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ORIGINAL

Before the
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34509

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

REPLY TO MOTION TO STRIKE



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Public Record

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Teamsters.

Due Date: September 28, 2004

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Preliminary Statement

Petitioner, Brotherhood of Locomotive Engineers & Trainmen, a Division of the Rail Conference, International Brotherhood of Teamsters (BLET), submits this Reply to the Motion to Strike, filed September 8, 2004, by Kaw River Railroad, Inc. (KRR).

KRR's Motion to Strike is mentioned in the caption of its Reply to Petitions to Revoke (KRR Reply, 9/8/04), ^{1/} and is set forth in the text of its reply. (KRR Reply, 9/8/04, 4-5).

The Motion Should Be Denied

KRR's motion seeks to strike unidentified portions of BLET's Supplemental Petition. KRR's motion should be denied. KRR complains that BLET's Supplemental Petition may only contain information obtained through discovery, pointing to 49 CFR §1121.3(c); KRR asserts that "virtually" all of the facts relied upon by BLET

^{1/} The petitions to revoke are those filed June 4 and June 14, 2004, by BLET and UTU, respectively, as supplemented August 16 by both, separately.

in its supplemental petition were, or should have been, available to BLET when it filed its petition to revoke. KRR claims "BLET is flouting the Board's rules;" and in the interest of "fairness," "administrative efficiency," and "compliance with the Board's rules," all portions of the BLET supplemental petition not addressing the discovery documents should be stricken from the record. (KRR Reply, 9/8/04, 4-5).

The short answer to KRR's motion is that its underlined only does not appear in the Board's regulations. The information BLET sought by discovery was merely the applicable agreements to the transactions entered into between KRR and Kansas City Southern Railway Company (KCS), along with Kansas City Terminal Railway Company (KCT). (BLET Pet., 6/4/04, 5). These agreements are required to be filed for applications under 49 U.S.C. 10901,^{2/} and for applications under 49 U.S.C. 11323, or trackage rights exemption notices.^{3/}

In most instances, as here, examination of the agreements underlying the transaction for which Board approval or exemption is required, is necessary prior to finalizing any competent protest or petition to revoke. It is incumbent upon a party to understand the underlying agreement prior to determining whether proposed evidence already in hand, or that to be sought, may be relevant or competent. Counsel would be remiss in filing a complete case prior to seeing the agreements.

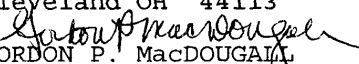
^{2/} 49 CFR §1150.4(a).

^{3/} 49 CFR §1180.6(a)(7)(ii).

KRR's theory that a protestant should file its complete case to revoke, and only thereafter file the agreements, would be tantamount to incompetence, if not malfeasance. Here, BLET filed a minimal petition to revoke, with discovery, which advanced the proceeding more rapidly. There is nothing wrong with such procedure and is consistent with the Board's rules; moreover, combining a case in one supplemental petition promotes agency efficiency. KRR points to no prejudice or unfairness to its position or ability to file a reply. The procedure sought by KRR would delay presentation of a case, and confuse the reader with references to two (or more) pleadings.

WHEREFORE, KRR's motion to strike should be denied.

Respectfully submitted,

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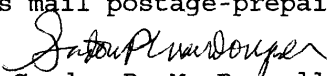
Attorneys for Brotherhood of
Locomotive Engineers & Trainmen,
a Division of the Rail Conference,
International Brotherhood of
Teamsters.

September 28, 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