

ORIGINAL

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April 17, 2008

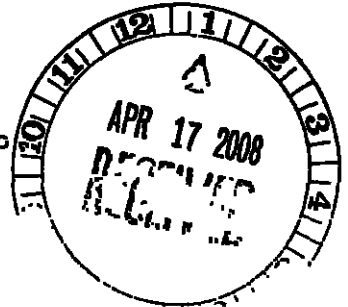
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Acting Secretary
Surface Transportation Board
Washington DC 20423

ENTERED
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Re: Ex Parte No. 677
Common Carrier Obligations of Railroads

Dear Madam:

Please withdraw the request of Jay L. Schollmeyer, on behalf of United Transportation Union-General Committee of Adjustment (UTU/GO-386), for an allocation of time at the hearing to be conducted April 24-25 in the entitled matter. Unfortunately, Mr. Schollmeyer is unable to be in Washington, DC.

Enclosed are an original and 10 copies of Mr. Schollmeyer's prepared statement, which I ask be included in the hearing record.

Very truly yours,

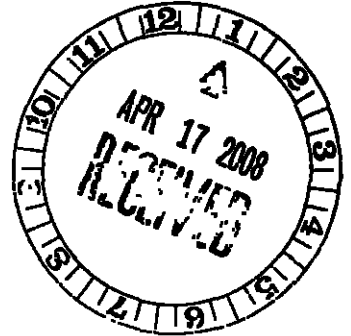
Gordon P. MacDougall

Atty. for Jay L. Schollmeyer

Before the
SURFACE TRANSPORTATION BOARD

ORIGINAL

Ex Parte No. 677
COMMON CARRIER OBLIGATION OF RAILROADS



STATEMENT OF
JAY L. SCHOLLMAYER
April 25, 2008

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Public Record

My name is Jay L. Schollmeyer, with offices at 400 East Evergreen Boulevard, Vancouver, WA. I serve as General Chairman for United Transportation Union-General Committee of Adjustment (UTU/GO-386), representing train and engine service personnel employed by Burlington Northern Railway Company (BNSF).

My employment with BNSF, and its predecessors, commenced in 1974, in the MofW department; beginning 1978, I transferred to the Operating department, and held successive positions from Brakeman to Conductor.

I have been a member of the UTU since 1978, becoming Local Chairman in 1996. Subsequently, I was elected Vice General Chairman for the General Committee of Adjustment, serving in that capacity from 1999 through 2007. I was elected General Chairman, effective January 1, 2008, upon the elevation of John D. Fitzgerald to the position of UTU Vice President.

From my experience in BNSF's Operating department, services as Brakeman and Conductor, along with assisting my General Committee of Adjustment (UTU/GO-386) in arbitration, agreements, and research projects, I have become fully familiar with issues involving rail carriers and their obligations to the public, particularly concerning the obligation to provide rail service.

Of course, BNSF's service obligations to the public are of concern to railroad employees, in both MofW and train/engine operations. Rail service provides the primary basis for employment opportunities and compensation levels; and rail service may also accord certain minimum employee protective conditions in situations involving rail carrier abandonments and discontinuances.

Institution of Proceeding. I was puzzled by the Board's institution of this proceeding on February 22, 2008, and the simultaneous announcement of a public hearing scheduled for April 24, 2008. The Board's notice did not contain any proposed rules, and the proceeding was not instituted at the request or petition by any member of the public.

The Board's Notice defined its term "common carrier obligation" to mean the statutory duty of railroads to provide "transportation or service on reasonable request," referring to 49 U.S.C. 11101(a). The Notice advised that in recent years, the Board has seen an increasing number of questions arising, both formally and informally, regarding the extent of a railroad's common carrier obligation. The Notice concluded that the purpose of the hearing is to (1) "highlight" the common carrier obligation, (2) better "understand" it, and (3) to assist the Board in its "monitoring and compliance" work. Notice, 2:

"As a result, this hearing seeks to highlight the importance of the common carrier obligation, to provide a better understanding of it, and to assist the Board in its monitoring and compliance work."

The Board's February 22, 2008 Notice and accompanying press release (No. 08-06), was followed on April 3, 2008 by a Decision, with an accompanying press release (No. 08-08), that the April 24 hearing would be extended for an additional day, to include April 25, 2008.

Recent STB Staff Developments. The first two objectives for the STB's inquiry--to highlight and understand the common carrier obligation, need no comment from UTU/GO-386. I understand the common carrier obligation command stems from Section 1 of the Interstate Commerce Act of 1887, and is carried forward basically unchanged, in the current 49 U.S.C. 11101(a), as mentioned in the Board's February 22, 2008 notice. I am advised by counsel, and is in accord with my own knowledge and experience, there have been over the years numerous court and agency proceedings dealing with the common carrier obligation. I would only add that the term "common carrier obligation" is perhaps the STB's term of art for the more traditional term, "rights and duties of carriers." It appears the Board's predecessor began extensive use of "common carrier obligation" to describe situations in line sales where the seller retained a common carrier obligation to resume service upon the failure of another carrier to provide common carrier duties and responsibilities. I am referred to the following citations in this regard: Maine, DOT-Acq. Exemption, ME. Central R. Co., 8 I.C.C.2d 835 (1991); Common Carrier Status of States, State Agencies, 363 I.C.C. 132 (1980), aff'd Simmons v. ICC, 697 F.2d

326 (D.C. Cir. 1982); United Transp. Union-Ill. Legislative Bd. v. ICC, 52 F.3d 1074 (D.C. Cir. 1995).

The third hearing objective mentioned by the Board--the "monitoring and compliance" functions of the Board--appears to be the critical issue. The Board on April 15, 2008, announced a major staff revision, in press release served that day. (No. 08-10). The Board's Office of Compliance and Enforcement, was restructured into an Office of Public Assistance, Governmental Affairs and Compliance. The role of "enforcement" apparently has been downsized, with its Director placed on senior status.

Another important recent and novel development was the institution of a proceeding, on the Board's own motion, to investigate whether a carrier had abandoned service without prior STB authorization. Finance Docket No. 35130, Central Oregon & Pacific Railroad, Inc.-Coos Bay Rail Line (served Apr. 11, 2008). The respondents are to show cause by May 12, why the Board should not consider the failure to be an unlawful abandonment, and why it should not be required to repair the line and resume rail service, or seek abandonment authority. I have read the recent Board decision and show cause order with interest.

Importance of Enforcement. I do not believe the discontinuance of effective enforcement, in favor of a lengthy process to determine whether there has been an unlawful abandonment, to be in the best interest of the public or railroad employees.

The Board has the power to go directly into federal court to enjoin an unlawful discontinuance of service amounting to an abandonment, without first undertaking a lengthy agency inquiry, or expending the time and expenses by the complaining parties. The

Board, particularly its predecessor, utilized direct enforcement as a routine matter.

While I appreciate the Board's recent interest in a suspect abandonment in Oregon, the institution of an inquiry by the Board is not an effective substitute for prompt enforcement. To be sure, action by the Board's Bureau of Enforcement in the past may not have carried the same degree of deference before the court, as would an agency decision first arrived at through the full agency process; nevertheless, the direct enforcement approach proved very effective.

The Board should not weaken the enforcement process through downgrading enforcement in its organizational structure. The Board's current inquiry into the Coos Bay situation, while welcome, should not obscure the needed forces at the agency, so it seems to me. Direct enforcement is preferable to drawn out agency inquiry and proceedings.

I wish to thank the Board for permitting me to participate in this hearing, and to file this statement.

JAY L. SCHOLLMEYER

Dated at
Vancouver WA
April 17, 2008