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November 21, 2005
BY HAND-DELIVERY

Surface Transportation Board
Office of the Secretary
Case Control Unit
1925 K Street, NW
Washington, DC 20423-0001

215185
ENTERED
Office of Proceedings

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Public Record



**Re: STB [I.C.C.] Finance Docket No. 32549 (BURLINGTON NORTHERN, INC. -
CONTROL AND MERGER - SANTA FE PAC. CORP. & ATCHISON, TOPEKA
& SANTA FE RY. CO.)**

Dear Mr. Williams:

Enclosed for filing are an original and ten copies of the following pleading on behalf of the BNSF Railway Company:

**REPLY OF BNSF RAILWAY COMPANY TO PETITION OF THE
BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN TO
ENFORCE LABOR ARBITRATION AWARD OR, IN THE
ALTERNATIVE, COMPLAINT REGARDING NON-COMPLIANCE WITH
A LABOR ARBITRATION AWARD**

Pursuant to Section 1002.2, a check for the \$200 filing fee accompanies this filing.
Thank you.

Sincerely,

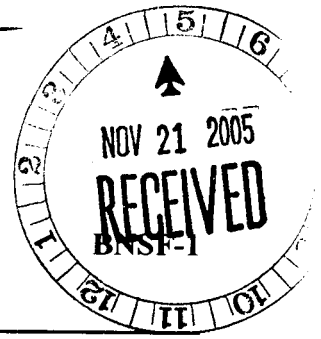
A handwritten signature in cursive script that reads "Donald J. Munro/jds".

Donald J. Munro:jds

cc: Michael S. Wolley, Esq.

215185

BEFORE THE SURFACE TRANSPORTATION BOARD



In the Matter of:

STB [I.C.C.] Finance Docket No. 32549

**BURLINGTON NORTHERN, INC. – CONTROL AND MERGER – SANTA FE PAC.
CORP. & ATCHISON, TOPEKA & SANTA FE RY. CO.**

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**REPLY OF
BNSF RAILWAY COMPANY
TO PETITION OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND
TRAINMEN TO ENFORCE LABOR ARBITRATION AWARD OR, IN THE
ALTERNATIVE, COMPLAINT REGARDING NON-COMPLIANCE WITH A LABOR
ARBITRATION AWARD**

Pursuant to Sections 1104.13 and 1111.4 of the regulations of the Surface Transportation Board ("STB" or "Board"), BNSF Railway Company ("BNSF"), through its counsel, Donald J. Munro, Goodwin Procter LLP, 901 New York Avenue NW, Washington, D.C., 20001, submits the following Reply to the Petition filed by the Brotherhood of Locomotive Engineers and Trainmen, A Division of the Rail Conference of the International Brotherhood of Teamsters ("BLET").

Reply

BNSF denies all of the allegations of the Petition unless expressly admitted herein. BNSF answers the allegations in each of the like-numbered paragraphs of the Petition as follows:

1. BNSF admits the allegations contained in Paragraph 1 of the Petition.

2. BNSF admits that it employs individuals who are represented by BLET, but is without knowledge or information sufficient to form a belief as to whether BNSF is the employer of the "certain employees represented by BLET" referenced in Paragraph 2. BNSF admits all other allegations contained in Paragraph 2 of the Petition.

3. BNSF admits the allegations contained in Paragraph 3 of the Petition.

4. BNSF admits that the Board has jurisdiction over BLET's Petition/Complaint pursuant to 49 U.S.C. §§ 10501 and 11701.

5. BNSF admits the allegations contained in Paragraph 5 of the Petition.

6. BNSF admits that it entered into Implementing Agreement 17 with BLET on March 10, 2000. BNSF further admits that one of the stated purposes of that agreement was to "address[] a diversion of traffic from the former Frisco's Tulsa-Madill-Ft. Worth corridor to the former Frisco and Santa Fe's Tulsa-Black Bear-Oklahoma City-Ft. Worth corridor [and] the changes in operations and terminals necessitated by this diversion."

7. BNSF admits that on May 2, 2003, it served notice under Article I, Section 4 of the New York Dock protective conditions to amend Implementing Agreement 17. BNSF further admits that the reason for the notice was to achieve operational efficiencies made possible by the merger. BNSF also admits that meetings between BNSF, Rick Gibbons, and Pat Williams resulted in a tentative agreement, but that this tentative agreement was not ratified by the members of BLET on the former Santa Fe lines.

8. BNSF admits that it referred the matter to arbitration under Article I, Section 4 of the New York Dock protective conditions. BNSF avers that the terms of the June 11, 2004 Award (attached as Exhibit B to the Petition) speak for themselves.

9. BNSF avers that the terms of Implementing Agreement 17A speak for themselves.

10. BNSF avers that the terms of Article 3 of Implementing Agreement 17A speak for themselves.

11. BNSF avers that the terms of the side letters to Implementing Agreement 17A speak for themselves.

12. BNSF avers that the terms of Article 4, Section 3 of Implementing Agreement 17A speak for themselves.

13. BNSF admits that on July 21, 2004, BLET General Chairman Rick Gibbons sent an email to BNSF Director of Labor Relations Wendell Bell. BNSF further admits that on August 4, 2004, Gibbons sent Bell a letter. BNSF avers that these documents speak for themselves.

14. BNSF admits that on August 12, 2004, Bell sent Gibbons and Williams a letter. BNSF avers that the text of this letter speaks for itself.

15. BNSF admits that on September 1, 2004, Gibbons sent a letter to Bell. BNSF avers that the text of this letter speaks for itself.

16. BNSF admits that the parties have not been able to resolve their dispute over Implementing Agreement 17A, but BNSF avers that it has given notice to implement Article 3 and the side letters of Implementing Agreement 17A at the express request of the BLET.

17. BNSF admits that it has not given notice under Article 4, Section 3 of Implementing Agreement 17A to make the Agreement effective, except with respect to Article 3 and the side letters. BNSF avers that Article 4, Section 3 of Implementing Agreement 17A gives the carrier a unilateral right to decide if and when to make the Agreement effective.

18. BNSF denies the allegations of paragraph 18 of the Petition. BNSF avers that it gave notice to implement Article 3 and the side letters – but not the remainder of Implementing Agreement 17A – at the express request of the BLET.

19. Paragraph 19 of the Petition states conclusions of law as to which no response is required.

20. The first sentence of Paragraph 20 of the Petition states conclusions of law as to which no response is required. BNSF otherwise denies the allegations of Paragraph 20 of the Petition.

21. BNSF denies the allegations of Paragraph 21 of the Petition.

22. BNSF denies the allegation of Paragraph 22 of the Petition.

The remainder of BLET's Petition contains prayers for relief, to which no response is required. To the extent that the remainder of the Petition may be deemed to contain averments of fact, they are denied.

Defenses

1. Article 4, Section 3 of the BNSF Merger Implementing Agreement 17A provides in pertinent part that "[t]his agreement will become effective upon 5 days' written notice from the carrier." Petition Exhibit B at 4. Under this provision, BNSF has a unilateral right to decide if and when to make the Agreement effective. BNSF has not exercised its right to make Implementing Agreement 17A effective, and therefore is not in violation of the terms of the Agreement or the underlying arbitration award.

2. BLET expressly requested BNSF to make Implementing Agreement 17A partially effective by implementing Article 3 and the side letters. At that time, BLET gave assurances that any partial implementation by BNSF would not be used as a basis for seeking to force BNSF to

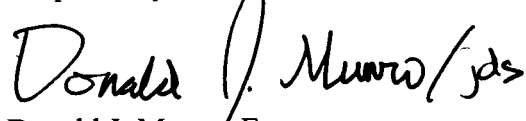
fully implement the Agreement. BLET is therefore estopped from arguing that the partial implementation of Implementing Agreement 17A requires BNSF to put the full agreement into effect.

Conclusion

WHEREFORE, respondent BNSF Railway Company respectfully requests that the Board:

1. Dismiss the Petition in its entirety;
2. Confirm that Implementing Agreement 17A shall not be made effective except upon 5 days written notice from BNSF;
3. Order that BNSF may rescind the partial implementation of Article 3 and the side letters to Implementing Agreement 17A;
4. Award BNSF its reasonable attorneys' fees and other costs; and
5. Grant to BNSF such other and further relief as the Board deems appropriate.

Respectfully submitted,

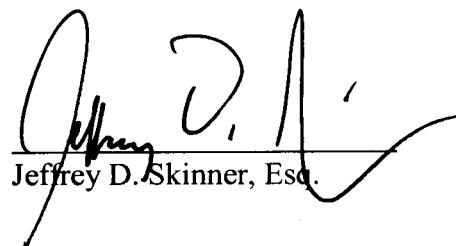
Handwritten signature of Donald J. Munro, Esq. in black ink, with a stylized 'jds' at the end.

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Attorney for BNSF Railway Company

CERTIFICATE OF SERVICE

This is to certify that a copy of the attached Reply was duly served upon counsel of record for the Brotherhood of Locomotive Engineers and Trainmen by hand delivery this 21st day of November, 2005, at the following address:

Michael S. Wolly, Esq.
ZWERDLING, PAUL, KAHN & WOLLY
1025 Connecticut Avenue, NW Suite 712
Washington, D.C. 20036
Attorney for BLET


Jeffrey D. Skinner, Esq.