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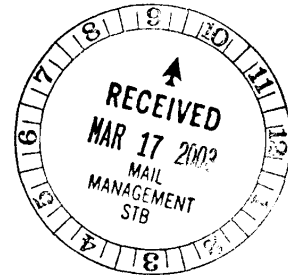
THOMAS F. MCFARLAND

March 14, 2003

By UPS overnight mail

Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit, Suite 713
1925 K Street, N.W.
Washington, DC 20423-0001

207400



Re: STB Docket No. NOR-42076, *Albany & Eastern Railroad Company v. The Burlington Northern and Santa Fe Railway Company*

Dear Mr. Williams:

Enclosed please find an original and 10 copies of Petition For Leave To File Reply In Opposition To Appeal Out Of Time, And Tendered Reply In Opposition To Appeal, for filing with the Board in the above referenced matter.

Kindly acknowledge receipt by date stamping the enclosed duplicate copy of this letter and return in the self-addressed stamped envelope.

Very truly yours,

Tom McFarland

Thomas F. McFarland

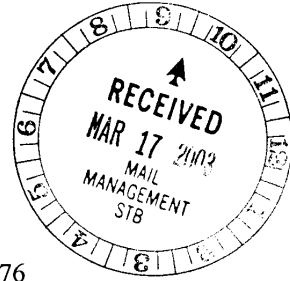
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ENTERED
Office of Proceedings

MAR 17 2003

Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD



ALBANY & EASTERN RAILROAD
COMPANY,)

Complainant,)

v.)

) Docket No. NOR-42076

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY,)

Defendant.)

**PETITION FOR LEAVE TO FILE REPLY IN OPPOSITION
TO APPEAL OUT OF TIME, AND TENDERED REPLY
IN OPPOSITION TO APPEAL**

ALBANY & EASTERN RAILROAD COMPANY
MIKE ROOT, President
1784 South Main Street
Lebanon, OR 97355
(541) 259-6470

Complainant

ENTERED
Office of Proceedings

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Public Record

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1194
(312) 236-0204

Attorney for Complainant

DATE FILED: March 17, 2003

BEFORE THE
SURFACE TRANSPORTATION BOARD

ALBANY & EASTERN RAILROAD
COMPANY,

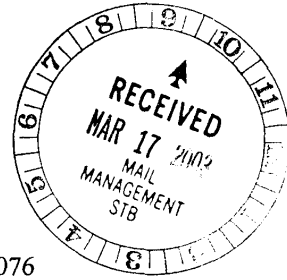
Complainant.

v.

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY,

Defendant.

Docket No. NOR-42076



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Office of Proceedings

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**PETITION FOR LEAVE TO FILE REPLY IN OPPOSITION
TO APPEAL OUT OF TIME, AND TENDERED REPLY
IN OPPOSITION TO APPEAL**

Pursuant to 49 C.F.R. § 1117.1 and 49 C.F.R. § 1011.2(a)(7), ALBANY & EASTERN RAILROAD COMPANY (AERC) (1) petitions for leave to file a Reply in Opposition to Appeal out of time; and (2) tenders its reply in opposition to the appeal of John D. Fitzgerald for and on behalf of United Transportation Union - General Committee of Adjustment (UTU/GO-386) (Appeal). The Appeal is directed to a decision of the Board's Director, Office of Proceedings, served February 13, 2003 (Decision).

I. Petition For Leave To File Reply Out Of Time

Counsel for AERC mistakenly concluded that the time for reply to the appeal is 20 days, as provided for replies generally in 49 C.F.R. § 1104.13(a). In fact, the time for reply to this appeal of an initial decision of the Director, Office of Proceedings, is 10 days, as provided for in 49 C.F.R. § 1011.2(a)(7). As soon as counsel became aware of that mistake, he contacted counsel for UTU/GO-386. UTU/GO-386 has authorized AERC to state that UTU/GO-386 does

not object to the filing of this Reply out of time. The Board should accept this Reply for filing in order to have a more complete record, and in view of the absence of prejudice to any party resulting from its acceptance.

II. Reply In Opposition To Appeal

The arbitration regulations preclude intervention in arbitrations under 49 C.F.R. Part 1108 -- period. That was made clear in *Arbitration of Disputes Subject to Stat. Juris. of the STB*, 2 STB 564 (1997), where the Board said (at 574):

... We do not consider intervention to be necessary or appropriate ...

Contrary to the position argued by UTU/GO-386, no exception was expressed or implied where the intervention is for determining whether the complaint should be referred to an arbitrator.

(Appeal at 7). Consequently, the Director correctly found that UTU/GO-386's attempted intervention is precluded by 49 C.F.R. § 1108.7, as interpreted by the Board in the decision cited above. (Decision at 2).

Inasmuch as the proposed intervention is not appropriate, the substantive arguments in the Appeal (at 9-11) are not properly before the Board. As a result, those arguments do not warrant a reply here.

It should be noted, however, that the regulations address the concerns expressed by UTU/GO-386. It is provided in 49 C.F.R. § 1108.3(b) that arbitration may include disputes arising in connection with jurisdictional transportation, including service being conducted pursuant to an exemption. In the same subsection, Arbitrators are instructed to resolve only disputes over which the Board has jurisdiction. By virtue of 49 C.F.R. § 1108.11(c)(1), an

arbitration award can be appealed to the Board on the ground that it exceeds the Board's statutory jurisdiction.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, for the reasons stated, this Reply should be accepted for filing and, upon consideration thereof, the Director's Decision denying intervention on the part of UTU/GO-386 should be affirmed.

Respectfully submitted,

ALBANY & EASTERN RAILROAD COMPANY
MIKE ROOT, President
1784 South Main Street
Lebanon, OR 97355
(541) 259-6470

Complainant

Thomas F. McFarland

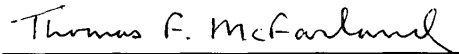
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Chicago, IL 60604-1194
(312) 236-0204

Attorney for Complainant

DATE FILED: March 17, 2003

CERTIFICATE OF SERVICE

I hereby certify that on March 14, 2003, I served the foregoing document, Petition For Leave To File Reply In Opposition To Appeal Out Of Time, And Tendered Reply In Opposition To Appeal, on Robert M. Jenkins, III, Mayer, Brown, Rowe & Maw, 1909 K Street, N.W., Washington, DC 20006 and Gordon P. MacDougall, 1025 Connecticut Avenue N.W., Rm. 410, Washington, DC 20036, by UPS overnight mail.


Thomas F. McFarland