

ORIGINAL

Before the
SURFACE TRANSPORTATION BOARD



Finance Docket No. 35081

CANADIAN PACIFIC RAILWAY COMPANY, ET AL.-CONTROL-
DAKOTA, MINNESOTA & EASTERN RAILROAD CORP., ET AL.

BRIEF

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Due Date: July 2, 2008

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BRIEF

Jay L. Schollmeyer,^{1/} for and on behalf of United Transportation Union-General Committee of Adjustment (UTU/GO-386), submits this Brief in opposition to the application.

UTU/GO-386 filed the verified statement of Jay L. Schollmeyer on March 4, 2008, in accordance with the Board's schedule, served December 27, 2007.^{2/} The applicants replied on April 18, 2008. (CPR-14/DME-14, Vol. 1, pp. 67-69).

The Board should deny the application by Canadian Pacific Railway Company (CPR) to control Dakota, Minnesota & Eastern Corporation (DM&E) and Iowa, Chicago & Eastern Railroad Corporation (IC&E).

UTU/GO-386 is concerned with approval of the transaction, without knowing whether there will be significant coal transportation forthcoming over the DM&E or IC&E lines to be acquired. The

^{1/} General Chairman for United Transportation Union on lines of BNSF Railway Company, with offices at 400 E. Evergreen Blvd., Vancouver WA 98660.

^{2/} 73 Fed. Reg. 923-30 (Jan. 4, 2008).

applicants respond that the environmental consequences will be considered if and when a demand for such transportation should arise.

However, if the coal traffic should develop, the reopening for environmental considerations would be insufficient. There should be a reopening for approval of the control transaction, when the facts become known, under the governing statutes, primarily 49 U.S.C. 11324. The patterns for such new business would be highly significant and warrant new findings, particularly under 49 U.S.C. 11324. At the minimum, the Board should not approve the control transaction at this time for the movement of the coal.

The applicants in their response have misunderstood the interests of railroad employees under the statute. First, the interests of BNSF employees are to be considered in determining whether the transaction should be approved. Such employee interest is not confined to those persons employed by applicant rail carriers. We do not understand that the Board will not consider employee interests as part of the "public interest" in the approval process. Second, specific protection for adversely affected BNSF employees, if the transaction nevertheless is approved, is another matter. Applicants point to some precedent denying protection for non-applicant employees. However, the cases are not uniform in this regard, particularly where employees in terminal areas are involved. See: Soo Line Railroad Company v. United States, 280 F.Supp. 907, 921-26 (D.Minn.1968) (three-judge); Railway Labor Executives' Association v. ICC, 216 F.Supp. 101, 102-4 (E.D.Va.1963) (three-judge); Black v. Interstate Commerce Commission, 814 F.2d 769 (D.C. Cir. 1987). Here, protection should

be afforded BNSF employees, in the event the transaction is approved.

Unfortunately, UTU/GO-386 cannot suggest the appropriate level of employee protection in the absence of the factual and environmental facts under contemplation, but which have not been made of public record. Of course, the minimum statutory protection in any event would be the New York Dock employee conditions.

The Board should give careful consideration to the 9-page UTU/GO-386 submission of March 4, 2008, including the verified statement of Jay L. Schollmeyer.

The application should be denied.

Respectfully submitted,


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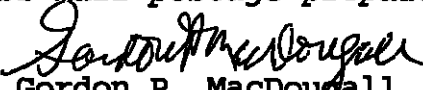
July 2, 2008

Attorney for Jay L. Schollmeyer

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