

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34865
ARKANSAS MIDLAND RAILROAD COMPANY, INC.
--PETITION FOR DECLARATORY ORDER--
CADDO VALLEY RAILROAD COMPANY

REPLY TO PLEADING FILED BY INTERNATIONAL PAPER COMPANY, INC.,
OR IN THE ALTERNATIVE, MOTION TO STRIKE

Caddo Valley Railroad Company ("CVR") and its shareholders respectfully request the Board to waive its rule prohibiting a reply to a reply, or in the alternative, to strike, pursuant to 49 C.F.R. § 1104.8, certain irrelevant, immaterial and scandalous matters from the Reply filed by International Paper Company, Inc. ("IP"). In seeking this relief, CVR notes that the factual issues that IP has attempted to inject into this proceeding have no bearing on the narrow issue presented by the Arkansas Midland Railroad Company, Inc. ("AMR"), which is whether the sale of CVR's stock is the legal equivalent of an asset sale. In addition, the matters raised by IP are highly misleading and cannot be substantiated.

In its reply, IP claims that it "has essentially been cross subsidizing service that has been provided by the CALM (sic) to the shippers on the northern end of the line."¹ That claim is false and highly misleading. Because the rates for all shippers on the line are set by the Union Pacific Railroad pursuant to a Cooperative Marketing Agreement ("CMA"), and not by CVR, there is no basis for IP's suggestion.² In fact, if all the other shippers on the line were to cease shipping, IP

¹ IP Reply at p. 2. Apparently, IP is unaware that CALM, which is the acronym for the Caddo, Antoine and Little Missouri Railroad, is not involved in this matter.

² See Letter to Edward D. Greenberg from Richard H. Streeter, dated September 10, 2004, at p. 2.

would likely pay the same, if not higher, rates. In any event, the issue is wholly irrelevant to the narrow issue that is before the Board.

IP has also claimed that it “has received consistently substandard service from the incumbent carrier.”³ Once again this claim is wide of the mark. The last complaint that CVR received about car supply was in September 2004.⁴ At that time, the shortage of centerbeams and boxcars was a nationwide problem. Furthermore, while IP is now attempting to blame CVR for the lack of equipment, IP is well aware that the UP/CVR CMA included a provision that prevented CVR from leasing cars without first obtaining a waiver from UP. Although UP agreed to waive that provision in order to assist IP, and although CVR diligently attempted to locate additional cars in order to assist IP, no cars were available from either UP or from various car manufacturers and leasing companies.

Moreover, if IP truly believed that CVR had failed to provide the type or quantity of cars or a level of service to which IP is entitled, why did it fail to speak up at any time prior to the onset of the well documented rail car supply crisis that prompted the Board to request the major trunk lines to submit operational strategies to meet the peak demand? In this regard, CVR has no record of ever having received any formal complaints about the level of service that it provided to IP between the time it assumed responsibility for operations over the Norman Branch and the late Summer of 2004, when the car supply shortage became acute nationally.

Furthermore, although CVR was requested by the undersigned to keep a record of any subsequent complaints about the service being provided to IP, no complaints about service have been received since the car supply shortage abated in the early part of 2005. Instead, IP

³ IP Reply at p. 2.

⁴ Copies of contemporaneous correspondence between counsel for IP and CVR are attached. The correspondence plainly shows that (i) CVR made reasonable efforts to obtain additional equipment, and (ii) that no equipment was available at that time.

personnel who are located at IP's Gurdon facility have expressed the view that service has been satisfactory. In addition, CVR is informed and believes that IP recently acknowledged to Pioneer that things are "pretty good" in terms of rail service at its Gurdon facility.

Plainly, if IP believed that CVR's actions were reflective of an unreasonable failure to provide service upon reasonable demand, it had a potential statutory remedy that it could have employed to have the Board address its perceived issues. *See* 49 U.S.C. § 11704(b). It speaks for itself that IP did not do so. In any event, those issues have no bearing on the narrow legal issue that AMR has raised in this proceeding.

IP also says that the Bean Lumber Companies have received favored treatment "as owners of CALM (sic) and did not provide cars for other shippers generally."⁵ Once again, this statement is false and misleading. In the first place, the Bean Lumber Companies are not the owners of any of CVR's stock. Second, the Bean Lumber Companies suffered as well from the lack of centerbeams during the time of tight supply during the late Summer of 2004. At no time has CVR made any effort to discriminate in favor of the Bean Lumber Companies. Rather, all shippers on the line have been treated equally. Once again, this issue is irrelevant in the context of the narrow issue that has been raised by AMR.

IP may well yearn for the good old days when it received favored treatment from AMR (which was not afforded the other shippers on the line who were unlawfully embargoed and subsequently awarded extensive monetary damages from AMR). However, IP has no basis for suggesting that Pioneer Railcorp will not provide adequate rail service. In this regard, Caddo is informed and believes that Pioneer has agreed to acquire whatever additional cars that IP may need, if IP will agree to use them. Of course, if Pioneer fails to provide adequate service upon

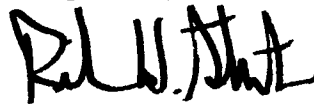
⁵ IP Reply at pp. 3-4.

reasonable request, IP will have a remedy. Once again, the issue is not germane to the narrow issue raised by AMR in its petition.

Last, CVR requests the Board to note that if AMR had been able to abandon the northern portion before its forced sale to CVR, IP would have been able to rid itself of competition from the Bean Lumber Companies for the purchase of timber and the sale of lumber. Given that scenario, one must question whether IP has an ulterior motive in seeking to delay the sale of the shares of CVR to Pioneer, which has made clear its intention to restore the line in order to provide service to all the shippers on the line and not just IP.

WHEREFORE, the Board is requested to waive its regulation prohibiting the reply to a reply and to consider the foregoing, which addresses matters raised by the first time by IP and which are not germane to any relevant issue in this proceeding. In the alternative, should the Board not allow this reply, it should strike all matters referred to above on the grounds that they are irrelevant, immaterial and scandalous, as well as being unsupported by any competent evidence.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R.H. Streeter", written in a cursive, stylized script.

Richard H. Streeter
Counsel to Caddo Valley Railroad Company

Dated: May 9, 2006

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of May, 2006, a true copy of the foregoing was served by e-mail or first class mail, postage prepaid, upon the following:

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July 23, 2004

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RE: Caddo Valley Railroad and International Paper

Dear Mr. Greenberg:

Please excuse my delay in responding to your letter of July 6, 2004. I have taken the liberty of sharing your letter with the Caddo Valley Railroad ("CVR") and wish to respond to what appears to be several inadvertent errors and misunderstandings. Before focusing on your letter, I will note that the car shortage problem is not limited to International Paper at Gurdon, Arkansas. Instead, the current shortage of centerbeams and boxcars is a nationwide problem.

You claim that IP is concerned about the service difficulties that it has been having at its Gurdon, Arkansas facility and that it sees little reason to be optimistic that the CVR has the ability "to resolve the problems and provide reasonable service." I strongly urge you and your client to view the perceived problems in light of the current nationwide shortage of boxcars and centerbeams. I have been advised by the Union Pacific that although they have ordered several hundred centerbeams, there are no cars available at the present time. This has been confirmed by Bill Thompson at CVR who has been diligently searching for cars for the past couple of months. During that time he has contacted over twenty leasing companies with the same result, there are no cars available. Although cars are being manufactured, CVR has been told that the backlog of orders means that no new cars will be available until February 2005 at the earliest.

CVR rejects the unsubstantiated comment that CVR is unable "to provide the type or quantity of cars or the level of service to which IP is entitled and to which the CVRR committed to provide when it sought approval to acquire this line from the Arkansas Midland Railroad (AKMD)." My client has told me that until very recently, IP has had no complaints about the service that CVR has diligently performed on its behalf. At present, CVR is doing its best to provide IP with reasonably adequate service, especially given the recent increase in traffic volumes. There is nothing to suggest that it will not do so in the future.

You also claim that "CVRR completely reneged on its commitments to acquire at least the same number and type of cars that AKMD had used to service IP." That is untrue. I am aware that you have previously referred to a "promise" that was allegedly made on behalf of

CVR in 1999. As IP has been informed, and as you are also aware from our conversations, CVR did not exist in 1999. More importantly, not only did the unanticipated Cooperative Marketing Agreement ("CMA") that CVA was subsequently required to enter into with the Union Pacific Railroad ("UP") supercede any alleged promises made by GS Roofing Products Company and Bean Lumber, but the ownership of the shortline railroad changed between January 1999 and the date that CVR acquired the ownership of the Norman Branch Line.

You also claim that the CMA was entered into without "IP's knowledge or consent." I know of nothing that would have required CVR to obtain IP's consent. In addition, by entering into the CMA, CVR did not abdicate its responsibilities to IP "in derogation of its common carrier obligations" and "commitments to IP and the STB when it forced AKMD to sell the line." Instead, it made it possible to render service for IP. That rail service has continued without interruption since the date that CVR commenced operations after taking over the Norman Branch Line from AKMD.

I must also remind you that IP was not and is not the only shipper on the line. Indeed, the STB, as required by the statute, determined that AKMD was not providing adequate service to a majority of the shippers on the line. Of course, if IP had affirmatively joined with the other shippers in supporting the feeder case, it might have prompted the ICC and the STB to grant the feeder application in a timely fashion. Had that been done, the line would be in far better shape than it is today, which would have benefited all concerned. In any event, CVR has never faulted IP for failing to support the feeder application. Instead, it has for several years conscientiously provided service to IP and the other shippers on the line with only a minimal amount of problems prior to the onset of the national car shortage, which is a matter that is beyond CVR's control.

As you are aware, UP has agreed, at least temporarily, to waive the provision that prevented CVR from leasing cars. Subsequent to the date of your letter, UP has agreed to work with CVR regarding the time limitations that were originally imposed when UP agreed to a waiver in order to secure additional equipment with which to provide even more service to IP during this peak period. I can assure you that CVR is doing everything within its power to locate cars with which to augment the fleet of cars that it and UP have provided to IP. Any assistance that IP can give in locating cars and ensuring that CVR will not realize a financial loss by having to pay an exorbitant charge for leased cars would be appreciated.

Finally, IP is unjustifiably withholding payment of CVR's lawfully imposed charges. I strongly urge you to take immediate steps to secure payment of CVR's past due invoices.

Very truly yours,



Richard H. Streeter

RHS:rs

cc: Bill Thompson, CVR

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September 10, 2004

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RE: Caddo Valley Railroad and International Paper

Dear Mr. Greenberg:

Thank you for providing the information this morning regarding the possibility of obtaining some center beam cars (other than tank cars). I have forwarded the information to my client, the Caddo Valley Railroad Company ("CVRR") and we are in the process of reviewing it this afternoon.

I have reviewed your letter of August 31, 2004 with my client and we find it to be very disturbing. If your client, International Paper, truly "believes that the Caddo Valley Railroad ("CVRR") has for several years been unable to provide the type or quantity of cars or a level of service to which IP is entitled," why did it fail to speak up at any time prior to the onset of the recent rail crisis that prompted the Surface Transportation Board ("STB") to request the major trunk lines to submit operational strategies to meet the peak demand. I am advised by my client that CVRR has no record of ever receiving any formal complaints about the level of service that it has diligently provided to IP since assuming responsibility for operations over the Norman Branch.

You also claim that "IP noted three empty centerbeam cars" sitting in the UP/CVRR switching yard on August 27. You then claim that because those cars were not delivered immediately to IP that it was forced "to ship 20 trucks of outbound product to an AKMD transload site at Jones Mill." In response, my client has informed me that after IP personnel advised them that the cars were sitting in the yard that they immediately took steps to determine whether the cars were intended to be delivered to IP. As they discovered, the cars were not supposed to be delivered to IP. Nevertheless, CVRR took steps to pick up the cars and delivered them to IP. I believe the information from my client disproves the false allegation that CVRR would not, or could not, make those cars available to IP.

You have also ought to leave the impression that CVRR is responsible for IP having to ship via truck. Please be advised that IP supervisory personnel have heretofore advised my client that trucking was their first alternative and that CVRR was only the second alternative. That

being the case, I must demand strict proof that CVRR's alleged failure to provide sufficient equipment caused IP to turn to trucks. Such allegations are seriously misleading.

I also question your contention that if IP had challenged CALM's application, it would now have direct access to a rail carrier that invested in an adequate supply of rail cars and that is committed to providing service rather than talking about it." I suggest that anyone who carefully reads the series of Eighth Circuit decisions would be compelled to disagree with your various unfounded contentions. As the record in that case made clear, AKMD was not committed to providing service to a majority of shippers on the line. Although it may have favored IP at the expense of the other shippers on the line, the feeder statute is designed to protect the majority of shippers on a line, not the narrow interests of one large shipper who is provided discriminatorily favorable treatment.

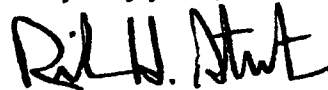
Your interpretation of the Cooperative Marketing Agreement ("CMA") is also wide of the mark. Keep in mind that CVRR has no alternative line-haul carrier with which it may interchange traffic, it has UP alone. As a result, when it signed that agreement, CVRR was faced with an ultimatum that it was in no position to resist. "Either you sign it, or else." In order to provide any rail service to IP and the other shippers on the Norman Branch line, CVRR signed the agreement. Based on my knowledge of the STB and its jurisdiction, I do not believe that CVRR had any options.

In addition, it is our understanding that prior to the UP/SP merger, UP did not require shortlines to enter into CMA's. However, following that merger, UP apparently adopted the SP method of dealing with the shortlines. Hence, you are in error when you state without any supporting evidence that "AKMD was in the same situation as CVRR and it was able to obtain sufficient equipment to service its customers."

The truth of the matter is that CVRR has been treated far differently than AKMD. In particular, it is our understanding that the original MP/AKMD sales contract, by which AKMD acquired the Norman Branch, required AKMD to furnish freight cars to the shippers. As such, it is the polar opposite of the CMA that CVRR was required to sign after the forced sale of the line.

In closing, we are reviewing the material that you forwarded this morning and will try to get back with you by the close of business.

Very truly yours,



Richard H. Streeter

RHS:rs

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October 11, 2004

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RE: Caddo Valley Railroad and International Paper

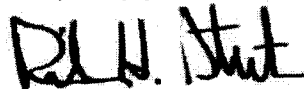
Dear Mr. Greenberg:

In response to your prior correspondence, my client, the Caddo Valley Railroad, has spoken with several entities about the possibility of leasing center-beam flatcars for use by International Paper ("IP") at Gurdon, Arkansas. I am advised that my client is willing to enter into a long-term lease with one of the car suppliers, provided that it would break even and not suffer any financial losses associated with the leased cars. Unfortunately, it appears that the cars, based on the rentals that are now being demanded, will not earn enough, computed either on time or mileage, to cover the cost of the lease. As a result, if my client were to lease equipment, it would incur a deficit that it cannot afford.

Therefore, my client would be forced to impose a surcharge to cover the anticipated financial deficit that would be caused by entering into a lease at this particular time. I can assure you that it does not intend to seek to return a profit on these leases, but merely to break even. Caddo Valley will provide financial data which shows how it computed the surcharge amount. If payment of a surcharge is satisfactory to IP, Caddo Valley will enter into a lease, which would guarantee delivery of the cars in late December or early January 2005.

Please understand that it now appears that the shortage may be coming to an end. Today, there were 33 empty cars at the yard in Gurdon, while another 6 cars were spotted at IP to be loaded. If this trend continues, there will be no need for additional leased equipment.

Very truly yours,



Richard H. Streeter

RHS:rs

cc: Bill Thompson, Caddo Valley Railroad