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July 26, 2005

VIA FACSIMILE

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings

JUL 26 2005

Part of
Public Record



Re: Finance Docket No. 28676 (Sub No.-5) (Arbitration Review)

Dear Secretary Williams:

On July 20, 2005, Larry Thornton filed with the Board a pleading entitled "Background Necessary Information (Relevant to and additional cause of denial of emp. Right's etc.)," which purports to be an "amended and/or supplemental complaint" in the above-referenced action. On behalf of Canadian National/Grand Trunk Western Railroad (the "Carrier"), I am writing to request that the Board strike Mr. Thornton's July 20, 2005 filing as an impermissible reply to a reply under 49 C.F.R. § 1104.13(c). Indeed, this latest filing is the third reply to the Carrier's Reply in Opposition to the Petition for Review Mr. Thornton filed on behalf of Claimants T.K. Sorge and T.W. Black, and should be stricken from the record for that reason alone.

Alternatively, Mr. Thornton's latest filing should be dismissed for lack of jurisdiction because it is an attempt to appeal from a Railway Labor Act ("RLA") arbitration award issued on January 5, 2005 by Public Law Board No. 6774, in Case No. 10, Award No. 8 (Malin, Neutral). A copy of PLB No. 6774, Case No. 10, Award No. 8 is attached hereto. As Mr. Thornton's July 20 filing indicates, Arbitrator Malin's Award in that case involved the interpretation and application of the 2001 collective bargaining agreement between the Carrier and the Brotherhood of Railway Carmen Division of the Transportation Communications International Union ("BRC"). A copy of that collective bargaining agreement is included with Claimants' Petition for Review in this case as Exhibit 3. Specifically, Arbitrator Malin's Award involves the interpretation and application of Side Letter No. 1 to the 2001 collective bargaining agreement, in which the Carrier agreed to double the signing bonus payable upon ratification of the agreement in exchange for the withdrawal of all pending time claims, except those involving discipline, based on an occurrence prior to the April 9, 2001 effective date of the agreement.

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Thus, Arbitrator Malin's Award involves the interpretation and application of a collective bargaining agreement by a Public Law Board established under the RLA. Pursuant to Sections Three, First (q) and Three, Second of the RLA, 45 U.S.C. §§ 153, First (q), and Second, the federal district courts have exclusive jurisdiction over actions to review arbitration awards issued by Public Law Boards. Accordingly, the Board lacks jurisdiction over any appeal from Arbitrator Malin's Award, and Mr. Thornton's July 20, 2005 filing purporting to seek review of that Award should be dismissed for lack of jurisdiction.

Moreover, even if Mr. Thornton's July 20 submission could be characterized as an appeal of an arbitration award concerning the application of agency-imposed labor protective conditions, it is untimely under the Board's rules governing petitions for review of such awards. Under 49 C.F.R. § 1115.8, a petition for review of an arbitration award must be filed within twenty (20) days of the date of the decision. Arbitrator Malin's Award is dated January 5, 2005. Accordingly, Mr. Thornton's appeal from that decision, which was filed more than six months after the date of the Award, is untimely, and should be dismissed for this reason as well.

For all of these reasons, the Carrier respectfully requests that Mr. Thornton's July 20, 2005 filing be stricken from the record in this case, or alternatively, that Mr. Thornton's purported appeal from the Award issued by Arbitrator Malin in Public Law Board No. 6774, Case No. 10, Award No. 8 be dismissed.

Respectfully,



Andrew J. Rolfes

AJR/bc

Enclosure

cc: Larry G. Thornton (via reg. mail) (w/enc)
T.W. Black (via reg. mail) (w/enc)
T.K. Sorge (via reg. mail) (w/enc)

**NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 6774**

BROTHERHOOD OF RAILWAY CARMEN DIVISION	)	
TRANSPORTATION COMMUNICATIONS INTERNATIONAL	)	
UNION	)	
	)	Case No. 10
and	)	
	)	Award No. 8
CANADIAN NATIONAL/ GRAND TRUNK WESTERN	)	
RAILROAD CORPORATION	)	

Martin H. Malin, Chairman & Neutral Member
A. M. Novakovic, Employee Member
M..J. Kovacs, Carrier Member

Hearing Date: August 17, 2004

STATEMENT OF CLAIM:

1. That the Grand Trunk Western Railroad Company - Canadian National violated the terms and provisions of our current Agreement when they failed and/or refused Carmen employees who were hired by PDS Rail Car Services on December 31, 1996 the opportunity to participate in labor protective Agreements as specified in Side Letter No. 2 to the January 10, 1996 Agreement after they were furloughed from PDS Rail Car Services on March 7, 2001. A complete list of those employees who initially accepted employment with PDS can be found in Exhibit A, page 7. This list includes thirty six (36) employees which begins with F. Meddaugh and continues through K. Thomas.

2. That now, as just and proper relief, the Grand Trunk Western Railroad Company - CN now be required to provide all these Carmen employees with any/all of the protective conditions that are contained in Side Letter No. 2 of the January 10, 1996 Agreement. Also, that these identified Carmen be completely compensated for any and all lost work opportunities that they may have lost as a result of not being recognized as Protected employees and placed on the Carrier's "extra board", or returned to full employment with the Company. This to include vacation rights and pay for same, along with all Health and Welfare benefits being fully restored. All said relief to retroactive to the furlough date with PDS of March 7, 2001.

FINDINGS:

Public Law Board No. 6774, upon the whole record and all of the evidence, finds and holds that Employee and Carrier are employee and carrier within the meaning of the Railway Labor Act, as amended; and, that the Board has jurisdiction over the dispute herein; and, that the parties to the dispute were given due notice of the hearing thereon and did participate therein.

On April 9, 2001, the parties entered into Side Letter No. 1, which provides:

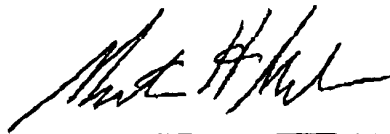
This will confirm our understanding that the signing bonus payment provided in Article I, Section 1, of the April 9, 2001 Agreement is doubled because the company received written advice of ratification of this agreement on or before April 14, 2001.

Additionally, upon payment of the above, all time claims, other than those involving discipline based on an occurrence prior to the effective date of this agreement, are considered withdrawn without precedent or prejudice.

It is apparent from the specifics of the claim that the incident giving rise to the dispute occurred on March 7, 2001. Side Letter No. 1 implicitly seeks to settle all matters of collective bargaining agreement interpretation occurring prior to April 9, 2001. Therefore, Side Letter No. 1 provided a mutually acceptable formula for resolution of disputes before its effective date. The instant claim falls within the settlement parameters established by the parties and must be dismissed.

AWARD

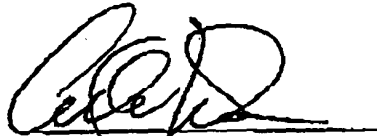
Claim dismissed.



Martin H. Malin, Chairman



M. J. Kovacks
Carrier Member



A. M. Novakovic,
Employee Member

Dated at Chicago, Illinois, January 5, 2005

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DATE: July 26, 2005

Number of Pages (inclusive): 5

NAME	FACSIMILE NUMBER	CONFIRMATION NUMBER
Hon. Vernon A. Williams	202-565-9002	202-565-1718

CLIENT: Canadian National

MATTER: New York Dock

FROM: Andrew J. Rolfes

TELEPHONE NO: (215) 567-7741

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