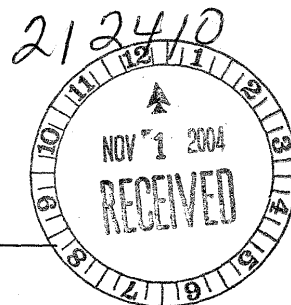


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BEFORE THE
SURFACE TRANSPORTATION BOARD



BOSTON AND MAINE CORPORATION
and

SPRINGFIELD TERMINAL RAILWAY COMPANY

v.

NEW ENGLAND CENTRAL RAILROAD, INC.

FEE RECEIVED
NOV - 9 2004
SURFACE
TRANSPORTATION BOARD

Docket No.

FD34612

FILED
NOV 9 - 2004
SURFACE
TRANSPORTATION BOARD

FORMAL COMPLAINT AND PETITION FOR DECLARATORY ORDER

JURISDICTION

1. The Board has jurisdiction to adjudicate this formal complaint pursuant to 49 U.S.C. §§ 11701 and 11704(b). The Board has jurisdiction to issue a declaratory order pursuant to 49 U.S.C. § 721 and 5 U.S.C. § 554(e) to terminate a controversy or remove uncertainty.

PARTIES

2. The Boston and Maine Corporation ("B&M") is a common carrier by rail subject to the jurisdiction of the Board pursuant to 49 U.S.C. § 10501(a). B&M maintains its principal place of business at Iron Horse Park, North Billerica, Massachusetts 01862.

3. The Springfield Terminal Railway Company ("ST") is a common carrier by rail subject to the jurisdiction of the Board pursuant to 49 U.S.C. § 10501(a). ST maintains its principal place of business at Iron Horse Park, North Billerica, Massachusetts 01862.

4. New England Central Railroad, Inc. ("NECR") is a common carrier by rail subject to the jurisdiction of the Board pursuant to 49 U.S.C. § 10501(a). NECR maintains its principal place of business at 2 Federal Street, Suite 201, St. Albans, Vermont 05478.

FACTS COMMON TO ALL CLAIMS

5. In a decision served February 6, 1990, the Board's predecessor in interest, the Interstate Commerce Commission ("ICC"), imposed the terms and conditions of a trackage rights order ("TRO") upon the B&M and NECR's predecessor in interest, Central Vermont Railway, Inc. ("CV").

6. The TRO was imposed by the ICC as part of the compensation to be paid to B&M in an eminent domain proceeding brought by the National Railroad Passenger Corporation ("Amtrak") to acquire a line of railroad located between White River Junction, Vermont and East Northfield, Massachusetts (the "Line").

7. CV acquired its interest in the Line from Amtrak subsequent to the eminent domain proceeding and subject to the requirement that CV grant trackage rights to B&M.

8. ST subsequently succeeded to the rights of B&M under the trackage rights agreement and currently operates trains on the Line.

9. NECR acquired the assets of CV, including the Line and CV's rights and responsibilities under the TRO, in 1995. NECR continues to own and operate the Line.

10. As the owner of the Line, NECR is required to inspect and maintain the line to a standard that is in compliance with the TRO and the Track Safety Standards promulgated by the Federal Railroad Administration ("FRA").

11. NECR also is required to maintain the Line in a safe condition for its intended uses.

12. NECR failed to inspect or maintain the Line to such standards in multiple locations along the Line, including the location where the derailment described below began.

13. Moreover, specialized testing performed on or about June 8, 2004 by FRA on the Line had disclosed that there were multiple locations along the line that were unsafe, did not meet FRA Class II standards, and were otherwise in violation of the FRA Track Safety Standards.

14. The results of this testing were provided to NECR before the Derailment, yet NECR failed to correct these dangerous conditions on the Line.

15. On or about July 3, 2004, an ST train was operating southbound on the Line when a car partially derailed near Hartland, Vermont.

16. Upon reaching a switch on the Line, the partially derailed car fully derailed, along with six additional cars.

17. The cause of this derailment (the "Derailment") was a defective, unsafe track condition.

FORMAL COMPLAINT FOR DAMAGES

First Cause of Action—Breach of the Interstate Commerce Act and an Order Issued Thereunder

18. B&M and ST repeat and reallege the allegations of Paragraphs 1 through 17 as if fully set forth here.

19. Part A of Subtitle IV of Title 49 of the United States Code (the "Interstate Commerce Act" or "ICA") and the TRO ordered by the ICC require NECR to maintain the Line at not less than FRA Class II condition.

20. The Line and, in particular, the portion of the Line where the Derailment began, was not being maintained by NECR at the time of the Derailment in a safe condition, nor was it being maintained in accordance with the TRO or the FRA Track Safety Standards.

21. NECR knew or should have known that the Line was not in Class II condition and not safe at the time of the Derailment.

22. NECR's failure to maintain the Line safely and in Class II condition was the cause of the Derailment.

23. NECR's failure to maintain the Line safely and in Class II condition violated the ICA and the TRO.

24. NECR's failure to maintain the Line safely and in Class II condition damaged B&M and ST in excess of \$100,000, including damaged or destroyed railroad cars, excess per diem costs, wrecking and rerailling costs and excess crew costs.

Second Cause of Action—Breach of Contract

25. B&M and ST repeat and reallege the allegations contained in Paragraphs 1 through 24 as if fully set forth here.

26. Pursuant to Sections 3.2 and 3.3 of the TRO, NECR is solely responsible for the maintenance and repair of the Line at all times to not less than FRA Class II condition in exchange for the payment of a trackage rights fee by ST.

27. The Derailment was caused by the failure of NECR to maintain the Line in accordance with its obligations under the TRO and the Track Safety Standards established by the FRA.

28. This failure of NECR to perform its obligations constituted a breach of the TRO, which is a contract between NECR, on the one hand, and B&M and ST, on the other.

29. As a result of NECR's breach of contract, B&M and ST suffered damages in excess of \$100,000, including damaged or destroyed railroad cars, excess per diem costs, wrecking and rerailling costs and excess crew costs.

**Third Cause of Action—Tortious Injury to B&M and ST Due to
Gross Negligence, Recklessness, and Willful Misconduct of NECR**

30. B&M and ST repeat and reallege the allegations contained in Paragraphs 1 through 29 as if fully set forth here.

31. NECR had a duty to maintain the Line in safe condition for B&M, ST and all other users thereof.

32. Portions of the Line—including the section where the Derailment began—were in substandard condition, in breach of applicable federal regulations, unsafe for users such as B&M and ST, and hence presented a substantial risk of derailment of B&M and ST's trains.

33. NECR knew of these adverse conditions.

34. NECR nevertheless failed to maintain the Line in an appropriate, safe, and legally sufficient condition.

35. NECR therefore breached its duty to B&M and ST in a grossly negligent, reckless, and willful manner.

36. B&M and ST were injured in excess of \$100,000, including damaged or destroyed railroad cars, excess per diem costs, wrecking and rerailing costs and excess crew costs, as the result of NECR's misconduct.

REQUEST FOR DECLARATORY ORDER

37. B&M and ST repeat and reallege the allegations contained in Paragraphs 1 through 36 as if fully set forth here.

38. NECR's breach of its duties under the ICA, the TRO, and at common law was grossly negligent, reckless, or willful.

39. NECR's breach of such duties was the proximate cause of the Derailment.

40. NECR has taken the position that under the terms of the TRO, ST is solely responsible for all expenses arising out of the Derailment, including expenses relating to the repair of the track and other expenses incurred by NECR, even if the sole cause of the Derailment was NECR's breach of its duties under the ICA, the TRO, and at common law.

41. In furtherance of this position, NECR has demanded payment by B&M and ST of approximately \$750,000, allegedly constituting NECR's expenses in respect of the Derailment.

42. In support of this position, NECR apparently relies upon Section 7.1 of the TRO, which NECR interprets as apportioning to B&M and ST all responsibility for the Derailment even if the Derailment was caused solely by NECR's grossly negligent, reckless, or willful misconduct.

43. Such an interpretation does not reflect the intent of the parties, or of the ICC, at the time the terms and conditions of the TRO were imposed.

44. Such an interpretation also would be contrary to public policy and the intent of the ICA, the Federal Rail Safety Act, and other applicable statutes, regulations, and orders.

WHEREFORE, B&M and ST respectfully request that the Board enter an order—

- (1) declaring that the TRO does not apportion any liability to B&M or ST for damages caused by NECR's gross negligence, recklessness, and willful misconduct;
- (2) awarding B&M and ST compensatory, incidental, and punitive damages due to NECR's violation of the ICA, the TRO (as order and as contract), and NECR's common law duties;
- (3) awarding B&M and ST their costs in connection with this proceeding, including a reasonable attorneys' fee; and
- (4) awarding B&M and ST such other and further relief as may be just.

B&M and ST suggest that this proceeding be handled under the Board's Modified Procedures.

Respectfully submitted,



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Robert B. Culliford
Guilford Rail System
Iron Horse Park
North Billerica MA 01862
Tel. 978-663-1029

Dated: October 29, 2004

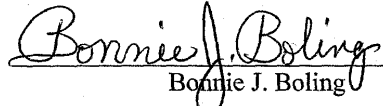
CERTIFICATE OF SERVICE

I certify that on this 1st day of November 2004, I served a copy of the foregoing document upon the respondent, New England Central Railroad, Inc., by facsimile and overnight courier, at the following address and facsimile number:

Chief Legal Officer
New England Central Railroad, Inc.
2 Federal Street, Suite 201
St. Albans, Vermont 05478

Fax no. 802-527-3455.

The cover page of the facsimile transmitting and the cover of the envelope containing such copy bear the legend, "Service of STB Complaint."


Bonnie J. Boling