

LEONARD, STREET AND DEINARD

PROFESSIONAL ASSOCIATION

206260

September 18, 2002

Diane P. Gerth

612-335-1463

diane.gerth@leonard.com



VIA FACSIMILE AND U.S. MAIL

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street NW
Washington DC 20423

ENTERED
Office of Proceedings

SEP 24 2002

Part of
Public Record

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

Dear Mr. Williams:

Enclosed for filing in the above-captioned proceeding please find the original and ten (10) copies of Canadian Pacific Railway Company's Motion to Supplement the Record. These copies are to replace the faxed copy of this document that was filed with your office on September 18, 2002.

Very truly yours,

LEONARD, STREET AND DEINARD
Professional Association

A handwritten signature in cursive script, appearing to read "Diane P. Gerth".

Diane P. Gerth

DPG:sf

cc: Karen Cline w/encl.
Paul Guthrie w/encl.
William Tuttle w/encl.
Murray Ross w/encl.
Robin Mullaney w/encl.

150 SOUTH FIFTH STREET SUITE 2300 MINNEAPOLIS, MINNESOTA 55402 TEL 612-335-1500 FAX 612-335-1657
2260187v1

LAW OFFICES IN MINNEAPOLIS, SAINT PAUL AND MANKATO

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.



STB Finance Docket No. 34004

CANADIAN PACIFIC RAILWAY COMPANY AND NAPIERVILLE JUNCTION RAILWAY
COMPANY – CORPORATE FAMILY TRANSACTION – ST. LAWRENCE & HUDSON
RAILWAY COMPANY LIMITED

CANADIAN PACIFIC RAILWAY COMPANY'S
MOTION TO SUPPLEMENT THE RECORD

ENTERED
Office of Proceedings

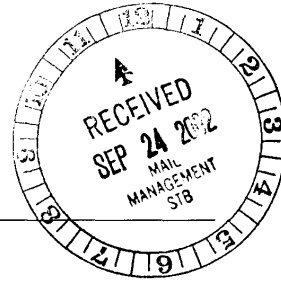
SEP 24 2002

**Part of
Public Record**

CANADIAN PACIFIC RAILWAY

Diane P. Gerth, Esq.
Leonard, Street and Deinard
Professional Association
150 South Fifth Street
Minneapolis, MN 55402
(612) 335-1500

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.



STB Finance Docket No. 34004

CANADIAN PACIFIC RAILWAY COMPANY AND NAPIERVILLE JUNCTION RAILWAY
COMPANY – CORPORATE FAMILY TRANSACTION – ST. LAWRENCE & HUDSON
RAILWAY COMPANY LIMITED

CANADIAN PACIFIC RAILWAY COMPANY'S
MOTION TO SUPPLEMENT THE RECORD

COMES NOW Canadian Pacific Railway Company ("CPR") with its motion seeking permission to file materials received subsequent to its response to Petitioner Cline's Petition to Reopen this matter.

On September 13, 2002, Cathryn Frankenberg, CPR's Assistant Vice President, Labor Relations & Human Resources - US, received a letter from Cline in this matter (attached hereto as Exhibit A). The letter was dated September 5, 2002, and in it Cline requested for the first time that the dispute in this matter be referred to arbitration under New York Dock § 11 procedures. See, New York Dock Railway – Control – Brooklyn Eastern District, 306 I.C.C. 60, 87-88 (1979). Although clearly beyond the twenty-day time limitation in § 11, Cline is now seeking arbitration of her claim that she is an employee affected by the STB-authorized transaction. The fact that she is now seeking arbitration is relevant to the Petition that she has filed with the Board and CPR respectfully requests that it be allowed to supplement the record in this matter by submitting this September 5, 2002 letter.

By her belated request for arbitration under § 11, Cline acknowledges that a § 11 arbitration is appropriate to determine whether or not she was an employee affected by the

transaction. Indeed, under § 11(e) it is her obligation to “identify the transaction and specify the pertinent facts of that transaction relied upon.” 360 ICC at 88 (emphasis added).

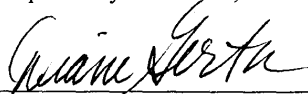
In this matter, Cline continues to make the conclusory statement that the abolishment of her position in Detroit and the relocation of the border services work to Winnipeg occurred as a result of the corporate structure changes that lead to the filing of the Notice of Exemption in early 2001 in Finance Docket No. 34004. Although the verified statements provided by CPR in its initial response to Cline’s petition demonstrated that Cline cannot establish the necessary causal connection, she now recognizes that a dispute such as this belongs in an arbitral forum.

However, her request for arbitration will also ultimately fail as untimely. Section 11 of the New York Dock labor protective provisions specifically requires that in the event the railroad and its employees cannot settle a dispute regarding the “interpretation, application, or enforcement of any provision of this appendix” may refer the matter to arbitration “within twenty days after the dispute arises.” 360 ICC at 87. By any calculation of time, Cline’s request is untimely. Her claim for New York Dock benefits was denied in a May 8, 2002 letter from counsel and this denial was reiterated in the July 25, 2002 letters from Cathryn Frankenberg, CPR’s Assistant Vice President, Labor Relations and Human Resources – US. She was aware of CPR’s position months ago, but failed to comply with the straightforward requirements of the procedural steps of New York Dock to perfect her claim that she was entitled to benefits beyond those her union negotiated and beyond what she is currently receiving. Cline’s belated recognition that she should have sought § 11 arbitration to resolve the dispute underscores the procedures that she should have followed, but chose not to. She has instead sought relief directly from the Board in this proceeding.

For these reasons and for all the reasons outline in CPR's earlier opposition to the petition, her petition should be denied.

Dated: September 18, 2002

Respectfully submitted,



Diane P. Gerth, Esq.
Leonard, Street and Deinard
Professional Association
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402
(612) 335-1500

CERTIFICATE OF SERVICE

I hereby certify that on September 18, 2002, I served Canadian Pacific Railway Company's Motion to Supplement the Record relative to STB Finance Docket No. 34004 by U.S. Mail properly addressed and with postage prepaid upon Karen Cline, 15128 Gage Street, Taylor, Michigan, 48180.

Dated at Minneapolis, Minnesota this 18 day of September, 2002.



Diane P. Gerth

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.

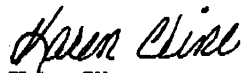
EXHIBIT A

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