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BEFORE THE
SURFACE TRANSPORTATION BOARD

Part of
Public Record

STB DOCKET NO. AB-103 (Sub- No. 21X)



**KANSAS CITY SOUTHERN RAILWAY COMPANY
ABANDONMENT EXEMPTION
LINE IN WARREN COUNTY, MS**

**SUPPLEMENTAL
COMMENTS REGARDING THE EFFECT
OF ENGLISH'S MOTION TO WITHDRAW OFA**

1 On the morning of May 21, 2008, Raymond B. English ("English") filed his "Raymond B. English Withdrawal of Offer to Purchase ("Motion to Withdraw"). Later that same day, the Board issued a Decision staying until further order of the Board, the date by which English and Riffin were to close on their purchase of the line which is the subject of this proceeding, in order to allow the Board time to consider the effect of English's Motion to Withdraw. The Board's May 21, 2008 Decision permitted the parties to file, by May 28, 2008, pleadings addressing the effect of English's Motion to Withdraw, and to file by June 2, 2008, Replies.

2. James Riffin ("Riffin"), herewith files his Supplemental Comments Regarding the Effect of English's Motion to Withdraw his Offer of Financial Assistance ("Supplemental Comments") to purchase the Segment portion of the Line which is the subject of this proceeding.

3. These Supplemental Comments would be Riffin's late-filed Reply. Since this Reply is being late-filed, Riffin would ask for leave from the Board to late-file these Supplemental Comments for the following reasons: Accepting these late-filed Supplemental Comments would provide the Board with a more complete record. Riffin delayed filing these Supplemental Comments in order to permit the Kansas City Southern Railway Company ("KCSR") time to respond to Riffin's settlement offer.

4. Riffin, in his May 28, 2008 Comments, stated he would be willing to withdraw his offer to purchase the Line and would be willing to voluntarily dismiss the Petitions for Review he has filed, providing KCSR was willing to waive all claims against Riffin and English. Riffin pointed out that the \$51,000 KCSR stated it spent on legal and expert witness fees associated with Riffin's Request for Compensation due to the untimely demolition of the Glass Road bridge, would be offset by KCSR's avoided cost of providing Riffin with \$19,277, of providing Riffin with sufficient used timbers to restore the Glass Road bridge (which has an unknown, but substantial value), and the avoided cost of hiring an independent engineer to certify the used timbers were free of material defects, all of which KCSR was ordered to provide to Riffin in order to compensate Riffin for the partial demolition of the Glass Road bridge. Riffin further pointed out that KCSR could also file suit against Warren County, requesting compensation for KCSR's expenses associated with Warren County's demolition of the bridge.

5. David Reeves, KCSR's in-house counsel, advised Riffin on June 5, 2008, that KCSR's management has made the decision to decline Riffin's settlement offer. Mr. Reeves has advised Riffin that unless the Board serves a decision that specifically states KCSR is not entitled to litigation and expert witness fees associated with Riffin's Request for Compensation, KCSR will not voluntarily waive its purported right to sue Riffin and English for these counsel and expert witness fees.

KCSR'S COUNSEL AND EXPERT WITNESS FEES

6. Riffin requested the Board award to Riffin the expert witness fees associated with Riffin's preparation of his Request for Compensation. Riffin argued, he was entitled to be compensated for these expenses, since Riffin would not have incurred these expenses if Warren County had not partially demolished the Glass Road bridge. The Board, in its decision awarding Riffin some compensation, specifically denied Riffin's request to be reimbursed for his expert witness fees. On page 11 of the Board's May 20, 2008 Decision awarding Compensation to Riffin, the Board stated:

"Litigation Costs. Riffin's request for litigation costs will be denied. The Board has consistently rejected requests for such costs in the past. Sec. e.g., Groome & Assocs., Inc. v.

Greenville County Econ. Dev. Corp., STB docket No. 42087, slip op. at 17 (STB served July 27, 2005); Caddo Antoine et al. – Feeder Li. Acq. – Arkansas Midland RR, 4 S.T.B. 610, 630-31 (2000), aff'd in part, rev'd in part on other grounds, GS Roofing Prods. Co. v. STB, 262 F.3d 767, 778 (8th Cir. 2001); CF Industries, Inc. v. Kock Pipeline Company, L.P., 4 S.T.B. 637, 637 n.2 (2000).

7. Riffin would argue KCSR's request to be reimbursed for its counsel and expert witness fees associated with responding to Riffin Request for Compensation, should likewise be denied.

8. If the Board renders a decision which specifically states English and Riffin are not responsible for KCSR's counsel and expert witness fees, Riffin offers to do the following:

- A. Riffin will withdraw his offer to purchase the Segment and Remainder portions of the Line.
- B. Riffin will voluntarily dismiss the Petitions for Review he has filed in the D.C. Court of Appeals, relating to the above entitled proceeding.
- C. Riffin will execute whatever documents are necessary to facilitate KCSR's efforts to sell the real estate associated with the Line, to the City of Vicksburg.
- D. Mr. English has indicated that he will likewise voluntarily dismiss his interests in the Petitions for Review filed in the D.C. Court of Appeals and will execute whatever documents are necessary to facilitate KCSR's efforts to sell the real estate associated with the Line, to the City of Vicksburg.

9. While Riffin strongly opposes giving up his legal right to Petition the Court of Appeals to Review three of the Board's decisions, in the interest of facilitating KCSR's desire to sell the real estate to the City of Vicksburg, in the interest of conserving the Board's and KCSR's resources, and in the interest of offering some compensation to KCSR and the Board for Mr. English's untimely withdrawal of his offer to purchase the Segment portion of the Line, Riffin is willing to relinquish some of his legal rights, but only if English and Riffin are relieved of any legal obligation to compensate KCSR for any of KCSR's litigation and expert witness expenses.

Respectfully submitted.



James Riffin

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of June, 2008, a copy of the foregoing Supplemental Comments Regarding the Effect of English's Motion to Withdraw, was e-mailed and mailed via first class mail, postage prepaid, to **William A. Mullins, Baker & Miller PLLC**, Ste 300, 2401 Pennsylvania Ave, N.W., Washington, DC 20037, attorney for Kansas City Southern Railway Company, and was mailed via first class mail to **Craig Richey**, 315 W. 3rd Street, Pittsburg, KS 66762, attorney for Vicksburg Southern Railroad, Inc.



James Riffin