

Job 282

September 25, 2002



VIA FEDERAL EXPRESS

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

Re: Finance Docket No. 34004
*Canadian Pacific Railway Company and Napierville Junction
Railway Company – Corporate Family Transaction Exemption –
St. Lawrence & Hudson Railway Company Limited*

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of my reply to *Canadian Pacific Railway Company's Opposition to Petition to Reopen* filed September 5, 2002.

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

SEP 30 2002

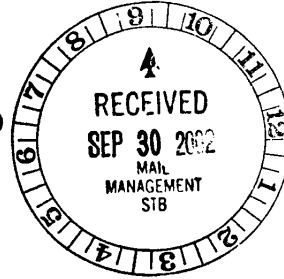
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Public Record

Very truly yours,

Karen Cline

Karen Cline
15128 Gage Street
Taylor, Michigan 48180

Before the
SURFACE TRANSPORTATION BOARD
Washington, D. C. 20423



Finance Docket No. 34004

*Canadian Pacific Railway Company and
Napierville Junction Railway Company
– Corporate Family Transaction Exemption –
St. Lawrence & Hudson Railway Company Limited*

**REPLY TO CANADIAN PACIFIC RAILWAY COMPANY'S
OPPOSITION TO PETITION TO REOPEN**

Karen Cline (Cline) files this reply to the Canadian Pacific Railway Company's Opposition to Petition to Reopen filed with the Board on September 5, 2002. Cline previously filed a Petition to Reopen and Impose Oversight with the Board on July 27, 2002 citing the fact that she was pursuing:

...rights under the proceeding and NYD. However, given the fact that CPR corporate headquarters are located in a foreign country; communications and ultimately enforcement tenuous; Cline hereby requests the Board to reopen the exempt proceedings and impose oversight. Such actions will insure the public interest is protected in this proceeding and the Board's imposition of §11326 for the benefit of U.S. railroad employees via the NYD protective conditions are expeditiously followed.¹

In Canadian Pacific Railway's (CPR) opposition it has advanced arguments inappropriate for consideration by the Board – such arguments are more appropriately proffered to a New York Dock (NYD) §11 Arbitration Committee. These arguments,

¹Cline informed CPR on July 9, 2002 that if it continued to ignore previous correspondence (4/19 and 5/30) a reopening of FD 34004 would be sought.

although inappropriate for the Board's consideration in these proceedings, nevertheless underscore and emphasis the regulatory uncertainty which Cline anticipated being utilized by the CPR and its representatives.

It was for this very reason that Cline requested the Board to impose oversight thereby insuring the arbitral avenues provided by NYD are followed by CPR. The Board has consistently provided a basic framework for mitigating labor impacts and provided affected employees with *"substantive benefits and arbitration, if necessary to resolve disputes regarding implementation of particular transactions."*² This was reiterated in a letter dated June 21, 2002 from Ms. Linda Morgan, Chairman STB, to Cline assuring that under the Board's imposed protection if *"unable to negotiate a satisfactory resolution of your claim filed with the railroad, you have the right to have the matter submitted to arbitration."*

CPR's OPPOSITION

CPR argues before the Board that Cline has *"failed to take the steps necessary to bring her claims to an arbitral board as required by the procedural provisions of the very decision she is attempting to use to claim the benefits."* Citing §11 of NYD CPR argues that Cline is untimely and has not requested arbitration.

CPR has subsequently amended these assertions by reference to the September 5, 2002 letter from Cline (appended) to Ms. Frankenberg, Assistant Vice President

²See Union Pacific – control merger – Southern Pacific, FD 32760, Decision No. 44 (August 6, 1996).

Labor Relations.³ Now CPR asserts that Cline was untimely in requesting §11 arbitration and the providing of a list of acceptable arbitrators to decide the matter.

As previously stated, in matters involving the application and interpretation of imposed protection the Board has consistently restrained itself by holding that: *"those most familiar with the complexities of labor law and particular problems associated with railroad employees would determine disputes arising out of such conditions."*⁴

Cline followed acceptable and standard procedures in the development of the issue and expression of the dispute as it exists on-the-property. Procedures for development are utilized by employees and carriers alike for the purpose of ultimately settlement of outstanding disputes.⁵ The fact that Cline continuously corresponded with CPR representatives in Canada (documentation available upon request) to this end is uncontested.⁶

NYD arbitration case law involving similar situations support the right and obligation of the parties to a dispute to make every reasonable attempt for settlement

³CPR filed a Motion to *Supplement the Record with the Board* on September 18, 2002.

⁴Norfolk & W. Ry. Co. and New York, C. & St. L. R. Co. Merger, 9 I.C.C. 2d 1021, 1025 (1993) as cited in Carmen III.

⁵§11 provides for disputes to be progressed *"upon notice in writing served by one part on the other to refer a dispute or controversy to an arbitration committee..."* after determination that a dispute cannot be settled.

⁶Noteworthy, CPR representative Gerth wrote to Cline without identifying herself or her position with Leonard, Street and Deinard – an association unknown to Cline at that time. Additionally, CPR representatives whom Cline was in contact over this matter subsequently retired from service without informing Cline of this fact – as noted in CPR's opposition.

before arbitration, as the last resort, is elected. Moreover, NYD §11 arbitrators have consistently held that NYD does not place restrictive time limits upon progression of disputes.⁷

CPR is aware of the consistency of these decisions and the factual record in this dispute dispels any time limit issue applicable to Cline's consistent pursuit of this matter. What CPR's argument does reveal is its consistent attempt to evade the Board's imposition of NYD in FD 34004.

CPR asserts that Cline seeks the Board's determination over an issue of causation, the calculation of benefits, or resolution of other factual questions. These assertions are both inaccurate and incorrect. A perfunctory review of Cline's motion for reopening and oversight clearly validates the request was made to assure that *"the NYD protective conditions are expeditiously followed"*.

Cline rebuts the assertions of CPR as baseless and purely self-serving. CPR upon advice of counsel is attempting to mitigate its obligations by ignoring the dictates of the protective arrangement imposed by the Board.⁸

Conclusion

⁷See BN v. BRC (Vernon) FD 28250, FD 28250, 1-3-86, wherein it was held: *"...it is noted that there are no strict time limits in the New York Dock conditions."* Also, see BO v. BRS (Peterson) FD 28905, 2-28-87. And, Pennsylvania Railroad – merger – New York Central Railroad FD 21989 (Sub-No. 3) Arbitration Review, December 2, 1998.

⁸See Rio Grande Industries – control – Southern Pacific FD 32000 (Sub-No. 12) Arbitration Review (September 17, 2002) which held: *"...under New York Dock, even if an individual employee is an actual member of a union (not merely eligible for unionization), the*

THEREFORE, Cline requests the Board to grant the petition and reopen the proceedings in Finance Docket No. 34004, Canadian Pacific Railway Company and Napierville Junction Railway Company – Corporate Family Transaction Exemption – St. Lawrence & Hudson Railway Company Limited; and, impose oversight to insure prompt adherence and arbitration under NYD.

Cline will serve a copy of this petition upon Leonard, Street and Deinard, 150 South Fifth Street, Minneapolis, MN 55402 – Diane Gerth.

Respectfully submitted,

Karen Cline

Karen Cline
15128 Gage
Taylor, Michigan 48180

Attachments
September 25, 2002

employee has standing to pursue arbitration under New York Dock...

September 5, 2002

Ms. Cathryn S. Frankenberg
Assistant Vice President
Labor Relations & Human Resources - US
Canadian Pacific Railway Company
P. O. Box 530
Minneapolis, MN 55440

Dear Ms. Frankenberg:

This will acknowledge your letters of July 25, 2002, your file: 0-0151-001, in which you indicated that upon the retirement of Mr. Brazier from the service of the Canadian Pacific Railway all correspondence involving my entitlement to an election of the New York Dock (NYD) protective conditions should be addressed to you.

Your letters indicate that my entitlement to NYD is denied because the reorganization of the Border Services in the United States (US) previously performed by the St. Lawrence and Hudson (St.L&H) and transferred to Canada and the jurisdiction of the Canadian Pacific Railway Company (CPR) was not an action subject to approval of the Surface Transportation Board (STB). Additionally, you state that any claim for benefits is improper and not supported by the collective bargaining agreement.

Ms. Frankenberg, there is absolutely no question that CPR sought approval from the STB to take-over the rail operations of the St.L&H in Finance Docket No. 34004. Subsequently, after STB approval the US rail operations and assets of the St.L&H were taken over by CPR in total. Moreover, there is absolutely no question that CPR then transferred and consolidated all St.L&H Border Service work in the US to its CPR operations in Canada – these are indisputable facts and a matter of record.

In consideration of the CPR taking over the operations and assets of the St.L&H the STB imposed (with acceptance of CPR in its initial filings) the statutory protection prescribed by US law (49 U.S.C. 11326) for the benefit of US railroad employees. That protection is NYD.

Notwithstanding these facts, your predecessor and now you contend that such actions are not attributable to the reorganization or subject to the protection imposed by the STB in FD 34004. Clearly, the Carrier's contentions are not grounded in fact or reality.

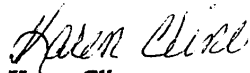
I would appreciate the opportunity to discuss this matter with you at your earliest convenience. You may call me at (734) 946.1418 Monday through Friday during your regular business hours.

However, if the Carrier still persists in its insupportable position, then I suggest you call me to discuss the selection of a neutral member for a NYD §11 Committee. Below is a list of acceptable arbitrators with protective agreement experience. They are:

Joseph Sickles
Dana Eischen
Jack Fletcher
Edward Suntrup
M. David Vaughn

Your prompt attention and response is appreciated.

Yours truly,



Karen Cline
15128 Gage Street
Taylor, Michigan 48180