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October 11, 2005

UPS Next Day Air

Vernon A. Williams, Secretary
Surface Transportation Board
ATTN: Ex Parte No. 658
1925 K Street N W
Washington, DC 20006
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Re: STB Ex Parte No. 658
The 25th Anniversary of the Staggers Rail Act of 1980:
A Review and Look Ahead

Dear Secretary Williams:

Please find enclosed the original and 10 copies of United Transportation Union's Written Testimony for filing in the above captioned matter. We have also enclosed a disk in WordPerfect format.

Thank you for your cooperation.

Very truly yours,

Daniel R. Elliott, III
Associate General Counsel

Enclosures

Before the
SURFACE TRANSPORTATION BOARD

STB EX PARTE No. 658

**THE 25TH ANNIVERSARY OF THE
STAGGERS RAIL ACT OF 1980:
A REVIEW AND LOOK AHEAD**

**UNITED TRANSPORTATION UNION'S
WRITTEN TESTIMONY**



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Office of Proceedings

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United Transportation Union ("UTU") respectfully submits its written testimony in the above-captioned proceeding regarding the impact, the effectiveness, and the future of the Staggers Rail Act of 1980 ("Staggers Act"). United Transportation Union is the largest rail labor organization in the United States. Its members were greatly impacted by this change in legislative policy towards deregulation in the rail industry, which resulted in a major loss of jobs by these railroad workers over the past twenty-five years.

There is no dispute that the Staggers Rail Act improved rail profits and service quality by relaxing restrictions on pricing and easing abandonment procedures. These improvements helped the rail industry move from the brink of disaster at that time back to good health over the past twenty-five years. For this, UTU is obviously thankful since its members' jobs and wages would have been at risk if the industry had collapsed as is evidenced by the present situation in the air industry.

However, throughout this period of prosperity, it seems that the supporters of the Staggers Act have forgotten why many of the gains to the rail industry occurred during this time period. Many of these gains were achieved in ways not expected when the Act was originally enacted. Generally, rates

unexpectedly fell instead of increasing after deregulation. Even with the lowering of rates, railroads prospered mainly because their costs decreased. The biggest cost decrease was achieved on the backs of the employees to labor's surprise and chagrin, since it supported the bill with the railroads foreseeing a win-win situation.

Unfortunately, rail employment dropped precipitously from 457,000 workers on Class I railroads to fewer than 200,000 today. With this major decline in employment and some modest output growth, labor productivity increased significantly. In essence, Staggers seemed to take money from the working men and women in this industry and move it into the pockets of the mega-railroads, who were struggling at that time.

The focus of Staggers obviously was on rates; yet it was somehow turned on its head to give the rail industry a free crack at its labor force under the guise of deregulation. Until the Staggers Act, the substantial deregulation of motor carriers – begun administratively by the ICC during the 1970s and accelerated by Congress in 1980 – eliminated entry barriers and encouraged the formation of thousands of new, non-union and highly efficient rail-competitive truckers that presaged a new round of track abandonments by major railroads unable to compete with lower-cost motor carriers. Until the Staggers Act, the primary means by which Class I railroads exited unprofitable markets was to abandon track.

It had become the prevailing rail industry theory that markets in which Class I railroads were less able to operate track profitably might produce profits for smaller, non-union local carriers - given some of the new economic freedoms provided by the Staggers Act. By slicing short-line and regional railroads out of this less profitable track of the Class I railroads, local rail service began to be preserved, by using non-union labor and the more flexible rate structure.

Under 49 U.S.C. § 10905, the Staggers Act actually encouraged Class I railroads to sell their less economic lines to short lines by requiring railroads to give preference to such sales over abandonment. In fact, if a mutually acceptable sales price could not be negotiated, either party could ask the ICC (now STB) to establish a price at least equivalent to net liquidation value.

However, the ICC determined that income protection imposed on the selling carrier in these line-sale transactions generally would be passed through to the acquiring carrier in the form of a higher purchase price that could chill a sale or dampen the likelihood of future financial success.

Although the Staggers Act contained no amendments to the Interstate Commerce Act indicating or even implying that railroad employees should be treated any differently under the Interstate Commerce Act than they had been treated in the past, the ICC viewed deregulation, even partial deregulation, of the rail industry in quite a different light.

The Commission opined that the Congress in 1980 had not completed its task, and while it had removed many of the regulatory burdens of pricing and entry and exit, it also must have intended to remove the carriers' regulatory burdens evidenced by the protections provided employees in acquisitions.

Despite this lack of change by the Staggers Act, the Commission stated:

It is our established policy that the imposition of [income] protective conditions on acquisitions and operations . . . could seriously jeopardize the economics of continued rail operations and result in the abandonment of the property with the attendant loss of both service and jobs on the line.

The legislative history of the *Staggers Act* reflects a deliberate congressional option for "discretionary" rather than "mandatory" [income] protection.

In 1982, based on this reasoning, the ICC decided not to impose the required labor protection on sales of lines by major railroads to non-carrier subsidiaries created by holding companies to purchase them. The ICC made that decision into *Ex Parte* rules in 1985 by exempting acquisitions of such lines from most regulation and holding that employee protective conditions could be imposed only in "exceptional circumstances in these types of lines sales under § 10901."

The ICC achieved this result by an almost implausible interpretation of the Interstate Commerce Act. Sales of rail lines between carriers up to this time had been subject to the provisions of then Sections 11342 and 11347 of the Act (now Sections 11323 and 11326(a), respectively). Section 11347 required the imposition of labor protection upon a sale. The ICC reasoned that with the elimination of labor protection in these transactions, sales of these railroad lines would increase greatly.

The ICC somehow found the sales of such lines to be subject to Section 10901 which basically dealt with the construction of railroad lines. Under this provision, labor protection was not required, but was left to the discretion of the ICC, unlike under Section 11347. The ICC refused to use its discretion in sales approved under Section 10901 to non-carriers or to operating short lines. Therefore, under the ICC's unique interpretation, the carriers used this new ICC policy of rejecting employee protection as these sham non-carriers purchased thousands of miles of lines from the Class I carriers.

This is the how and why line sales to non-railroad corporations intending to become railroads were immunized from income protection. This use of § 10901 under the guise of Staggers to further ease the carriers' overall costs when selling short lines resulted in the loss of many rail jobs without the customary labor protection.

This loss of jobs was further compounded by the way the Staggers Act caused traffic on the major carriers to change. The new, lower rates gave shippers incentives to move their traffic to higher density lines between fewer terminals with longer trains and bigger shipments. This change allowed costs to be cut in labor since manpower was less intensive for this type of service. This also resulted in less stress by the major carriers on service on branch lines, which were then, as noted, sold off to short lines instead of being abandoned as in the past. Labor expenses fell by 56 percent between 1980 and 1990 (only 20 percent from 1970 to 1980). Employment on railroads declined at a faster rate of 7.5 percent a year. By 1990, employment was 41 percent lower than it was expected to be based on pre-Staggers trends. Operating costs were obviously reduced significantly by labor reductions.

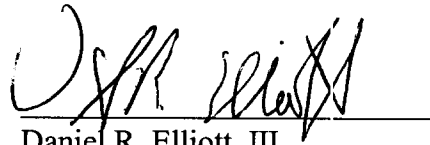
In addition, because there was a relaxation in controls over entry and exit, the post-deregulation period has been marked by a significant development in mergers and acquisitions. From 56 Class I railroads in 1975, the number has been reduced to 7 in 2005 (two of which are Canadian). This has generally resulted in job losses for labor.

In sum, the general effects of Staggers have improved the bottom line for rail carriers, which is good for the industry; however, much of this occurred at the expense of rail employees who are the backbone of this industry. UTU supported the Staggers Act only to be later blind-sided by its use to eliminate jobs without income protection and lower wages.

This large scale elimination of jobs has now come back to haunt the railroads. The UP-SP debacle in 1997 and other major traffic problems after mega-mergers have been because of a shortage of employees. Also, employees have struggled with fatigue because of these circumstances.

UTU now is somewhat hesitant to give any further support to changes to the rail regulatory system based its past treatment by the railroads and the ICC. Any further changes to the rail industry should have labor at the forefront of the discussions. Without these vital employees, the trains could not run.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. R. Elliott, III", written over a horizontal line.

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