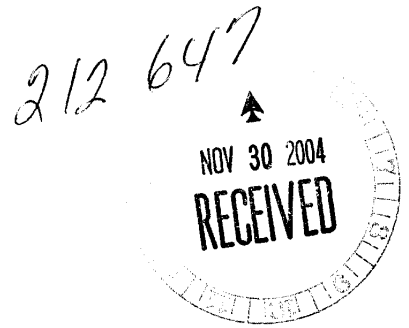


ORIGINAL

Before the
SURFACE TRANSPORTATION BOARD



Finance Docket No. 34561

CANADIAN PACIFIC RAILWAY COMPANY-TRACKAGE RIGHTS
EXEMPTION-NORFOLK SOUTHERN RAILWAY COMPANY-BUFFALO, NY

PETITION TO STRIKE

Office of Proceedings

NOV 30 2004

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Public Record

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Washington DC 20036

November 30, 2004

Attorney for Samuel J. Nasca

Before the
SURFACE TRANSPORTATION BOARD

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RECEIVED

Finance Docket No. 34561

CANADIAN PACIFIC RAILWAY COMPANY-TRACKAGE RIGHTS
EXEMPTION-NORFOLK SOUTHERN RAILWAY COMPANY-BUFFALO, NY

PETITION TO STRIKE

Samuel J. Nasca,^{1/} for and on behalf of United Transportation Union-New York State Legislative Board (UTU-NY), submits this petition to strike a portion of the Reply, filed November 12, 2004, by Canadian Pacific Railway Company (CPRC).

The CPRC Reply reads, at p. 12 n.12, in full:

The United Transportation Union ("UTU"), not the the union's New York legislative board (known in these cases as "UTU-NY") is the representative of certain D&H employees for purposes of collective bargaining and presumably will speak for them in the negotiation of any required implementing agreements. UTU petitioned for a stay of the trackage rights transactions, but has not sought revocation of the class exemptions at issue here, nor has UTU, to our knowledge, submitted comments in connection with the discontinuance transaction.

The above excerpt should be stricken. It purports to set forth and describe the internal structure of the United Transportation Union (UTU), and the legal authority and responsibilities of the subordinate unit within the UTU, with the apparent purpose

^{1/} New York Director for United Transportation Union, with offices at 35 Fuller road, Albany, NY 12205.

of diminishing or discrediting arguments on the merits advanced by UTU-NY in this proceeding. The excerpt is incorrect.

1. UTU is an unincorporated association. UTU-NY (or by its Director, Samuel J. Nasca), when it acts in accordance with the UTU's constitution and procedures, speaks for the UTU. United Transp. Union v. ICC, 891 F.2d 908 n.1 (D.C. Cir. 1989), cert. den. 497 U.S. 1024; Redden v. ICC, 956 F.2d 302, 306 n.5 (D.C. Cir. 1992).

2. The UTU Constitution and procedures place primary responsibility upon its state organizations to appear before regulatory agencies in connection with proposals for change in train service, and where service may be discontinued.

3. The International UTU on October 7, 2004, submitted a general statement of support for UTU-NY's petition, filed October 5, 2004, in this proceeding, and in related proceedings,^{2/} and expressly incorporated the UTU-NY petition.

4. UTU-NY speaks for UTU, as the collective bargaining representative for D&H employees, in all aspects of this proceeding; moreover, Samuel J. Nasca also serves as Vice General Chairman for the General Committee of Adjustment (GO-081) that represents D&H employees.

5. UTU, through its UTU-NY, seeks revocation of the CPRC exercise of the trackage rights class exemption herein.

^{2/} The UTU's caption and text included Finance Docket No. 34562, Norfolk Southern Railway Company-Trackage Rights Exemption-Delaware and Hudson Railway Company, Inc.-Between Saratoga Springs, NY, and Binghamton, NY, and Docket No. AB-156 (Sub-No. 25), Delaware and Hudson Railway Company-Discontinuance of Trackage Rights-Between Lanesboro, PA. and Buffalo, NY.

WHEREFORE, the stated footnote 12, at page 12, should be stricken.

Respectfully submitted,


GORDON P. MacDOUGALL
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Washington DC 20036

November 30, 2004

Attorney for Samuel J. Nasca

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