



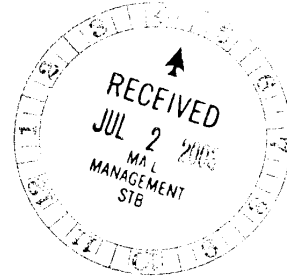
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July 2, 2003



VIA HAND DELIVERY

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, DC 20006

Re: **Docket No. 42080**
Minnesota Northern Railroad, Inc. v.
Canadian National Railway Company

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Answer of Canadian National Railway Company to Formal Complaint**, dated July 2, 2003.

One extra copy of the Answer and this letter also are enclosed. I would request that you date-stamp those items to show receipt of this filing and return them to our messenger.

Please feel free to contact me should any questions arise regarding this filing. Thank you for your assistance on this matter.

Respectfully submitted,

Theodore K. Kalick

Theodore K. Kalick
Attorney for Canadian National
Railway Company

TKK:tjl

Enclosures

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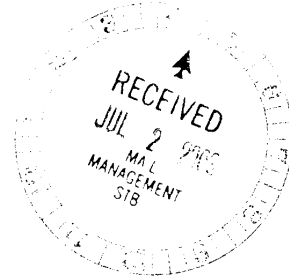
BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. 42080

MINNESOTA NORTHERN RAILROAD, INC.

v.

CANADIAN NATIONAL RAILWAY COMPANY



**ANSWER OF CANADIAN NATIONAL
RAILWAY COMPANY TO FORMAL COMPLAINT**

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**ATTORNEYS FOR CANADIAN NATIONAL
RAILWAY COMPANY**

Dated: July 2, 2003

BEFORE THE
SURFACE TRANSPORTATION BOARD

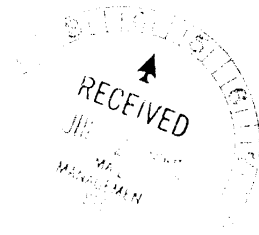
DOCKET NO. 42080

MINNESOTA NORTHERN RAILROAD, INC.
v.
CANADIAN NATIONAL RAILWAY COMPANY

**ANSWER OF CANADIAN NATIONAL
RAILWAY COMPANY TO FORMAL COMPLAINT**

Pursuant to 49 C.F.R. § 1111.4, Canadian National Railway Company ("CN") hereby files this answer to the Formal Complaint of Minnesota Northern Railroad, Inc. ("MNN"). MNN seeks the reestablishment for its own benefit of a rail connection and interchange with CN at Warroad, Minnesota, but refuses to bear any of the expenses associated with that undertaking. Consistent with statutory requirements and agency precedent, CN has been continually willing to share with MNN the cost of the requested connection and interchange. Indeed, if the traffic projections proffered by MNN are even remotely accurate, MNN would, under the arrangement proposed by CN, recoup its share of expenses within three years. CN's efforts to resolve this matter with MNN have been extremely reasonable, and more than satisfy the statutory obligations of rail carriers under the Interstate Commerce Act, 49 U.S.C. § 10101, et seq. MNN would no doubt prefer that CN bear all of the expense to recreate or preserve an abandoned interchange connection that MNN might or might not ever use, but the law does not require such one-sided forbearance from CN.

In response to the allegations contained in MNN's formal complaint, CN states as follows:



1. This is a complaint under 49 U.S.C. § 11701(b) seeking a Board order under 49 U.S.C. § 10742 requiring Canadian National Railway Company (CN), at its own expense, to reinstall interchange facilities between it and Minnesota Northern Railroad, Inc. (MNN) at Warroad, Minnesota, that CN removed over MNN's objection.

ANSWER:

CN denies that MNN's complaint arises solely under 49 U.S.C. § 10742, and states that 49 U.S.C. § 11103 also governs MNN's complaint. CN further denies that CN removed interchange facilities at Warroad, Minnesota "over MNN's objection," and states that the prior interchange connection between CN and MNN's predecessor at Warroad had been removed and/or was unsafe and non-functional prior to acquisition of MNN by its current owners and perhaps as early as 1995. CN admits the remaining allegations of paragraph 1.

2. MNN is a Class 3 common carrier by rail subject to the jurisdiction of the Board under 49 U.S.C. § 10101, *et seq.*

ANSWER:

CN admits the allegations in paragraph 2.

3. CN is a Class 1 common carrier by rail. Its trackage and operations in the United States are subject to the jurisdiction of the Board under 49 U.S.C. § 10101, *et seq.*

ANSWER:

CN denies that it is a Class I rail carrier. CN controls several U.S. rail carriers, and is a Class I carrier when considered on a consolidated basis with the U.S. rail carriers which it controls. CN admits the remaining allegations of paragraph 3.

4. KBN, Inc. (KBN) acquired MNN from Rail America Transportation Company in October, 2000.

ANSWER:

CN admits the allegations in paragraph 4.

5. The tracks of MNN intersect with tracks of CN at Warroad, Minnesota. Exhibit A attached to this complaint is a diagram of facilities at Warroad that permitted interchange of

traffic between CN and MNN (and their predecessors), i.e., the east and west switches between the CN main track and a CN side track known as the transfer track, and a switch connecting that transfer track to MNN's track.

ANSWER:

CN denies that the tracks of MNN and CN intersect at Warroad, Minnesota, or that since the acquisition of MNN by its current owners there have been facilities that permitted interchange of traffic between CN and MNN. CN admits that Exhibit A is a generally accurate depiction of former facilities at Warroad that prior to 1995 permitted interchange of traffic between CN and Burlington Northern Railroad Company ("BN"), a prior owner of the rail line now owned by MNN.

6. Interchange between CN and MNN at Warroad could be effected by use of only one of the two switches between the CN main track and CN transfer track, plus the switch between the CN transfer track and MNN's track.

ANSWER:

CN denies that since the acquisition of MNN by its current owners it has been possible to effect interchange between CN and MNN at Warroad. CN admits the allegations in paragraph 6 to the extent that they describe the interchange that could have taken place between CN and BN at Warroad prior to 1995.

7. In Spring, 2001, the east switch between the CN main track and CN transfer track had been largely removed, but the west switch between those tracks was largely intact, i.e., the switch stand and points were in place and although the frog had been removed, it was located at the site of the switch in nearby vegetation. The switch between the CN transfer track and MNN's track was in place, but the MNN track had been spiked.

ANSWER:

CN denies that in the spring of 2001 the west switch was "largely intact." Answering further, CN states that the frog and closed rail of the west switch had been removed, that the switch no longer functioned or was safe to carry trains, and that returning the switch to a

functional and safe status would have required installation of significant switch components (if not installation of an entirely new switch) and entailed substantial expense. CN admits the remaining allegations of paragraph 7.

8. In Spring, 2001, CN advised MNN that it planned to remove the west switch between the CN main track and transfer track at Warroad in conjunction with its planned replacement of joint rail in its main track with 136-pound continuous welded rail. As explained to MNN, CN proposed to remove the interchange facilities because it would be inconvenient to CN to install "step-down" facilities to permit trains to operate between that 136-pound rail and the 90-pound rail on the transfer track, and because there had been no use of the interchange facilities at Warroad for a number of years.

ANSWER:

CN denies that its proposal in 2001 involved removal of the "west switch" or "interchange facilities" at Warroad, in that said switch and facilities did not then exist in any functional, safe or complete form. CN admits the remaining allegations in the first sentence of paragraph 8. CN denies MNN characterization of CN's position in the second sentence of paragraph 8. Answering further, CN states that it proposed in 2001 to remove the remaining components of the abandoned and disconnected west switch (i.e., the switch points and switch stand) because the unused and deteriorated switch points presented a rail safety hazard; retention of the unused switch points and switch stand, or installation of a new switch, in connection with the track relaying project on the main line through Warroad would have entailed substantial and unproductive expense; and there was no reasonable prospect of future traffic volumes that would justify installing a new switch connection to MNN at Warroad.

9. MNN explicitly advised CN on a timely basis that it objected to removal of the interchange facilities at Warroad. MNN explained to CN that notwithstanding nonuse of those facilities under prior MNN ownership, KBN, as the new owner of MNN, intended to cause MNN to make significant use of that interchange. MNN advised CN at that time that a Warroad interchange with CN would play a vital role in MNN's future plans, and is considered to be essential to the long-term viability of MNN's Warroad Subdivision.

ANSWER:

CN denies that its proposed actions in 2001 involved the removal of "interchange facilities" at Warroad, and states further that such interchange facilities had been discontinued, were unsafe and/or effectively removed in 1995 or earlier. CN admits that the remaining allegations in paragraph 9 accurately characterize MNN's position in this matter as conveyed to CN, but CN is without sufficient knowledge or information to form a belief as to the truth of the allegations of the factual predicates underlying that position, and therefore neither admits nor denies said allegations, but demands strict proof thereof.

10. At the end of May, 2001, CN advised MNN that it decided to "straight the two switches at Warroad," i.e., to remove all interchange capability between the CN main track and the CN transfer track.

ANSWER:

CN denies that any "interchange capability" existed at Warroad in May, 2001, or had existing at that location for least several years prior to that time. CN thus further denies that any of its actions in 2001 had the effect of removing "interchange capability" at Warroad. CN admits the remaining allegations in paragraph 10.

11. At no time between Spring, 2001, and the present has CN embargoed rail traffic via its interchange with MNN at Warroad. At all times during that period, an interchange with CN at Warroad was shown in the Official Railroad Station List published by RAILINC.

ANSWER:

CN admits the allegations in the first sentence of paragraph 11. Answering further, CN states that it has no published rates, exempt rate quotations or transportation contracts for traffic moving via a CN-Warroad-MNN routing, and thus there is no traffic to issue an embargo against. CN is without sufficient knowledge or information to form a belief as to the

truth of the allegations in the second sentence of paragraph 11, and therefore neither admits nor denies said allegations, but demands strict proof thereof.

12. On or about June 13, 2001, Cenex Harvest States requested that MNN transport a carload of soybeans from Roseau, Minnesota to Superior, Wisconsin routed via MNN for interchange to CN at Warroad. Exhibit B attached to this complaint is a copy of MNN's Waybill No. 16073 covering that shipment.

ANSWER:

CN is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 12, and therefore neither admits nor denies said allegations, but demands strict proof thereof. Answering further, CN states that it is extremely rare that a shipper such as Cenex Harvest States would consign a single carload of soybeans on a one-time basis for any legitimate business reason.

13. MNN transported that car to Warroad and tendered it for interchange to CN via RAILINC. RAILINC confirmed to MNN that CN received that tender of interchange. CN did not accept interchange of that car. MNN transported that car back to its origin. The car was later transported via a different rail route.

ANSWER:

CN is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 13, and therefore neither admits nor denies said allegations, but demands strict proof thereof. Answering further, CN states that MNN, by its own admission, was aware in June, 2001 that no interchange facilities existed at Warroad and that it was not possible to move a rail car from MNN's tracks to CN's tracks at Warroad.

14. Thereafter, in conjunction with its main track rail replacement program, CN completed removal of the switches between its main track and its transfer track.

ANSWER:

CN is without sufficient knowledge or information to form a belief as to the truth of the allegation in paragraph 14 that the events alleged in paragraph 14 occurred after the events

alleged in paragraphs 12 and 13. CN therefore neither admits nor denies said allegation, but demands strict proof thereof. CN admits the remaining allegations in paragraph 14.

15. MNN has repeatedly requested that CN reinstall the interchange facilities at Warroad at CN's expense. CN has refused to reinstall those facilities unless MNN bears one-half of the cost of the reinstallation.

ANSWER:

CN denies that its proposal to MNN provides solely that MNN bear one-half of the cost of installation of interchange facilities at Warroad. CN states further that its complete proposal to MNN is contained in a December 9, 2002 letter from Richard A. Verkler, counsel for CN, to Thomas F. McFarland, counsel for MNN, attached hereto as Exhibit A. CN admits the remaining allegations of paragraph 15.

16. MNN has refused to bear that or any other portion of the reinstallation cost because it considers it to be unreasonable to require part payment of the cost of reinstallation of interchange facilities from a party who explicitly objected to their removal on a timely basis.

ANSWER:

CN admits that the allegations in paragraph 16 accurately characterize MNN's position in this matter, but denies the factual predicates underlying that position.

17. There is substantial rail traffic that originates or terminates on MNN that would be likely to be transported via the Warroad interchange with CN if the interchange facilities at that location were to be reinstalled, including 1,027 carloads that originated on MNN and terminated on CN and *vice versa* in the 29-month period between January 1, 2001, and May 31, 2003, inclusive, and significant additional traffic that originates on MNN for which CN grain rates over Warroad to Duluth, MN-Superior, WI and other points are very attractive to shippers.

ANSWER:

CN is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 17, and therefore neither admits nor denies said allegations, but demands strict proof thereof. Answering further, CN states that MNN has steadfastly refused to provide any volume commitment with respect to traffic that would move via a new MNN-CN

Warroad interchange. CN states further that, if MNN's predictions of traffic volume were even remotely accurate, MNN would, under the proposal made to MNN by CN, recoup within three years its entire share of the expense of installing interchange facilities at Warroad.

18. In late May, 2003, a representative of CN requested MNN to provide its revenue requirements for shipments of urea originating on CN at Brandon, Manitoba, destined to Climax, Minnesota on MNN, with interchange at Warroad. MNN provided the requested information, but that traffic cannot be transported in the manner suggested by CN unless the interchange facilities at Warroad are reinstalled.

ANSWER:

CN admits the allegations in paragraph 18.

19. By reason of the foregoing facts and circumstances, CN has failed and refused to provide reasonable and proper facilities with MNN at Warroad at CN's expense.

ANSWER:

CN denies the allegations in paragraph 19.

20. By reason of the foregoing facts and circumstances, public convenience and necessity require that CN reinstall reasonable and proper interchange facilities with MNN at Warroad at CN's expense.

ANSWER:

CN denies the allegations in paragraph 20.

WHEREFORE, CN respectfully requests that, after conducting proceedings in accordance with the provisions of 49 C.F.R. § 1111, the Board deny MNN's complaint.

Respectfully submitted,

By: Theodore K. Kalick
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**ATTORNEYS FOR CANADIAN NATIONAL
RAILWAY COMPANY**

Dated: July 2, 2003



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EXHIBIT A

December 9, 2002

Thomas F. McFarland, Esq.
208 South LaSalle Street, Suite 1890
Chicago, Illinois 60604-0204

Re: Warroad, MN

Dear Mr. McFarland:

Please be advised that we are in receipt of your November 20, 2002 letter regarding the installation of a switch to provide interchange between the Canadian National Railway (CN) and Minnesota Northern Railroad (MNN) at Warroad, Minnesota. This letter responds to MNN's demand that CN install that switch at no cost to MNN and without any traffic guarantees from either MNN or MNN's on-line shippers.

As you know, Section 10742 of the Interstate Commerce Act, 42 U.S.C. § 10742, provides that U.S. rail carriers are required to provide "reasonable, proper and equal facilities" for the interchange of traffic with other rail carriers. Section 11103 of the Act makes clear that rail carriers are only obligated to provide switch connections on "reasonable conditions" and if the connection "will furnish sufficient business to justify its construction and maintenance." 42 U.S.C. § 11103(a). Section 11103 also makes clear that in the event a lateral branch line owner can demonstrate that a proposed connection will furnish sufficient business to justify the construction of a switch connection, the carrier from whom the connection is sought is entitled to be compensated for costs incurred in constructing and maintaining the same. 42 U.S.C. § 11103(b). In construing Section 10742, the Interstate Commerce Commission has stressed that interchange arrangements should take into account the material benefits provided to the parties and not place undue burdens on one carrier or another. See, e.g., New York, C & St. L.R. Co. v. New York Central R. Co., 314 I.C.C. 344 (1961).

Your November 20, 2002, letter states that "Warroad would be by far the preferred routing for a large percentage of Harvest State's substantial volume of traffic" and that "there is every reason to believe that 1000 carloads of grain per year or more would move over the Warroad interchange upon its reopening." CN took the liberty of contacting Harvest States to confirm the accuracy of these statements and was told a much different story.

Thomas F. McFarland, Esq.
December 9, 2002
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According to Dan Mack of Harvest States, most of the grain shipped over MNN is routed to Chicago and beyond via the BNSF and CP, and most of the traffic shipped over CP is sent to CP-served destinations. Mr. Mack was therefore skeptical as to how much need there was for a third railroad option. After discussing the issue with his regional manager, Mr. Mack advised us that while Harvest States would like to see CN service made available as a possible alternative to the other two railroads, the company was unwilling to offer any assurance to CN that it would actually ship traffic over the proposed Warroad interchange. Given Mr. Mack's comments, CN has no reason to believe that any amount of traffic will be interchanged by MNN to CN over a Warroad connection.

CN has grave doubts as to whether installation of a switch connection at Warroad will furnish sufficient business to justify its construction and maintenance, and, accordingly, whether it has any obligation under 42 U.S.C. § 11103 to install a switch at all. However, it is willing to resolve this matter on terms which address MNN's desire to minimize or eliminate any contribution to the cost of constructing a switch. Our proposal is as follows:

CN will install a switch at Warroad at an estimated cost of \$150,000 with MNN paying 50% of those costs in advance. MNN will guarantee that a minimum of 400 cars per year will be interchanged from MNN to CN via Warroad in each of the three years immediately following the installation of the switch.

In the event the 400-car minimum is not met, MNN would pay CN \$500 for each car short of the minimum for that year. In the event traffic shipped to CN is greater than 800 cars over any one of the three one-year periods, CN will rebate to MNN 1/3 of MNN's investment in the switch, with a potential rebate of 100% of MNN's investment should the 800-car threshold be reached in each of the three years. In the event MNN interchanges more than 500 but less than 800 cars to CN during any of the three one-year periods, MNN will neither be required to pay any shortfall nor entitled to receive any rebate for the year in question.

CN and MNN would further agree to share ongoing maintenance on an equal basis.

It appears from the tone of your letter that MNN is all but convinced that it will be able to interchange at least 1,000 carloads of grain a year to CN if only a switch were installed at Warroad. Assuming your client is correct, MNN will recoup 100% of its investment in

EXHIBIT A

Thomas F. McFarland, Esq.
December 9, 2002
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three short years under the formula we are now proposing. CN believes this proposal is reasonable and fully consistent with its obligations under 42 U.S.C. § 10742 and § 11103.

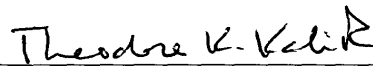
Please do not hesitate to contact me should you have any questions or comments regarding the above.

Sincerely,

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of July, 2003, a copy of the foregoing **Answer of Canadian National Railway Company to Formal Complaint** was served by overnight delivery upon:

Thomas F. McFarland, Esq.
Thomas F. McFarland, P.C.
208 South LaSalle Street
Suite 1890
Chicago, Illinois 60604-1194



Theodore K. Kalick