

ORIGINAL

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Before the
SURFACE TRANSPORTATION BOARD



Finance Docket No. 34335

KEOKUK JUNCTION RAILWAY COMPANY-FEEDER LINE ACQUISITION-
LINE OF TOLEDO PEORIA AND WESTERN RAILWAY CORPORATION BETWEEN
LA HARPE AND HOLLIS, IL

OPPOSITION TO APPLICATION

ENTERED
Office of Proceedings

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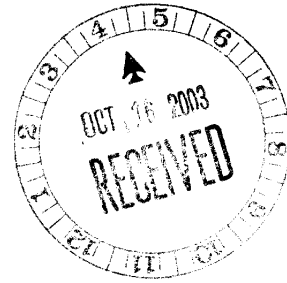
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Attorney for Joseph C. Szabo

Due Date: October 16, 2003

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OPPOSITION TO APPLICATION

Protestant, Joseph C. Szabo,^{1/} for and on behalf of United Transportation Union-Illinois Legislative Board (UTU-IL), submits this opposition to the application of Keokuk Junction Railway Company (KJRY), filed April 9, as supplemented June 9, 2003, which seeks to acquire the line owned and operated by Toledo, Peoria and Western Railroad Corporation (TP&W), between Hollis and La Harpe, IL, a distance of approximately 76 miles, and the Mapleton Spur, a 2.5-mile track which connects with the line at Kolbe, IL.

The application is filed under the so-called "Feeder Railroad Development Program," 49 U.S.C. 10907,^{2/} and constitutes an attempt to force the transfer of a substantial line segment against the will of TP&W, apparently as a "feeder" for KJRY.

^{1/} Illinois Legislative Director for United Transportation Union, with offices at 8 So. Michigan Avenue, Chicago, IL 60603.

^{2/} The Feeder Railroad Development Program was originally enacted as §401 of Staggers Rail Act of 1980, 94 Stat. 1895, 1939-41.

UTU-IL is in strong opposition to the forced sale of the line. UTU is the collective-bargaining agent for most operating persons employed by TP&W.

1. Supplemental Evidence. The Board's September 26, 2003 decision states that if TP&W's motion for discovery is granted, in whole or in part, the Board will consider a request by TP&W to supplement the record. (Decision, 9/26/03, 6). UTU-IL requests that any party be permitted to supplement the record, if desired, should the TP&W request be granted. At this time, UTU-IL is unaware as to the extent discovery, if allowed, will require or permit a supplemental UTU-IL filing, in light of the facts produced by discovery.

2. Support for TP&W. UTU-IL is in support, generally, with TP&W in its effort to defeat this forced takeover of extensive and important railroad trackage. To the extent there may be any legitimate or genuine controversy over railroad freight rates among TP&W and its customers, UTU-IL suggests the reasonableness standards of 49 U.S.C. 10701, 10704, including the provisions for small cases.^{3/} However, we emphasize a legitimate or genuine controversy, not any dispute manufactured by another carrier. UTU-IL does not have knowledge as to whether there exists any legitimate or genuine rate dispute. Moreover, the Board has broad powers to fashion creative procedures and standards for resolving rate controversies under broad provisions and its statutory exemption

^{3/} See: Ex Parte No. 646, Rate Challenges in Small Cases.

power.^{4/}

3. Importance to Public. The involved TP&W line is important. The possibility of TP&W service was found necessary to preserve the competitive balance between carriers, shippers, and communities, when the former ICC and present Board approved the recent BNSF/ATSF and UP/SP merger applications. Burlington Northern Et Al.--Merger--Santa Fe Pacific Et Al., 10 I.C.C.2d 661, 682-85, 730-31, 763-68, 778-79, 811, 813 (1995); Union Pacific/Southern Pacific Merger, 1 S.T.B. 233, 279-81, 467 (1996).

TP&W has the connections in the Peoria area, and east thereof, which are important to the competitive balance required by the recent BNSF/ATSF and UP/SP mergers. The KJRY is wholly lacking in the requisite ability to substitute for TP&W in this regard.^{5/}

4. Employee Conditions. The verified statement of UTU's General chairman, David M. Wegman, is attached. If despite the opposition to the KJRY takeover by TP&W, UTU-IL, and perhaps others, the Board nevertheless should approve KJRY's application, in whole or in part, employee protection is required: 49 U.S.C. §10907(e):

^{4/} The predecessor to the Board, the Interstate Commerce Commission, established a rate comparison test for appropriate situations. See: Georgia-Pacific Corp. Pet. for Declar. Order, 9 I.C.C.2d 103 (1992), 9 I.C.C.2d 796 (1993), and 9 I.C.C.2d 1052 (1993)

^{5/} The Board neglected to restore the status quo when it recently ordered return of the SF&L line to TP&W in Finance Docket No. 33995, et al., SF&L Railway, Inc.-Acquisition and Operation Exemption-Toledo, Peoria and Western Railway Corporation Between La Harpe and Peoria, IL (served Oct. 17, 2002, and January 31, 2003), for the Board failed to reopen, on its own motion, the contemporaneous and related Finance Docket No. 34143, Keokuk Junction Railway Co.-Acquisition and Operation Exemption-West End of Toledo, Peoria and Western Railway Corporation, 67 Fed. Reg. 1535-36 (Jan. 11, 2002).

"The Board shall require, to the maximum extent practicable, the use of the employees who would normally have performed work in connection with a railroad line subject to a sale under this section."

Accordingly, in the event of a forced sale, the Board in its order should require that KJRY use TP&W employees, under rates of pay, rules, and working conditions, no less favorable than now applicable to TP&W employees under collective bargaining agreements with UTU. It is eminently practicable to use TP&W employees for the Hollis-La Harpe line.

KJRY states that displaced TP&W employees, under certain conditions, may be accorded priority over other qualified applicants for employment by KJRY. (Application, 4/9/03, 29). KJRY projects initially serving the line on a 3-4 days' per week basis, with increased service frequency to 6-7 times per week after 12 months, according to KJRY's affiant, B. Allen Brown. (Application, 4/9/03, 164-65).

The Board should not require that TP&W employees resign, or be displaced from their TP&W employment, for TP&W personnel to operate KJRY trains. It is not uncommon in the railroad industry for employees of one carrier to operate the trains of another carrier. The "maximum extent practicable" means what it says. Cf. Black v. Interstate Commerce Commission, 814 F.2d 769 (D.C. Cir. 1987).

CONCLUSION

The Board should deny KJRY's application.

Respectfully submitted,


GORDON P. MacDOUGALL
1025 Connecticut Ave., N.W.
Washington DC 20036

October 16, 2003

Attorney for Joseph C. Szabo

Certificate of Service

I hereby certify I have served a copy of the foregoing upon
all parties of record by first class mail postage-prepaid.

Washington DC


Gordon P. MacDougall

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VERIFIED STATEMENT OF DAVID M. WEGMAN

My name is David M. Wegman. I reside in East Peoria, IL, and am employed by Toledo, Peoria & Western Railroad Corporation (TP&W) as a Locomotive Engineer. My seniority with TP&W commenced in 1994. I am a member of the United Transportation Union (UTU), and serve as General Chairman for UTU on TP&W. I have held my UTU position since mid-2003. The UTU is the collective bargaining representative for engineers and conductors on TP&W.

I am familiar with train operations on TP&W, and with the TP&W line between Hollis and La Harpe, IL. I have worked on the Hollis-La Harpe trackage on many occasions. I have read the application, filed April 9, as supplemented June 9, 2003, by Keokuk Junction Railway Company (KJRY), whereby KJRY seeks to force TP&W to transfer its Hollis-La Harpe line to KJRY.

I am opposed to the transfer of this line to KJRY, in whole or part. Such a transfer would adversely affect work opportunities for TP&W employees. Such a loss of business on the line would not only affect TP&W employment on the involved Hollis-La Harpe line segment, but also is likely to divert traffic presently handled by

TP&W employees by haulage or trackage rights over the line of The Burlington Northern and Santa Fe Railway Company (BNSF) between Galesburg and the Peoria area.

I am advised if, despite the UTU's opposition, and that of TP&W, the Surface Transportation Board (STB) nevertheless forces TP&W to sell the Hollis-La Harpe line, in whole or in part, the enabling statute mandates certain employee protection:

"The board shall require, to the maximum extent practicable, the use of the employees who would normally have performed work in connection with a railroad line subject to a sale under this section."

Accordingly, in the event of a forced sale, the STB in its order should require that KJRY use TP&W employees, under rates of pay, rules, and working conditions, no less favorable than now applicable to TP&W employees under collective bargaining agreements with UTU. It is eminently practicable to use TP&W employees for the Hollis-La Harpe line.

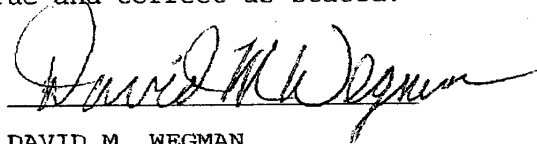
I note that KJRY in its application, states that displaced TP&W employees, under certain conditions, may be accorded priority over other qualified applicants for employment by KJRY. (Application, p. 29). KJRY projects initially serving the line on a 3-4 days' per week basis service, with increased service frequency to 6-7 times per week after 12 months, according to my reading of the verified statement of B. Allen Brown.

I do not believe TP&W employees need resign, or be displaced from their TP&W employment, for the public to have the benefit of their experience on the involved line in the event it should be operated by KJRY.

VERIFICATION

STATE OF ILLINOIS
COUNTY OF TAZEWELL

Under the penalties of perjury, I hereby affirm that the
foregoing verified statement is true and correct as stated.

A handwritten signature in cursive script, appearing to read "David M. Wegman", written over a horizontal line.

DAVID M. WEGMAN

Dated at
East Peoria, IL
October 16, 2003