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Before the
Surface Transportation Board

JR - 25

STB DOCKET NO. AB-167 (Sub-No. 1189X)

**CONSOLIDATED RAIL CORPORATION – ABANDONMENT EXEMPTION –
IN HUDSON COUNTY, NJ**

STB DOCKET NO. AB-55 (Sub-No. 686X)

**CSX TRANSPORTATION, INC. – DISCONTINUANCE OF SERVICE EXEMPTION –
IN HUDSON COUNTY, NJ**

STB DOCKET NO. AB-290 (Sub-No. 306X)

**NORFOLK SOUTHERN RAILWAY COMPANY – DISCONTINUANCE OF SERVICE
EXEMPTION – IN HUDSON COUNTY, NJ**

**JAMES RIFFIN'S SUPPLEMENT TO HIS
APPEAL OF ALJ DRING'S OCTOBER 26, 2016 SERVED DECISION**

1. Comes now James Riffin, ("**Riffin**") who herewith respectfully Supplements his November 14, 2016 filed Appeal (JR-24) of ALJ Dring's October 26, 2016 Served Decision.

2. On October 25, 2016, Riffin sent a letter, Appx 448-449, to Yahoo, asking Yahoo to verify:

A. That the e-mails in Riffin's Yahoo e-mail account on August 24, 2016, were as listed on the print-outs provided to Yahoo by Riffin;

B. That the contents of specific e-mails were as depicted on the photocopies provided to Yahoo by Riffin.

3. On **November 26, 2016**, Riffin received Yahoo's **November 7, 2016** response to Riffin's October 25, 2016 letter to Yahoo, a copy of which is appended hereto, and paginated as Appx 591, 592.

4. The Yahoo letter essentially says:

A. The Stored Communications Act, 18 U.S.C. 2701 *et seq*, prohibits Yahoo from disclosing to anyone the contents of any e-mail. [Which holding has been upheld by the 9th Circuit in *Suzlon Energy v. Microsoft*, 671 F. 3d 726 (9th Cir. 2011)].

B. Yahoo will not produce **any** e-mail information, period, even when requested with a civil-proceeding subpoena.

5. Effectively, the Yahoo letter makes it clear, that City et al. should have taken advantage of Riffin's production of Riffin's e-mails, **on August 23, 2016**, and **again on August 24, 2016**, **immediately after** the August 24, 2016 hearing before ALJ Dring, wherein Riffin agreed to produce to City et al. all e-mails remaining in Riffin's e-mail account, between Riffin and the 'LLCs,' for City et al.'s 'inspection and copying.' And that City et al.'s refusal to take advantage of Riffin's production of his e-mails, forever bars City et al. from complaining about what he did, or did not, receive when Riffin forwarded to City et al. all of the e-mails remaining in Riffin's e-mail account on August 25, 2016, between Riffin and Daniel Horgan, counsel for the LLCs, Vickie Hyman, manager of the LLCs, and Steve Hyman, husband of Vickie Hyman.

6. Riffin will emphasize to the STB what 49 CFR 1114.31 (2) authorizes ALJ Dring to sanction Riffin for:

“If any party ... refuses to obey ... an order made under §1114.30 requiring him to **produce any document or other thing for inspection, copying, testing, sampling, or photographing or to permit it to be done** ... the Board may make such orders in regard to the refusal as are just”

7. ALJ Dring’s August 25, 2016 Order **did not order Riffin “TO PRODUCE ... FOR INSPECTION AND COPYING”** any ‘document.’ **NOR DID RIFFIN REFUSE TO “PRODUCE ... FOR INSPECTION AND COPYING”** any “document” **NOR DID Riffin refuse “to permit it to be done.”**

8. Without a showing that Riffin “refused to produce ... for inspection and copying” any document, or a showing that Riffin refused to “permit it to be done,” there is no basis for sanctioning Riffin pursuant to 49 CFR 1114.31. (These are the **only criteria** listed in 49 CFR 1114.31 upon which to base a sanction order.)

9. It should be kept in mind that Charles Montange testified:

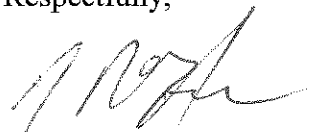
- A. “Now, what has happened most recently is that Mr. Riffin found out that I was coming into town for this, and because – he found out where I was having dinner last night and **was there.**” Apx 72: 9-12. August 24, 2016 hearing.
- B. “Mr. Montange: He was there; he was there with his computer. **He opened up his computer and displayed to me his e-mails.** ... So he did a search putting ‘Hyman’ up at the top and pulled up a whole sequence of e-mails. We went down the list until end of 2015, an e-mail exchange. It looked like it was material that was – I can’t remember whether it was material he sent to Hyman or Mr. Hyman sent to him or both, but there was a lot.” Apx 72:15-22; 73: 1-5. August 24, 2016 hearing.
- C. “To back up just a little bit, in response to the second motion to compel filed by the City, Mr. Riffin showed up at my – while I was thinking I was going to dinner, unannounced, **the evening before a hearing** before your Honor which resulted in this motion or your order that compelled him to make discovery. And **he offered at that point to make discovery, to actually show me e-mails, to make available his computer.**” Appx 112:13-21. October 24, 2016 hearing. Bold added.

10. Riffin argues that he “produced ... for inspection and copying” the e-mails that City et al. requested. Riffin certainly **DID NOT REFUSE** “to produce ... for inspection and copying” any of the e-mails that City et al. sought, **NOR DID Riffin** refuse “to permit it to be done.”

11. Consequently, there is no basis for ALJ Dring’s October 26, 2016 Served decision sanctioning Riffin.

12. WHEREFORE, Riffin prays that the STB **vacate** ALJ Dring’s October 26, 2016 Served decision sanctioning Riffin, and for such other and further relief as would be appropriate.

Respectfully,



James Riffin
P. O. Box 4044
Timonium, MD 21094
(443) 414-6210

CERTIFICATE OF SERVICE

I hereby certify that on the 28th Day of November, 2016, a copy of the foregoing James Riffin’s Supplement to his Notice of Appeal, and the Yahoo letter appended thereto, was served on all of the parties in this proceeding, either via e-mail, or via U.S. Postal Service, postage prepaid.



James Riffin

YAHOO!

November 7, 2016

Via U.S. Mail

James Riffin
P.O. Box 4044
Timonium, MD 21094

Re: Request for Information Pertaining to User Account: jimriffin@yahoo.com
(Internal Reference No. 327982)

Dear Mr. Riffin:

Yahoo! Inc. ("Yahoo") is in receipt of a letter dated October 25, 2016, in the above-referenced matter. As we understand it, you are seeking the production of information pertaining to a user account. Consistent with our Terms of Service and Privacy Policy, Yahoo requires a valid subpoena or other legal process to access or produce subscriber information on behalf of a requesting party. Accordingly, Yahoo will not be producing any information in response to your letter.

Additionally, please be advised that the Stored Communications Act ("SCA"), 18 U.S.C. § 2701, *et seq.*, prohibits Yahoo from disclosing certain information you seek. Specifically, the SCA prohibits Yahoo from disclosing "contents" of electronic communications, *e.g.*, unless one of the specifically enumerated exceptions to the prohibition is satisfied. None of these exceptions provide a basis for disclosure in response to legal process, even a court order, secured at a civil litigant's (or other non-governmental entity's) request. *See, e.g., Suzlon Energy Ltd. v. Microsoft Corp.*, 671 F.3d 726 (9th Cir. 2011) (affirming lower court's decision to deny a request to order production of emails to a non-governmental entity because the emails were protected from such disclosure by the SCA); *In re Subpoena Duces Tecum to AOL, LLC*, 550 F.Supp.2d 606 (E.D. Va. 2008) (holding that "the clear and unambiguous language" of the SCA prohibited AOL from divulging communications contents because the SCA "does not include an exception for the disclosure of electronic communications pursuant to civil discovery subpoenas").

Sincerely,

Yahoo! Inc. Legal Department

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