

ORIGINAL

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May 1, 2006

Vernon A. Williams
Secretary
Surface Transportation Board
Washington DC 20423

216440

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Office of Proceedings

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Re: F.D. No. 34830, Kansas City Transportation Company LLC--Lease and Assignment of Lease Exemption--Kansas City Terminal Railway Company, and Kaw River Railroad, Inc.

Dear Mr. Williams:

This letter is on behalf of Brotherhood of Locomotive Engineers & Trainmen (BLET) which, although not served, has become aware of the request for clarification by Kansas City Transportation Company LLC (KCTC), filed April 25, with respect to the decision by the Director, Office of Proceedings (DOP), in the entitled matter dated March 14 (served March 22, 2006).

BLET participated in the proceedings leading up to the March 22 decision. BLET is specifically mentioned by the DOP at p. 3 n.2 (Decision, 3 n.2), has an obvious interest in KCTC's April 25 filing, and should have been served with the clarification request.

KCTC asks that the decision be "clarified" by the elimination of footnote 1 (Decision, 1 n.1):

"Under 49 U.S.C. 10902 and the Board's rules at 49 CFR 1150.31, if KCTC elects to enter into agreements with contract operators, the operators must file a request with the Board for authority prior to commencing operations."

The KCTC letter advances facts and legal argument in support of its position that no authority by contract rail operators is required to perform services for KCTC.

BLET urges that the Board decline to entertain any KCTC "clarification" request for the following reasons, among others:

1. The KCTC request is untimely, coming well over a month after the March 22 DOP issuance and publication. 71 Fed. Reg. 14576-77 (Mar. 22, 2006). Moreover, all filings with the STB in this proceeding, and in F.D. No. 34831, including notices, pleadings, decisions, and Federal Register issuances, were lodged with the U.S. Court of Appeals in No. 05-1233 (USCA-DC Cir.), BLET v. STB, before and on March 22. The court heard oral argument on March 23, 2006. Counsel for BLET and STB answered oral inquiries from the panel concerning this proceeding. The court is reviewing the STB's action in F.D. No. 34509, involving the same Kaw River Railroad, Inc. (KRR) as named in the instant (F.D. No. 34830)

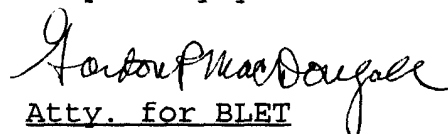
captioned matter. In essence, KCTC is asking the STB, now by way of "clarification," to revise the agency's position taken before the Court. I know of no communication from the court to the STB in this matter, by way of staffs or Dept. of Justice personnel.

2. KCTC is a bogus rail operator. It performs no services. The actual operator at Kansas City remains KRR, which is a party to the court proceeding, along with The Kansas City Southern Railway Company (KCS). BLET personnel advise that the KRR operation is the same as in F.D. No. 34509, with the exception of some additional KCS business taken over by KRR east of the KC Star facility, see: F.D. No. 34830, BLET Pet. for Stay, 2/27/06, V.S. William J. Martin, p.2. Of course, the required filing for which KCTC seeks "clarification" does not impose any duty upon KCTC; rather, it is imposed upon KRR or some other presently unknown rail operator.

3. The citations presented by KCTC in its April 25 letter do not support its view concerning absence of operating authority for contract operators. The first three instances were unopposed notices of exemption, where the newly-formed non-carrier stated its subsequent intention to contract the operation. These statements were included in the notices, but the mere filing and publication of the primary transaction does not constitute any ruling on any subsequent arrangement, which may never occur anyway. 70 Fed. Reg. 56525 (9/27/05), 62 Fed. Reg. 59027 (10/31/97), 60 Fed. Reg. 33847 (6/29/95). The fourth citation involved the STB's "entire line" concept (taken from Effingham) for non-carrier operation of \$10901 excepted trackage. There may be a distinction between contract operators on excepted switching trackage, and contact operators on "line of railroad" trackage.

4. BLET disagrees with many of the facts and assumptions contained in KCTC's April 25 letter, such as the status of KCTC and its present and/or prospective contract operators. The STB should decline to "clarify" its March 22 decision; of course, without prejudice to KCTC's right to file a formal petition to revoke, or a notice, application, or petition for exemption (perhaps with motion to dismiss), or a declaratory order petition, all based upon the then-existing concrete factual situation, and with a more fully developed record of fact and law.

Very truly yours,


Atty. for BLET

cc: Michael J. Barron, Jr.