

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34495

BUCKINGHAM BRANCH RAILROAD CO.
–Lease–
CSX TRANSPORTATION, INC.

**REPLY OF THE BROTHERHOOD OF MAINTENANCE OF WAY
EMPLOYEES TO BUCKINGHAM BRANCH RAIL ROAD
MOTION TO STRIKE ROY GRIFFITH DECLARATION**

The Comments of the Brotherhood of Maintenance of Way Employees in opposition to the so-called “lease” between CSX Transportation (“CSXT”) and Buckingham Branch Railroad (“BB”) relied in part on certain portions of the Declarations of Randall Brassell and Roy Griffith that contained Mr. Griffith’s observations about the condition of the current BB line and of Maintenance of way work that has been done on that line. Mr. Griffith is a BMWE Vice General Chairman and a fully qualified Track Inspector who had actual prior experience inspecting the track and right of way comprise the current BB line. Mr. Griffith inspected parts of the BB line on August 3, 2004. Mr. Griffith found defects and FRA violations in the short segments of the line he was able to inspect. Over 2 miles that he found 3 FRA citable violations, not just defects. At one location there was a rail separation at 58 and 1/4 inches, when Class 1 track tolerance is 58 inches (normal gauge is 56 ½ inches), at another location a brand new crosstie that had been improperly gauged at 58 inches rather than the correct 56 and ½ inches. And at a third location the rail separation was 58 and 1/16 inches. He stated that finding of 3 FRA violations within 2 miles is unusual and significant, and suggestive that while BB has labeled the track as Class 1, it

is not actually at the Class 1 level.

BB now seeks to strike the portions of the Brassell/Griffith declaration that relate to Mr. Griffith's observations regarding the current BB line, as well as the portion of the BMW's Comments that cite those observations.

BB has sought to strike paragraphs 11, 12 and 14 of the Brassell/Griffith declaration stating that Mr. Griffith was on the BB line without BB's knowledge. BB states that "[i]t is well documented that the presence of trespassers on an active rail line is highly dangerous for all concerned including the personal safety of intruders." BB also states that "at this time of heightened concern as to the threat of terrorist activity, Mr. Griffith's unauthorized presence and activity on BB's line was inexcusable." Motion to strike at 2. These arguments are specious and do not support BB's motion; it is apparent that BB merely seeks to shield its current operations and condition of its track from inspection and from consideration in this proceedings.

First, it is shameful that BB has invoked the serious matter of terrorist threats as a way of excluding evidence from this proceeding, particularly when there is no indication whatsoever that there is even an inkling of a terrorist threat against the BB line or anything on the line. Nor is there any evidence that there is any critical facility or installation, any strategic or national security facility, or any other "target of opportunity" on the line. It is outrageous that BB would invoke the specter of terrorism to exclude evidence. This argument should be rejected by the Board.

Second, there is no validity to BB's alleged safety concerns, particularly as they supposedly relate to Mr. Griffith. Mr. Griffith was no mere passerby. Mr. Griffith as shown that he is a highly experienced track inspector with an actual background inspecting the BB line. Second Declaration of Roy D. Griffith ¶¶1-2, 5. Mr. Griffith was fully capable of performing an

inspection without danger to himself or others. *Id.* ¶5. Moreover, this line is not the Northeast corridor, BB operates trains 3 days per week. The frequency of trains running on this line does not pose a significant danger, certainly not to someone of Mr. Griffith's experience. Thus, the second stated reason for BB's motion is without force.

Third, BB chose to make its story - - its progress as a short line operator - a major part of this proceeding. BB made certain representations about the condition of its line that BMW E deemed suspect. The obvious thing to do was to inspect the line. But, given the time frame for this proceeding it is unlikely that a motion to inspect the BB line, a ruling on that motion and a subsequent inspection would have been completed in time for BMW E to incorporate the information in its comments. The best way for BMW E to gather, and verify, facts about the current BB line was to do the work on its own. Furthermore, BMW E notes that Mr. Griffith entered the line at its beginning Milepost 0.0; there was no warning or no trespassing sign at that location.

Fourth, it is incorrect for BB to assert that Mr. Griffith came on the line uninvited. In fact, Mr. Griffith went out on the line after a discussion with Steve C. Powell, Assistant Vice President & General Manager of BB Railroad in Doswell, VA where Mr. Griffith mentioned the poor condition of the Buckingham Branch line during the time he was Track Inspector and Mr. Powell said that he should see it now, stating that this rail line was now in very good condition.

Finally, BMW E notes that BB has not contradicted Mr. Griffith's findings about the conditions of its current line, or the Maintenance of Way work done there. In particular, BB chose not to respond to his observations that he found a 58 1/4" gage when the maximum gage on this line is 58", a new crosstie spiked to 58", a joint at 58 1/16" gage, and no reaction from a BB foreman when Mr. Griffith pointed-out the joint at 58 1/16" gage. All of this within just 2

miles.

For all of these reasons, BMW respectfully submits that BB's motion to strike should be denied.

Respectfully submitted,

/s/

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Dated: October 4, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused copies of the foregoing Reply of the Brotherhood of Maintenance of Way Employes to Buckingham Branch Rail Road Motion to Strike Roy Griffith Declaration to be served by First Class Mail on all parties of record indicated on the attached service list and also by facsimile transmission to counsel for applicants and representatives of parties that filed comments.

Date: October 4, 2004

/s/
Richard S. Edelman

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SECOND DECLARATION OF ROY D. GRIFFITH

I, ROY D. GRIFFITH, declare under penalty of perjury that the following is true and correct and based upon personal knowledge:

1. I, Roy D. Griffith, am a Vice Chairman of the BMW Eastern Federation. I worked as a maintenance of way employee for CSXT and/or its predecessor railroads for 28 years, holding positions such as trackman, welder helper, machine operator, track foreman and track inspector; I worked as a track inspector for the last 19 years of my employment with CSXT, prior to becoming a full time Union officer. I hold seniority on the lines between Richmond and Clifton Forge, VA and related lines that are the subject of this proceeding.

2. I was the Track Inspector who inspected the lines that are now the Buckingham Branch Railroad (“BB”) between 1980 and 1988, when those lines were part of CSXT.

3. At a meeting held by BB at Doswell, Virginia in April of 2004, I mentioned my Track Inspector duties in connection with the Buckingham Branch Railroad lines during the time I worked for CSXT as Track Inspector between 1980 and 1988 to Steve C. Powell, Assistant Vice President & General Manager of BB Railroad. During this meeting, I mentioned the poor condition of the Buckingham Branch lines during this time I was Track Inspector on this line segment. Mr. Powell said that I should see it now, stating that this rail line was now in very good condition.

4. On August 3, 2004, I took the opportunity to walk and casually inspect the BB railroad. As indicated I did find FRA defects, in fact the defects I found, did not meet the FRA requirements for this 10 MPH, 17 mile railroad. As indicated in the BB motion to strike my statements, after I had walked 2 miles, I was escorted off the property, even after attempting to explain that I was a former Track Inspector of this line. After arriving back in my Office that day, I wrote a letter (reproduction and copy attached), addressed to Mr. Powell, requesting permission to walk and or Hi-Rail the Buckingham Branch Railroad. To this day I have not received a response from anyone from BB, even though Mr. Powell had previously suggested that I could look at the line.

5. With respect to my inspection, I entered the line at New Canton, Virginia, Milepost 0.0, and walked approximately (2) miles. I am well aware of the significance of walking and or inspecting an "active" rail line. As a railroad employee for nearly (30) years, having this amount of time working on and inspecting "active" rail lines, I am well aware of how to conduct myself while inspecting track. I also note that there were not any "no trespassing" signs posted when I entered the railroad initially at the New Canton, Virginia location.

6. I also note that BB has not responded to my description of the actual line conditions that I observed. BB has touted its upgrades for their (17) mile, (10) MPH railroad, but then I found a 58 1/4" gage, when the maximum gage on this line is 58", I found a new crosstie spiked to 58" and after I notified a "BB" Foreman of 58 1/16" gage in a joint no immediate action taken. All of this was observed in just a small section of this line.

I declare under penalty of perjury pursuant to 28 U.S.C. §1746, that the foregoing statements that are attributed to me are true and accurate.

Date

Roy D. Griffith

R.D.Griffith
Vice Chairman/BMWE
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August 3, 2004

Mr. Steven C. Powell
Assistant Vice President & General Manager
Buckingham Branch Railroad Company
P.O. Box 336
Highway US 15
Dillwyn, VA. 23936

Dear Mr. Powell,

This letter is in reference to our meeting at the Bridgeport Road Crossing on Tuesday August 3, 2004. During our meeting, you expressed an invitation to HI Rail and or walk the Buckingham Branch Railroad. You expressed your only desire was for you to be notified prior to this trip. By copy of this letter, be advised I am formally making that request. I will be looking forward to meeting you and appreciate your invitation to look at your railroad. Please advise of the date and time this invitation can be accomplished.

R.D.Griffith

Vice Chairman
AEF / BMWE

cc: E.R.Brassell, General Chairman
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