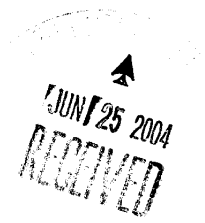


211433

ORIGINAL

Before the
SURFACE TRANSPORTATION BOARD



Finance Docket No. 34509

KAW RIVER RAILROAD, INC.
-ACQUISITION AND OPERATION EXEMPTION-
THE KANSAS CITY SOUTHERN RAILWAY COMPANY

PETITION TO COMPEL DISCOVERY

ENTERED
Office of Proceedings

JUN 25 2004

Part of
Public Record

HAROLD A. ROSS
General Counsel
1548 Standard Building
Cleveland OH 44113

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

Attorneys for Brotherhood of
Locomotive Engineers & Trainmen,
a Division of the Rail Conference,
International Brotherhood of
Teamsters

June 25, 2004

Before the
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34509

KAW RIVER RAILROAD, INC.
-ACQUISITION AND OPERATION EXEMPTION-
THE KANSAS CITY SOUTHERN RAILWAY COMPANY

JUN 25 2004
RECEIVED

PETITION TO COMPEL DISCOVERY

Petitioner, Brotherhood of Locomotive Engineers & Trainmen, a Division of the Rail Conference, International Brotherhood of Teamsters (BLET), submits this petition to compel discovery from respondent, Kaw River Railroad, Inc. (KRR), ^{1/} in connection with BLET's petition to revoke, filed June 4, 2004, in this proceeding. ^{2/}

BLET in its June 4 petition to revoke, and separately that same day, personally served counsel for KRR with a request to provide the agreements listed by KRR in its notice of exemption, filed May 25, 2004. A copy of the letter-request is attached hereto as Exhibit 1. ^{3/}

^{1/} We term KRR a "respondent," as KRR is neither an applicant nor a petitioner; rather, KRR is a noncarrier filing a notice of exemption under the line acquisition class exemption. 49 CFR 1150.31.

^{2/} We have captioned the cause as shown by the Board in its notice served June 24, 2004, which differs from that chosen by KRR in its notice and pleadings; however, we agree with KRR, as its caption is descriptive of the transaction as we understand it.

^{3/} The letter also is part of the Petition to Revoke, at p. 5.

KRR at the time indicated is would need a protective order, and on June 10, 2004, KRR filed a request for protective order, which the STB granted on June 18, 2004. Counsel for petitioner executed the confidentiality agreement attached to the STB's decision on June 18, and personally served the same on counsel for KRR that same day.^{4/}

KRR steadfast refuses to furnish the basic documents sought, and which are mentioned in its notice of exemption. Although KRR can speak for itself, it appears KRR relies on 49 CFR 1121.2, that it need not comply with discovery until the lapse of 30 days from the filing of the petition to revoke, after which petitioner may file a supplement to its petition within 15 days thereafter, being 45 days from the initial June 4 filing.

The Board should direct production of the requested materials, which are relevant and essential to any petition to revoke application of the class exemption to the transaction, without awaiting a 30-day period from the June 4 filing of the petition to revoke. KRR is dilatory and, of course, its action serves to prevent any necessary follow-up discovery in light of its production of the basic agreements to the transaction.

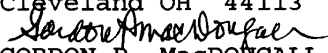
The Board in its order granting petitioner's June 4 discovery request, should at the minimum extend the 30-day discovery period, and the 45-day period for supplementing the petition to revoke, for such additional number of days as may transpire from June 18

^{4/} Counsel for The Kansas City Southern Railway Company (KCS) executed the confidentiality undertakings on June 21, 2004.

until KRR's compliance with petitioner's the June 4 discovery request.^{5/} The materials obviously are available, most likely at the office of KRR counsel in Washington, D.C., since June 18, if not long before.

WHEREFORE, the Board should order production of the materials set forth in Exhibit 1, and/or take such additional measures as to extend the 30-day and 45-day periods, otherwise provided by 49 CFR 1121.2, by the number of days from June 18 until document production.

Respectfully submitted,

HAROLD A. ROSS
General Counsel
1548 Standard Building
Cleveland OH 44113

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

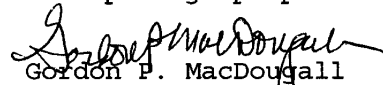
Attorneys for Brotherhood of
Locomotive Engineers & Trainmen,
a Division of the Rail Conference,
International Brotherhood of
Teamsters

June 25, 2004

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

^{5/} This extension is requested even though KRR may now rush to furnish the requested materials, in an attempt to avoid a ruling on this discovery petition.

LAW OFFICES
GORDON P. MACDOUGALL
1028 CONNECTICUT AVE., N.W.
WASHINGTON, D. C. 20006

TELEPHONE
AREA CODE 202
223-9788

June 4, 2004

Mr. Karl Moril
1455 F St., N.W.-#225
Washington DC 20005

Re: F.D. No. 34509.

Dear Mr. Morell:

This is to request production of various materials set forth in the Notice of Exemption in this proceeding, filed May 25, 2004, as follows:

1. All leases and other written arrangements between Kaw River Railroad, Inc. (KRR) and The Kansas City Southern Railway Company (KCS), and/or Kansas City Terminal Railway Company (KCT), including leases and other arrangements between KCS and KCT that bear upon the KRR leases and operations. See: Notice of Exemption, at pp. 4-5.
2. The Track Lease and Switching Maintenance Agreement, dated December 15, 1992. (Ibid., p. 4).
3. Operating Agreement, dated June 12, 1909, as amended. (Ibid., p. 4).

This request is made pursuant to 49 CFR 1121 in accordance with the petition to revoke, filed today, along with 49 CFR 1114.

Very truly yours,



Attorney for Brotherhood of Locomotive
Engineers & Trainmen, a Division of the
Rail Conference, International Brother-
of Teamsters.

cc: David C. Reeves-KCS

EXHIBIT 1