

ORIGINAL

Before the
SURFACE TRANSPORTATION BOARD



Finance Docket No. 34209

NORFOLK SOUTHERN RAILWAY COMPANY--TRACKAGE RIGHTS
EXEMPTION--DELAWARE AND HUDSON RAILWAY COMPANY--
BETWEEN SUNBURY, PA AND MECHANICVILLE, NY

✓ Finance Docket No. 34225

206025

NORFOLK SOUTHERN RAILWAY COMPANY--TRACKAGE RIGHTS
EXEMPTION--READING BLUE MOUNTAIN AND NORTHERN RAILROAD
COMPANY--BETWEEN LEHIGHTON YARD AND DUPONT, PA

MOTION TO COMPEL AND TO EXTEND TIME FOR
FILING SUPPLEMENTAL PETITION TO REVOKE

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Office of Proceedings

AUG 12 2002

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Public Record

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

Attorney for Samuel J. Nasca

Dated: August 12, 2002

Before the
SURFACE TRANSPORTATION BOARD



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Samuel J. Nasca,^{1/} for and on behalf of United Transportation Union-New York State Legislative Board (UTU-NY), submits this motion for an order compelling Norfolk Southern Railway Company (NS) to furnish the documents requested by discovery which UTU-NY served July 23, 2002. 49 CFR 1114.31. The discovery request is attached as Appendix A, and was served by FAX on that day, returnable within 15 days, or no later than August 7, 2002.

Upon issuance of an order requiring document production, the Board is requested to extend the time within which UTU-NY may supplement its petition to revoke, for a period not less than 15 days from the date NS is required to produce the requested documents, or until September 6, 2002, whichever is later. The UTU-NY

^{1/} New York State Legislative Director for United Transportation Union, with offices at 35 Fuller Road, Albany, NY 12205.

supplemental petition presently is due September 6, 2002. 49 CFR 1121.2.

ARGUMENT

1. The materials sought by discovery are mentioned in the governing trackage rights agreement between NS and Canadian Pacific Railway (CPR), attached to the Notice of Exemption in F.D. No. 34209, and for which the class exemption has been invoked. These materials are dated May 5, 1998, April 11, 1999, June 16, 1999, and Northeast Restructuring Agreement (together with Term Sheet dated February 13, 2002). Appendix A.

2. NS has furnished only a redacted copy of Northeast Restructuring Agreement and without the Term Sheet. NS on August 6, 2002, refused to furnish the balance of the discovery request, on the ground UTU and NS had reached an implementing agreement, stating that issues set forth in the petition to revoke should be completely resolved with production of the Restructuring Agreement.^{2/}

"The document request was served in both Finance Docket No. 34209 and in Finance Docket No. 34225. As UTU has reached an implementing agreement with Norfolk Southern and further as the issues set forth in the Petition should be completely resolved with the production of the Restructuring Agreement, Norfolk Southern will not be producing additional documents in response to the UTU-NY document request."

^{2/} NS did not file a separate reply to the UTU-NY discovery request; rather, NS included its response within its petitions for protective orders, filed August 6, 2002. F.D. No. 34209, Petition For Protective Order 4-5, n.1; F.D. No. 34225, Petition for Protective Order 5, n.2.

3. The NS refusal to furnish the relevant documents set forth in the trackage rights agreement is arrogant and irresponsible. NS and its employees will be acquiring trackage rights, whereas CPR and Reading Blue Mountain and Northern Railroad (RBMN) employees (both represented by UTU) will be deprived of business presently handled in haulage for NS, or otherwise naturally belonging to their employers. Although UTU has an implementing agreement with NS, matters are unresolved with respect to CPR and RBMN. See: Appendix B. Moreover, UTU-NY has not received an unredacted copy of the heavily-censored Restructuring Agreement with sufficient detail to perform an adequate analysis of the agreement, and the Board has not issued a protective order sought by NS. It is highly presumptuous for NS to imply that UTU-NY's examination of the Restructuring Agreement will completely resolve issues in the UTU-NY petition, or as the petition may be supplemented.

CONCLUSION

The Board should issue an order requiring NS to furnish UTU-NY with a copy of the agreements listed in Appendix A; and the Board should extend the time for UTU-NY to file its supplemental petition for not less than 15 days after NS has complied with such directive, or until September 6, 2002, whichever is later.

Respectfully submitted,


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

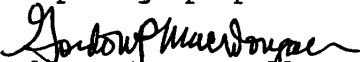
August 12, 2002

Attorney for Samuel J. Nasca

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

LAW OFFICES
GORDON P. MACDOUGALL
1025 CONNECTICUT AVE, N. W.
WASHINGTON, D. C. 20006

TELEPHONE
AREA CODE 202
223-9738

July 23, 2002

Mr. John V. Edwards
Norfolk Southern Corporation
Three Commercial Place
Norfolk VA 23510

Re: STB F.D. No. 34209, NS-Tr.Rts.-D&H Ry.
STB F.D. No. 34225, NS-Tr.RTs.-RBMN RR

Dear Mr. Edwards:

This is to request a copy of the agreements listed in F.D. No. 34209, Notice, Ex. 2, pp. 1-2, dated May 5, 1998, April 11, 1999, June 16, 1999, and Northeast U.S. Restructuring Agreement (together with Term Sheet dated February 13, 2002).

Please designate any portions of the agreements you wish to claim confidentiality, and we can attempt an understanding on this score.

You are requested to furnish these documents no later than August 7, 2002. 49 CFR 1114.26(b), 1114.30(a). If you desire not to mail these materials, they may be produced for my copying at my office.

If you have any question concerning this discovery request which you believe I may be able to answer or if I otherwise can be of assistance, please let me know.

Very truly yours,



APPENDIX A

LAW OFFICES
GORDON P. MACDOUGALL
1008 CONSTITUTION AVE. N. W.
WASHINGTON, D. C. 20006

July 25, 2002



TELEPHONE
AREA CODE 202
222-9708

Vernon A. Williams
Secretary
Surface Transportation Board
Washington DC 20423

JUL 26 2002

Part of
Public Record

Re: F.D. No. 34209, NS Ry.-Tr.Rts.-D&H Ry.-Sunbury, PA/Mechanicsville NY
F.D. No. 34225, NS Ry.-Tr.Rts.-RBMN RR-Leighton Yard/Dupont PA

Dear Mr. Williams:

This is to advise that Norfolk Southern Ry. employees represented by United Transportation Union today have reached agreement for an implementing agreement with that carrier.

The situation with respect to UTU-represented employees of Delaware and Hudson Railway Company, and Reading Blue Mountain and Northern Railroad Company, remain pending and unresolved.

Very truly yours,

Gordon P. MacDougall
Atty. for Samuel J. Nasca

cc: John V. Edwards-NS Ry.

APPENDIX B