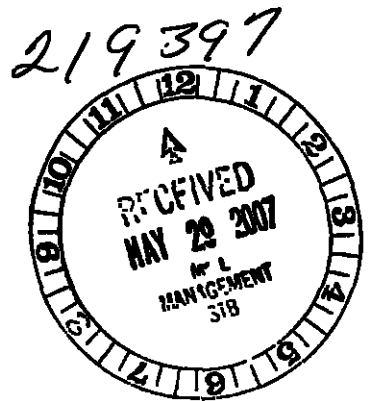


ORIGINAL

Before
SURFACE TRANSPORTATION BOARD



Finance Docket No. 35019

WESTERN NEW YORK & PENNSYLVANIA RAILROAD, LLC
-LEASE AND OPERATION EXEMPTION-
CERTAIN ASSETS OF NORFOLK SOUTHERN RAILWAY COMPANY AND
CHAUTAUQUA, CATTARAUGUS, ALLEGANY AND STEUBEN SOUTHERN TIER
EXTENSION RAILROAD AUTHORITY

REPLY TO PETITION FOR WAIVER
OF EMPLOYEE NOTICE CERTIFICATION

ENTERED
Office of Proceedings

MAY 29 2007

Part of
Public Record

Samuel J. Nasca,^{1/} for and on behalf of United Transportation Union-New York State Legislative Board (UTU-NY), makes this reply to the petition by Western New York & Pennsylvania Railroad, LLC (WNYP), filed May 25, 2007, wherein WNYP seeks waiver of the 60-day notice to employees certification requirement.^{2/}

The WNYP petition for waiver should be denied.

Background

1. WNYP on May 17, 2007, filed its notice of exemption to acquire and operate some 98.3 miles of line between Machias Junction, NY, and Driftwood, PA, presently operated by Norfolk

^{1/} New York State Legislative Director for United Transportation Union, with offices at 35 Fuller Road, Albany, NY 12205.

^{2/} 49 CFR 1150.42(e).

Southern Railway (NS).^{3/} WNYP's notice of exemption was filed pursuant to the 49 U.S.C. §10902 class exemption, 49 CFR 1150.42. Inasmuch as the projected annual revenue of the subject line, together with WNYP's projected annual revenue, most likely will exceed \$5 million, the employee notice certification requirements of 49 CFR §1150.42(e) are applicable. WNYP's notice of exemption stated the parties intend to consummate the transaction on or soon after the date the notice becomes effective. (Notice of Exemption, 5/17/07, 4). The effective date is 30 days after filing. 49 CFR §1150.42(b).

2. WNYP on May 17, with its notice of exemption, certified it intended to post notice to its employees on April 18. (Notice of Exemption, 5/17/07, 12). This employee 60-day advance notice certification had not been made until the May 17 filing of the notice of exemption.

3. UTU-NY on May 22, 2007, petitioned the Board to reject the Notice of Exemption, or to stay the effective date for 60 days beyond the May 17 filing day, to July 16, 2007, to comply with the 60 day employee notice certification requirement.

5. WNYP on May 25, filed a letter "response" to UTU-NY's petition of May 22, in the form of a petition for waiver of the employee notice certification of 49 CFR 1150.42(e), so that the exemption might become effective on June 25, 2007.

^{3/} NS is the owner of that portion of the line in Pennsylvania; Chautauqua, Cattaraugus, Allegany and Steuben Southern Tier Extension Railroad Authority is the owner of that portion of the line in New York. (Notice of Exemption, 5/17/07, 3).

ARGUMENT

The WNYP petition for waiver should be denied. WNYP does not defend the validity of its notice of exemption; nor does WNYP resist the UTU-NY petition for stay of the effective date until at least July 16, 2007.

There is no basis for waiver of the 60-day certification of notice to employees. WNYP cites an old citation which merely states that the purpose of §1150.42(e) is to give sufficient notice to employees who would be affected by consummation of the transaction.^{4/} WNYP says a June 25 effective date will give UTU and other representatives more than 60 days "actual" notice, such that waiver of the notice would not prejudice the employee organizations or the employees. (WNYP Pet., 5/25/07, 2).

The burden is not upon UTU-NY or individual employees to come forth to show why waiver should not be granted; rather, the burden is upon WNYP to come forward with facts showing special reasons for relief. WNYP has not presented a single reason for a waiver.

Service of the employee notice upon the national offices of an employee organization frequently is insufficient notice. Many organizations, including UTU, accord primary responsibility upon state legislative directors to organize opposition to service changes, and upon general committees of adjustment to negotiate implementing agreements where changes are contemplated. Thus, filing with the STB, and Federal Register publication, frequently are more important for "actual notice" to full-time employee

^{4/} F.D. No. 33843, Arkansas and Missouri Railroad Company-Lease and Operation Exemption-Union Pacific Railroad Company (served June 29, 2000).

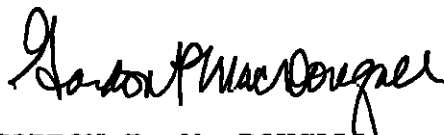
representatives who deal with proposed service changes. Moreover, posting on employee bulletin boards frequently is inadequate for an uninformed employee.

The STB recently pointed out that it ordinarily does not grant waivers of the employee notice requirement. See: F.D. No. 34904, Dakota, Missouri Valley and Western Railroad, Inc.-Lease and Operation Exemption-Soo Line Railroad Company (served July 24, 2006). None of the special circumstances are present here, as UTU-NY emphasized in its petition for stay. (Pet., 5/22/07, 2-3).

CONCLUSION

WNYP's petition for waiver should be denied.

Respectfully submitted,



GORDON P. MacDOUGALL
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May 29, 2007

Attorney for Samuel J. Nasca

Certificate of Service

I hereby certify I have served a copy of the foregoing upon counsel for WNYP, by personal service upon Kevin M. Sheys, 1601 K Street, N.W., Washington DC 20006.

Washington DC


Gordon P. MacDougall