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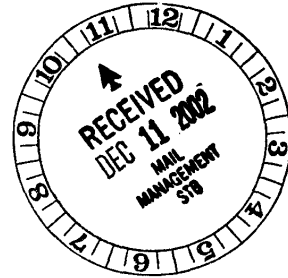
Before the
SURFACE TRANSPORTATION BOARD

Docket No. 42076

ALBANY & EASTERN RAILROAD COMPANY

v.

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY



PETITION FOR LEAVE TO INTERVENE

ENTERED
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Public Record

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Attorney for John D. Fitzgerald

Dated: December 11, 2002

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PETITION FOR LEAVE TO INTERVENE

John D. Fitzgerald,^{1/} for and on behalf of United Transportation Union-General Committee of Adjustment (UTU/GO-386), submits this petition for leave to intervene in the captioned proceeding, and for good cause therefor states as follows:

1. Intervention is sought in order that intervenor may participate in the Board's determination whether arbitration is to proceed and, if so, under what conditions. 49 CFR 1108.7(g). This petition does not constitute a request for intervention in the arbitration itself, as the rules provide that the arbitrator will establish the rules, after the Board first makes the referral. 49 CFR 1108.3(b), 1108.7(g).

2. The interest of UTU/GO-386 is in connection with the employment of persons by The Burlington Northern and Santa Fe Railway Company (BNSF) who are represented by UTU/GO-386. BNSF has

^{1/} General Chairman for United Transportation Union (UTU), on lines of The Burlington Northern and Santa Fe Railway Company (BNSF) with offices at 400 E. Evergreen Blvd., Vancouver, WA 98660,

yards and lines of railroad, and/or operates the same, in the Albany, OR area, and which do business and/or interchange traffic with Albany & Eastern Railroad Company (AERC). Persons represented by UTU/GO-386 perform duties for BNSF in connection with BNSF's relationships with AERC. AERC was initially established as a carrier by acquisition of BNSF trackage between Lebanon and Foster, OR, and trackage rights accorded by BNSF at Albany, and by Union Pacific Railroad Company (UP) between Lebanon and Albany, OR. Finance docket No.33567, Albany & Eastern Railroad Company-Acquisition and Operation Exemption-The Burlington Northern and Santa Fe Railway Company (served May 21, 1998).^{2/}

3. UTU/GO-386 desires maximum opportunities, and suitable working conditions, for BNSF employees engaged in business and interline traffic with AERC and its affiliates.

4. UTU/GO-386 believes maximum employment opportunities, including overtime and working conditions, may be threatened if AERC is accorded certain relief in this proceeding, particularly if traffic handled by BNSF is diminished. The threat to BNSF and/or employment opportunities and conditions for BNSF employees, is believed to be further increased by the proposed lease, trackage rights, and other matters entered into between BNSF and Portland & Western Railroad, Inc., in the involved Albany, OR area, and the Pacific Northwest, generally. Finance Docket No.

^{2/} AERC is affiliated with Willamette Valley Railway Company (WVRY), with WVRY's operations at Albany merged with AERC. See: Finance Docket No. 33949, Albany & Eastern Railroad Company-Acquisition and Operation Exemption-Union Pacific Railroad Company (served October 27, 2000; Finance Docket No. 32249, Willamette Valley Railway Company-Acquisition, Lease and Operation Exemption-Southern Pacific Transportation Company (served March 5, 1993)

34255, Portland & Western Railroad, Inc.-Lease and Operation Exemption-The Burlington Northern and Santa Fe Railway Company (filed December 6, 2002). UTU/GO-386 understands that BNSF would transfer yard management at Albany,OR, among other operations, to another carrier. Preliminary analysis by UTU/GO-386 indicates the present complaint for arbitration appears related to the transactions contemplated in Finance Docket No. 34255, Portland & Western Railroad, Inc., supra.

5. UTU/GO-386 was an active participant in Assn.of American Railroads Et Al.-Agreement--49 U.S.C. 10706, 3 S.T.B. 673 (1998) and 3 S.T.B. 910 (1998), and has a demonstrated interest in the workings of the approved agreement. This complaint for arbitration is believed to be the first instance of a dispute arising under the agreement which seeks enforcement by the Board of an arbitration clause in the agreement. UTU/GO-386 is particularly concerned that the feature of the agreement over which AERC seeks arbitration for its dispute was not approved by the Board. Further, the guidelines to govern the dispute are not identical with the standards to be employed by the Board in administering 49 U.S.C §§ 10742, 10901(a)(4), 10901(c), the only statutory criteria named by AERC in its complaint for arbitration. The agreement guidelines concern features of concern to private railroad parties,^{3/} whereas the Board is to be primarily concerned with the statutory standards for the public which embrace elements--includ-

^{3/} We do not observe AERC in the list of carrier members listed in the agreement; perhaps its merged operations with WVRV at Albany is a changed situation.

ing carrier employees--which are not addressed in the agreement and, indeed, go beyond the agreement guidelines.

WHEREFORE, the Board should grant intervention for UTU/GO-386 in this proceeding, to the extend requested.

Respectfully submitted,


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December 11, 2002

Attorney for John D. Fitzgerald

Certificate of Service

I hereby certify I have served a copy of the foregoing upon the following by overnight mail:

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