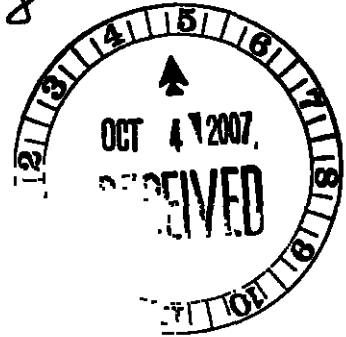


ORIGINAL

220398

Before the
SURFACE TRANSPORTATION BOARD



Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY, AND
MISSOURI PACIFIC RAILROAD COMPANY

-CONTROL AND MERGER-

SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP., AND THE DENVER AND RIO GRANDE
WESTERN RAILROAD COMPANY

FINAL BRIEF

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Washington DC 20036

Attorney for John D. Fitzgerald

Due Date: October 4, 2007

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Public Record

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FINAL BRIEF

John D. Fitzgerald, for and on behalf of United Transportation Union, General Committee of Adjustment (UTU/GO-386), submits this Final Brief pursuant to the Board's Decision of May 5, 2007.

The verified statement of Mr. Fitzgerald is attached.
UTU/GO-386 is in support, generally, with the BNSF Railway Company (BNSF) position. However, in the event the Board should determine to revise or eliminate present operations, in whole or in part, protective conditions are required for the protection of BNSF employees who may be adversely affected by implementation of the Board's determination.

The decisions of the Board and its predecessor, Interstate Commerce Commission, sometimes have frowned upon protection for employees of third-party carriers in consolidation proceedings, but the courts have found otherwise in certain situations. Here, the



Board recognized an exception by its summary that the "no third party beneficiaries" provision of the involved BNSF/UP settlement agreement is inapplicable, such that the agreement does provide rights, claims, and remedies for persons other than BNSF and UP. Union Pacific/Southern Pacific Merger, 1 S.T.B. 233, 246-47 n.15 (1996).

If the UP petition to reform the Restated and Amended BNSF Settlement Agreement is not denied, or if operations are otherwise eliminated or revised, the Board's order should be accompanied by the NYD protective conditions.

Respectfully submitted



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

October 4, 2007

Attorney for John D. Fitzgerald

Certificate of Service

I hereby certify I have served a copy of the foregoing upon parties shown on the special service list by first class mail postage-prepaid.

Washington DC



Gordon P. MacDougall

VERIFIED STATEMENT OF
JOHN D. FITZGERALD

My name is John D. Fitzgerald. I serve as General Chairman for United Transportation Union, General Committee of Adjustment 386, (UTU/GO-386), with offices at 400 East Evergreen Boulevard, Suite 217, Vancouver, WA 98660. I represent persons employed by BNSF Railway Company (BNSF), primarily on its lines between Seattle, WA and Portland,OR/Vancouver,WA, on the west, and Minneapolis/St. Paul, MN, on the east;; between Vancouver, BC and Keddie, CA, and between Superior, WI and Sioux City, IA; and lines between Guernsey, WY, and Texline, TX.

I have been a full-time General Chairperson since August, 1993. Previously, I served as Asst. General Chairman from January 1981 to August, 1993. My railroad service began with BNSF's predecessor in September, 1970. Currently, I hold seniority as a conductor, brakeman, and yardman.

I was a participant in the original UP/SP merger case, the caption of this proceeding; on May 22, 2007, I filed a notice of intent to remain on the service list for this proceeding.

I have reviewed the public filings in this proceeding involving the "settlement agreement" between BNSF and Union Pacific Railroad Company (UP), filed March 1, 2002, and which was made part of the STB's condition for its approval of the UP/SP merger.

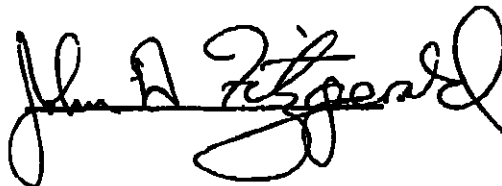
BNSF train and engine service employees, operating north-south in both directions between Vancouver, BC, and Keddie, CA, have enjoyed employment opportunities as a result of the STB-prescribed

trackage rights for BNSF between Stege-Sacramento, and Elvas-Stockton. Of course, not all BNSF employees benefitted from the UP/SP merger, or from the STB-imposed conditions in that case.

BNSF employees operating on the I-5 corridor have come to rely upon the additional business from the settlement agreement, and have adjusted their seniority preferences, family concerns, and anticipated earnings based upon these operations, which have been in effect for over 3 years. Revision or interpretation of the settlement agreement adverse to BNSF traffic movement would adversely affect BNSF employees. However, the precise effects cannot be measured in advance.

Although most BNSF employees, while perhaps generally in support of BNSF in this proceeding, insist they be protected from adverse effects in the event the STB should revise or interpret the agreement adverse to BNSF traffic flows. The appropriate employee conditions would be those prescribed in New York Dock. I am familiar with the NYD conditions and its procedures and benefits.

I affirm the foregoing is true and correct as stated.

A handwritten signature in black ink, appearing to read "John D. Fitzgerald", written in a cursive style.

JOHN D. FITZGERALD

Dated at
Vancouver WA
October 4, 2007