identified.

EXHIBIT NO.

C

Mr. Brazier, as you are aware, under provisions of the collective bargaining agreement (CBA); Carrier policy; and usual and customary procedures, employees are to file claims or grievances with their respective supervisors with final handling by the highest designated officer of the company. Yet, Ms. Gerth states that my "*claim was not presented to the officer designated to handle such matters...*"

Again, who is Ms. Gerth and what authority does she possess to interject herself in the grievance handling machinery and render interpretations of the CBA? I thought that was the job of the Union's representative and yourself Mr. Brazier.

What Ms. Gerth does is assert that no causal nexus exists between the loss of all St. L&H jobs at Detroit and the transfer of our work to the CPR at Winnipeg, MB, Canada. You may ask how she came to this decision. Well, the basis for Ms. Gerth's conclusion is her citation of the US Court of Appeals, 9th Circuit, decision in Employees of the Butte, Anaconda & Pacific Railway Co. v. United States, 938b F.2d 1009.

However, review of this decision, which was not supplied by Ms. Gerth, indicates the 9th Circuit was faced with the question of whether the Interstate Commerce Commission (ICC), now the STB, could stand in review of arbitration decisions dealing with its protective schemes. The ability of the ICC/STB to review arbitration decisions stemmed from its (then recent) so-called Lace Curtain decision.¹

Notwithstanding, important to the Anaconda case was the decision of the ICC in Finance Docket No. 28490 (Sub-No. 1), Arbitration Review, decided February 17, 1988. In that holding the ICC stated that it had the "*primary jurisdiction to determine whether parties to a rail merger complied with an employee protective agreement relating to the transaction.*" The ICC also recognized that subsequent events trigger the benefit provisions under proximate cause by adhering to standards set by the Washington Job Protective Agreement (WJPA). (see ICC decision of Feb. 9, 1979 Finance Docket No. 28250).

Consequently, the ICC found the employees in the Anaconda case were affected by economic factors that were not a direct result of the control transaction. As such, the Anaconda case is clearly distinguishable from the claim I have presented for my protective entitlement.

In a previous telephone conversation with you, Mr. Brazier, you indicated that I deserved a written response to my claim from the Carrier. What I really deserve is an election of a NYD protective entitlement as imposed by the STB. However, I appreciate your remarks that my claim warrants a timely response from the Carrier – of which I still await.

¹Lace Curtain established standards for the review of arbitral decision dealing with imposed protective conditions. The ICC/STB restricted itself from dealing with issues of causation, calculation of benefits, or resolution of factual questions – arbitrators were given deference to these matters.

Your prompt attention and response is appreciated.

Yours truly,

Karen Cline

Karen Cline
15128 Gage Street
Taylor, Michigan 48180

Attachments

July 09, 2002

Mr. D.V. Brazier
Director, Labour Relations
Canadian Pacific Railway Company
Room 370, Windsor Station
P.O. Box 6042 Station Centre Ville
Montreal, Quebec Canada H3C 3E4

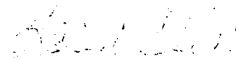
Dear Sir:

As of this date, I have still yet to receive a response to my claim from the Carrier, letters dated April 19 and May 30, 2002, respectively. I, again, remind you Mr. Bazier, in our telephone conversation May 1, 2002 you indicated a timely written response would be forthcoming. I still await your response.

I have been in contact with the Surface Transportation Board. Accordingly, if no reply is provided me, I will go forward to seek reopening of the CPR/St.L&H transaction, filing a formal petition with the Secretary of the Surface Transportation Board's Office of Congressional and Public Service.

Your prompt response is appreciated.

Yours truly,



Karen Cline
15128 Gage Street
Taylor, MI 48180

EXHIBIT NO.

D



**CANADIAN
PACIFIC
RAILWAY**

501 Marquette Avenue (55402)
PO Box 530 (55440)
Minneapolis Minnesota

Tel (612) 347-8356

In Response Please Refer to
File:

0-0151-001

July 25, 2002

Ms. Karen Cline
15128 Gage Street
Taylor, MI 48180

Dear Ms. Cline:

Your letter dated May 30, 2002, addressed jointly to Mr. D. V. Brazier and Mr. A. J. Roberts, the manager to whom your initial claim should have been presented, has been forwarded to me for review and response.

As you have been previously advised, the reorganization of Border Services was not an action that was subject to approval of the Surface Transportation Board and New York Dock protective conditions are not applicable.

Your claim for such benefits is improper and not supported by collective bargaining agreement.

Consequently, your claim is respectfully denied in its entirety.

Sincerely,

Cathryn S. Frankenberg
Cathryn S. Frankenberg
Assistant Vice President
Labor Relations & Human Resources - US

cc: Alan Roberts
Diane Gerth

EXHIBIT NO.

E



**CANADIAN
PACIFIC
RAILWAY**

501 Marquette Avenue (55402)
PO Box 530 (55440)
Minneapolis Minnesota

Tel (612) 347-8356

In Response Please Refer to
File:

0-0151-001

July 25, 2002

Ms. Karen Cline
15128 Gage Street
Taylor, MI 48180

Dear Ms. Cline:

I am in receipt of your letter dated July 9, 2002, addressed to Mr. D. V. Brazier stating that you have not received a response to your April 19 and May 30, 2002, letters.

Inasmuch as Mr. Brazier has retired from the service of Canadian Pacific Railway, please direct any further correspondence in this regard to me, Cathryn S. Frankenberg, Assistant Vice President HR/LR-US, at P.O. Box 530, Minneapolis, Minnesota 55440.

My file reflects your letter dated April 19, 2002, was responded to on May 8, 2002, by Diane P. Gerth, legal counsel, in behalf of Canadian Pacific Railway. Your May 30, 2002, letter was directed to me and I have responded in behalf of Canadian Pacific Railway.

As you have been previously advised, the reorganization of Border Services was not an action that was subject to approval of the Surface Transportation Board and New York Dock protective conditions are not applicable. The Border Services Reorganization that took place in February 2002 was undertaken to effectuate operational efficiencies within the CPR network. It was not the result of the re-absorption of the St. Lawrence & Hudson.

Your claim for such benefits is improper and not supported by collective bargaining agreement.

Consequently, your claim is respectfully denied in its entirety.

Sincerely,

Cathryn S. Frankenberg
Cathryn S. Frankenberg
Assistant Vice President
Labor Relations & Human Resources - US

cc: Diane Gerth
Alan Roberts

EXHIBIT NO.

F