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VIA FEDERAL EXPRESS

Surface Transportation Board
1925 K. Street, N.W.
Washington, DC 20006

Re: **Union Pacific Railroad Company v. John E. Grother, New York Dock
Finance Docket No. 32760, SUB-FILE 42**

To Whom It May Concern:

Enclosed please find an original and 12 copies of Carrier's Response to Petitioner's Motion to Strike to be filed in the above-referenced matter. Please return a file stamped copy to us in the enclosed self-addressed stamped envelope for our file.

If you have any questions, please feel free to give me a call.

Very truly yours,

Thompson Coburn LLP

By 
Clifford A. Godiner

CAG/kak

Enclosures

cc: Gordon P. MacDougall

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760, SUB-FILE 42



IN THE MATTER OF ARBITRATION BETWEEN UNION PACIFIC RAILROAD
COMPANY AND JOHN E. GROTHER,
NEW YORK DOCK ARBITRATION

ENTERED
Office of Proceedings

(Arbitration Review)

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CARRIER'S RESPONSE TO PETITIONER'S
MOTION TO STRIKE

On April 28, 2005, Petitioner John E. Grother ("Petitioner") filed a Motion to Strike the brief filed by Respondent Union Pacific Railroad Company ("UP") in this Arbitration Review action. Although Petitioner admits that reply briefs are not permitted by Board rules, 49 C.F.R. § 1104.13(c), he seeks to circumvent the rule by disguising his reply brief as a Motion to Strike.¹

Petitioner's Motion to Strike does not merit a substantive response. UP has submitted its brief to the Board explaining why it should decline review of Arbitrator Lynette Ross' Award under the Lace Curtain standard of review. The issues decided by Arbitrator Ross were factual determinations based on her evaluation of the credibility of the evidence – precisely the types of issues that the Board does not review under Lace Curtain. To suggest that UP's Response must be stricken because it uses abbreviations different from those preferred by Petitioner, relies on

¹ Petitioner seems intent on filing inappropriate motions to strike. In addition to his latest filing, Petitioner also filed a motion to strike certain portions of the Board's April 19, 2004, decision denying Petitioner's request that the Board establish certain procedures for the arbitration. In the same sort of specious arguments that he makes herein, Petitioner's earlier motion took issue with the Board's use of the term "labor protection" (Petitioner believes that it should be called "employee protection") and its statement that Petitioner had "filed a claim" for New York Dock benefits (Petitioner believes he "initiated arbitration"). App., at 149-150.

evidence in the record that Petitioner does not like, and cites the Board to the exhibits and testimony that Arbitrator Ross credited in making her factual findings (as opposed to the exhibits and testimony she discredited) borders on the ridiculous. UP is confident that the Board is able to review the parties' submissions and the evidence submitted in support thereof, and reach a determination on these matters without further argument.

For these reasons, UP respectfully requests that Petitioner's Motion to Strike be denied.

Respectfully submitted,

THOMPSON COBURN LLP

By 

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served, via United States mail, first class postage prepaid, this 11th day of May 2005 on:

Gordon P. MacDougall
1025 Connecticut Ave., N.W., Suite 410
Washington, D.C. 20036

