

ORIGINAL

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THOMAS F. MCFARLAND

DF D# 010219/001

June 11, 2003

By UPS overnight mail

Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit, Suite 713
1925 K Street, N.W.
Washington, DC 20423-0001

208041

RECEIVED
JUN 12 2003
MAIL
MANAGEMENT
STB

Re: Docket No. NOR-42080, *Minnesota Northern Railroad, Inc. v. Canadian National Railway Company*

Dear Mr. Williams:

Enclosed please find an original and 10 copies of Formal Complaint, for filing with the Board in the above referenced matter.

Also enclosed is Minnesota Northern Railroad's check #6248 in the amount of \$6,000 for the filing fee.

Kindly acknowledge receipt by date stamping the enclosed duplicate copy of this letter and return in the self-addressed stamped envelope.

ENTERED
Office of Proceedings

JUN 12 2003

Part of
Public Record

Very truly yours,

Tom McFarland

Thomas F. McFarland
Attorney for Minnesota Northern Railroad, Inc.

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FILED

JUN 12 2003

**SURFACE
TRANSPORTATION BOARD**

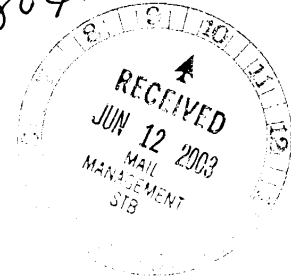
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**SURFACE
TRANSPORTATION BOARD**

BEFORE THE
SURFACE TRANSPORTATION BOARD

208041



MINNESOTA NORTHERN RAILROAD,
INC.,

Complainant,

v.

CANADIAN NATIONAL RAILWAY
COMPANY,

Defendant.

Docket No. NOR-42080

FORMAL COMPLAINT

ENTERED
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Public Record

MINNESOTA NORTHERN RAILROAD, INC.
P.O. Box 705
Crookston, MN 56716

Complainant

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JUN 12 2003
SURFACE
TRANSPORTATION BOARD

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1194
(312) 236-0204

Attorney for Complainant

DATE FILED: June 12, 2003

FILED
JUN 12 2003
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

MINNESOTA NORTHERN RAILROAD,)
INC.,)

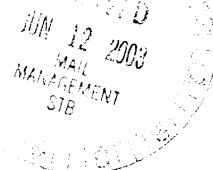
Complainant,)

v.)

CANADIAN NATIONAL RAILWAY)
COMPANY,)

Defendant.)

Docket No. NOR-42080



FORMAL COMPLAINT

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

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.
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.
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 jointed 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 for 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.
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.

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.
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.
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.
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.
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.
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.

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.
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.
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.
19. By reason of the foregoing facts and circumstances, CN has failed and refused to provide reasonable and proper facilities for the interchange of traffic between its line and the line of MNN at Warroad in violation of 49 U.S.C. § 10742.
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.

WHEREFORE, MNN respectfully requests that the Board take the following action:

- (1) institute a proceeding in response to the filing of this complaint;
- (2) require that CN file a timely answer to this complaint;
- (3) order that the parties meet, or discuss by telephone, discovery and procedural matters within 12 days after the answer is filed;
- (4) require that the parties file a report with the Board, within 19 days after the answer is filed, setting forth a proposed procedural schedule to govern future proceedings;
- (5) enter an order, after evidence and argument are taken, requiring CN to reinstall reasonable and proper interchange facilities with MNN at Warroad at CN's expense.

Respectfully submitted,

MINNESOTA NORTHERN RAILROAD, INC.
P.O. Box 705
Crookston, MN 56716

Complainant

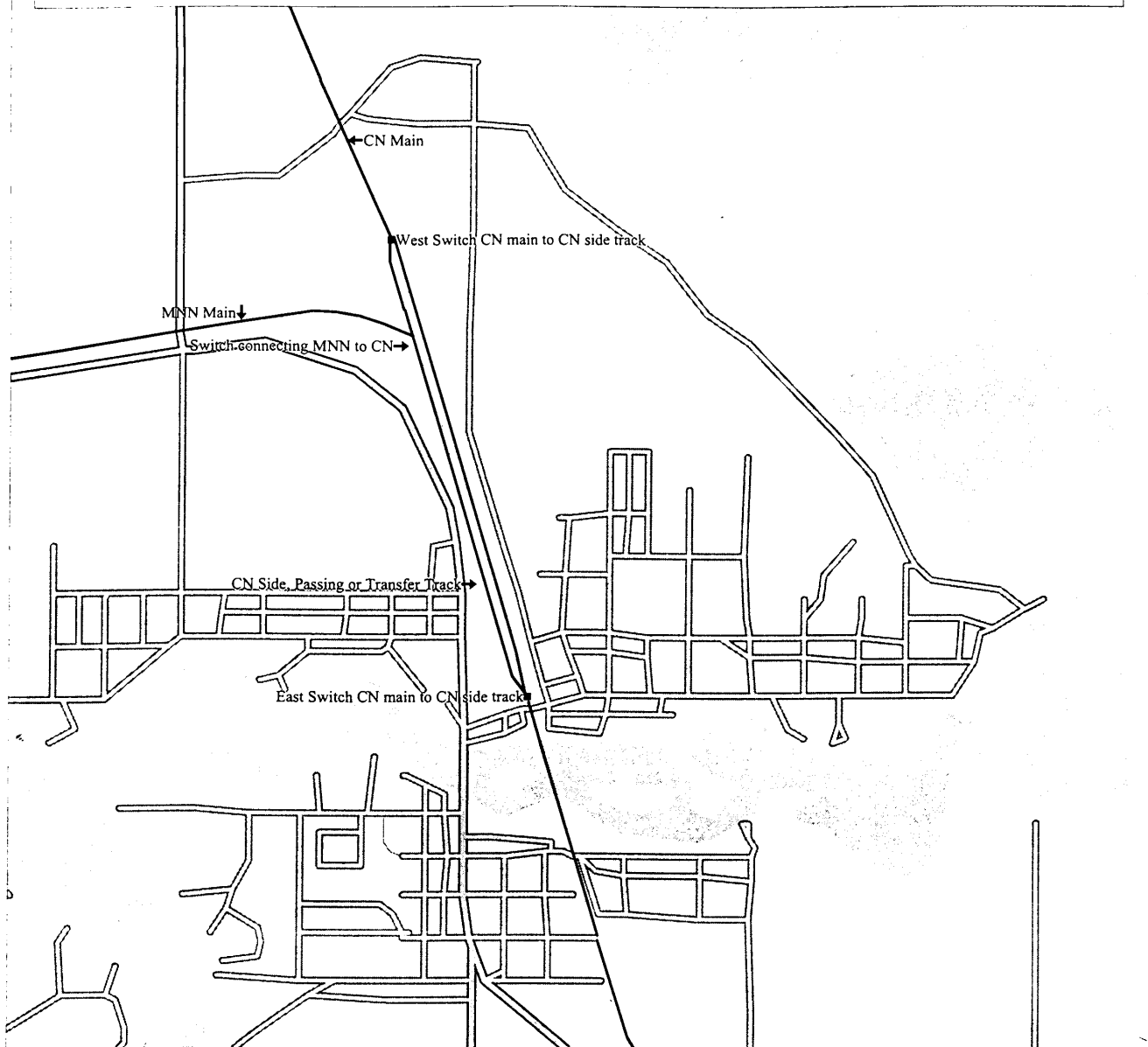
Thomas F. McFarland

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1890
Chicago, IL 60604-1194
(312) 236-0204

Attorney for Complainant

DATE FILED: June 12, 2003

CN, MNN at Warroad, MN



JUN 14 01 06:48P

MINN RAILROAD

2102011719

P. 1

467 MINNESOTA NORTHERN RAILROAD 467

551CNSOYBE

PAGE 1

WAYBILL

Car Initial and Number	Kind	No. Cars	Waybill Date	Waybill Number
MNN 12211	HC	1	06/14/01	16073

Road	Station	State	For	Consignee at Stop	By DES
STOP THIS					
CAR					
AT					

To No.	Station	State	From No.	Station	State
817	SUPERIOR	WI	55294	ROSEAU	MN

Billed at No.	Station	State

Route	A/S	B/L Number	B/L Date
MNN WARRD CN SUPER CPRS	S	NS	06/13/01

Consignee	Ref Number	RP	B/L Time
	551CNSOYBE		1607

Shipper

CENEX HARVEST STATES

CENEX HARVEST STATES - ROSEAU
232 2nd AVENUE SE
BOX 178
ROSEAU, MN 56751

SUPERIOR, WI

Party To Receive Freight Bill
AGRILIANCE
BOX 64039
ST PAUL, MN 551640089

Notify Party on Arrival

Special Instructions

WI WAIVE INSPECTION
SLC SHIPPER LOAD AND COUNT

Weighted
At DESTINATION WEIGHT AGREEMENT

Tariff Authority

Estimated Gross

Item:

Tare

325,500

Sec. 7

Allowance

62,500

NO

Estimated Net

263,000

Method of Payment

STCC Number

Declared Value not to Exceed

Seals

01 144 10

Pkgs	Qual	Description of Articles	Weight	Rate	Per	Freight	Advance	Prepaid
1.00	CLD	SOYBEANS	200000					

CERTIFICATE OF SERVICE

Pursuant to 49 C.F.R. § 1111.3, I hereby certify that on June 11, 2003, I served a copy of this complaint by facsimile and first-class mail on the chief legal officer of the defendant, addressed as follows:

Sean Finn, Esq.
SVP, Chief Legal Officer & Corporate Secretary
Canadian National Railway Company
935 de La Gauchetiere Street West
16th floor
Montreal, PQ H3B 2M9, CANADA

Fax #: (514) 399-4854
Attn: "Service of STB Complaint"



Thomas F. McFarland