

ORIGINAL

215914



Before the
SURFACE TRANSPORTATION BOARD

Ex Parte No. 647

CLASS EXEMPTION FOR EXPEDITED ABANDONMENT
PROCEDURES FOR CLASS II AND CLASS III RAILROADS

COMMENTS

RECEIVED
Office of Proceedings

RECEIVED
Office of Proceedings

GORDON P. MacDOUGALL
1025 Connecticut Ave., N.W.
Washington DC 20036

Attorney for John D. Fitzgerald

Due Date: March 6, 2006

Before the
SURFACE TRANSPORTATION BOARD

Ex Parte No. 647

CLASS EXEMPTION FOR EXPEDITED ABANDONMENT
PROCEDURES FOR CLASS II AND CLASS III RAILROADS

COMMENTS

John D. Fitzgerald,^{1/} for and on behalf of United Transportation Union-General Committee of Adjustment (UTU/GO-386), submits these comments in response to Advance Notice of Proposed Rulemaking (ANPRM). 71 Fed. Reg. 3030-33. (Jan. 19, 2006).

UTU/GO-386 participated in the earlier stage of this proceeding, with the filing of a 10-page statement on August 3, 2004.^{2/}

The instant ANPRM invites additional comments; in particular, the ANPRM asks whether the 2-year out-of-service exemption should be reduced to a single year, and whether the "no protest" provision of the former 49 U.S.C. 10904(b) should be reinstated by agency rulemaking. (ANPRM, 1/19/06, 7).

UTU/GO-386 is unaware of any serious effort to cut-back the two year period prior to exercise of the out-of-service abandon-

^{1/} General Chairman for United Transportation Union on lines of BNSF Railway Company, Puget Sound & Pacific Railroad, and former Montana Western Railway Co., Inc., with offices at 400 E. Evergreen Blvd., Vancouver, WA 98660.

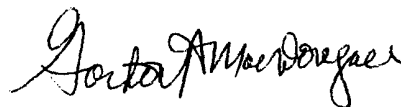
^{2/} UTU/GO-386 did not appear to read the statement at the open hearing conducted August 31, 2004, but it was received and made part of the record.

ment class exemption. UTU/GO-386 opposes a reduction in the time period. Indeed, rail employee organizations, and many states and public organizations, opposed the out-of-service class exemption, and urged an even longer waiting period. There was considerable controversy surrounding the entire out-of-service exemption.

Exemption of Out of Service Rail Lines, 366 I.C.C. 885 (1983), vac. & rem. Illinois Commerce Com'n v. ICC, 787 F.2d 616 (D.C. Cir. 1986); Exemption of Out of Service Lines, 2 I.C.C.2d 146 (1986), rev. den. Illinois Commerce Com'n v. ICC, 848 F.2d 1246 (D.C. Cir. 1988), cert. den. 488 U.S. 1004.

Reinstatement of the prior "no protest" abandonment notification process, whereby abandonment would be approved if no protests were filed within a 30 day period, would be unwarranted. The "no protest" rule was statutory by the former 49 U.S.C. 10904(b). However, Congress repealed the rule in ICC Termination Act of 1995. The U.S. House sought to continue and expand the rule, but the U.S. Senate was of a different mind, and the Senate prevailed. See: H. Rept. 104-422 (Conf.), 180-81 (1995). It would be inappropriate for the STB to accomplish by rulemaking that which the Congress specifically has repealed and rejected.

Respectfully submitted,



GORDON P. MacDOUGALL
1025 Connecticut Ave., N.W.
Washington DC 20036

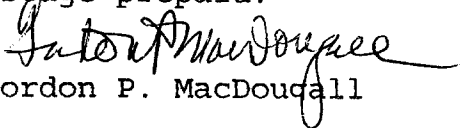
March 6, 2006

Attorney for John D. Fitzgerald.

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