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Before the
SURFACE TRANSPORTATION BOARD



Ex Parte No. 542 (Sub-No. 4)

REGULATIONS CONCERNING FEES FOR SERVICES PERFORMED
IN CONNECTION WITH LICENSING AND RELATED SERVICES-2002 NEW FEES

PETITION FOR RECONSIDERATION

ENTERED
Office of Proceedings

APR 20 2004

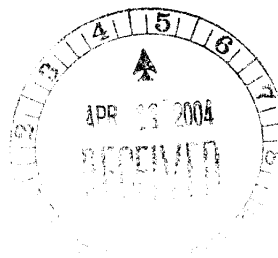
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Public Record

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Due Date: April 19, 2004

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John D. Fitzgerald,^{1/} for and on behalf of United Transportation Union-General Committee of Adjustment (UTU/GO-386), submits this petition for reconsideration of the Board's decision in this proceeding, dated March 23, 2004 (served March 29) (Decision). 69 Fed. Reg. 16173-75. (Mar. 29, 2004).

This petitioner on October 11, 2002, submitted comments, with respect to the institution of new fees, and for increases in existing fee items.

I. IT IS IRRATIONAL TO IMPOSE HIGHER FEES FOR
CHALLENGING A DECISION ON PROCEDURAL GROUNDS,
THAN FOR CHALLENGING A DECISION ON THE MERITS.

The Decision, for the first time, splits item 61. Appeals from a decision on the merits, or to revoke an exemption pursuant to 49 U.S.C. 10502(d), are to be covered by item 61(i), with a 33% increase from \$150 to \$200; whereas an appeal on procedural

^{1/} General Chairman for United Transportation Union on lines of The Burlington Northern and Santa Fe Railway Company, with offices at 400 E. Evergreen Boulevard, Vancouver, WA 98660.

matters, will be covered by item 61(ii), with a 67% increase from \$150 to \$250. (Decision 3).

The Board's decision lacks a rational basis. Staff procedural decisions should not to be accorded greater weight or credibility, than are decisions on the merits.^{2/} The Decision reasons that most decisions issued by staff under delegated authority are upheld when challenged administratively." (Decision 3). This is an irrational response, and appears directed to protect staff action. It is no answer for the Decision to claim that petitioner provides no specific examples of staff abuse of authority. (Decision 3).^{3/}

The issue is a dramatic increase in fees, from \$150 to \$250 to appeal a staff procedural decision, whereas a decision on the merits, by staff or the Board, is taxed an increase from \$150 to only \$200,

II. THE NEW FEE FOR "ADJUDICATORY SERVICE
NOT OTHERWISE COVERED" IS IMPROPERLY VAGUE,

The Board's new fee, item 88, imposing a new \$200 fee for "STB adjudicatory services not otherwise covered" is improperly vague, and is thus impermissible. This would be s "catch all" fee for anything Staff determines appropriate. For all that appears, this new fee would be another example of agency staff seeking to bolster its role in the decisional process.

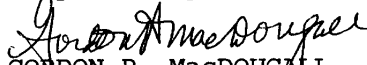
^{2/} Most appeals on procedural grounds will be from staff decisions, whereas appeals on the merits are more likely to be an initial Board decision. However, the line between "procedure" and "merits" is often difficult to mark.

^{3/} We decline to delve into abuses of staff authority. The agency and/or its predecessor, are not immune on this score.

CONCLUSION

The Board should reconsider its March 29, 2004 decision, and should delete items 61(ii) and 88.

Respectfully submitted,


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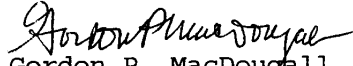
April 19, 2004

Attorney for John D. Fitzgerald

Certificate of Service

I hereby certify I have served a copy of the foregoing upon all parties of record by first class mail postage-prepaid.

Washington DC


Gordon P. MacDougall