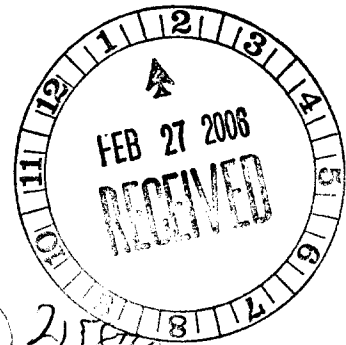


ORIGINAL

Before the
SURFACE TRANSPORTATION BOARD



Finance Docket No. 34830

KANSAS CITY TRANSPORTATION COMPANY LLC
--LEASE AND ASSIGNMENT OF LEASE EXEMPTION--
KANSAS CITY TERMINAL RAILWAY COMPANY AND KAW RIVER RAILROAD, INC.

Finance Docket No. 34831

KANSAS CITY TERMINAL RAILWAY COMPANY
--INTRA-CORPORATE EXEMPTION--
KANSAS CITY TRANSPORTATION COMPANY LLC

PETITION FOR STAY ^{*/}

GORDON P. MacDOUGALL
1025 Connecticut Ave., N.W.
Washington DC 20036

Attorney for Brotherhood of
Locomotive Engineers and Trainmen,
a Division of the Rail Conference-
International Brotherhood of
Teamsters

February 27, 2006

*/ Expedited handling requested, inasmuch as the two notices of exemption are filed and stated to become effective at 12:01AM on March 1, 2006.

Before the
SURFACE TRANSPORTATION BOARD



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PETITION FOR STAY

Preliminary Statement

Brotherhood of Locomotive Engineers and Trainmen, a Division of the Rail Conference-International Brotherhood of Teamsters (BLET), petitions for stay of the operation of the notices of exemption for the two captioned proceedings, filed February 22, 2006, pending disposition of BLET's forthcoming petition to reject the notices of exemption, or to revoke the exemptions; a stay would also appear appropriate to assist the effective jurisdiction of the Board in Finance Docket No. 34509,^{1/} and the jurisdiction of the reviewing court in No. 05-1233 (USCA-DC Cir.).^{2/}

1/ Kaw River Railroad, Inc.-Acquisition and Operation Exemption-The Kansas City Southern Railway Company.

2/ Brotherhood of Locomotive Engineers, Etc. v. U.S.A. and S.T.B.
(Argument scheduled for March 23, 2006).

Background

The notice in F.D. No. 38430 is by Kansas City Transportation Company, LLC (KCTL), a wholly-owned subsidiary of Kansas City Terminal Railway Company (KCT), which would (1) lease certain tracks from KCT, and (2) have Kaw River Railroad Company (KRR) assign to KCTL KRR's operating and lease rights over KCT tracks which have been subleased to Kaw River Railroad Company (KRR), and KRR's tracks which have been leased from The Kansas City Southern Railway Company (KCS). (FD 38430, Notice 4, 16-18 & Ex. C).^{3/}

Although KCTL states it will assume common carrier rights and obligations on the tracks, it expects that the actual rail service will be provided by one or more agreements with contract operators. (FD 38430, Notice 4, 18 & Ex. C, p. 3).^{4/}

In essence, the only change in the present situation from that referenced in Finance Docket No. 34509, would be to change the name of the so-called "carrier" from KRR to KCTL, and to place within the KCTL operation, certain additional KCT trackage, operated by KCS, but which had not been subleased to KRR. The employees would be the same KRR employees, except that certain additional KCS work would be transferred to KRR employees.

The justification for the notice is said to be that the underlying lease of the KCT tracks to KCS will expire on March 1, 2006. (FD 34830 Notice 5).

^{3/} The pagination of the Notice is somewhat confusing; this petition for stay references the STB website pagination.

^{4/} The text of the notice indicates contract operators, but the caption indicates a single contract operator. (FD 34830, Notice 18; Ex. C, p. 3).

The notice in F.D. No, 34831 is for KCT to control its subsidiary KCTL when the latter is said to become a "common carrier" upon acquisition of certain trackage leased from KCT or assigned from KRR. KCT is not an operating carrier and, likewise, KCTL would not become an operating carrier.

REASONS FOR STAY

I. BLET HAS A SUBSTANTIAL LIKELIHOOD OF SUCCESS;
THE STB LACKS AUTHORITY OVER THE LEASE OF
SWITCHING TRACKS; AND OTHER FEATURES OF
THE TRANSACTIONS WARRANT REJECTION/REVOCATION.

The newly-formed non-carrier KCTL would acquire and operate switching tracks in the Kansas City, MO/KS terminal presently operated by KRR and KCS. The instant proceedings are a sequel to F.D. No. 34509, presently undergoing judicial review, and scheduled for argument on March 23, 2006.

The court briefing concluded February 9, with the submission of reply briefs. The two notices in the instant proceedings were filed February 21; however, the maps indicate they were prepared February 14, and the underlying documents remain to be completed. (FD 38430 Notice, 4, 10-14, Ex. A).

The STB should stay the operation of the exemptions for both notices. Of course, if the exemption in F.D. No, 34830 is stayed, a stay would be unnecessary at this time for the exemption in F.D. No. 34831.

1. The STB Lacks Authority over the Transaction. The notice in FD 34830 is filed under the non-carrier line acquisition class exemption, issued pursuant to 49 U.S.C. §10901. Yet the STB lacks

authority pursuant to §10901 over the acquisition or operation of switching tracks, by virtue of §10906:

The Board does not have authority under this chapter over construction,, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks.

Accordingly, the STB should reject the notice in F.D. No. 34830. Moreover, to the extent the non-carrier KCTL proposes to acquire or operate trackage leased by KRR, the KCTL notice should also be rejected on the ground KRR is not a carrier within the meaning of the §10901 class exemption.

BLET does not find it necessary to repeat its contentions made in F.D. No. 34509, or advanced on judicial review. KCTL is merely being substituted for KRR. Further, it appears KRR will be the contract operator for KCTL.

2. Status of KCTL. KCTL claims it will become a "common carrier." However, a mere statement to such effect does not make KCTL a common carrier and, of course, does not convert a switching track into a "line of railroad" for the purposes of §10901, §10906. All of the trackage to be included within the orbit of KCTL will be as an agent for KCS rail service.

Even assuming, arguendo, that KCTL would become a "common carrier," the test for "line of railroad" vs. "switching" is not necessarily the determination whether the operation is in common carriage. To be sure, the instant proceedings may be the initial KCTL acquisition/operation of trackage, perhaps coming under the challenged "entire line" rule; nevertheless a critical matter is KCTL's status as a switching agent for a line-haul carrier, along

with other indicia. Effingham RR Co.-Pet. for Declaratory Order, 2 S.T.B. 606, 610 (1997).

3. Not a Bona Fide Transaction. The establishment by KCT of a separate corporate subsidiary, KCTL, to serve as an umbrella for KCS to contract out its switching work to KRR, is not a bona fide transaction, and should not be permitted by the STB. The timing of the new KCTL notices follow receipt of the reply briefs in the court proceeding, Brotherhood of Locomotive Engineers & Trainmen v. STB (No. 05-1233, USCA-DC Cir), and after announcement of the court's scheduled argument.

The establishment of KCTL to stand in the stead of KRR is a "sham" transaction. The agency has often said it will not overlook a challenge to the bona fides of a transaction, with revocation, to protect the integrity of the agency processes, e.g., Minnesota Comm. Ry., Inc.-Trackage Exempt.-BN RR. Co., 8 I.C.C.2d 31, 37 (1991); Land Conservancy-Acq. & Oper.-Burlington Northern, 2 S.T.B. 673, 676 (1997).

4. The Notice for F.D. No. 34831. Although the Board, at its option, may not need to stay the exemption at this time in F.D. No. 34831, in the event it does stay the notice in F.D. No. 34830, BLET believes the better practice is to stay both exemptions. In F.D. No. 34831, KCT would exempt itself from approval for control of its subsidiary KCTL. However, KCT is not a "rail carrier" within the meaning of 49 U.S.C. 10102(5) as it does not provide common carrier railroad transportation for compensation. Likewise, KCTL is not a "rail carrier" for the same reasons. Accordingly, the class exemption for intracorporate transactions is inapplicable.

II. RAILROAD EMPLOYEES WOULD SUFFER
IRREPARABLE INJURY WITHOUT A STAY.

Railroad employees would suffer irreparable injury without a stay. The verified statement of William J. Martin is attached hereto. KCS employees presently perform the switching operations east of K.C. Star. Unless a stay is granted, this work would be assumed by a contractor of KCTC, presumably KRR. If BLET should ultimately prevail on the merits, KCS employees likely could not be compensated for damages.

III. OTHER PERSONS WOULD NOT SUFFER
INJURY IF A STAY IS GRANTED.

Other persons would not be injured if a stay is granted. The F.D. No. 34830 notice states the underlying lease of the KCT tracks to KCS will expire March 1, 2006. However, the matter of the expiration of the lease is within the control of KCS, and can be extended. If not, such is a further reason the STB should stay the transaction.

It is well-settled that a carrier, such as KCS, cannot unilaterally cancel a lease or trackage rights, over objection, absent agency approval. Smith v. Hoboken R. Co., 328 U.S. 123 (1946); Thompson v. Texas Mexican R. Co., 328 U.S. 134 (1946).

IV. THE PUBLIC INTEREST WARRANTS A STAY.

The public interest warrants a stay. The equities as between the parties support a stay. Moreover, the transaction documents are not available, and are the subject of a discovery request. The transaction documents also should be part of the agency record

for evaluation by the agency. The pending court proceedings are an additional reason supporting a stay at this time.

CONCLUSION

The STB should stay the operation of the notices of exemption pending disposition of petitions to reject/revoke, or until further order of the STB.

Respectfully submitted,



GORDON P. MacDOUGALL
1025 Connecticut Ave., N.W.
Washington DC 20036

Attorney for Brotherhood of
Locomotive Engineers and Trainmen,
a Division of the Rail Conference-
International Brotherhood of
Teamsters

February 27, 2006

Certificate of Service

I hereby certify I have served a copy of the foregoing, and upon counsel for applicants, by overnight express service (and by facsimile and telephone advice), to: Michael J. Barron, Jr., 29 North Wacker Dr., Chicago, IL 60606.
Washington DC



Gordon P. MacDougall

LAW OFFICES
GORDON P. MACDOUGALL
1025 CONNECTICUT AVE., N. W.
WASHINGTON, D. C. 20036

TELEPHONE
AREA CODE 202
223-9738

February 27, 2006

Mr. Michael J. Barron, Jr.
Fletcher & Sippel
29 North Wacker Dr.-#920
Chicago IL 60606

BY FACSIMILE

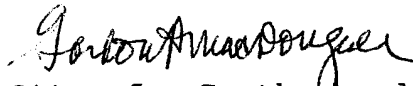
Re: STB Finance Docket No. 34830, Kansas City Transportation
Company LLC--Lease and Assignment of Lease Exemption--Kansas
City Terminal Railroad Company and Kaw River Railroad, Inc.

Dear Mr. Barron:

This is a discovery request. I desire a copy of the "finalize
written documents" referred to in the entitled notice of exemp-
tion, at page 4 (STB filed pagination), filed February 22, 2006,
in the captioned matter.

Your early cooperation will be appreciated.

Very truly yours,



Atty. for Brotherhood of Locomotive
Engineers & Trainmen, a Division of
the Rail Conference, International
Brotherhood of Teamsters.

VERIFIED STATEMENT OF
WILLIAM J. MARTIN

My name is William J. Martin. I am employed as a locomotive engineer by Kansas City Southern-ICE Joint Facility, an affiliate of The Kansas City Southern Railway Company (KCS). I have been employed by KCS-ICE, or its various predecessors, for the past 34 years. I reside in Lenexa, KS.

I am a member of the Brotherhood of Locomotive Engineers and Trainmen, a Division of the Rail Conference, International Brotherhood of Teamsters (BLET). I presently serve as Local Chairman for BLET's Division 930. For about 15 years, I was President of Division 930.

I submitted two verified statements (August 2, and September 28, 2004) in the Kaw River Railroad, Inc. (KRR) proceeding, Finance Docket No. 34509.

I am fully familiar with KCS operations in the Kansas City area.

I have read the notices of exemption in Finance Docket Nos. 34830 and 34831, dated February 21, and marked by the STB as filed February 22, 2006. I have also reviewed the five color-coded sketch maps included in each of these notices. Further, I have made an investigation into the facts and circumstances surrounding the two notices. My investigation is continuing, inasmuch as the maps are dated February 12, and the attorneys for the newly-created Kansas City Transportation Company (KCTL) on February 21 indicated

that although "in principal" agreement has been reached, the written documents are not yet "finalized." However, oral information to employees has circulated in the Kansas City terminal.

1. It is my understanding that any KCTL "service" on March 1, or thereafter, will be performed by the same persons as presently are employed by KRR. I do not know whether KRR will be the contract operator for KCTC, but it is anticipated there will be no material change in the employees actually doing the work.

2. The tracks proposed to be operated by KCTL, as indicated in the five maps included in the two notices, are basically the same as presently serviced by KRR crews, except for trackage east of KC Star, shown in the notices of exemption, Exhibit A, sheets 1 & 2. This work presently is performed by KCS crews, and would represent work lost for KCS crews at Albert Tamm Lumber, Paxton Lumber, Reload Central, and at Blue River yard among other locations. Loss of this work could result in reduced earnings for KCS employees.

3. KCS employees consider the KRR work, including that projected to be lost east of KC Star, to be our work. The service performed east of KC Star, and that to be subsumed by KCTL, is switching and industrial work. In the event the work should be transferred from KCS employees to KCTL (or KRR) employees, pursuant to the FD 34830 notice, and then the notice should be rejected or the exemption revoked, I know of no provision in our KCS/BLET agreement for damage claims by employees for carrier discontinuance of service ultimately found to be unlawful.

4. Kansas City Terminal Railway Company (KCT) is not presently an operating rail carrier in the Kansas City, KS/MO area, although in the past it was a rail carrier with its own operating employees.

VERIFICATION

STATE OF KANSAS)
COUNTY OF WYANDOTTE)

Under the penalties of perjury, I affirm the foregoing
verified statement is true and correct as stated.

/s/ William J. Martin

WILLIAM J. MARTIN

Dated at
Lenexa, KS
February 27, 2006