

ORIGINAL

Before the
SURFACE TRANSPORTATION BOARD

2/2070



Finance Docket No. 34555

CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, BELTLINE
DIVISION, DBA TACOMA RAIL, OR TACOMA MUNICIPAL BELTLINE OR
TMBL--ACQUISITION AND OPERATION EXEMPTION--LAKEVIEW
SUBDIVISION, QUADLOCK-ST. CLAIR, AND BELMORE-OLYMPIA RAIL
LINES IN PIERCE AND THURSTON COUNTIES, WASHINGTON

REPLY TO PETITION FOR WAIVER

ENTERED
Office of Proceedings

SEP 23 2004

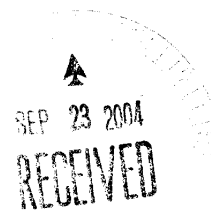
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September 23, 2004

Attorney for John D. Fitzgerald

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REPLY TO PETITION FOR WAIVER

John D. Fitzgerald,^{1/} for and on behalf of United Transportation Union-General Committee of Adjustment (UTU/GO-386), submits this reply to the petition for waiver, filed today by City of Tacoma, Department of Public Utilities, Beltline Division, DBA Tacoma Rail, or Tacoma Municipal Beltline or TMBL (TMBL).

TMBL seeks a waiver of the employee notice certification provisions of 49 CFR 1150.42(e). TMBL's petition for waiver is responsive to the Petition for Stay, filed yesterday, by UTU/GO-386.^{2/}

TMBL's petition for waiver should be denied.

ARGUMENT

The Board, effective October 10, 1997, seven years ago,

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

^{2/}TMBL, also on September 22, filed a corrected identification of a portion of the line to be acquired.

responsive to the WARN Act,^{3/} and other employee protective interests, promulgated the 60-day rule that carriers must certify to the Board, at least 60 days in advance of any notice of exemption in certain line transfers, that the requisite 60-day notice has been given, by means of posting notice at the workplace of employees on the affected lines, and to the national offices of the labor unions with employees on the affected lines. Acq. of R. Lines Under 49 U.S.C. 10901 & 10902-Advance Notice, 2 S.T.B. 592 (1997), aff'd, Assoc. of American Railroads v. Surface Transp., 161 F.3d 59 (D.C. Cir. 1998).

As here pertinent the rule is codified at 49 CFR 1150.42(e).

TMBL failed to file the requisite 60-day certification with the Board. It claims "oversight," and says waiver is supported by "precedent" which the Board has "generously" granted. (Pet. 5).

1. Oversight Claim. The asserted "oversight" is bogus. It has become standard procedure for carrier and non-carrier notices of exemption to acquire lines to flaunt the 60-day requirement, which serves to frustrate employees and their organizations. Filing with the Board triggers various "watching services," and most employee organizations maintain staffs in Washington DC to monitor such developments as 60-day notices.

The persistent disregard of the Board's rules, so as to enhance the position of rail carriers (or rail carriers to be) over employees, should not be continued any longer--7 years are

^{3/}Worker Adjustment and Retraining Notification Act, 29 U.S.C. §2101, et seq.

enough time to come into compliance.^{4/}

2. Precedent. TMBL cites three examples of recent "generous" grants of employee notice waivers. (Petition 5). We note two more of quite recent date. Finance Docket No. 34464, Wisconsin & Southern Railroad Co.-Acquisition Exemption-Iowa, Chicago & Eastern Railroad Corporation, decisions served June 30, and July 30, 2004; Finance Docket No. 34508, Central Railroad Company of Indianapolis-Lease and Operation Exemption-CSX Transportation, Inc., decision served July 15, 2004.

This continuing outrage against railroad employees should cease. The so-called "precedent" for "generous" relief should come to a halt. If the WARN Act, and the Board's regulations, are to be meaningful, they should be enforced, without what has become routine waiver requests.

3. No Special Circumstances. There are no special circumstances here warranting a waiver. Indeed, there is no proof of any actual notice to BNSF employees. The verified statement of A.L. Spangler merely states that she asked BNSF to give notice. (Pet. Ex. A). In any event, it is the filing of notice to the public via filing with the Board which may be important to the receipt of any actual, and timely, notice to employees.

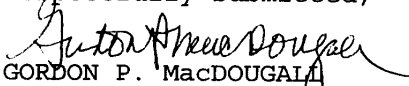
Finally, it is important to note that any special circumstances favor additional notice--for UP employees. UP lines are involved and are "affected lines."

^{4/} We note that TMBL is represented by knowledgeable Washington DC counsel; however, interestingly, most of the similar waiver requests come from similar Washington DC counsel.

CONCLUSION

The TMBL petition for waiver should be denied.

Respectfully submitted,


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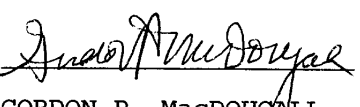
Attorney for John D. Fitzgerald

Certificate of service

I hereby certify I have served a copy of the forgoing by
personal service upon applicant's representative, as follows;

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GORDON P. MacDOUGALL

Dated at
Washington DC
September 23, 2004