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ORIGINAL



September 21, 2005

VIA HAND DELIVERY - RETURN COPY

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW (7th fl.)
Washington, DC 20423-0001

ENTERED
Office of Proceedings
SEP 21 2005
Part of
Public Record

Dear Secretary Williams:

Enclosed for filing in STB Finance Docket No. 34337, Michael H. Meyer, Trustee in Bankruptcy for California Western Railroad, Inc. v. North Coast Railroad Authority, d/b/a Northwestern Pacific Railroad, are the original and ten copies of the Petition to Reopen of Michael H. Meyer, Trustee in Bankruptcy for California Western Railroad, Inc.

The Trustee's check for \$200 in payment of the filing fee is attached.

Additional copies of this letter and of the Appeal are enclosed for you to stamp to acknowledge your receipt of them and to return to me via the messenger.

By copy of this letter, service is being effected upon counsel for North Coast Railroad Authority, d/b/a Northwestern Pacific Railroad.

If you have any question concerning the foregoing or if I otherwise can be of assistance, please let me know.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Fritz R. Kahn'. Below the signature is the printed name 'Fritz R. Kahn'.

Fritz R. Kahn

enc.

cc: William A. Mullins, Esq.

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

STB Finance Docket No. 34337

MICHAEL H. MEYER, TRUSTEE IN BANKRUPTCY FOR
CALIFORNIA WESTERN RAILROAD, INC.

v.

NORTH COAST RAILROAD AUTHORITY
d/b/a NORTHWESTERN PACIFIC RAILROAD

PETITION TO REOPEN
OF
MICHAEL H. MEYER, TRUSTEE IN BANKRUPTCY FOR
CALIFORNIA WESTERN RAILROAD, INC.

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Attorneys for

MICHAEL H. MEYER, TRUSTEE IN BANKRUPTCY
FOR CALIFORNIA WESTERN RAILROAD, INC..

Dated: September 21, 2005

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d/b/a NORTHWESTERN PACIFIC RAILROAD

PETITION TO REOPEN
OF
MICHAEL H. MEYER, TRUSTEE IN BANKRUPTCY FOR
CALIFORNIA WESTERN RAILROAD, INC.

Petitioner, Michael H. Meyer, Trustee in Bankruptcy for California Western Railroad, Inc., pursuant to 49 C.F.R. 1115.4, petitions the Board to reopen the instant proceeding to correct material error in the Decision, served July 27, 2005, and to receive into the record new evidence pertaining to the decided issues.

I.

The Decision was fatally flawed.

It is axiomatic that the findings and conclusions of a decision of an administrative agency, such as the Board, must be based on substantial evidence. See, CSX Transp., Inc. v. Surface Transp. Bd., 96 F.3d 1528, 1530 (D.C. Cir. 1996); Section 10(e) of the Administrative Procedure

Act, 5 U.S.C. 706(2)(E); 2 Am. Jur.2d Administrative Law §506; Stein, Mitchell & Mezines, Administrative Law, §51.02.. In the instant proceeding, the record was totally devoid of **any** evidence to support the following of the Decision's crucial findings and conclusions:

[California Western Railroad] CWR did not tender traffic to NWP for movement, nor did it ask [Northcoast Railroad Authority d/b/a Northwestern Pacific Railroad] NWP to make the necessary repairs to restore service over its line following the FRA order [p.2].

The trustee concedes that CWR never asked NWP to repair the line or provide service [p.3].

Here, the trustee concedes that, in the 6½ years since the line went out of service in 1998, neither CWR nor Georgia Pacific [Corporation], the only shipper on the line, ever requested that service be provided. Moreover, the record does not show that CWR or any other party ever asked that the line be repaired and put back into service [p.4].

NWP must have received a reasonable demand for its services. That did not happen. Nor is there any indication in the record that CWR or Georgia Pacific ever asked that the line be repaired [p.4].

The foregoing findings and conclusions are wholly a matters of conjecture. There is not a shred of evidence of record to support them.

Respondent, North Coast Railroad Authority, d/b/a Northwestern Pacific Railroad ("NWP"), certainly introduced no evidence to support the foregoing findings and conclusions. NWP's Answer, filed December 21, 2004, and its Motion to Dismiss, filed January 28, 2005, had attached to them no testimony or exhibits which might have supported them. Indeed, the Answer and Motion to Dismiss were submitted without having been verified by an officer of the NWP. At best, the pleadings constituted the arguments of counsel, but not even counsel's arguments included allegations supportive of the assailed findings and conclusions. All that counsel contended which may have been relevant, at page 15 of its Motion to Dismiss, was that "Meyer

has failed to allege [in his Complaint] any such requests [for specific shipments] by CWR.”

The Trustee responded that *he* certainly had not requested NWP to effect repairs of the Willits-to-Shelleville railroad line and to resume operations on it. After all, the principal shipper on CWR’s line, Georgia Pacific Corporation, had closed its Fort Bragg lumber mill in September 2002, a few months before CWR declared bankruptcy on December 3, 2002, and Mr. Meyer was appointed its Trustee. Moreover, Federal Railroad Administration Emergency Order No. 21 remained in effect, barring NWP’s operation of the line, as NWP itself pointed out, at pages 9-12 of its Motion to Dismiss. The Trustee, at page 9 of his Reply, filed February 17, 2005, explained “[F]or *Complainant* to have asked Respondent to start hauling shipments originating on the CWR and consigned to industries on the Respondent’s railroad line or on the lines of connecting carriers would have made no sense whatever [emphasis added].”

The Trustee, however, did not speculate about what demands CWR and Georgia Pacific Corporation may have made of the contract operator of the NWP, Rail-Ways, Inc., on or about November 25, 1998, when Emergency Order No. 21 was entered, or what the railroad and lumber mill might have done thereafter to try to have the Willits-to-Shelleville railroad line repaired and service on it restored.

The foregoing findings and conclusions were critical to the Board’s Decision. They provided the very underpinning for the Board’s determination to dismiss the Trustee’s Complaint. Having been rendered *without any evidentiary support*, their inclusion in the Board’s decision constituted material error, requires reopening of the proceeding and vacation of the Decision, served July 27, 2005.

II.

New evidence is instructive.

Petitioner is well aware that normally the evidence offered in support of a petition for reopening be new evidence which previously could not have been offered into evidence. See, STB Finance Docket No. 33989, Pejeboscot Industrial Park, Inc., d/b/a Grimmell Industries–Petition for Declaratory Order, served November 7, 2003; Platnick Bros., Inc. v. Norfolk & Western Ry. Co., 367 I.C.C. 782, 785 (1983). That principle, however, is inapplicable here, because the evidentiary phase of this proceeding had not yet been reached. The Board dismissed the Complaint without having allowed the parties to introduce *any* evidence.

The attached Verified Statements of John Mayfield, former Chairman of CWR, and Gary D. Milliman, former President and CEO of CWR, permit of no doubt that, contrary to the Board's unfounded findings and conclusions in its Decision, served July 27, 2005, CWR had carloads of Georgia Pacific Corporation's lumber, at Fort Bragg and Willits ready to be interlined to the NWP on November 25, 1998, when Federal Railroad Administration Emergency Order No. 21 occasioned the shut-down of the NWP. The Verified Statements further attest to the fact that CWR time and again appealed to Mr. John Darling of Rail-Ways, Inc., the contract operator of the NWP, as well as to the Board of NWP, to repair the Willits-to-Shelleville railroad line and to resume ending service on it. Indeed, Mr. Mayfield noted that he even had offered CWR's personnel to assist with the maintenance of way work that needed to be done. The entrities of Mr. Mayfield and Mr. Milliman, however, were unavailing. The refusal of Rail-Ways, Inc., and the NWP's Board to undertake the rehabilitation of the railroad line and to operate it meant that the output of Georgia Pacific Company's Fort Bragg lumber mill needed to be trucked, rather

than shipped by rail as it long had been, and that CWR was completely deprived of its freight business. The loss of the lumber shipments which CWR was foreclosed from interlining to the NWP for movement beyond, Mr. Mayfield and Mr. Milliman conclude, inescapably led to the CWR's bankruptcy.

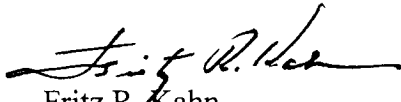
WHEREFORE, Michael H. Meyer, Trustee in Bankruptcy for California Western Railroad, Inc., requests that the Board make a determination that its Decision, served July 27, 2005, involved material error, that the Board receive and include in the record as new evidence the attached Verified Statements of John Mayfield and Gary D. Milligan, and that, based thereon, the Board reopen the proceeding and vacate its Decision.

Respectfully submitted,

MICHAEL H. MEYER, TRUSTEE IN BANKRUPTCY
FOR CALIFORNIA WESTER RAILROAD, INC.

By his attorneys,

David N. Chandler
1747 Fourth Street
Santa Rosa, CA 95404
Tel.: (707) 529-4331

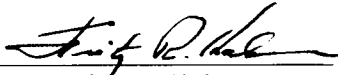

Fritz R. Kahn
Fritz R. Kahn, P.C.
1920 N Street, NW (8th fl.)
Washington, DC 20036-1601
Tel.: (202) 263-4152

Dated: September 21, 2005

CERTIFICATE OF SERVICE

I certify that I this day have served a copy of the foregoing Petition to Reopen upon North Coast Railroad Authority, d/b/a Northwestern Pacific Railroad, by facsimile transmitting and mailing copies thereof by prepaid first-class mail to it attorney, William A. Mullins, Esq.

Dated at Washington, DC, this 21st day of September 2005.


Fritz R. Kahn

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

STB Finance Docket No. 34337

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v.

NORTH COAST RAILROAD AUTHORITY
d/b/a NORTHWESTERN PACIFIC RAILROAD

VERIFIED STATEMENT
OF
JOHN MAYFIELD

My name is John Mayfield, and I reside at 2090 Sierra Place, Ukiah, California 95482.

I was the Chairman of the California Western Railroad, Inc. ("CWR"), when on August 9, 1996, it acquired the railroad properties, pursuant to the Notice of the Board in STB Finance Docket No. 33005, CWRR, Inc.—Acquisition and Operation Exemption—Mendocino Coast Railway, Inc., d/b/a California Western Railroad, served August 19, 1996, and I remained Chairman until December 3, 2002, when the CWR went into bankruptcy. I, accordingly, am all too aware of what transpired on November 25, 1998, when the Northwestern Pacific Railroad ("NWP") ceased operating, as directed by Federal Railroad Administration Emergency Order No. 21.

CWR is a forty-mile railroad extending between Fort Bragg and Willits, California. Fort Bragg was the site of a lumber mill of the Georgia Pacific Corporation, the principal shipper on the CWR's line. On average, Georgia Pacific Corporation tendered three carloads of lumber a day, or 60 carloads a month, for transportation by CWR. The Georgia Pacific Corporation had approximately 80 cars assigned to handle its lumber shipments.

Willits, the eastern terminus of the CWR, was where CWR connected with the NWP and, through its connection with the Union Pacific Railroad Company at Shelleville, California, with the Nation's railroad system. Indeed, the Willits interchange with the NWP was the only way CWR could participate in the movement of the Georgia Pacific Corporation's lumber shipments.

I do not recall just when Rail-Ways, Inc., became the contract operator of the NWP, but I know full well that Rail-Ways, Inc., was the contract operator of the NWP at the time that the Federal Railroad Administration entered Emergency Order No. 21. I know that to be a fact, because I time and again spoke with Mr. John Darling, who was the head of Rail-Ways, Inc., about what he proposed to do to permit CWR again to move the Georgia Pacific Corporation's lumber shipments.

At the time of the November 25, 1998, shut-down of the NWP, CWR had three loaded cars of lumber at Fort Bragg ready to be transported to Willits to be tendered to NWP for movement to points beyond. Three additional loaded cars of lumber were at Willits awaiting interchange to NWP to be hauled by it to Shelleville for handling by the Union Pacific Railroad Company. I repeatedly asked Mr. Darling if he couldn't repair the line sufficiently to permit the movement of the cars from Willits to Shelleville. Although I subsequently learned that he had

promised the Federal Railroad Administration to effect the repairs and at no time indicated that he was unable to make the repairs for want of funds, Mr. Darling washed his hands of the whole thing. The loaded cars ready to be tendered for transportation by the NWP had to be unloaded and the lumber shipped by truck for transloading to the Union Pacific Railroad Company.

The personnel of the Fort Bragg lumber mill of Georgia Pacific Corporation were frantic that Rail-Ways, Inc., had allowed the Willits-to-Shelleville line to deteriorate to the point that it was shut down by the Federal Railroad Administration's Emergency Order No. 21. It left the lumber mill with no alternative but to ship by truck, at appreciably greater expense, rendering its lumber less competitive in the marketplace. They kept after me to try to get service restored on the NWP, and I, in turn, hounded Mr. Darling to get the line repaired so that operations on it might resume. I even went so far as to offer him CWR's employees to assist with the maintenance of way work that needed to be done.

A modicum of work was performed by Rail-Ways, Inc., enough to permit the return to the Union Pacific Railroad Company of the now empty cars which CWR was holding. Additionally, after I met with the Board of Directors of the NWP, Rail-Ways, Inc., did some work at Willits to enable CWR to turn its Skunk Train passenger excursion trains. That resulted in the partial relief from Emergency Order No. 21, approved by the Federal Railroad Administration on June 8, 1999.

I repeatedly spoke with Mr. Darling about repairing the Willits-to-Shelleville line sufficiently to permit the handling of the Georgia Pacific Corporations lumber cars, but to no avail. The Fort Bragg lumber mill was eager to again be able to ship its products by rail, and CWR was prepared to transport the carloads of the mill's lumber to Willits and to tender the

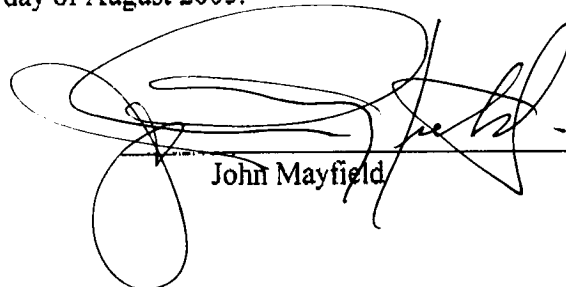
traffic to the NWP, as I explained on any number of occasions to Mr. Darling, who, I understand, in early 2001 unsuccessfully sought to lease the NWP under the name of the Northwestern Pacific Railway Co., L.L.C.. The Fort Bragg lumber mill was closed by Georgia Pacific Corporation in September 2002, and I have no doubt its inability to ship by rail because of the disrepair of the NWP's Willits-to-Shelleville line was a contributing factor.

In turn, CWR's loss of the Georgia Pacific Corporation's lumber business contributed to its bankruptcy just a few months later, on December 3, 2002.

VERIFICATION

I, John Mayfield, former Chairman of the California Western Railroad, declare under penalty of perjury, under the laws of the United States of America, that I have read the foregoing Verified Statement and that its assertions are true and correct to the best of my knowledge, information and belief. I further declare that I am qualified and authorized to submit this verification on behalf of the estate of the California Western Railroad. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

Dated at Ukiah, California, this 25th day of August 2005.



John Mayfield

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

STB Finance Docket No. 34337

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CALIFORNIA WESTERN RAILROAD, INC.

v.

NORTH COAST RAILROAD AUTHORITY
d/b/a NORTHWESTERN PACIFIC RAILROAD

VERIFIED STATEMENT
OF
GARY D. MILLIMAN

My name is Gary D. Milliman, and I reside at 246201 Tiara Court, Tehachapi, California 93561.

Between the summer of 1996, when the ownership of the ownership of its properties changed hands, and early 2000, I served as the President and CEO of the California Western Railroad ("CWR"). I held that position on November 25, 1998, when the Northwestern Pacific Railroad ("NWP") ceased operating, pursuant to Federal Railroad Administration Emergency Order No. 21.

Mr. John Mayfield, the former Chairman of the CWR, in his Verified Statement describes the CWR, the daily lumber shipments it handled for the Fort Bragg mill of the Georgia Pacific

Corporation ("GPC") and the railroad's dependence on the interchange with the NWP at Willits, California, as the only means for the CWR to connect with the general railroad system of the country, and I shall not repeat his observations.

I recall distinctly that, when the NWP ceased operating, we had several carloads of lumber sitting at Fort Bragg because we had nowhere to move them, and we had additional carloads of lumber at Willits which we wanted to interchange to the NWP for movement to Shelleville and the connection with the California Northern Railroad Company and, hence, the Union Pacific Railroad Company.

I contacted Mr. John Darling of Rail-Ways, Inc., which at the time was the contract operator of the NWP, to see what could be done about repairing the Willits-to-Shelleville railroad line and restoring service on it.

Mr. Mayfield and I attended several Board meetings of the North Coast Railroad Authority ("NCRA") to advise them that GPC was hurting because of its inability to ship its lumber by rail, and CWR was hurting because we were unable to handle any freight shipments. We asked the NCRA Board to authorize the repair of the line and even offered to make CWR personnel available to assist with the maintenance of way work.

Mr. Darling patched up the line sufficiently to permit the return to the UP of the cars which were trapped on the CWR and which, in the meantime, had been unloaded for the lumber to be trucked.

Moreover, the NCRA Board directed Mr. Darling to repair the tracks at Willits sufficiently to permit us to turn our Skunk Train passenger excursion trains.

But neither Mr. Darling nor the NCRA Board responded to our repeated requests that the

Willits-to-Shellevill railroad line be repaired so that the GPC lumber again could be shipped by rail. We didn't think that the needed repairs were all that extensive – certainly nothing like what was required for the restoration of the Russian River segment north of Willits – and, from what we read in the newspapers, we had reason to believe that NCRA had received sufficient Federal disaster assistance and other state funds to permit the work to be performed..

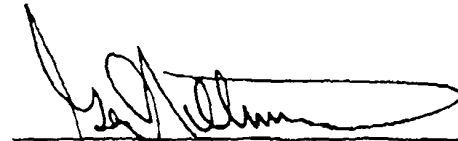
At the time service was discontinued, we were actively working with GPC and the Louisiana Pacific Corporation on plans to develop increased lumber freight business from Fort Bragg to NWP. We were also engaged in plans for expanding passenger operations on the NWP to enhance the CWR. We had made significant investments in these business planning efforts.

The eventual bankruptcy of the CWR was directly related to the loss of the freight service connection with NWP, lost business opportunities resulting from the termination of operations on the NWP and the lack of access to the Southern Pacific interconnection for points beyond.

VERIFICATION

I, Gary D. Milliman, the former President and CEO of the California Western Railroad, declare under penalty of perjury, under the laws of the United States of America, that I have read the foregoing statement and that its assertions are true and correct to the best of my knowledge, information and belief. I further declare that I am qualified and authorized to submit this verification on behalf of the estate of the California Western Railroad. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

Dated at Tehachapi, CA, this 31st day of August 2005.



Gary D. Milliman