



BOSTON & MAINE CORPORATION
MAINE CENTRAL RAILROAD COMPANY
SPRINGFIELD TERMINAL RAILWAY COMPANY

IRON HORSE PARK
NO. BILLERICA, MASS. 01862

209512

LAW DEPARTMENT
(978) 663-1029

December 1, 2003

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

By Federal Express

DEC 2 2003
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U.S. DEPARTMENT OF TRANSPORTATION

DEC 2 2003

U.S. DEPARTMENT OF TRANSPORTATION

**Re: Docket No. NOR 42083, Granite State Concrete Company, Inc. and
Milford Bennington Railroad Company v. Boston and Maine Corporation
and Springfield Terminal Railway Company**

Dear Secretary Williams:

Enclosed for filing in the above-referenced proceeding are an original and ten copies of the *Reply of the Boston and Maine Corporation and Springfield Terminal Railway Company to Motion of Milford-Bennington Railroad Co., Inc. and Granite State Concrete Co., Inc. for Sanctions and other Relief Regarding Discovery.*

Also enclosed is a diskette in Word format of the filing and attached verified statements.

Thank you for your attention to this matter. Please feel free to contact me if you should have any questions or comments.

Sincerely,

Robert B. Culliford
Corporate Counsel

cc: James E. Howard, Esquire

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. NOR 42083

**GRANITE STATE CONCRETE COMPANY, INC. and
MILFORD BENNINGTON RAILROAD COMPANY, INC.**

vs.

**BOSTON AND MAINE CORPORATION and
SPRINGFIELD TERMINAL RAILWAY COMPANY**

**REPLY OF THE BOSTON AND MAINE CORPORATION AND SPRINGFIELD TERMINAL
RAILWAY COMPANY TO MOTION OF MILFORD-BENNINGTON RAILROAD CO., INC.
AND GRANITE STATE CONCRETE CO., INC. FOR SANCTIONS AND OTHER RELIEF
REGARDING DISCOVERY**

I. INTRODUCTION

On November 13, 2003, the Boston and Maine Corporation and the Springfield Terminal Railway Company (collectively "Guilford") received a "Motion of Milford-Bennington Railroad Co., Inc. ("MBR") and Granite State Concrete Co., Inc. ("Granite State") for Sanctions and Other Relief Regarding Discovery" (the "Motion"). Relying almost exclusively upon the Verified Statement of Peter R. Leishman, MBR and Granite State request that the Board find: (a) that an employee of Guilford—Andrew D. Zompa—lied during his deposition with regard to a central issue in this matter; and (b) that Guilford has engaged in a pattern of intimidation to coerce its employees into giving false testimony in this matter. Had MBR and Granite State taken the time to perform a modicum of research, however, they would have realized that: (a) Mr. Zompa's testimony is not only accurate but is clearly supported by the record in this proceeding; (b) Mr. Leishman has once again misconstrued the substance of a conversation

between himself and representatives of Guilford; and (c) Guilford does not and could not intimidate its employees to testify in a certain manner.

II. ARGUMENT

A. Mr. Zompa testified truthfully and did not engage in the conversations alleged by Mr. Leishman.

First and foremost, Mr. Zompa vehemently denies that he either testified untruthfully during his deposition or that he made any of the statements alleged by Mr. Leishman. Verified Statement of Andrew D. Zompa (“Zompa V.S.”), ¶¶ 2-3, 7. Mr. Zompa also denies that he was intimidated or coerced to testify in a certain manner by anyone at Guilford. Id., ¶¶ 4-6.

According to MBR and Granite State, Mr. Leishman and Mr. Zompa engaged in two conversations—on November 3rd and 5th, respectively—during which Mr. Zompa allegedly admitted to testifying untruthfully at the behest of Guilford. Verified Statement of Peter R. Leishman dated November 11, 2003, pages 2-3 (“Leishman 11/11/03 V.S.”). Not surprisingly, Mr. Zompa’s recollection of his discussions with Mr. Leishman—recollections that are supported by more verifiable evidence than that presented by MBR and Granite State—is at odds with that of Mr. Leishman.

First, Mr. Zompa is certain that he never spoke with Mr. Leishman on November 3rd, and the notes he kept of his efforts to contact MBR indicate that his recollection is correct. Zompa V.S., ¶ 8, Attachment A. Second, while Mr. Zompa does recall speaking with Mr. Leishman on November, 4, 2003, this conversation was limited to scheduling issues for the training class, with no mention of any objections by Mr. Leishman to Mr. Zompa’s testimony or the scheduling of the class, a recollection which is supported by the content of a voice mail left by Mr. Leishman on Mr. Zompa’s cell phone. Id., ¶ 9-10, Attachment B. Indeed, in his message to Mr. Zompa, Mr.

Leishman makes no mention of Mr. Zompa's testimony or the additional class, and simply requests that the class be held in Wilton on Wednesday or Friday of that week since two of his employees were unavailable on Thursday. Id., ¶ 10. Obviously, if Mr. Leishman truly believed that Mr. Zompa had testified untruthfully and intended to ask Mr. Zompa about the issue again at the training class, it would seem to follow that his message would have referenced the issue, which it clearly did not. Instead, Mr. Leishman's tone was friendly and Mr. Zompa did not get the impression that there were any problems with his testimony at that time. Id. Finally, Mr. Zompa also denies that he made any of the statements attributed to him by Mr. Leishman after the training class, an allegation that is also unsupported. Id., ¶ 11. Clearly, if Mr. Zompa were "very uncomfortable" in response to the questions purportedly asked by Mr. Leishman, another MBR employee in attendance would have noticed this behavior and been able to support Mr. Leishman's assertions. However, no one else from MBR has come forward to support Mr. Leishman's recollection of this conversation. In any event, Mr. Zompa does recall Mr. Leishman stating that Mr. Zompa would be deposed again in relation to his testimony, a statement to which Mr. Zompa did not object or otherwise comment. Id.

Furthermore, Mr. Zompa's testimony clearly shows that he was being truthful in recounting his December 12, 2002 meeting with Mr. Leishman and that Mr. Zompa did not meet Mr. Pease until June of 2003. More particularly, to confirm that Mr. Zompa did not meet Mr. Pease on December 12, 2002, on cross-examination Counsel for Guilford inquired as to the first time that Mr. Zompa did meet Mr. Pease. Deposition of Andrew D. Zompa ("Zompa Deposition"), pages 91-92. Without hesitation, Mr. Zompa clearly answered that the *first time* he had ever met Mr. Pease was in June of 2003 while monitoring the use of the derail on the MBR. Zompa Deposition, page 92. To further confirm that Mr. Zompa has no recollection of meeting

Mr. Pease prior to June of 2003, Counsel for Guilford also asked Mr. Zompa if he had ever met Mr. Pease when he worked for Guilford, to which Mr. Zompa responded that he had not. Zompa Deposition, page 92. Plainly, in light of Mr. Zompa's clear recollection of meeting Mr. Pease in June for the first time, it is highly unlikely that he had met Mr. Pease previously—as asserted by Mr. Leishman and Mr. Pease—or that he had testified untruthfully in relation to any such meeting.

B. Regardless of when Mr. Zompa and Mr. Pease first met, Mr. Zompa's testimony as to an agreement by MBR to install and utilize a derail device for both passenger and freight operations is accurate and clearly supported by the record.

Notwithstanding the issue of when and where Mr. Zompa and Mr. Pease first met, MBR and Granite State apparently believe that by challenging the truthfulness and credibility of Mr. Zompa, they can somehow nullify Mr. Leishman's agreement to install and utilize a derail device for both passenger and freight operations. Considering the other evidence in the record, however, it is clear that such an agreement existed and that Mr. Zompa did testify truthfully as to the events of December 12, 2002. Specifically, by taking this position MBR and Granite State essentially ignore the testimony of Erwin R. Towle, the bulletin issued by Guilford on December 12th, and the plain language of the NORAC rules, all of which prove that MBR understood and agreed that the derail device was to be utilized for both passenger and freight operations.

As noted by Mr. Leishman in his verified statement, he also discussed the use of the derail device with Erwin R. Towle of Guilford prior to Mr. Zompa's visit to Wilton on December 12, 2002. Leishman 11/11/03 V.S., page 1. What MBR and Granite State fail to disclose, however, is that Mr. Towle also testified that Mr. Leishman had understood and agreed that the derail device was to be utilized for both passenger and freight operations *prior* to December 12th. Deposition of Erwin R. Towle, page 22. Exhibit 1 hereto. Consequently, any attempt by MBR

and Granite State to distance themselves from this agreement must address the testimony of Mr. Towle, whose truthfulness and credibility is beyond reproach, as discussed in more detail in Point II.D, below. Perhaps most important, neither Mr. Leishman nor Mr. Pease recall questioning Mr. Leishman's agreement with Mr. Towle during their alleged December 12, 2002 meeting with Mr. Zompa. Leishman 11/11/03 V.S., page 2; Verified Statement of F. Colin Pease in Response to the Motion to Dismiss Filed by the Boston and Maine Corporation and Springfield Terminal Railway Company, page 4; Verified Statement of F. Colin Pease dated November 8, 2003, page 5. Rather, both Mr. Leishman and Mr. Pease assert only that the use of the derail device for freight service was not discussed with Mr. Zompa, not that an agreement never existed. Id. Accordingly, even if the testimony of Mr. Leishman and Mr. Pease were absolutely correct, nothing in that testimony indicates that Mr. Leishman's agreement with Mr. Towle was nullified.

Additionally, MBR and Granite State fail once again to address the bulletin issued by Mr. Zompa on December 12, 2002, a document that makes no distinction between the use of the derail for either passenger or freight operations. Exhibit 2 hereto. Consequently, the bulletin applies to both passenger and freight operations, a fact that neither MBR nor Granite State—or Mr. Leishman or Mr. Pease for that matter—ever chose to challenge from December of 2002 to June of 2003. Clearly, if Mr. Zompa had believed that the derail was only to be used during passenger operations, the bulletin would have made that distinction. Similarly, if MBR or Granite State had any concerns with the scope of the bulletin, it would seem prudent to make those concerns known to Guilford, particularly where the bulletin applied to a device on MBR property. As a result, the efforts of MBR and Granite State to distance themselves from an agreement with regard to the use of the derail at this point is specious at best.

Finally, the plain language of the NORAC rules also provide further support for the veracity of Mr. Zompa's testimony, as those rules make no distinction between passenger and freight service as those operations pertain to the use of a derail device. More particularly, the NORAC rules define a derail as, "A track safety device designed to guide a *car* off the rails at a selected spot as a means of protection against collisions or other accidents." Similarly, NORAC Rule 104 requires that a derail installed on track be kept in a locked position at all times, regardless of whether passenger or freight traffic is operating on a particular line, further supporting Mr. Zompa's understanding of the agreement between MBR and Guilford. As a result, even if no agreement existed—which the record does not indicate—MBR's failure to object to the placement of the derail device meant that MBR was required by the NORAC rules to maintain the derail in the locked position at all times, regardless of whether passenger or freight traffic was operating.

C. Mr. Leishman's history of misconstruing conversations with Guilford personnel is relevant to a determination of the exact nature of his conversations with Mr. Zompa.

While Guilford takes the allegations contained in the Motion extremely seriously, Guilford is also aware that Mr. Leishman has regularly misconstrued or misinterpreted his conversations with Guilford personnel. As a result of these misperceptions over the years, Guilford believes that in this instance Mr. Leishman has most likely misinterpreted his conversations with Mr. Zompa, further undermining the allegations contained in the Motion.

The most recent episode in which Mr. Leishman misconstrued a conversation with Guilford personnel occurred on September 18, 2003, when Guilford attempted to work with MBR to allow it to better serve Granite State within the confines of the operating window then in existence. As background, on the morning of September 18th MBR notified Guilford of a broken

rail on the Guilford line that threatened to impact MBR's ability to serve its customer. Verified Statement of Warren Bostwick, ¶ 2 ("Bostwick V.S."). Because of the delays resulting from this condition, Warren Bostwick, John Steiniger and Larry Ferguson of Guilford contacted Mr. Leishman to inform him that on September 18th and 19th MBR would be permitted to provide service to Granite State outside the operating window established by Guilford to make up for time lost due to the broken rail. Bostwick V.S., ¶¶ 2-3; Verified Statement of John Steiniger ("Steiniger V.S."), 2; and Verified Statement of Larry Ferguson, ¶ 7 ("Ferguson V.S."). Despite the fact that Mr. Bostwick, Mr. Steiniger and Mr. Towle all clearly recall that Mr. Leishman was told that this arrangement was for two days only, Mr. Leishman apparently understood something quite different. Bostwick V.S., ¶¶ 3,5; Steiniger V.S., ¶ 2, Ferguson V.S., ¶ 7. Specifically, when MBR failed to continue to operate on September 18th, did not operate at all on September 19-21st, and still had not begun operations at 9:30 a.m. on September 22nd, Guilford confirmed in writing that the operating window had not been permanently removed. Bostwick V.S., ¶ 4, Attachment A. In response, Mr. Leishman was quite adamant that he was told that the operating window had been permanently removed, despite the fact that Mr. Bostwick, Mr. Steiniger and Mr. Ferguson are all in agreement that it was made clear to Mr. Leishman that any change to the operating window was temporary. Bostwick V.S., ¶ 5, Attachment B.

Similarly, when this issue first arose in June of 2003, Mr. Leishman submitted a Verified Statement in which he claimed to have been maintaining Guilford's track for a number of years because Guilford had failed to do so, which MBR and Granite State claimed was being done with the knowledge and consent of Guilford. Exhibits 3 and 4 hereto. Unfortunately for Mr. Leishman, *no one* from Guilford has any knowledge that he was performing this work, and *every employee* deposed (including union employees) denied that they had consented to such work by

Mr. Leishman or MBR. Depositions of Roger D. Bergeron, pages 30-35; Steven Larkin, pages 12-13; Gary S. Nault, page 10; Thomas Garrity, page 7; Calvin R. Preston, page 9; and Michael S. Moretto, pages 5-6; Exhibits 5 through 10 hereto. Plainly, therefore, Mr. Leishman was again under a mistaken impression with regard to conversations that he may or may not have had with Guilford personnel.

Furthermore, it also appears that Mr. Pease experienced the same type of response from Mr. Leishman when Mr. Pease was Guilford's Executive Vice President. As shown in the letters attached hereto as Exhibits 11 and 12, Mr. Pease apparently took exception to Mr. Leishman's recollection of their conversations at that time, further supporting Guilford's position that Mr. Leishman has likely misconstrued his conversation with Mr. Zompa.

D. Guilford Has Not Intimidated, Coerced or Threatened its Employees.

In a remarkable allegation—albeit one that is consistent with their theory throughout this proceeding—MBR and Granite State assert that Mr. Zompa and other Guilford employees have testified untruthfully under oath because of a purported “atmosphere of intimidation” that threatens employees with reprisals if their testimony does not please Guilford. Of course, this theory only works if Guilford has the ability to exact retribution from its wayward employees, a power that Guilford lacks over several of the employees who have contradicted the allegations of Granite State and MBR in this proceeding.

By way of example, Mr. Towle was deposed at the request of MBR and Granite State and contradicted the position of MBR and Granite State with regard to an agreement for the use of the derail in both passenger and freight service, testimony that is consistent with Guilford's position and with Mr. Zompa's testimony. Towle Deposition, page 22, Exhibit 1 hereto. Given that Mr. Towle is retired from Guilford, it would be extremely difficult for Guilford to intimidate

him or to coerce certain testimony from him, despite the claims of MBR and Granite State. Additionally, Mr. Nault, Mr. Garrity, and Mr. Preston also were deposed at the request of MBR and Granite State and testified that they had no knowledge that MBR was maintaining Guilford's track and that they had not consented or authorized such a practice, in direct contradiction to the claims of MBR and Granite State. Each of these gentlemen is a member of the same union, the Brotherhood of Maintenance of Way Employees ("BMWE"), and cannot be disciplined arbitrarily by Guilford. Rather, if Guilford were to seek to discipline these employees because they failed to testify to Guilford's satisfaction, Guilford would have to pursue such discipline through its collective bargaining agreement with the BMWE, and agreement that provides for hearings and appeals of any charges leveled. Exhibit 13 hereto. Consequently, Guilford would have to either disclose that it was disciplining these employees because Guilford was not pleased with their testimony, or Guilford would have to invent a basis for pursuing discipline. Either way, the hearing and appeals procedures available to each employee would likely prevent either of these actions by Guilford.

That Guilford has no real power to coerce or intimate Mr. Towle, Mr. Nault, Mr. Garrity or Mr. Preston is also important given the consistency of the testimony of each Guilford employee deposed at the request of MBR and Granite State. In short, Mr. Towle's testimony was consistent with that of Mr. Zompa, and the testimony of Mr. Nault, Mr. Garrity and Mr. Preston was also consistent with that of Mr. Moretto, Mr. Larkin and Mr. Bergeron with regard to whether or not Guilford had known of or consented to MBR's maintenance of Guilford's line. Obviously, if the testimony of employees that are free from threats or reprisals is entirely consistent with the testimony of employees who allegedly are at risk of such action, it is more than probable that all employees are testifying truthfully and without fear of retribution by

Guilford. Otherwise, there would likely be conflicting statements between the two groups, which assuredly does not exist here.

III. CONCLUSION

Therefore, Guilford is certain that none of its employees were intimidated or coerced in any manner, and that each employee deposed by MBR and Granite State testified truthfully to the best of his ability, and has attached Verified Statements of several of those employees that were deposed by MBR and Granite State to underscore this point.¹ Furthermore, Guilford has also offered to make these same employees available to MBR and Granite State for additional depositions, an offer which remains open. Finally, Guilford is also willing to make each employee available to representatives of the Board to discuss the allegations contained in the Motion, and to take all reasonable steps to ensure the Board, MBR and Granite State that Guilford has not engaged in any improper conduct.

While Guilford is willing to take these steps to confirm its credibility, it is also important to take note of Mr. Leishman's role in this episode, as well as his apparent difficulty in understanding the substance of his conversations with Guilford personnel. At issue here is not the testimony under oath of Mr. Zompa or any other Guilford employee. Rather, the issue is whether this is another instance where Mr. Leishman has misinterpreted discussions that he has had with a Guilford employee—when neither participant was under oath—and has created a proverbial mountain out of a molehill.

¹ Guilford has not submitted Verified Statements from Mr. Fink, Mr. Steiniger and Mr. Culliford because these individuals are part of the senior management of Guilford and presumably not subject to the intimidation alleged by the Motion. Guilford will, however, make these individuals available at the request of the Board.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bob Culliford", written in a cursive style.

Robert B. Culliford
Iron Horse Park
North Billerica, MA 01862
(978) 663-1029
rculliford@guilfordrail.com

Attorney for:

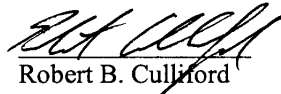
The Boston and Maine Corporation
The Springfield Terminal Railway Company

December 1, 2003

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served on December 1, 2003, by Federal Express, postage prepaid, on counsel for the plaintiffs, as follows:

James E. Howard, Esquire
James E. Howard, L.L.C.
One Thompson Square, Suite 201
Charlestown, MA 02129


Robert B. Culliford

December 1, 2003

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Vol. 1 - 1

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34381

GRANITE STATE CONCRETE COMPANY, INC., and
MILFORD BENNINGTON RAILROAD COMPANY, INC.

vs.

BOSTON AND MAINE CORPORATION and
SPRINGFIELD TERMINAL RAILWAY COMPANY

DEPOSITION OF ERWIN R. TOWLE, taken
pursuant to Notice on behalf of Granite State
Concrete Company, Inc., and Milford Bennington
Railroad Company, Inc., before Simonne J. Elwood,
R.P.R. and a Notary Public in and for the
Commonwealth of Massachusetts, at the office of
Guilford Rail System, Iron Horse Park, North
Billerica, Massachusetts, commencing on Friday,
October 31, 2003 at 1:18 p.m.

NEAL A. SALLOWAY - COURT REPORTERS
FIVE CARDIGAN ROAD
WEST PEABODY, MA 01960
781-581-3993 - 978-535-0313 - FAX 978-536-3142

1 what the substance of that conversation was?
2 A That from a safety standpoint, that we were
3 concerned about the equipment on their
4 property.
5 Q The passenger equipment?
6 A Well, I mentioned the passenger cars, yeah,
7 but I don't recall that I absolutely limited
8 it to that, but we were concerned that if the
9 equipment or vandals or their own
10 carelessness, whatever, anything could
11 happen, possibly defective equipment, could
12 get away and roll onto our property, and who
13 knows where it would stop, and Peter
14 indicated that he knew what I was talking
15 about, "Yeah, that is downhill," and he
16 didn't take exception to it.
17 Q So you told him that you wanted to install
18 it, and he didn't take exception?
19 A That's right.
20 Q And was that the end of the conversation?
21 A It was with me, yeah.
22 Q And did you ever talk to him again about the
23 derail?

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M: TRUADZ DSP65
12/02 11:30:29

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PAGE: 1 OF 1

SPRINGFIELD TERMINAL RAILWAY
SUPPLEMENTAL BULLETIN ORDER
NO 3-0128

IN EFFECT 1500 THURSDAY, DECEMBER 12, 2002

HILLSBORO BRANCH
WILTON, NH

1. A NEW DERAIL IS PLACED INTO SERVICE AT THE END OF MAIN TRACK JUST NORTH OF HOWARD ST. ON THE MILFORD AND BENNINGTON RAILROAD.

F.R. TOWLE
GENERAL MANAGER

E.J. REARDON
ASSISTANT GENERAL MANAGER

3

Verified Statement of Peter Leishman

My name is Peter Leishman and I am President of the Milford-Bennington Railroad. The Milford-Bennington is a small class 3 carrier that operates in Wilton and Milford New Hampshire. We employ two full time employees and two part time employees in addition to myself. The Milford-Bennington operates over track that is owned by the State of New Hampshire and leased by Milford-Bennington. The State owned portion was formerly owned by Boston & Maine Railroad until it was abandoned in the 1980's and sold to the state. While our operating rights extend considerably farther over the state owned line we actually operate our freight service from a stone quarry located at milepost 19 to milepost 16.36 in Wilton, New Hampshire where our line connects with a branch line owned by the Springfield Terminal Railroad, a subsidiary of Guilford Transportation Industries. From milepost 16.36 to milepost 11 Milford-Bennington has the right to operate over Guilford owned track under a trackage rights agreement ordered by the Interstate Commerce Commission and ultimately agreed to by Springfield Terminal on June 22, 1992. While our rights extend to milepost 11 we only operate to a stone processing plant owned by Granite State Concrete located at milepost 13.5 or approximately 3 miles of Guilford owned track.

The Milford-Bennington serves one customer, Granite State Concrete. Our railroad shuttles stone loaded at Granite State's quarry located in Wilton, New Hampshire to their processing plant located in Milford. We operate three trains per day and move 27 cars of stone per day. In contrast Guilford operates over its track between milepost 13 and milepost 16.36 approximately 1 to 2 times per week. Granite State operates, in part, under permits issued by the town of Wilton under which Granite State agreed to move product by rail and not by truck and agreed to restrict quarry operations to daytime hours only between 6:30 am and 6:30pm, Monday through Friday. Granite State's restrictions are well known in the area as its rights have been well publicized over the years in local papers and they are a matter of public record. I believe that it is reasonable to assume that these restrictions are well known to the management of the Springfield Terminal Railroad and to Guilford's President, David Fink who lives in a neighboring town.

Guilford also operates over Milford-Bennington leased track between milepost 16.36 and approximately milepost 20. Guilford serves another quarry owned by a company called Pike industries. Milford-Bennington entered into a trackage rights agreement with Guilford on September 6, 1999 so that they could access the quarry to secure company ballast. Though the Guilford trackage rights agreement authorizing Milford Bennington to run over Guilford tracks restricts Milford-Bennington to running no larger than 10 car trains, Milford-Bennington did not set limits on Guilford operations over Milford-Bennington. The trackage rights agreement with Guilford expired in 2001 but Milford-Bennington has taken no action since 2001 to in any way restrict their operations and they have continued to use their rights.

The Milford-Bennington maintains its track to a very high standard. Since commencing operations in 1992 it has installed 105 lb rail between the Granite State Quarry and milepost 16.36 and 17.8 and renewed 100 percent of the defective ties in the rail line. We

operate conservatively and restrict my operating speeds to 25 mph though our track is capable of supporting speeds that are higher.

The Guilford owned track between milepost 16.36 and the Granite State processing facility at milepost 13.5 is in deplorable condition. The three miles utilized by Milford-Bennington are designated as excepted track and two of the three miles are restricted to 5 miles per hour. During the past ten years we have installed literally hundreds of ties, rails and gauge rods on the Guilford owned track in order to keep it safe enough to avoid derailling Milford-Bennington trains even at 5 mph. We cannot rely on Guilford to perform necessary work or even emergency work in a timely manner to protect my ability to meet my obligations to my customer.

Approximately 8 weeks ago employees of the Springfield Terminal Railway, I believe under the direction of Guilford President Mr. David Fink, insisted that a permanent derail device be installed on track operated by Milford-Bennington and leased from its owner the State of New Hampshire. The derail was installed without the approval of the property owner and was located at approximately milepost 16.38. At the time I did not want to "fight" Guilford, as I knew that this action would attract some form of retribution. I told the Guilford crew that it served absolutely no purpose other than one of harassment and that we would not use it.

A derail device is traditionally used in the rail industry to intentionally derail a car in the event it should roll out of a siding onto a main line track in order to protect operations on the main line track. Milford-Bennington has two sidings used to store cars for serving customers, one at Granite State's Quarry served by Milford-Bennington and one at Pike Industries served by Guilford. Both sidings are protected by derails and both derails are maintained and used to protect the main line.

On June 20, 2003 a team of Guilford managers again visited the location where the derail had been installed in Wilton. I was working in the area and went over to talk to them. Mr. Stuart Draper, who is a local business man and town of Wilton selectman, was also present. to join us as a witness. Guilford Vice President of Operations Culliford in the ensuing conversation ordered me to keep the derail closed at all times except when operating in the area. I refused on the grounds that the derail served no purpose, would seriously delay Milford-Bennington operations and that the derail could, in fact, create a safety problem. The original derail was installed at a location that could derail a train directly into a building adjacent to the tracks. After some further conversation in which I pointed out that derails already existed approximately 500 yards further down the Guilford owned track the Guilford managers left. Later that day I was informed that Guilford was now going to install another derail approximately 100 feet from the one on Milford-Bennington property but on Guilford property and that Milford-Bennington would not be permitted to run unless we agreed to maintain all derails in the closed position. A more detailed description of the above meeting is attached in the form of a verified statement witnessed by Mr. Draper.

After the encounter I telephoned Mr. Mark McKeon, Federal Railroad Administration Regional Administrator for Safety and reported what had happened. Mr. McKeon could not understand the purpose of the derail and agreed to look into the matter. I also telephoned the Office of Rail and Transit for the New Hampshire Department of Transportation who also agreed to get involved. They subsequently sent a letter to Guilford a copy of which is attached to this affidavit.

Later that day I was informed that Milford-Bennington would not be allowed to operate over Guilford track unless we agreed to use both derails that were now installed within about 100 feet of each other. I subsequently wrote a letter to Guilford's corporate counsel protesting but agreeing to use the derails. I was in a position where I had to agree or I would not be able to operate and serve my customer. By this time Guilford had refused to permit a Milford-Bennington train to operate over Guilford in accordance with our trackage rights agreement and my loaded train was sitting on Milford-Bennington track unable to move to the processing plant.

Finally, even though, I agreed under duress to Guilford's use the derails, Guilford changed the terms again and told me that they would only permit Milford-Bennington to operate between the hours of 1:00 am to 8:00 am. It is my firm belief that Guilford management including Mr. David Fink is fully aware of the operating restrictions placed on the Granite State quarry and knew that the terms they had set would shut down the quarry and would ultimately put the Milford-Bennington out of business.

Throughout the weekend of June 21-22 I again attempted to seek permission to operate over Guilford track during daylight hours and was refused permission by Guilford dispatchers. On Monday morning, June 23, 2003 we were able to operate one train to the Granite State processing plant arriving prior to 8:00 am but we were not able to return as the dispatchers refused me entry after 8:00 am.

The effect of these actions by Guilford will ultimately be to put my company out of business. Today our employees are idled. We are unable to serve Granite State which is experiencing serious difficulty and will be shut down very soon.

Milford-Bennington has operated in a sound and safe manner over our track and over Guilford track for approximately 11 years. We have done nothing to change our operations. I know of no other situation where Guilford has required the installation of a derail device on the main line on someone else's property on a main line track. Despite my attempts to resolve this issue amicably, despite efforts by the State of New Hampshire and despite the impact Guilford's actions are having on our customer, Guilford has refused to change its position. Guilford's actions are seriously harming the Milford-Bennington Railroad, its customer, Granite State Concrete and in a broader sense the public. I respectfully ask the STB to take whatever immediate action it can to enable the Milford-Bennington to fulfill its common carrier obligations and serve its customer.

If at any time any concerns are raised regarding the safety of our operations we would welcome a review by state or federal officials. We would welcome a detailed inspection

Jun 27 03 05:21p

James E Howard

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of our track and would also welcome a similar inspection of tracks owned by Guilford rail that are subject to the Milford -Bennington Trackage rights.

Jun 27 03 05:21p

James E Howard

617 886 9324

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06/26/03 12:55 FAX 6036734899

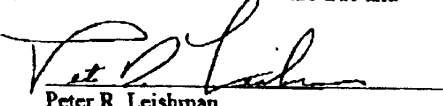
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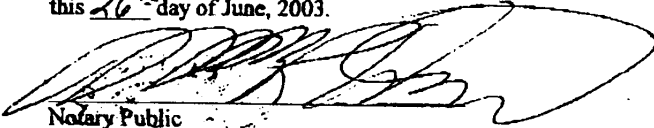
VERIFICATION

STATE OF NEW HAMPSHIRE)
) ss:
COUNTY OF HILLSBOROUGH)

I, Peter R. Leishman, being duly sworn, depose and state that I am President of Milford-Bennington Railroad Company, Inc., ("Milford-Bennington"); that I am authorized to sign the foregoing "Verified Statement" on behalf Milford-Bennington, that I have examined all of the statements contained in the "Verified Statement"; and that all such statements are true and correct to the best of my knowledge and belief.


Peter R. Leishman

Subscribed and sworn to before me
this 26th day of June, 2003.


Notary Public

My Commission Expires:

MY COMMISSION EXPIRES
AUGUST 26, 2003

4

JAMES E. HOWARD LLC
ONE THOMPSON SQUARE
SUITE 201
CHARLESTOWN, MA 02129

TEL (617) 886-9322
FAX (617) 886-9324

July 2, 2003

BY FACSIMILE

Melvin F. Clemens
Office of Compliance and Enforcement
Surface Transportation Board
Suite 780
1925 K Street, N.W.
Washington, D.C. 20423-0001

Dear Mr. Clemens:

This letter responds to a letter dated June 30, 2003, from Robert B. Culliford, corporate counsel for Boston and Maine Corporation and Springfield Terminal Railway Co. (referred to by Mr. Culliford as "Guilford"), which was directed to my letter to you dated June 27, 2003 on behalf of Milford-Bennington Railroad Co., Inc. ("Milford-Bennington") and Granite State Concrete Co., Inc. ("Granite State"). Mr. Culliford's letter was served on me by facsimile at approximately 3 PM on July 1, 2003.

As demonstrated in my letter of June 27, 2003 and below, Guilford has utterly failed to explain why it has arbitrarily restricted Milford-Bennington's use of trackage rights over Guilford, thereby severely harming both Milford-Bennington and its customer, Granite State. Guilford has attempted to obfuscate the real issue--denial of access to its line by Milford-Bennington--by means of detailed discussion of derail devices and maintenance practices in an effort to create the aura of a "safety" issue in order to justify its restrictions of Milford-Bennington's rail operations. Notwithstanding these attempts, the actions of Guilford cannot be justified. They represent a callous disregard of the interests of Granite State, which is not even mentioned by name in Mr. Culliford's letter, in order to punish Milford-Bennington.

A brief response to several of the extraneous points raised by Guilford will serve to underscore the arbitrary nature of the restriction of use of the trackage rights to the hours of 12 AM to 8 AM:

Deraill Devices

Guilford story: According to Guilford, the derail device on Milford-Bennington's line was prompted by the anticipation of the operation of excursion passenger trains on

the line. After the device was "installed", allegedly in December, 2002, Guilford purportedly required both the passenger operator and Milford-Bennington to use the device. Guilford assertedly did not know that Milford-Bennington was not using the device until June 20, 2003, when a delegation of Guilford personnel visited the location of the device.

Facts: As a result of discussions concerning passenger operations that would commence in the spring of 2003, a temporary derail device was left by Guilford personnel in December, 2002 next to the Milford-Bennington line near the connection to the Guilford line. The passenger operations began on Memorial Day, 2003, at about the time that a permanent derail device was installed on the Milford-Bennington line. All parties agreed that use of the device made sense in order to ensure that the passenger operations did not intrude on Guilford's line. The derail devices were never used for freight operations--whether by Milford-Bennington or Guilford--and Guilford never advised Milford-Bennington that Guilford believed that Milford-Bennington should use the device until June 20, 2003.

On June 20, 2003, Milford-Bennington wrote to Mr. Culliford to indicate that it would use the derail device on its property as well as the derail device approximately 100 feet away on Guilford's line "under protest" in order to continue to operate. A copy of the letter is attached. Whatever disagreement there may be as to the facts or issues regarding the derail devices, therefore, there was no issue concerning their use as of June 20, 2003.

Milford-Bennington uses derail devices in accordance with the applicable NORAC rules. For example, Milford-Bennington has derail devices at the end of sidetracks at both the Granite State excavation site and the quarry served by Guilford. The devices prevent cars from inadvertently rolling onto the main line. Guilford itself uses derail devices in the same manner at Rumford and Skowhegan, Maine. The devices are located at the point where yards and main line tracks intersect. The rules do not contemplate the use of derail devices on main lines except in situations where they are necessary on a temporary basis due to track work or disabled equipment.

Maintenance

Guilford story: Guilford denies that Milford-Bennington has ever performed any maintenance on the Guilford line over which Milford-Bennington has trackage rights. Guilford also argues that any such maintenance work would be inappropriate.

Facts: Milford-Bennington has from time to time installed ties and gauge rods and fixed broken rails on the Guilford line in order to operate safely. In each case, the work has been done in accordance with all applicable regulations by properly trained and qualified personnel. Furthermore, any such work has been done only after communication with the Guilford dispatcher.

Safety

Guilford story: Guilford has referred to in a 1996 grade crossing collision apparently in an effort to imply that Milford-Bennington does not operate safely.

Facts: The grade crossing incident occurred at the Granite State concrete plant when a truck driver failed to stop and ran into the train. The accident was investigated by the state police and the FRA, and the driver was determined to be at fault. Milford-Bennington was not cited for any improper operation. More importantly, Milford-Bennington has operated safely on the trackage rights line for eleven years.

New Operating Plan

Guilford story: Guilford's new "operating plan" for Milford-Bennington restricts operations to the hours between 12 AM and 8 AM, allegedly due to its "experience with [Milford-Bennington]--an experience that has shown that [Milford-Bennington] has little regard for operational safety" Guilford letter of June 30, 2003 at p. 4. According to Guilford, Milford-Bennington and Granite State have not shown how this "operating window" hinders their operations. Guilford alleges that the only reason that Milford-Bennington cannot serve Granite State under the new operating plan is that Granite State does not have the capacity to unload more than nine cars at a time.

Facts: Guilford knows--indeed, it does not deny--that Granite State's hours of operation are restricted to 6:30 AM to 6:30 PM. Guilford knows that it is impossible to operate three trains of nine cars each between 6:30 AM and 8 AM. More significantly, Guilford clearly understands that the 1992 trackage rights agreement provides that Milford-Bennington may serve only Granite State and may operate trains with a maximum of 10 cars. As a consequence, the rail facilities at the Granite State excavation site and processing plant were designed to accommodate ten car trains. Modifications of those facilities at this time to permit 30 car trains would be prohibitively expensive.

It is disingenuous for Guilford to suggest that the operating impossibility that it has created for Granite State and Milford-Bennington can be solved by Granite State and Milford-Bennington. Daylight operations have been conducted for eleven years without objection from Guilford and without interference with Guilford's operations, which are limited to 1 or 2 trains a week on the line in question. While the trackage rights agreement provides that operations by Milford-Bennington are subject to the orders of Guilford, any such orders must be reasonable and must enable Milford-Bennington to realize the express purpose of the agreement--to provide service to Granite State.

Attached you will find a verified statement of Stuart Draper and a letter dated June 20, 2003 from the Department of Transportation of the state of New Hampshire to Guilford, both of which were referred to in Mr. Leishman's verified statement but which were inadvertently omitted from the material I supplied to you on June 27, 2003. Mr. Draper's statement is actually a verification of the accuracy of Mr. Leishman's statement.

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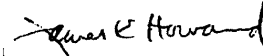
James E Howard

617 886 9324

p.5

Thank you for your anticipated efforts to resolve this matter. If you need additional information or have questions, please let me know.

Very truly yours,


James E. Howard

cc: Robert M. Culliford

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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34381

GRANITE STATE CONCRETE COMPANY, INC., and
MILFORD BENNINGTON RAILROAD COMPANY, INC.

vs.

BOSTON AND MAINE CORPORATION and
SPRINGFIELD TERMINAL RAILWAY COMPANY

DEPOSITION OF ROGER D. BERGERON, taken
pursuant to Notice on behalf of Granite State
Concrete Company, Inc., and Milford Bennington
Railroad Company, Inc., before Simonne J. Elwood,
R.P.R. and a Notary Public in and for the
Commonwealth of Massachusetts, at the office of
Guilford Rail System, Iron Horse Park, North
Billerica, Massachusetts, commencing on Monday,
November 3, 2003 at 11:58 a.m.

NEAL A. SALLOWAY - COURT REPORTERS
FIVE CARDIGAN ROAD
WEST PEABODY, MA 01960
781-581-3993 - 978-535-0313 - FAX 978-536-3142

1 Q That's a verified statement that you made in
2 this case. Do you recall that document?
3 A Yes, I do.
4 Q Now, if you can take a look at Paragraph 4 on
5 Page 2, please, you say there that, "If the
6 MBR were performing maintenance on this line,
7 the MBR would be required to contact the
8 Guilford dispatcher to obtain permission to
9 occupy the track." Do you see that?
10 A Yes, I do.
11 Q And then you say that, "Guilford has no
12 record of any such permission being requested
13 or granted."
14 What inquiry or investigation did you
15 make to determine that there was no record?
16 A I spoke with the -- what we call our District
17 No. 2 Train Operations Manager that has
18 authority over that line and asked him if
19 there was any -- any request ever come in to
20 maintain the track rather than the operation
21 of the Milford-Bennington.
22 Q What's his name?
23 A It was -- I think it was Mike Moretto that I

1 spoke to.

2 Q Did you talk to anybody else?

3 A I spoke with Larry Ferguson about -- who is

4 our supervisor for the dispatchers, and asked

5 him if he knew of any such request, and he

6 didn't personally know of any.

7 Q How about Mr. Moretto?

8 A Mr. Moretto didn't recollect any time when

9 the Milford-Bennington ever requested to do

10 track maintenance on the line.

11 Q Did you -- Was that the extent of your

12 investigation then?

13 A That was the extent of my investigation.

14 Q Now, in the next Paragraph 5 there, you say

15 that anybody performing maintenance on

16 Guilford's property would have to be trained

17 and qualified pursuant to the FRA's Roadway

18 Worker Rules and that no one from

19 Milford-Bennington ever received training or

20 qualification from Guilford under those

21 rules. Do you see that?

22 A Yes, I do.

23 Q Are the FRA Roadway Worker Rules the same for

1 all railroads?

2 A To the best of my knowledge, they are.

3 Q Okay. And is it possible for
4 Milford-Bennington, in your experience, to
5 qualify under those FRA Roadway Worker Rules
6 on its own rather than be trained by
7 Guilford?

8 A On their properties, they could be, not on
9 ours.

10 Q And that's a provision of the railway or the
11 Roadway Worker Rules?

12 A That is correct.

13 Q Do you know which provision that is?

14 A It's in the 214 which is the Roadway Worker,
15 Subtitle 49 CFR 214. It requires the
16 railroad to ensure the on-track safety
17 programs.

18 Q Has any Guilford union or union
19 representative, to your knowledge, complained
20 or said anything about Milford-Bennington
21 personnel doing work on the Guilford line?

22 A Any union to me? No. No, not at all.

23 Q You're not aware of any complaint?

1 A Not to me directly, no.

2 Q You're aware of something indirectly?

3 A Well, other than the dialogue that I heard

4 last Tuesday when we were down in -- up in

5 Manchester on that; but other than that, I

6 wasn't aware of anybody.

7 Q Well, let me be more specific. In Paragraph

8 6 of this statement that we're looking at

9 says that, in effect, that your collective

10 bargaining agreements give your employees the

11 right to perform maintenance, and performance

12 of maintenance by MBR employees on Guilford

13 property would be a violation of these

14 agreements. Do you see that?

15 A I see that.

16 Q Are you aware of any union complaining that

17 Milford-Bennington employees are violating

18 the collective bargaining agreements?

19 A I'm not personally aware of any union

20 employees complaining.

21 Q Well, personally, you mean -- What do you

22 mean by personally?

23 A I mean if there was a -- if there was a

1 complaint lodged against the
2 Milford-Bennington for maintaining tracks
3 that the Brotherhood of Maintenance of Way
4 has an agreement with us to maintain, we
5 would see that advanced either in what they
6 call claims conference when they talk
7 about -- this would be a subject of a time
8 claim, and this would either be mentioned in
9 the claims conference, and conferences that I
10 attend, probably 80 percent of those, or it
11 would be a direct time claim which is a
12 formal declaration and a written declaration
13 asking us to pay this person for that time
14 that somebody else was doing the work, and I
15 don't know of -- I've never heard it in the
16 claims conference, and I have no recollection
17 of seeing a claim advanced from the
18 Milford-Bennington working.

19 Q Okay. In Paragraph 7, you're saying that you
20 might be -- Guilford might be subject to
21 liability under the FRA's track safety
22 standards if Milford-Bennington employees
23 performed work from which they were not

1 properly qualified, and I'm paraphrasing
2 that.

3 You haven't -- Guilford hasn't had any
4 claim by the FRA that there's been a
5 violation of the track safety standards as a
6 result of anything Milford-Bennington was
7 doing, right?

8 A No, I have not.

9 Q Okay. Are you aware of any instances over
10 the last -- well, since the beginning of the
11 trackage rights agreement between Guilford
12 and Milford-Bennington, any instances where
13 Milford-Bennington has brought to Guilford's
14 attention track problems or track defects?

15 A Yes, I am.

16 Q When was that, do you recall?

17 A Not specifically, no.

18 Q More than five years ago?

19 A Could be five. It could have been, you know,
20 -- in those conference calls that we have, we
21 have two per day with the engineers of the
22 territory and myself. The topics of what's
23 going on with the crews and the track

6



Copy

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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34381

GRANITE STATE CONCRETE COMPANY, INC., and
MILFORD BENNINGTON RAILROAD COMPANY, INC.

vs.

BOSTON AND MAINE CORPORATION and
SPRINGFIELD TERMINAL RAILWAY COMPANY

DEPOSITION OF STEVEN LARKIN, taken
pursuant to Notice on behalf of Granite State
Concrete Company, Inc., and Milford Bennington
Railroad Company, Inc., before Simonne J. Elwood,
R.P.R. and a Notary Public in and for the
Commonwealth of Massachusetts, at the office of
Guilford Rail System, Iron Horse Park, North
Billerica, Massachusetts, commencing on Friday,
October 31, 2003 at 3:03 p.m.

NEAL A. SALLOWAY - COURT REPORTERS
FIVE CARDIGAN ROAD
WEST PEABODY, MA 01960
781-581-3993 - 978-535-0313 - FAX 978-536-3142

1 A Yeah, a couple. There was an instance that
2 when I was putting in ties, Peter said that
3 he had a lot of plates. If I ever needed a
4 few plates to come out and help myself to the
5 plates, and I told him that if I did take any
6 plates it was because I needed a few extra to
7 complete the job or put a couple extra ties
8 in that weren't marked, and I always tried to
9 go a little bit more than, you know, put in
10 five ties, I'd put in six or seven. If I
11 needed extra plates, he said to come and get
12 them, and I said -- and that's how we did it.

13 Q You did that from time to time?

14 A Not a lot.

15 Q But you did it?

16 A If I ran out and I wasn't going to put a tie
17 in without a plate, and he said that we could
18 do it; and so, yeah, he did give a few
19 plates, yeah.

20 Q Now, were there any times that you were aware
21 that Milford-Bennington was doing work on the
22 Guilford line between Milepost 13 and the end
23 of the line?

1 A I never knew that he was doing any work up
2 there. Okay?
3 Q You never knew at the time, but you know now,
4 or you never knew?
5 A I hear that, you know, he's suggesting that
6 he did a lot of work up there.
7 Q You never saw him out there?
8 A I never saw Peter, and I never gave him
9 permission to work on the track.
10 Q Okay.
11 A Absolutely not.
12 Q I take it, though, based on what you said so
13 far, that you had a cooperative relationship
14 with Milford-Bennington?
15 A Yes. Oh, yeah.
16 Q Keeping the track in good shape or as good as
17 possible?
18 A Yeah.
19 Q Are you aware of the condition of the end of
20 that line today, 13 to the end of the line?
21 A No idea. I've been away from there for three
22 years, two months, and I have too much to do
23 where I am now. I don't get involved with

7



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BEFORE THE
SURFACE TRANSPORTATION BOARD
FINANCE DOCKET NO. 34381

GRANITE STATE CONCRETE COMPANY, INC., and
MILFORD BENNINGTON RAILROAD COMPANY, INC.

vs.

BOSTON AND MAINE CORPORATION and
SPRINGFIELD TERMINAL RAILWAY COMPANY

DEPOSITION OF GARY S. NAULT, taken
pursuant to Notice on behalf of Granite State
Concrete Company, Inc., and Milford Bennington
Railroad Company, Inc., before Simonne J. Elwood,
R.P.R. and a Notary Public in and for the
Commonwealth of Massachusetts, at the office of
Guilford Rail System, Iron Horse Park, North
Billerica, Massachusetts, commencing on Friday,
October 31, 2003 at 2:27 p.m.

NEAL A. SALLOWAY - COURT REPORTERS
FIVE CARDIGAN ROAD
WEST PEABODY, MA 01960
781-581-3993 - 978-535-0313 - FAX 978-536-3142

1 last five years.

2 Q Okay. And are there times when you've worked
3 together with him to take care of that track?

4 A Never. I wouldn't let him work on my track.
5 I'm a union, and I don't let management, and
6 I wouldn't let anybody work. I've told
7 anybody to stay away from my track. It's not
8 in the union, you know. Like if you came,
9 you know. Believe me, I have friends that
10 are laid off, and I'm not going to have
11 somebody else working.

12 Q Okay. Are you aware of any instances when
13 Milford-Bennington has provided materials for
14 use on the line?

15 A I believe, yeah, he's given me some spikes
16 before and a few bolts, but he's never done
17 any work with me.

18 Q So you take the material and install it
19 yourself?

20 A Yeah, yeah. Or he's left it there or
21 whatever, you know, just left it there.

22 Q Okay. Have you ever observed anybody from
23 Milford-Bennington working on the line

8



BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34381

GRANITE STATE CONCRETE COMPANY, INC., and
MILFORD BENNINGTON RAILROAD COMPANY, INC.

vs.

BOSTON AND MAINE CORPORATION and
SPRINGFIELD TERMINAL RAILWAY COMPANY

DEPOSITION OF THOMAS GARRITY, taken
pursuant to Notice on behalf of Granite State
Concrete Company, Inc., and Milford Bennington
Railroad Company, Inc., before Simonne J. Elwood,
R.P.R. and a Notary Public in and for the
Commonwealth of Massachusetts, at the office of
Guilford Rail System, Iron Horse Park, North
Billerica, Massachusetts, commencing on Friday,
October 31, 2003 at 3:45 p.m.

NEAL A. SALLOWAY - COURT REPORTERS
FIVE CARDIGAN ROAD
WEST PEABODY, MA 01960
781-581-3993 - 978-535-0313 - FAX 978-536-3142

1 when Milford-Bennington provided materials
2 for you to use on the Guilford line?
3 A Not to my knowledge.
4 Q Okay. When you say not to your knowledge,
5 have you heard from other people that
6 Milford-Bennington has provided materials?
7 A I have not. As far as I know, you know, the
8 materials we have always supplied on our own
9 jobs.
10 Q Okay. Are you aware of any instances when
11 Milford-Bennington personnel have been on the
12 Guilford line doing any kind of maintenance
13 work?
14 A I don't know of any such occasion.
15 Q Never saw anything?
16 A No.
17 Q Never heard from anybody else that they were
18 out there?
19 A No. Any time I've been up there for
20 maintenance, I've been up there doing the
21 work with, you know, the people I work with.
22 I haven't been up there and witnessing them
23 doing any other work.

9



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BEFORE THE
SURFACE TRANSPORTATION BOARD
FINANCE DOCKET NO. 34381

GRANITE STATE CONCRETE COMPANY, INC., and
MILFORD BENNINGTON RAILROAD COMPANY, INC.

vs.

BOSTON AND MAINE CORPORATION and
SPRINGFIELD TERMINAL RAILWAY COMPANY

DEPOSITION OF CALVIN R. PRESTON, taken
pursuant to Notice on behalf of Granite State
Concrete Company, Inc., and Milford Bennington
Railroad Company, Inc., before Simonne J. Elwood,
R.P.R. and a Notary Public in and for the
Commonwealth of Massachusetts, at the office of
Guilford Rail System, Iron Horse Park, North
Billerica, Massachusetts, commencing on Friday,
October 31, 2003 at 3:19 p.m.

NEAL A. SALLOWAY - COURT REPORTERS
FIVE CARDIGAN ROAD
WEST PEABODY, MA 01960
781-581-3993 - 978-535-0313 - FAX 978-536-3142

1 Q You've worked with him then over the years?
2 A I've known him for quite awhile. He used to
3 work for us.
4 Q Were there ever any times that you observed
5 Mr. Leishman or any other Milford-Bennington
6 employees on the Guilford line between
7 Milepost 13 and the end of the line doing any
8 kind of maintenance work?
9 A No.
10 Q Never saw anybody out there?
11 A I never saw them doing any track work.
12 Q Did you ever hear from anybody else that they
13 had seen Milford-Bennington people out there
14 doing any work?
15 A No.
16 Q How would you describe the working
17 relationship between you and
18 Milford-Bennington?
19 A Between me, personally?
20 Q Yes.
21 A No problems.
22 Q Now, were there times when you were out there
23 working, and this is now, again, between

10



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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34381

GRANITE STATE CONCRETE COMPANY, INC., and
MILFORD BENNINGTON RAILROAD COMPANY, INC.

vs.

BOSTON AND MAINE CORPORATION and
SPRINGFIELD TERMINAL RAILWAY COMPANY

DEPOSITION OF MICHAEL S. MORETTO, taken
pursuant to Notice on behalf of Granite State
Concrete Company, Inc., and Milford Bennington
Railroad Company, Inc., before Simonne J. Elwood,
R.P.R. and a Notary Public in and for the
Commonwealth of Massachusetts, at the office of
Guilford Rail System, Iron Horse Park, North
Billerica, Massachusetts, commencing on Friday,
October 31, 2003 at 1:13 p.m.

NEAL A. SALLOWAY - COURT REPORTERS
FIVE CARDIGAN ROAD
WEST PEABODY, MA 01960
781-581-3993 - 978-535-0313 - FAX 978-536-3142

1 dispatcher, what they're doing out there?

2 A Yeah.

3 Q Has there ever been a time in your

4 recollection when you were notified by

5 Milford-Bennington that they were on the

6 Guilford line doing maintenance work?

7 A No.

8 Q Nobody has ever told you that they were

9 stopping to tighten a bolt or --

10 A Not on our track, no.

11 Q Never at all?

12 A No.

13 Q Do you understand you're under oath here?

14 A Yeah. I don't recall them ever saying to me

15 that they're doing maintenance work on our

16 track.

17 Q If they haven't called, have you been aware

18 that they have been doing maintenance work?

19 A Not on that track, no.

20 Q You're not aware of that?

21 A No.

22 Q Nobody else has told you that?

23 A No.

1 Q No other dispatcher has ever said to you that
2 they have had calls from Milford-Bennington
3 indicating that they're on the track doing
4 work?

5 A No.

6 Q Okay. Thank you very much. That's all I
7 have.

8

9 CROSS EXAMINATION

10 Q (By Mr. Howard) Milford-Bennington has
11 contacted you when they're going to do
12 maintenance on Milford-Bennington's track, is
13 that correct?

14 A They have told me that they're doing
15 maintenance on their side, yes, on their side
16 of the track, not our side which is --

17 Q As a Guilford dispatcher, you have no control
18 over --

19 A Yeah. I have no control over what they do on
20 their side.

21 MR. CULLIFORD: That's it.

22 (Whereupon the deposition of Michael

23 S. Moretto concluded at 1:15 p.m.)



BOSTON & MAINE CORPORATION
MAINE CENTRAL RAILROAD COMPANY
SPRINGFIELD TERMINAL RAILWAY COMPANY

IRON HORSE PARK
NO. BILLERICA, MASS. 01862

(508) 663-1186

May 22, 1992

Peter R. Leishman, President
Milford-Bennington Railroad
Company, Inc.
62 Elm Street
Milford, New Hampshire 03055

Dear Peter:

Upon my return to the office today I reviewed your unsigned letter dated May 22, 1992 addressed to me and stamped "CONFIDENTIAL" on each page.

I am returning the original of that letter to you herewith; and I have not made any photocopies of this letter. Since it is not signed, I cannot be certain that its contents, in fact, represent the views of you or your company. Furthermore, it is not clear to me what was intended by the "CONFIDENTIAL" stamps which were so prominently placed. We regularly have confidential communications regarding rates and other matters with our shippers (as opposed to other connecting railroads such as yours). Although we certainly do our best to protect that information and keep the details of those rate relationships private as between ourselves and the individual shippers, nonetheless, we may be required to produce such information during the course of Discovery proceedings when litigation is pending, or as a result of an ICC investigation, etc.

Since the entire thrust of your letter and your strong assertion of "Confidentiality" is not entirely clear to me, I have decided that rather than having any misunderstanding or confusion over this matter, that I will return the original unsigned letter to you for you to do with as you choose.

Peter R. Leishman, President
Milford-Bennington Railroad Co., Inc.
May 22, 1992
Page 2

As I have stated to you before, we are prepared to establish an interchange agreement in the usual and customary manner with MBRR in Wilton at the location where our railroads meet. Also, we remain ready, willing and able to develop routes, rates, and operating arrangements at the point of interchange to assure the efficient movement of traffic between our companies.

Sincerely,

F. Colin Pease
Executive Vice President

Enclosure

12



BOSTON & MAINE CORPORATION
MAINE CENTRAL RAILROAD COMPANY
SPRINGFIELD TERMINAL RAILWAY COMPANY

IRON HORSE PARK
NO. BILLERICA, MASS. 01862

• 9430 24
PENALTY
USA

May 8, 1992

CERTIFIED MAIL
P 643 492 411

Mr. Peter Leishman
Milford-Bennington Railroad Co., Inc.
P. O. Box 632
Milford, NH 03055

Dear Peter:

First let me say that your letter of May 6, 1992 truly surprises me. While we both have recognized that our two companies have sincere differences regarding your feeder line application to the Interstate Commerce Commission, you and I have worked to maintain a civil and working relationship. As you know, you and I have spoken to each other many times on the telephone and have discussed the issues relating to interchange at Wilton and the movement of stone to Lowell frequently. In all those conversations you have made it extremely clear that the only option acceptable to you is a transfer of ownership of our line between and Milford and Wilton to the Milford-Bennington Railroad.

You are correct that we met in Wilton on February 26, 1992 but beyond that you begin to stray. In that meeting our engineers indicated to you that we would be able to interchange with your railroad in Wilton and I told you then, as I have told you probably several hundred times, that we are prepared to interchange with you now at Wilton. I also indicated that if you could let us know in writing the traffic levels you intend to interchange in Wilton, we will make specific arrangements to handle the traffic. Whenever we get to the point where we have asked you for specifics you have not replied because you have been very open about the fact that your only goal is to force us to sell you our property.

We are willing to work with you immediately to effect an interchange with your railroad at Wilton. If you will kindly forward to me a definitive statement regarding the traffic you wish to interchange, I will take the steps necessary to implement the service. If you will provide to our Marketing Department, in writing, an indication of the traffic you intend to interchange, our marketing staff will immediately provide you with our revenue requirements for those moves. In the past we have done this including rate quotes only to meet with a stone wall.

Mr. Peter Leishman
May 8, 1992
Page 2

Let me also reiterate that we are willing to discuss with you a trackage rights arrangement over our track to McClellan's facility or a haulage arrangement to that facility. Several years ago I made a trackage rights proposal to you only to have it rejected after having a conversation with you in which you stated that my proposal seemed reasonable.

I am also prepared to meet you on the site in Lowell as we have discussed many times to discuss construction of an unloading facility. So that there may be no misunderstanding I can meet you on Monday, May 11, 1992 at 10:00 AM, Wednesday, May 13 at 9:00 AM or any time on Thursday May 14 or Friday 15.

Now as for your statement regarding the existence of a conspiracy, I also believe that a conspiracy does exist, but it exists between your railroad, you and the many organizations in the State of New Hampshire that appear to be in some way associated with your interests. As I am sure you know, a serious question has recently been raised in an editorial and newspaper story in the Nashua Telegraph about whether you have a conflict of interest through the many positions you hold. Frankly, the paper raises a number of points which should be of concern to you.

Peter, both you and I know that your letter is an outrage. You and I have talked on the telephone almost weekly for several years now and we have corresponded a number of times. Just to refresh your memory, I have attached those letters. You have consistently indicated that you do not want to interchange traffic at Wilton because you want to haul Mr. McClellan's stone between his two quarries in Wilton and Milford. You have also indicated that you require ownership of the line so that you can take state money to rehabilitate the line so that neither the Milford Bennington or Mr. McClellan's company have to pay for that expense. You have told me that we are foolish if we don't take the state money. Peter, I don't agree and I have told you that I did not think that Mr. McClellan, his company or your railroad should accept public subsidies, but that working together we should structure an operation which exists strictly in the private sector.

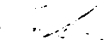
I still believe that and am prepared to do it. Rather than spend the time writing the letter you sent me on May 6, why don't you sit down and reply to our letters of October 8, 1990; March 14, 1991; September 9, 1991; and February 6, 1992. When you have done that, we will have a definitive idea of what you wish to do, and we will fashion an interchange agreement as we have with many other short line carriers, develop rates and begin to move some traffic.

Mr. Peter Leishman
May 8, 1992
Page 3

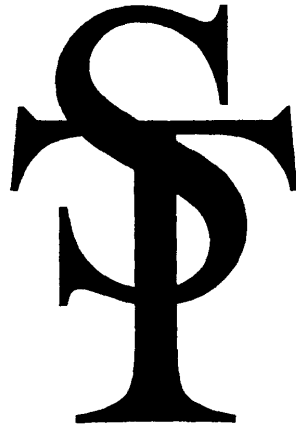
Please treat this letter as a formal request by B&M, pursuant to Section 10703 of the Interstate Commerce Commission, to establish a through route and a joint rate for the McClellan stone move between Wilton and Milford, NH.

I look forward again to your reply within the next week.

Sincerely,


F. Colin Pease
Executive Vice President

13



AGREEMENT

Between

The Springfield Terminal Railway Company

and

Brotherhood of Maintenance of Way Employees

Effective Date May 8, 2003

Article 26. Discipline

- 26.1 No employee will be disciplined without a fair hearing. The notice of hearing will be mailed to the employee within 10 days of the Carrier's first knowledge of the act or occurrence. The notice of hearing will contain information sufficient to apprise the employee of the act or occurrence to be investigated. Such information will include date, time, location, assignment, and occupation of employee at the time of the incident. The notice of hearing will also include a list of witnesses to be called. The hearing will be scheduled to take place on a regularly scheduled work day within 20 days of the Carrier's first knowledge of the act or occurrence. The hearing may be postponed by either party due to sickness, injury, or vacation of principals or witnesses. The hearing may be postponed for other reasons by mutual consent of the parties. The hearing may be adjourned to secure necessary witnesses or if it cannot be completed in a day. Hearings will be held at one of the following locations, whichever is closest to the employee's headquarter point - Waterville, Rigby, No. Billerica, East Deerfield. Employees required to attend a hearing at a location other than the location closest to the headquarter point will be allowed Personal Auto Expense payment from the location closest to the headquarter point to the location where the hearing is held and return.
- 26.2 An employee may not be suspended pending a hearing except when the act or occurrence to be investigated is of a serious nature such as Rule G, insubordination, extreme negligence, dishonesty, or when continuing an employee in service may constitute a threat to Carrier personnel, carrier property, or property entrusted to the custody of the Carrier. Suspension pending a hearing will not be considered as prejudicial to the employee and will be used sparingly by the Carrier.
- 26.3 The employee will have the opportunity to request that the Carrier provide necessary witnesses not listed on the notice of hearing and will have the opportunity to secure the presence of witnesses in his own behalf. The employee will have the right to representation and he and his representative will have the right to question all witnesses.
- 26.4 The employee must be notified within fifteen (15) days of the completion of

the hearing if discipline will be assessed. The employee and the General Chairman will be provided with a copy of the hearing transcript at the time the discipline decision is rendered. The types of discipline which may be assessed are reprimand, disqualification, deferred suspension, relevant training, actual suspension, and dismissal. The types of discipline may be assessed individually or in combination. The employee will be required to serve deferred suspension only if he commits another offense for which discipline is imposed within the succeeding six (6) month period.

- 26.5 If the finding of the hearing is that the employee is not at fault, he will be compensated for the actual wages lost, if any. If no wages are lost, employee will be paid in accordance with Article 38 of this Agreement.
- 26.6 If the finding of the hearing is that the employee is at fault, appeal of discipline assessed must be made within thirty (30) days of the date of the discipline notice. Such appeal must be made in writing by the BMW General Chairman to the Carrier's highest designated appeals officer. Conference must be scheduled within ten (10) days of receipt of appeal. Written response to the appeal will be issued within fifteen (15) days from the date of the conference. If the decision of the Carrier on appeal is in favor of the employee, he will be paid in accordance with paragraph 26.5 of this Article. If the appeal is denied, that decision will be final and binding unless within six (6) months of such denial the case is disposed of on the property or proceedings for disposition of the case are instituted by the BMW to a tribunal having jurisdiction by law or agreement.
- 26.7 If the Carrier's discipline decision is modified or overturned at any stage of handling resulting in a payment to the employee, such payment may be offset by any earnings received by the employee during the relevant time period which would not have otherwise been earned but for the discipline. The Carrier will work with the appropriate government agencies to assure that no Railroad Retirement benefits are adversely affected by the operation of the above provision.
- 26.8 (a) An Employee may be disciplined by reprimand, deferred suspension, or actual suspension without a hearing when the involved employee, his duly accredited representative, and the authorized carrier official agree,

in writing, to the responsibility of the employee and the discipline to be imposed.

- (b) The content of the discussion referred to in paragraph 26.8 (a) above will be considered off the record if a resolution is not achieved and such discussions will not be referred to at any subsequent handling of the case.
- (c) Any discipline imposed in accordance with paragraph 26.8 (a) above will be final with no right of appeal.

END OF ARTICLE

ZOMPA V.S

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. NOR 42083

**GRANITE STATE CONCRETE COMPANY, INC. and
MILFORD BENNINGTON RAILROAD COMPANY, INC.**

vs.

**BOSTON AND MAINE CORPORATION and
SPRINGFIELD TERMINAL RAILWAY COMPANY**

VERIFIED STATEMENT OF ANDREW D. ZOMPA IN SUPPORT OF REPLY OF THE
BOSTON AND MAINE CORPORATION AND SPRINGFIELD TERMINAL RAILWAY
COMPANY TO MOTION OF MILFORD-BENNINGTON RAILROAD CO., INC. AND
GRANITE STATE CONCRETE CO., INC. FOR SANCTIONS AND OTHER RELIEF
REGARDING DISCOVERY

Andrew D. Zompa states as follows:

1. I am the Director of Operating Rules for the Springfield Terminal Railway Company.

I make this Verified Statement in support of the Reply of the Boston and Maine Corporation and Springfield Terminal Railway Company (collectively "Guilford") to Motion of Milford-Bennington Railroad Co., Inc. ("MBR") and Granite State Concrete Co., Inc. ("Granite State") for Sanctions and Other Relief Regarding Discovery.

2. I have read the Verified Statements of Peter R. Leishman and F. Colin Pease submitted in support of the above-referenced motion, and I am extremely insulted by the accusations made by Mr. Leishman.

3. During my deposition, I testified truthfully and answered each question put to me

honestly and to the best of my ability. At no time did I fabricate any responses or provide responses that were not entirely correct to the best of my knowledge and belief.

4. Prior to my deposition, I met with Robert B. Culliford to discuss the potential questions that may arise as well as my knowledge of the operations of MBR.

5. During this meeting, Mr. Culliford stressed the fact that I should be honest in answering any questions that may arise during my deposition, regardless of whether those answers were favorable to Guilford or not.

6. I did not speak with any other representatives of Guilford regarding the substance of my deposition, nor did I feel that I was coerced or otherwise intimidated by any representative of Guilford with regard to my testimony.

7. I have never made any statements to the effect that I testified untruthfully during my deposition, or that I was concerned for my job if I did not testify in the manner expected by Guilford.

8. I did not speak with Mr. Leishman on November 3, 2003. As my notes reflect, I tried to contact the MBR on three occasions that day—twice by leaving messages on the MBR answering machine and once by paging Mr. Leishman. None of these messages was returned by Mr. Leishman. A copy of my notes—which indicate the phone numbers of the MBR office and my notes regarding the two phone calls and the page to Mr. Leishman—are attached hereto as Attachment A.

9. On November 4, 2003, I did speak with Mr. Leishman to schedule a training class for his employees in relation to the new operating window being implemented by Guilford. At no time did Mr. Leishman raise any objections to my testimony or the scheduling of the training class. Additionally, I also received a voice mail message from Mr. Leishman on November 4th

regarding scheduling of the training class. A transcript of that voice mail message is attached hereto as Attachment B.

10. When I received Mr. Leishman's voice mail message, I was not aware of the allegations with regard to my testimony, and his message did not indicate to me that there were any issues in relation to either my deposition or the scheduling of the training class.

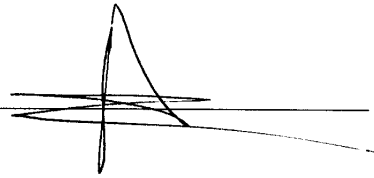
11. I also spoke with Mr. Leishman after the training class for MBR employees in Wilton, New Hampshire on November 5, 2003. It was during this conversation that I heard for the first time that Mr. Leishman disagreed with my testimony, when Mr. Leishman stated that I would be deposed again because of my testimony regarding a December 12, 2002 meeting in Wilton. In response, I did not object to this suggestion or otherwise comment upon it. Rather I simply stated something along the lines of "You've got to do what you've got to do."

VERIFICATION

Commonwealth of Massachusetts)
) ss.:
County of Middlesex)

Andrew D. Zompa, being duly sworn, deposes and says that he has read the foregoing statement, and that to the best of his knowledge, the facts asserted there are true and the same are true as stated.

Signed



Subscribed and sworn to before me this 24th
day of November 2003.


Notary Public

My commission expires March 12, 2010

ATTACHMENT A

603 599 700

603 673 7181 MB OFFICE

11-3-03

0800 - Left Message for Ruth Refresher
1400 HRT

Mary Lou

1128



Scot Chession	Clearing	Phy
Duane	Commie	Close Phy
John	Nichols	Close Phy



7/10/03

ATTACHMENT B

Peter Leishman:

Andy, hey uhh, Thursday doesn't work for a variety of reasons the two people can't even get down there so I don't know if tomorrow afternoon would work or Friday or whatever, so give me a call or page me 599-7007 for pager. I really don't want to give you my fucking cell phone number but I will anyway, uhh, 365-0621 of course, area code 603. Anyway, talk to you soon, thanks Andy. Bye.

End of message.

**BOSTWICK
V.S**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. NOR 42083

**GRANITE STATE CONCRETE COMPANY, INC. and
MILFORD BENNINGTON RAILROAD COMPANY, INC.**

vs.

**BOSTON AND MAINE CORPORATION and
SPRINGFIELD TERMINAL RAILWAY COMPANY**

**VERIFIED STATEMENT OF WARREN BOSTWICK IN SUPPORT OF REPLY OF THE
BOSTON AND MAINE CORPORATION AND SPRINGFIELD TERMINAL RAILWAY
COMPANY TO MOTION OF MILFORD-BENNINGTON RAILROAD CO., INC. AND
GRANITE STATE CONCRETE CO., INC. FOR SANCTIONS AND OTHER RELIEF
REGARDING DISCOVERY**

Warren Bostwick states as follows:

1. I am the General Manager for the Springfield Terminal Railway Company. I make this Verified Statement in support of the Reply of the Boston and Maine Corporation and Springfield Terminal Railway Company (collectively "Guilford") to Motion of Milford-Bennington Railroad Co., Inc. ("MBR") and Granite State Concrete Co., Inc. ("Granite State") for Sanctions and Other Relief Regarding Discovery.
2. On September 18, 2003, MBR reported a broken rail on the portion of the Guilford tracks over which MBR operates to serve Granite State. Noting that this broken rail would hamper the ability of MBR to serve its customer, myself, John Steiniger and Larry Ferguson contacted Mr. Leishman to discuss the situation.
3. During this discussion, I informed Mr. Leishman that Guilford was dispatching personnel

to repair the broken rail, and that in the interim a Guilford employee would be made available to walk the MBR trains over the broken rail to permit MBR to continue its operations. I also informed Mr. Leishman that MBR would be permitted to provide service to Granite State outside the existing 4 a.m. to 1 p.m. operating window on Thursday and Friday to make up for any time lost due to the broken rail. At no time did I indicate that the 4 a.m. to 1 p.m. operating window had been permanently discontinued, nor did Mr. Leishman ask whether that was the case.

4. After noting that MBR had not yet asked for clearance to enter the Guilford line as of 9:30 a.m. on September 22, 2003, after not having operated at during the remainder of September 18th, or the 19th through the 21st, I sent a letter to Mr. Leishman to confirm that the operating window had only been temporarily suspended. A copy of that letter is attached hereto as Attachment A.

5. Apparently, Mr. Leishman did not understand the nature of our discussion on September 18th, and believed that the operating window had been permanently discontinued despite that fact that I clearly stated that the window was *temporarily* discontinued for September 18th and 19th only. A copy of Mr. Leishman's letter is attached hereto as Attachment B.

VERIFICATION

Commonwealth of Massachusetts)
County of Middlesex) ss.:

Warren Bostwick, being duly sworn, deposes and says that he has read the foregoing statement, and that to the best of his knowledge, the facts asserted there are true and the same are true as stated.

Signed Warren Bostwick

Subscribed and sworn to before me this 25th
day of November 2003.

James J. Dumieau
Notary Public

My commission expires March 12, 2010

Attachment A

September 22, 2003

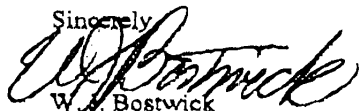
Mr. Peter R. Leishman
President
Milford-Bennington Railroad Company, Inc.
62 Elm Street
Milford, New Hampshire 03055

Dear Mr. Leishman:

On September 18, 2003 I had conversation with you regarding the operation of Milford-Bennington trains on the Springfield Terminal track. Due to a broken rail on the trackage, I indicated to you our willingness to walk your train over the broken rail until it was repaired and to make adjustments to our operating window to allow Milford-Bennington the necessary time to operate past 1300 hours on Thursday. I also offered you the option of operating after the 1300 cutoff on Friday, September 19, 2003, although you apparently elected not to take advantage of these options.

The broken rail was repaired on Thursday, September 18, 2003. As of 1500 hours on Friday, September 19, 2003 there has been no request by the Milford-Bennington for permission to occupy the trackage. The courtesy of a telephone call would have been appreciated if for some reason the Milford-Bennington has had problems that precluded the operation today particularly since we cancelled the Guilford Rail System local service early to accommodate the MBRC.

Sincerely,


W. J. Bostwick
General Manager
Transportation Department

Attachment B

Milford-Bennington Railroad Company, Inc.

*62 Elm Street
Milford, NH 03055
Tel. (603) 673-7181*

September 22, 2003

Warren Bostwick, General Manager
Springfield Terminal Railway
Iron Horse Park
No. Billerica, MA 01862

Re: Your Letter of September 22, 2003

Dear Warren:

We acknowledge, with strenuous objection, your letter reactivating the unjustified and arbitrary restrictions that were imposed on our use of Guilford's track pursuant to the trackage rights agreement of 1992. We reiterate our position that these restrictions are completely inconsistent with the agreement, constitute a blatant and unwarranted breach of the agreement and constitute an irresponsible breach of the public trust.

Following the receipt of the recent STB Order and our conversation of last Thursday, I was encouraged that your organization and superiors had finally committed to a good faith effort to resolve this matter. Your commitment to me in this conversation was an unambiguous and unconditional confirmation that the restrictions, (which we consider to be arbitrary and unjustified), had been removed. This was clear in our first conversation of Thursday and the complete inconsistency with that conversation and your current position, requires us to chronicle the recent events:

1. At approximately 800 hrs, on September 18, 2003, we telephoned the dispatcher at Guilford to advise him of a broken rail, following which the track was taken out of service until a track supervisor arrived on the scene to confirm the condition;
2. More than an hour passed so that our engineer was sent home since there was no clear indication of when this repair would take place.
3. At approximately 1000 hrs I responded to a page from yourself, and was informed that the track supervisor was willing to 'walk' our train over the defective rail. We were unable to implement this, however, because I was unable to recall my crew;
4. At that point, you will recall, I became involved in a multi-party conference call involving yourself, Larry Ferguson, and John Steiniger, which conversation was characterized by an abundance of good will, in which I was assured that your

Mr. Warren Bostwick

September 23, 2003

Page 2

objective was to 'work with us', 'get us up and operating', and 'get things back to normal';

5. The conversation made it eminently clear that not only would the restrictions be lifted, but that this action heralded a new and hopeful sea change in our relationship which would allow us to serve our customer with our complete capacity and your unconditional cooperation;
6. I was so encouraged by this change in events that I promptly contacted both our attorneys and Granite State to advise of this development which, in turn, resulted in Granite State reactivating their Milford and Wilton operations to full scale, with corresponding levels of commitment from our operation as well.
7. However, we were not in a position to take advantage of this new situation until we knew that the repairs were completed;
8. At no point have we ever received any official notification from Guilford that the repairs were completed and, as a consequence waited, patiently and courteously, for advice to that effect;
9. Today, Monday, September 22, 2003, we called the dispatcher to determine the state of the repairs, (which we had observed on Sunday to be complete), and to request permission to run, only to be told that the dispatcher had to call in to you for instructions, (a peculiar advice since the dispatcher would have logically been fully aware of the state of repairs), at which time I was directed to speak to you;
10. At that time you informed me, to my complete shock, that the revocation of the restrictions that was so graciously delivered on Thursday, had been revoked and that, once again, we were being subjected to the arbitrary, unjustifiable, and illegal restriction to preclude us from running beyond 1300 hrs;
11. You attempted to characterize my understanding of the earlier revocation as a 'misunderstanding' and contended that the statement, (which no one denies), was intended to deliver only a 'temporary' relief from the restrictions, a contrivance that is unworthy of you, (and, I suspect, the product of the mind of one of your superiors), and which, moreover, is incompatible with the fact that we have now learned from your own attorney's letter, that the repairs had been completed at 1600 hrs on Thursday and we were never advised of the same so that we could have, conceivably, taken some advantage of this 'temporary' window of opportunity;

At this time and in light of the foregoing events, we want to point out that throughout

Mr. Warren Bostwick
September 23, 2003
Page 3

these contentious proceedings, in which Guilford has wasted no amount of imagination creating unjustifiable and unwarranted obstacles to the reasonable delivery of service to our customers, we have continued to allow Guilford **full and unrestricted** access over **our** trackage to their customer, Pike Industries, which Mr. Culliford has affirmed constitutes an important source of ballast stone for Guilford's maintenance activities of their other operations. This brings me to the need to respond to your current letter which strains the bonds of incredulity. In that letter you imply that the easing of restrictions was intended by Guilford for Friday, (and part of Thursday) only, and that we 'elected not take advantage of these options'. Apart from the fact that Guilford's imposition of any of these conditions is a gross and unjustified breach of contract and the easing of those restrictions for any period is our legal right, you and the others with whom we spoke on that day could not have so obviously misstated a matter of such critical importance to us all. There was no misunderstanding regarding this. Your current version of this amounts to a categorical and direct change in position of such a serious nature as to constitute harassment and, moreover, makes no sense when the rest of the letter is read.

In the rest of the letter, you imply that it was our responsibility to have told you that we did not want to 'take advantage of these options' to avoid your having canceled your operation on that line that day. In the first place, this would have been the first time in the 11 years that we have operated that you would ever have had to cancel your operation to accommodate ours. More to the point, however, it would also have been the first time in 11 years that we would have had to provide you with advice that **we** did not choose to run on your trackage on a particular day. By contrast, any time that **we** had to close down **our** trackage to effect repairs or the like, we provided you with immediate notice to insure that it would not interfere with any possible service to Pike. When the repairs were concluded, by the way, we promptly notified you of that fact so that you would have no unnecessary interruption in service.

The reason we did not elect to 'take advantage' of the Friday operation was because you did not inform us that the repairs were concluded. We learned, (quite by accident), that the repairs were concluded when we saw the repairs, (on Sunday), with our own eyes. I never received any official notification of the same and only learned that you had them completed late Thursday when I received, from our lawyer, a copy of your lawyer's letter to our lawyer who represented therein that the repairs were concluded late Thursday.

In view of the foregoing, I must conclude that the inference in your letter that we owed you the courtesy of a call on Friday is an ineffective attempt to retroactively withdraw and ignore the clear and unambiguous relaxation of restrictions that were communicated to me earlier. Clearly, you can lift those restrictions and reimpose them at your pleasure, (but also at your risk), until we obtain relief from the STB and/or the courts. However, you have always appeared to me to be an honorable individual and I must sincerely express my disappointment at the evident change in your company's position that you were so clearly required to communicate to us now.

As you must know, the continued imposition of these unjustifiable and arbitrary

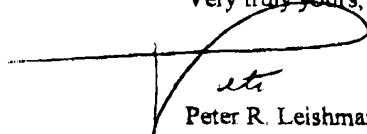
Mr. Warren Boswick

September 23, 2003

Page 4

restrictions continues to deliver substantial monetary damages to my customer, their and our employees and families, and our operation. Further, it deprives the citizens of this community of adequate and responsible rail service. As you and your company know, we will continue to hold Guilford accountable for any and all losses occasioned by their actions.

Very truly yours,

A handwritten signature in dark ink, appearing to read "P. Leishman", is written over a horizontal line. The signature is fluid and cursive.

Peter R. Leishman

PRL:ps

cc: David L. Nixon, Esquire
John G. MacLellan, III, Esq.
James Howard, Esq.
F. Colin Pease

VERIFIED STATEMENTS

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. NOR 42083

**GRANITE STATE CONCRETE COMPANY, INC. and
MILFORD BENNINGTON RAILROAD COMPANY, INC.**

vs.

**BOSTON AND MAINE CORPORATION and
SPRINGFIELD TERMINAL RAILWAY COMPANY**

VERIFIED STATEMENT OF LARRY L. FERGUSON IN SUPPORT OF REPLY OF THE
BOSTON AND MAINE CORPORATION AND SPRINGFIELD TERMINAL RAILWAY
COMPANY TO MOTION OF MILFORD-BENNINGTON RAILROAD CO., INC. AND
GRANITE STATE CONCRETE CO., INC. FOR SANCTIONS AND OTHER RELIEF
REGARDING DISCOVERY

Larry L. Ferguson states as follows:

1. I am the Director of Train Operations for the Springfield Terminal Railway Company.

I make this Verified Statement in support of the Reply of the Boston and Maine Corporation and Springfield Terminal Railway Company (collectively "Guilford") to Motion of Milford-Bennington Railroad Co., Inc. ("MBR") and Granite State Concrete Co., Inc. ("Granite State") for Sanctions and Other Relief Regarding Discovery.

2. At the request of MBR and Granite State, I was deposed on October 31, 2003.
3. Prior to October 31, 2003, I met with Robert B. Culliford to discuss the potential questions that may arise as well as my knowledge of the operations of MBR.
4. During this meeting, Mr. Culliford stressed the fact that I should be honest in answering

any questions that may arise during my deposition, regardless of whether those answers were favorable to Guilford or not.

5. I did not speak with any other representatives of Guilford regarding the substance of my deposition, nor did I feel that I was coerced or otherwise intimidated by any representative of Guilford with regard to my testimony.

6. During my deposition, I testified truthfully and honestly to the best of my knowledge and belief.

7. On September 18, 2003, I was involved in a telephone conversation between Warren Bostwick, John Steiniger and myself on behalf of Guilford and Peter R. Leishman on behalf of MBR. During this conversation, Mr. Bostwick made it clear to Mr. Leishman that MBR would be permitted to operate outside of the existing 4 a.m. to 1 p.m. operating window on September 18th and 19th only. At no time did Mr. Bostwick state or otherwise indicate that the operating window was being permanently discontinued, nor did Mr. Leishman ask whether that was the case.

VERIFICATION

Commonwealth of Massachusetts)
) ss.:
County of Middlesex)

Larry L. Ferguson, being duly sworn, deposes and says that he has read the foregoing statement, and that to the best of his knowledge, the facts asserted there are true and the same are true as stated.

Signed Larry L Ferguson

Subscribed and sworn to before me this 25th
day of November 2003.

Joseph J. Bumeau
Notary Public

My commission expires March 12, 2010

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. NOR 42083

**GRANITE STATE CONCRETE COMPANY, INC. and
MILFORD BENNINGTON RAILROAD COMPANY, INC.**

vs.

**BOSTON AND MAINE CORPORATION and
SPRINGFIELD TERMINAL RAILWAY COMPANY**

VERIFIED STATEMENT OF JOHN STEINIGER IN SUPPORT OF REPLY OF THE
BOSTON AND MAINE CORPORATION AND SPRINGFIELD TERMINAL RAILWAY
COMPANY TO MOTION OF MILFORD-BENNINGTON RAILROAD CO., INC. AND
GRANITE STATE CONCRETE CO., INC. FOR SANCTIONS AND OTHER RELIEF
REGARDING DISCOVERY

John Steiniger states as follows:

1. I am Chief Engineer of Track for the Springfield Terminal Railway Company.

I make this Verified Statement in support of the Reply of the Boston and Maine Corporation and Springfield Terminal Railway Company (collectively "Guilford") to Motion of Milford-Bennington Railroad Co., Inc. ("MBR") and Granite State Concrete Co., Inc. ("Granite State") for Sanctions and Other Relief Regarding Discovery.

2. On September 18, 2003, I was involved in a telephone conversation between Warren Bostwick, Larry Ferguson and myself on behalf of Guilford and Peter R. Leishman on behalf of MBR. During this conversation, Mr. Bostwick made it clear to Mr. Leishman that MBR would be permitted to operate outside of the existing 4 a.m. to 1 p.m. operating window on September 18th and 19th only. At no time did Mr. Bostwick state or otherwise indicate that the operating

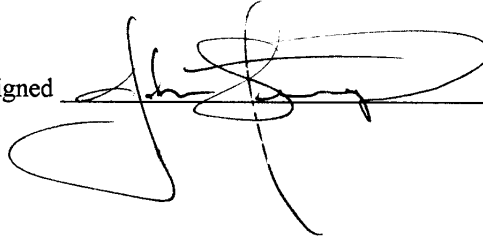
window was being permanently discontinued, nor did Mr. Leishman ask whether that was the case.

VERIFICATION

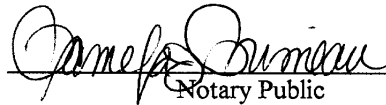
Commonwealth of Massachusetts)
) ss.:
County of Middlesex)

John Steinger, being duly sworn, deposes and says that he has read the foregoing statement, and that to the best of his knowledge, the facts asserted there are true and the same are true as stated.

Signed



Subscribed and sworn to before me this 26th
day of November 2003.


Notary Public

My commission expires March 12, 2010

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. NOR 42083

**GRANITE STATE CONCRETE COMPANY, INC. and
MILFORD BENNINGTON RAILROAD COMPANY, INC.**

vs.

**BOSTON AND MAINE CORPORATION and
SPRINGFIELD TERMINAL RAILWAY COMPANY**

VERIFIED STATEMENT OF ROGER D. BERGERON IN SUPPORT OF REPLY OF THE
BOSTON AND MAINE CORPORATION AND SPRINGFIELD TERMINAL RAILWAY
COMPANY TO MOTION OF MILFORD-BENNINGTON RAILROAD CO., INC. AND
GRANITE STATE CONCRETE CO., INC. FOR SANCTIONS AND OTHER RELIEF
REGARDING DISCOVERY

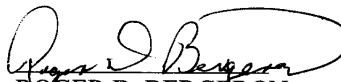
Roger D. Bergeron states as follows:

1. I am the Assistant Vice President-Engineering for the Springfield Terminal Railway Company. I make this Verified Statement in support of the Reply of the Boston and Maine Corporation and Springfield Terminal Railway Company (collectively "Guilford") to Motion of Milford-Bennington Railroad Co., Inc. ("MBR") and Granite State Concrete Co., Inc. ("Granite State") for Sanctions and Other Relief Regarding Discovery.
2. At the request of MBR and Granite State, I was deposed on October 31, 2003.
3. Prior to October 31, 2003, I met with Robert B. Culliford to discuss the potential questions that may arise as well as my knowledge of the operations of MBR.
4. During this meeting, Mr. Culliford stressed the fact that I should be honest in answering

any questions that may arise during my deposition, regardless of whether those answers were favorable to Guilford or not.

5. I did not speak with any other representatives of Guilford regarding the substance of my deposition, nor did I feel that I was coerced or otherwise intimidated by any representative of Guilford with regard to my testimony.

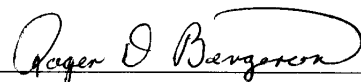
6. During my deposition, I testified truthfully and honestly to the best of my knowledge and belief.


ROGER D. BERGERON

VERIFICATION

Commonwealth of Massachusetts)
) ss.:
County of Middlesex)

Roger D. Bergeron, being duly sworn, deposes and says that he has read the foregoing statement, and that to the best of his knowledge, the facts asserted there are true and the same are true as stated.

Signed  _____

Subscribed and sworn to before me this 24th
day of November 2003.



Notary Public

My commission expires March 12, 2010

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. NOR 42083

**GRANITE STATE CONCRETE COMPANY, INC. and
MILFORD BENNINGTON RAILROAD COMPANY, INC.**

vs.

**BOSTON AND MAINE CORPORATION and
SPRINGFIELD TERMINAL RAILWAY COMPANY**

VERIFIED STATEMENT OF THOMAS GARRITY IN SUPPORT OF REPLY OF THE
BOSTON AND MAINE CORPORATION AND SPRINGFIELD TERMINAL RAILWAY
COMPANY TO MOTION OF MILFORD-BENNINGTON RAILROAD CO., INC. AND
GRANITE STATE CONCRETE CO., INC. FOR SANCTIONS AND OTHER RELIEF
REGARDING DISCOVERY

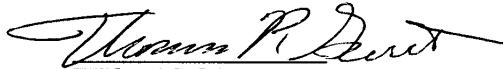
Thomas Garrity states as follows:

1. I am a truck driver for the Springfield Terminal Railway Company. I make this Verified Statement in support of the Reply of the Boston and Maine Corporation and Springfield Terminal Railway Company (collectively "Guilford") to Motion of Milford-Bennington Railroad Co., Inc. ("MBR") and Granite State Concrete Co., Inc. ("Granite State") for Sanctions and Other Relief Regarding Discovery.
2. At the request of MBR and Granite State, I was deposed on October 31, 2003.
3. Prior to October 31, 2003, I met with Guilford representatives Robert B. Culliford and Roger D. Bergeron to discuss the potential questions that may arise as well as my knowledge of the operations of MBR.
4. During this meeting, at which Mr. Nault, Mr. Larkin, and Mr. Preston were also present,

Mr. Culliford and Mr. Bergeron stressed the fact that I should be honest in answering any questions that may arise during my deposition, regardless of whether those answers were favorable to Guilford or not.

5. I did not speak with any other representatives of Guilford regarding the substance of my deposition, nor did I feel that I was coerced or otherwise intimidated by any representative of Guilford with regard to my testimony.

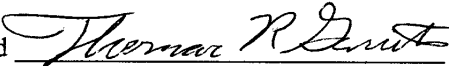
6. During my deposition, I testified truthfully and honestly to the best of my knowledge and belief.


THOMAS GARRITY

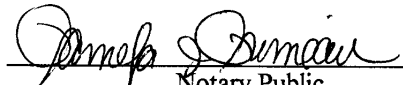
VERIFICATION

Commonwealth of Massachusetts)
County of Middlesex) ss.:

Thomas Garrity, being duly sworn, deposes and says that he has read the foregoing statement, and that to the best of his knowledge, the facts asserted there are true and the same are true as stated.

Signed 

Subscribed and sworn to before me this 24th
day of November 2003.


Notary Public

My commission expires March 12, 2006

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. NOR 42083

**GRANITE STATE CONCRETE COMPANY, INC. and
MILFORD BENNINGTON RAILROAD COMPANY, INC.**

vs.

**BOSTON AND MAINE CORPORATION and
SPRINGFIELD TERMINAL RAILWAY COMPANY**

VERIFIED STATEMENT OF MICHAEL S. MORETTO IN SUPPORT OF REPLY OF THE
BOSTON AND MAINE CORPORATION AND SPRINGFIELD TERMINAL RAILWAY
COMPANY TO MOTION OF MILFORD-BENNINGTON RAILROAD CO., INC. AND
GRANITE STATE CONCRETE CO., INC. FOR SANCTIONS AND OTHER RELIEF
REGARDING DISCOVERY

Michael S. Moretto states as follows:

1. I am a Train Operations Manager for the Springfield Terminal Railway Company.
I make this Verified Statement in support of the Reply of the Boston and Maine Corporation and Springfield Terminal Railway Company (collectively "Guilford") to Motion of Milford-Bennington Railroad Co., Inc. ("MBR") and Granite State Concrete Co., Inc. ("Granite State") for Sanctions and Other Relief Regarding Discovery.
2. At the request of MBR and Granite State, I was deposed on October 31, 2003.
3. Prior to October 31, 2003, I met with Robert B. Culliford and Larry Ferguson to discuss the potential questions that may arise as well as my knowledge of the operations of MBR.
4. During this meeting, Mr. Culliford stressed the fact that I should be honest in answering

any questions that may arise during my deposition, regardless of whether those answers were favorable to Guilford or not.

5. I did not speak with any other representatives of Guilford regarding the substance of my deposition, nor did I feel that I was coerced or otherwise intimidated by any representative of Guilford with regard to my testimony.

6. During my deposition, I testified truthfully and honestly to the best of my knowledge and belief.

MICHAEL S. MORETTO

VERIFICATION

Commonwealth of Massachusetts)
) ss.:
County of Middlesex)

Michael S. Moretto, being duly sworn, deposes and says that he has read the foregoing statement, and that to the best of his knowledge, the facts asserted there are true and the same are true as stated.

Signed _____

Subscribed and sworn to before me this 24th
day of November 2003.

Notary Public

My commission expires _____

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. NOR 42083

**GRANITE STATE CONCRETE COMPANY, INC. and
MILFORD BENNINGTON RAILROAD COMPANY, INC.**

vs.

**BOSTON AND MAINE CORPORATION and
SPRINGFIELD TERMINAL RAILWAY COMPANY**

**VERIFIED STATEMENT OF CALVIN R. PRESTON IN SUPPORT OF REPLY OF THE
BOSTON AND MAINE CORPORATION AND SPRINGFIELD TERMINAL RAILWAY
COMPANY TO MOTION OF MILFORD-BENNINGTON RAILROAD CO., INC. AND
GRANITE STATE CONCRETE CO., INC. FOR SANCTIONS AND OTHER RELIEF
REGARDING DISCOVERY**

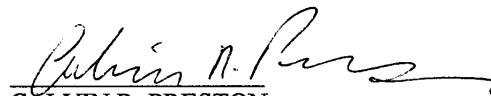
Calvin R. Preston states as follows:

1. I am an Inspection and Repair Foreman for the Springfield Terminal Railway Company.
I make this Verified Statement in support of the Reply of the Boston and Maine Corporation and Springfield Terminal Railway Company (collectively "Guilford") to Motion of Milford-Bennington Railroad Co., Inc. ("MBR") and Granite State Concrete Co., Inc. ("Granite State") for Sanctions and Other Relief Regarding Discovery.
2. At the request of MBR and Granite State, I was deposed on October 31, 2003.
3. Prior to October 31, 2003, I met with Robert B. Culliford and Roger D. Bergeron to discuss the potential questions that may arise as well as my knowledge of the operations of MBR.
4. During this meeting, at which Mr. Nault, Mr. Larkin, and Mr. Garrity were also present,

Mr. Culliford and Mr. Bergeron stressed the fact that I should be honest in answering any questions that may arise during my deposition, regardless of whether those answers were favorable to Guilford or not.

5. I did not speak with any other representatives of Guilford regarding the substance of my deposition, nor did I feel that I was coerced or otherwise intimidated by any representative of Guilford with regard to my testimony.

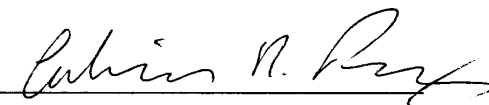
6. During my deposition, I testified truthfully and honestly to the best of my knowledge and belief.


CALVIN R. PRESTON

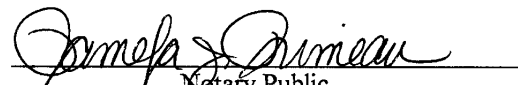
VERIFICATION

Commonwealth of Massachusetts)
County of Middlesex) ss.:

Calvin R. Preston, being duly sworn, deposes and says that he has read the foregoing statement, and that to the best of his knowledge, the facts asserted there are true and the same are true as stated.

Signed 

Subscribed and sworn to before me this 24th
day of November 2003.


Notary Public

My commission expires March 12, 2010

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. NOR 42083

**GRANITE STATE CONCRETE COMPANY, INC. and
MILFORD BENNINGTON RAILROAD COMPANY, INC.**

vs.

**BOSTON AND MAINE CORPORATION and
SPRINGFIELD TERMINAL RAILWAY COMPANY**

**VERIFIED STATEMENT OF STEVEN LARKIN IN SUPPORT OF REPLY OF THE
BOSTON AND MAINE CORPORATION AND SPRINGFIELD TERMINAL RAILWAY
COMPANY TO MOTION OF MILFORD-BENNINGTON RAILROAD CO., INC. AND
GRANITE STATE CONCRETE CO., INC. FOR SANCTIONS AND OTHER RELIEF
REGARDING DISCOVERY**

Steven Larkin states as follows:

1. I am a Track Supervisor for the Springfield Terminal Railway Company.

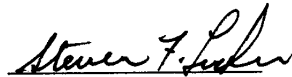
I make this Verified Statement in support of the Reply of the Boston and Maine Corporation and Springfield Terminal Railway Company (collectively "Guilford") to Motion of Milford-Bennington Railroad Co., Inc. ("MBR") and Granite State Concrete Co., Inc. ("Granite State") for Sanctions and Other Relief Regarding Discovery.

2. At the request of MBR and Granite State, I was deposed on October 31, 2003.
3. Prior to October 31, 2003, I met with Robert B. Culliford and Roger D. Bergeron to discuss the potential questions that may arise as well as my knowledge of the operations of MBR.
4. During this meeting, at which Mr. Nault, Mr. Larkin, and Mr. Garrity were also present,

Mr. Culliford and Mr. Bergeron stressed the fact that I should be honest in answering any questions that may arise during my deposition, regardless of whether those answers were favorable to Guilford or not.

5. I did not speak with any other representatives of Guilford regarding the substance of my deposition, nor did I feel that I was coerced or otherwise intimidated by any representative of Guilford with regard to my testimony.

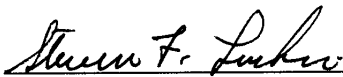
6. During my deposition, I testified truthfully and honestly to the best of my knowledge and belief.


STEVEN LARKIN

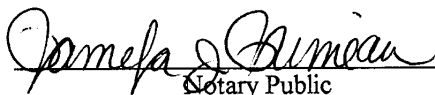
VERIFICATION

Commonwealth of Massachusetts)
County of Middlesex) ss.:

Steven Larkin, being duly sworn, deposes and says that he has read the foregoing statement, and that to the best of his knowledge, the facts asserted there are true and the same are true as stated.

Signed 

Subscribed and sworn to before me this 24th
day of November 2003.


Notary Public

My commission expires March 12, 2010

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. NOR 42083

**GRANITE STATE CONCRETE COMPANY, INC. and
MILFORD BENNINGTON RAILROAD COMPANY, INC.**

vs.

**BOSTON AND MAINE CORPORATION and
SPRINGFIELD TERMINAL RAILWAY COMPANY**

**VERIFIED STATEMENT OF GARY S. NAULT IN SUPPORT OF REPLY OF THE BOSTON
AND MAINE CORPORATION AND SPRINGFIELD TERMINAL RAILWAY COMPANY
TO MOTION OF MILFORD-BENNINGTON RAILROAD CO., INC. AND GRANITE STATE
CONCRETE CO., INC. FOR SANCTIONS AND OTHER RELIEF REGARDING
DISCOVERY**

Gary S. Nault states as follows:

1. I am an Inspection and Repair Foreman for the Springfield Terminal Railway Company. I make this Verified Statement in support of the Reply of the Boston and Maine Corporation and Springfield Terminal Railway Company (collectively "Guilford") to Motion of Milford-Bennington Railroad Co., Inc. ("MBR") and Granite State Concrete Co., Inc. ("Granite State") for Sanctions and Other Relief Regarding Discovery.
 2. At the request of MBR and Granite State, I was deposed on October 31, 2003.
 3. Prior to October 31, 2003, I met with Guilford representatives Robert B. Culliford and Roger D. Bergeron to discuss the potential questions that may arise as well as my knowledge of the operations of MBR.
 4. During this meeting, at which Mr. Garrity, Mr. Larkin, and Mr. Preston were also
-

present, Mr. Culliford and Mr. Bergeron stressed the fact that I should be honest in answering any questions that may arise during my deposition, regardless of whether those answers were favorable to Guilford or not.

5. I did not speak with any other representatives of Guilford regarding the substance of my deposition, nor did I feel that I was coerced or otherwise intimidated by any representative of Guilford with regard to my testimony.

6. During my deposition, I testified truthfully and honestly to the best of my knowledge and belief.

Gary Nault
GARY S. NAULT

VERIFICATION

Commonwealth of Massachusetts)
)
County of Middlesex) ss.:

Gary S. Nault, being duly sworn, deposes and says that he has read the foregoing statement, and that to the best of his knowledge, the facts asserted there are true and the same are true as stated.

Signed Gary Nault

Subscribed and sworn to before me this 24th
day of November 2003.

Daniela S. Simeau
Notary Public

My commission expires March 12, 2010