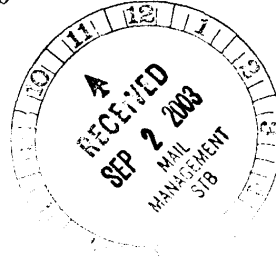


ORIGINAL

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THOMAS F. MCFARLAND



August 29, 2003

208809

By UPS overnight mail
(Tuesday delivery)

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

STB Proceeding

SEP 2 2003

Part of

Re: STB Docket No. 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 Reply In Opposition To Petition For Reconsideration, 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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208809

Complainant,

Docket No. 42076

Defendant.



Workshop Proceeding

SEP - 2003

Part of Page

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

Complainant

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1194
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Attorney for Complainant

-2-

RECEIVED
SEP 2 2003
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Defendant.

100-443887-100
 United States District Court
 Southern District of New York
 April 1, 2003
 Part of
 Page

REPLY

-3-

The short but complete answer to UTU's Petition is that intervention is not permissible in proceedings under the Board's arbitration regulations. The Board specifically so determined in the rulemaking in which those regulations were adopted. *Arbitration of Disputes Subject to Stat. Juris. of the STB*, 2 S.T.B. 564 (1997), at 574. Indeed, it was UTU that requested that the Board adopt a regulation permitting intervention. (*Id.*). In those circumstances, it is evident that UTU's attempted intervention in this arbitration constitutes a collateral attack against the Board's arbitration rules. The law is settled that collateral attacks of that nature are legally impermissible. *See, e.g., Illinois Central R. Co. -- Constr. & Oper. Exempt. -- in East Baton Rouge Parish, LA*, 2001 STB LEXIS 683 at *4, STB Finance Docket No. 33877, decision served Aug. 21, 2001. It was correctly so found in the notice in this proceeding served February 13, 2003 at 2.

Inasmuch as intervention is not legally permissible under any circumstances, UTU's argument that circumstances warrant its intervention requires no response. Even if that argument were legally cognizable, it is without merit.

Thus, the Board correctly found that the notice of arbitration was a ministerial act inasmuch as the parties had agreed to arbitration (decision served July 22, 2003 at 2). The "proceeding" takes place before the arbitrator, not before the Board.

AERC is not seeking revocation of the exemption by which it acquired the rail line. (Petition at 7-8). Instead, arbitration is sought of a provision of the Railroad Industry Agreement (RIA), as fully disclosed to the Board.

The Board did not purport to prejudge the issue for which arbitration was sought. (Petition at 9). The Board's reference to "new traffic" was in conjunction with describing the

dispute (decision served July 22, 2003 at 2). That reference was not intended as a finding that the traffic at issue is new traffic within the meaning of the RIA.

It was correctly found in the notice served February 13, 2003, at 2, that the arbitration cannot result in any adverse impact on BNSF employees beyond that already allowed by the Board's action in exempting AERC's acquisition and operation of the former BNSF rail line. Consequently, UTU would not be injured as a result of the Board's action in the matter of arbitration. (Petition at 10-11).

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, for the reasons stated, the Petition for Reconsideration should be denied.

Respectfully submitted,

ALBANY & EASTERN RAILROAD COMPANY
MIKE ROOT, President
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(541) 259-6470

Complainant

Thomas F. McFarland

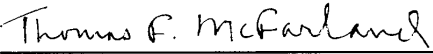
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Attorney for Complainant

DATE FILED: September 2, 2003

CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2003, by UPS overnight mail, guaranteed Tuesday delivery, I served the foregoing document, Reply In Opposition To Petition For Reconsideration, on Gordon P. MacDougall, 1025 Connecticut Avenue N.W., Rm. 410, Washington, DC 20036 and Robert M. Jenkins, III, Mayer, Brown, Rowe & Maw, 1909 K Street, N.W., Washington, DC 20006.



Thomas F. McFarland