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Transportation Communications International Union

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century
of pride!**

Robert A. Scardelletti, *International President*

LEGAL DEPARTMENT

Mitchell M. Kraus, *General Counsel*

Robert A. Scardelletti, II, *Assistant General Counsel*

April 4, 2006

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Office of Proceedings

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Public Record



VIA MESSENGER

Surface Transportation Board
Attn: STB Ex Parte No. 647
1925 K Street, NW
Washington, DC 20423-0001

Re: STB Ex Parte No. 647

Gentlemen:

Enclosed please find an original and ten copies of the Reply Comments of the Rail Labor Division, Transportation Trades Department, AFL-CIO, in the above-referenced matter. Copies have been served as indicated in the Certificate of Service.

Very truly yours,

Mitchell M. Kraus
General Counsel

MMK:fm

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD



STB Ex Parte No. 647

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

REPLY COMMENTS OF THE RAIL LABOR DIVISION,
TRANSPORTATION TRADES DEPARTMENT, AFL-CIO

These reply comments are being filed by the Rail Labor Division (RLD), Transportation Trades Department, AFL-CIO (TTD) in response to Petitioners' recently filed comments in this proceeding.

1. The Petition Lacks Factual Support

Petitioners' have reiterated their view that the current abandonment procedures "forces small railroads to engage in the wasteful process of raising rates, deferring maintenance and reducing service on a line slated for abandonment" and that as a result by the time a petition for abandonment is filed with the STB, no new owner will have "any hope of reviving services." (Petitioners' Comments at p. 2) As RLD has previously pointed out, it is certainly not self-evident that the current abandonment procedures, in fact, have these dire effects. One of the questions raised by RLD as well as the Board members at the oral hearing is whether small carriers, in fact, choose to purposefully have lines deteriorate rather than sell them at the NLV or any other price. Indeed, as pointed out in RLD's prior filings, Petitioners have

offered theories but avoided the introduction of facts into these proceedings.

In their most recent filing, Petitioners have provided the opinions of retired carrier officer Christopher J. Burger. What is noteworthy about Mr. Burger's verified statement is that his opinions are not supported by any specific facts. No examples are given in support of his views. Significantly, not one of the sixty-five petitioning carriers have offered a single statement from one of their officers outlining a single instance of how the current procedures caused carrier to adopt a policy of purposeful line deterioration. A petition for a class exemption should be supported by facts. Here, the relevant facts should be well known to petitioners. Notwithstanding, the petition lacks factual support and should be denied for that reason, as well as the reasons previously submitted by the RLD and others.

2. If the Petition Is Granted, Class II and Class III Carriers Should Be Required to Operate Lines, Purchased From Class I Carriers, For a Minimum of Three (3) Years.

RLD previously urged that, if the Board were to grant the requested class exemption, it should require that Class II and III carriers operate the involved line for at least three years prior to filing under the proposed exemption.

The STB imposes standard labor protective conditions, Oregon Short Line R. Co. - Abandonment - Goshen, 300 ICC 91 (1979), on

line abandonments involving Class II and Class III carriers.¹ The problem raised by the instant petition, if granted, is that potentially a Class I carrier could effectively abandon a line and avoid labor protection by transferring the line to a non-carrier, which then could promptly abandon that line under the proposed class exemption. The non-carrier which would become a Class II or III carrier would have few, if any, employees to be covered by labor protection. Petitioners have urged that, in order to avoid this abuse, the Board should require that any Class II or III carrier using the proposed expedited procedure should have operated the subject line for at least two (2) years. (Petitioners' Comments at pp. 19-20) RLD has suggested that an appropriate time period is three (3) years. Both Petitioners and RLD recognize that the proposed exemption could be abused and that a mandatory period of operation of a subject line is needed to avoid such abuse.

Conclusion

RLD urges that the proposed class exemption be denied. Alternatively, if granted, RLD urges that any Class II or III carrier be required to operate a line for at least three (3) years before filing for abandonment under the proposed class exemption.

¹RLD did not understand the APNR as indicating that the STB was considering revising this policy and agrees with the Rail Conference of the International Brotherhood of Teamsters that any such modification would violate the ICC Termination Act.

Respectfully submitted,



Mitchell M. Kraus
General Counsel
Transportation•Communications
International Union
3 Research Place
Rockville, Maryland 20850
(301) 840-8776

On behalf of the Rail Labor Division

Date: April 4, 2006

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Reply Comments of the Rail Labor Division, Transportation Trades Department, AFL-CIO, has been served this 4th day of April, 2006, via first-class mail, postage prepaid, upon all parties of record. In addition, copies of the previously filed Comments of the Rail Labor Division are also being served this 4th day of April, 2006, via first-class mail, postage prepaid, upon all parties of record.



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