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BEFORE THE
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 32760, SUB-FILE 44

IN THE MATTER OF ARBITRATION BETWEEN UNION PACIFIC RAILROAD
COMPANY AND THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND
TRAINMEN

PETITIONER'S REPLY OR SUR-REPLY

Petitioner Brotherhood of Locomotive Engineers and Trainmen (BLET) offer this extremely short response to the Carrier's Reply to Petitioner's Appeal from the April 14, 2005 decision of New York Dock Arbitrator James R. McDonnell. BLET is mindful that the Surface Transportation Board does not provide for a rebuttal brief. In this case, however, the BLET respectfully requests leave only to make a limited but important point.

The point is that the Carrier's argument here would lead to an explosion of litigation over the legal niceties of what is or is not part of a New York Dock Agreement. The BLET petition is based on the simple principle that a side letter to an agreement is part of an agreement. The principle has long precedent, which need not be recited here. If the Carrier's position prevails, then there could be an endless number of arguments - not only as to side letters but even as to which part of a hub-merger agreement itself is "in" or "out" of New York Dock jurisdiction.

In addition to swamping this Board with appeals, the Carrier's argument will impede bargaining of the hub-merger agreements, because a whole new issue is now put on the table. It will certainly impede the parties from developing side letters and understandings from implementation of the hub-merger agreements. Indeed, it may stop the parties from developing

such side letters and lead to inflexibility. The Carrier's position would "freeze" bargaining and prevent sensible and flexible applications of the merger agreements protected by the New York Dock.

With all due respect, the Carrier's argument will lead to years of litigation and consume the time and energy of this Board to no useful purpose.

Dated: June 1, 2005

Respectfully submitted,


One of the Attorneys for Petitioner

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