

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CSX TRANSPORTATION, INC.)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:04CV00611 (RWR)
)	Hon. Richard W. Roberts
NATIONAL MEDIATION BOARD)	
)	
Defendant.)	
)	

DECLARATION OF ROLAND WATKINS

I, Roland Watkins, hereby declare and state as follows:

I. INTRODUCTION

1. I am the National Mediation Board's Director of Arbitration Services, a position I have held since April 21, 1999. I began my employment with the National Mediation Board (NMB) in February 1980, as a Representation Investigator/Hearing Officer. Later, I was promoted to Senior Hearing Officer/Legal Counsel before assuming the duties of the Director of Arbitration Services in 1999.

2. My duties as NMB Director of Arbitration Services cover all areas of the arbitration support functions of the NMB, including broad authority with respect to the selection and appointment of arbitrators to arbitration tribunals. I am also responsible for providing panels of arbitrators for the resolution of disputes in the airline and railroad industries, maintenance of the NMB's General Roster of Arbitrators and all administrative procedures related to these functions for the

airline and railroad industries. As Director of Arbitration Services, I am the official custodian of all NMB arbitration files.

The statements made herein are based upon my personal knowledge and information available to me in my official capacity. Due to the nature of my official duties, I am familiar with the procedures established by the NMB in offering arbitration services to unions and carriers pursuant to the Railway Labor Act ("RLA"), 45 U.S.C. §§ 151 et seq. as well as the NMB's funding authority over those arbitration services.

3. I am also the authorized certifying officer for all NMB expenditures associated with public law boards (PLBs), special boards of adjustment (SBAs) and the National Railroad Adjustment Board (NRAB). These expenditures include payments to arbitrators for compensation and travel expenses, as well as payments to various suppliers. I also administer all aspects of the program of the NRAB including the administrative processing of all cases and the supervision of the NRAB personnel pursuant to the authority in 45 U.S.C. 153(u).

4. The documents attached to this Declaration are authentic copies of records maintained in the NMB's official files.

II. The RLA & The NMB

5. The Railway Labor Act (RLA) provides a comprehensive statutory framework for the resolution of labor-management disputes in the airline and railroad industries. Enacted in 1926 as a collaborative effort of labor and management, the RLA succeeded several previous federal statutes dating back to 1888. The Act was amended in 1934 and 1936. The RLA has five "general purposes": avoid interruptions to interstate commerce in the airline and railroad

industries; ensure the right of employees to freely determine whether they wish to be represented for collective bargaining purposes; ensure the independence of labor and management for self-organization to carry out the purposes of the Act; provide for the prompt and orderly settlement of collective bargaining disputes; and provide for the prompt and orderly settlement of disputes over the interpretation of existing collective bargaining agreements. The NMB is responsible for the mediation of collective bargaining disputes, the resolution of employee representation cases and certain support services for arbitration in the airline and railroad industries.

6. The NMB is headquartered in Washington, D.C. The NMB is composed of three Members selected by the President and confirmed by the U.S. Senate. The Members of the Board select the NMB Chairman annually.

7. In the railroad industry, the NMB appoints and sets the rates of pay for those arbitrators who are compensated by the Government, as well as providing their compensation from the NMB budget. Such arbitrators serve as independent contractors for the NMB rather than as employees of the NMB. In airline arbitration cases, the NMB provides a panel of potential arbitrators from the NMB's roster and the parties pay the particular individual they select.

8. The NMB is responsible for the financial administration of arbitration cases that are brought to SBAs, PLBs and the NRAB. Under Section 153 of the Railway Labor Act, the PLBs and SBAs are statutory equivalents to the NRAB in connection with the arbitration of grievance disputes in the railroad industry. The PLBs and SBAs are created on an ad hoc basis at the request of the parties. NMB grievance arbitration funds are not designated for budget purposes as separate

PLB, SBA or NRAB funds but are designated as funds for Section 3 activities. These funds cannot be mingled with other funds in the NMB's annual budget.

9. Since the amount of funds necessary to resolve all the cases on the NMB caseload far exceeds the NMB funds available, the NMB must closely monitor its expenditures on PLBs, SBAs and the NRAB. The NMB ensures that the Government funds expended for the NRAB, PLBs and SBAs are authorized in accordance with Government rules and regulations and are consistent with NMB policy. The NMB routinely makes funding related decisions concerning the operations of PLBs, SBAs and the NRAB. For example, if the NMB is operating under a continuing resolution, only a portion of the Section 3 activity is allowed to operate. Attachment 1 is a notice distributed by the NMB during a period when funding was in question and it shows that the NMB greatly limited the Section 3 activity depending on the availability of funds. During the last two months of Fiscal Year 2003, the NMB limited Section 3 activities due to the diminishing amount of available funds. Only portions were funded. Attachment 2 is a letter sent to arbitrators notifying them that the NMB was only allowing the arbitrators a portion of the funding requested.

PLBs and SBAs are closely monitored for funding purposes and if in my judgment there is no activity, that board is closed. For example, in fiscal year 2002, I closed 272 PLBs and 50 SBAs for a total of 322 boards for funding purposes. In fiscal year 2003, I closed 38 PLBs and 4 SBAs for a total of 42 boards for funding purposes. Open boards represent funding liabilities for the Federal Government.

The NMB's appropriation for Fiscal Year 2004 is approximately \$11.3 million of which \$2.1 is earmarked for arbitrators' salaries or compensation. The arbitrators' compensation is approximately 18.5 percent of the NMB's overall budget. Arbitrators are paid by the Federal Government \$300 per day for their services.

III. CHRONOLOGY OF EVENTS

10. On March 24, 2000, BMW was enjoined from engaging in any work stoppage on CSX by Judge Ralph W. Nimmons, Jr. of the United States District Court, Middle District of Florida, Jacksonville Division. The dispute concerned the subcontracting of work by CSX. The Court concluded that the dispute was a minor dispute and ordered the parties to submit to mandatory, binding arbitration. A copy of the preliminary injunction is included at Attachment 3.

11. On February 7, 2002, BMW requested that the National Mediation Board (NMB) appoint neutrals to decide 57 contracting out cases pending at the NRAB. (Attachment 4.) BMW organized the 57 cases into seven lists. The request was actually for the appointment of seven neutrals. BMW's action was based on Section 3, First (l) of the Railway Labor Act, 45 U.S.C. Section 153, First (l), which states:

(1) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote of the division members, as provided in paragraph (n) of this section, then such division shall forthwith agree upon and select a neutral person, to be known as "referee", to sit with the division as a member thereof, and make an award. Should the division fail to agree upon and select a referee within ten days of the date of the deadlock or inability to secure a majority vote, then the division, or any member thereof, or the parties or either party to the dispute may certify that fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit

with the division as a member thereof and make an award. The Mediation Board shall be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this chapter for the appointment of arbitrators and shall fix and pay the compensation of such referees.

12. On March 5, 2002, CSX requested that the NMB "appoint a neutral to establish an agreement creating a public law board for certain contracting out disputes between CSXT and the [BMW]." (Attachment 5.) CSX contended that BMW delayed finalizing the agreement pending pursuit of the matter at the NRAB. CSX requested that the "NMB expeditiously . . . provide a strike list of seven referees from which the parties can select a procedural neutral to fashion a PLB agreement." CSX asserted that this request was pursuant to 29 C.F.R. Section 1207.1, which states:

(b) Appointment of a neutral to determine matters concerning the establishment and/or jurisdiction of a PL Board. (1) When the members of a PL Board constituted in accordance with paragraph (a) of this section, for the purpose of resolving questions concerning the establishment of the Board and/or its jurisdiction, are unable to resolve these matters, then and in that event, either party may ten (10) days thereafter request the Mediation Board to appoint a neutral member to determine these procedural issues. (2) Upon receipt of this request, the Mediation Board will notify the other party to the PL Board. The Mediation Board will then designate a neutral member to sit with the PL Board and resolve the procedural issues in dispute. When the neutral has determined the procedural issues in dispute, he shall cease to be a member of the PL Board.

13. The NMB met with the parties on March 21, 2002, at the agency's offices in an attempt to mediate the disputes. I was present for the NMB along with Chief of Staff Benetta Mansfield and Deputy Chief of Staff Lawrence Gibbons. The parties agreed to establish public law boards and to refer the cases to these boards.

The result was a Letter of Agreement between CSX and BMW which was signed that evening. (Attachment 6.)

14. The first agreement establishing a public law board was received by the NMB on April 30, 2002. (Attachment 7.) In the agreement, it stated that the compensation and expenses of the arbitrator shall be set and paid by the NMB. On May 1, 2002, the BMW requested that the NMB furnish the parties a list of 11 arbitrators. (Attachment 8.) The agreement was docketed on May 2, 2002, as Public Law Board No. 6508, and a list of 11 arbitrators was furnished. (Attachment 9.)

On May 28, 2002, I was notified that the parties had selected Robert Douglas as the arbitrator. (Attachment 10.) Mr. Douglas was certified on May 28, 2002. (Attachment 11.) Arbitrator Douglas began work on this board on July 18, 2002. A hearing was conducted on August 19th, October 16th and November 3, 2002.

Mr. Douglas was certified to hear the grievances and to render a decision and not to engage in any other efforts actions. For example, on January 8, 2003, a voucher was returned to Arbitrator Douglas because he claimed reimbursement for decision writing and did not submit a decision code to indicate that he had rendered a decision. (Attachment 12.) It is NMB policy to pay the arbitrator only upon the submission of the award. When the arbitrator seeks reimbursement for his services, he has to submit a Report of Activity sheet indicating the type of work performed by the arbitrator on the days that he seeks reimbursement or payment from the NMB. A copy of the stated policy is Attachment 13. When the voucher was returned, Arbitrator Douglas indicated that the record on this board was a lengthy one and required days of reading. He indicated that it was taking days to

review this file. The voucher which was rejected was later paid after this clarification.

On June 4, 2003, the NMB requested that Arbitrator Douglas render the decisions on these cases by the end of June 2003. (Attachment 14.) The letter was sent because in February 2003, the NMB became aware of the fact that 6 months had elapsed since the hearing on the cases. It is NMB policy that the arbitrator must render the awards within 6 months of the date of the hearing of the cases which in this case was August 2002. After monthly efforts by the NMB Arbitration Services staff to obtain the awards, the arbitrator was sent the June 4th letter. On a monthly basis, an NMB staff employee called Mr. Douglas and informed him that the decisions were late. Arbitrator Douglas missed the deadline.

In August 2003, Arbitrator Douglas was directed by me to come to the NMB's offices and meet with me and the Chief of Staff. At that meeting, Arbitrator Douglas was directed to produce the decisions. Arbitrator Douglas stated that he was drafting a decision to assist the parties in handling future cases and that it took time to do this. He was directed to provide the awards by the end of August 2003. He stated that he was drafting one decision which had eight sections to address each grievance. This was the first time that the NMB had directed an arbitrator to appear in person and explained why an award had not been issued in the time frame that had been in effect for years. However, Arbitrator Douglas did not issue the decision by the end of August.

On September 2, 2003, Edward Fitzmaurice, Chairman of the NMB, called Arbitrator Douglas and directed him to issue the awards. This was the first time that the Chairman did something of this nature. Later that week, the arbitrator

provided the parties with a draft of his decision. The arbitrator performed work on the awards in October 2003. The parties did not sign the award until October 7, 2003. (Attachment 15.)

Arbitrator Douglas was not authorized to conduct any mediation. His neutral activity sheet shows that he was paid for decision writing and the work associated with the writing of a decision. Copies of his activity sheets are included as Attachment 16. After the submission of his award to the parties, Arbitrator Douglas met with the parties in executive session. The executive session is a common practice in railroad arbitration. The purpose of the executive session is to allow the parties to bring to the arbitrator's attention facts in the award which are incorrect. An example is a reference in the award to the wrong section of a collective bargaining agreement. Review of the records established that the NMB paid Arbitrator Douglas for 62 days of work on this board which amounted to \$18,600.00, for the award. Arbitrator Douglas issued one document in which he decided the 8 grievances.

In the Memorandum in Support of Plaintiff's Application for a Preliminary Injunction, CSX states that a typical fee for a neutral is in the range of \$3,000-\$5,000. This figure is not based on any records of the NMB and does not represent a cost based on the expenditure of Government funds. The NMB is not involved in those instances in which the parties pay the arbitrator. The \$18,600 paid to Arbitrator Douglas is the money paid for 62 days and does not include the travel expenses paid by the NMB. Arbitrator Douglas did not state to the NMB that the 62 days was based on any attempted mediation but that it was based on the amount of time that it took to read the materials submitted by the parties, conduct four

days of hearings, and to write a decision which he thought was going to be used by the parties to resolve the other cases. According to Mr. Klimtzak, there were two mediation sessions which were not authorized by the NMB.

In the Memorandum at page 26, CSX incorrectly states that the arbitrator issues a decision in 60 days. This provision is typical language in public law board agreements but it is rarely followed by the arbitrators and the parties refuse to enforce this provision. After six months, the parties contact the NMB and ask the NMB to inquire of the arbitrator the status of the award since the NMB pays the arbitrator. In those instances in which the parties pay the arbitrator, they do not encounter any problems. The statement by CSX as to the date for submission of vouchers is not based on any facts since vouchers for payment of Federal funds is submitted by the individual arbitrator and neither CSX nor BMW is involved or ever see the voucher forms. As an independent contractor with the NMB the arbitrator's pay relationship is strictly between the arbitrator and the NMB.

15. The second board was docketed on May 2, 2002, as Public Law Board No. 6509. (Attachment 17.) In the agreement, it stated that the compensation and expenses of the arbitrator shall be set and paid by the NMB. On May 29, 2002, the BMW requested that the NMB furnish a list of 11 arbitrators. (Attachment 18.) The list was furnished on June 11, 2002. (Attachment 19.) On July 23, 2002, I was informed by the BMW that the parties had selected Arbitrator Ann Kenis. (Attachment 20.) Arbitrator Kenis was certified on July 23, 2002. (Attachment 21.) The hearing before Arbitrator Kenis was originally scheduled for November 21, 2002, but the parties, on August 23, 2002, agreed to suspend the arbitration proceedings. (Attachment 22.) Arbitrator Kenis was contacted by the BMW on

November 24, 2003, to schedule the hearing. (Attachment 23.) This was after the issuance of the award in Public Law Board No. 6508. The parties agreed to a date of February 18, 2004. (Attachment 24.) Prior to February 18, 2004, the parties settled the 8 cases on this board.

In his declaration, Mr. Klimtzak stated that the CSX and BMW "agreed" to conduct "one PLB per month." This is neither stated in any of the numerous public law board agreements nor is this stated in correspondence provided to the NMB. The parties agreed to suspend the hearing of the second public law board which is Public Law Board No. 6509 from an original date of November 2002 until February 2004. At the time of the issuance of the order to show cause, the parties had neither selected an arbitrator nor scheduled hearings on the 30 boards which boards which were consolidated in Public Law Board No. 6511.

16. The third board was established on May 2, 2002, and docketed as Public Law Board No. 6510. (Attachment 25.) In the agreement, it stated that the compensation and expenses of the arbitrator shall be set and paid by the NMB. On July 16, 2002, the BMW requested that the NMB furnish a list of 11 arbitrators. (Attachment 26.) The list was submitted to the parties on July 19, 2002. (Attachment 27.) The NMB was notified on March 8, 2004, that the parties had selected Arbitrator Elliot Goldstein who was certified on March 23, 2004. (Attachments 28 and 29.) The hearing was held on April 21, 2004.

A. PLBs Without An Arbitrator At The Time Of Consolidation

17. Public Law Board No. 6511 was docketed on May 2, 2002. (Attachment 30.) In the agreement, it stated that the compensation and expenses of the

arbitrator shall be set and paid by the NMB. The parties had not selected an arbitrator for this board at the time of the issuance of my order to show case on March 1, 2004.

18. Public Law Board No. 6512 was docketed on May 2, 2002. The document on this board is similar to Attachment 30. In the agreement, it stated that the compensation and expenses of the arbitrator shall be set and paid by the NMB. The parties had not selected an arbitrator for this board at the time of the issuance of my order to show case on March 1, 2004.

19. Public Law Board No. 6513 was docketed on May 2, 2002. The document on this board is similar to Attachment 30. In the agreement, it stated that the compensation and expenses of the arbitrator shall be set and paid by the NMB. The parties had not selected an arbitrator for this board at the time of the issuance of my order to show case on March 1, 2004.

20. Public Law Board No. 6514 was docketed on May 2, 2002. The document on this board is similar to Attachment 30. In the agreement, it stated that the compensation and expenses of the arbitrator shall be set and paid by the NMB. The parties had not selected an arbitrator for this board at the time of the issuance of my order to show case on March 1, 2004.

21. Public Law Board No. 6515 was docketed on May 2, 2002. The document on this board is similar to Attachment 30. In the agreement, it stated that the compensation and expenses of the arbitrator shall be set and paid by the NMB. The parties had not selected an arbitrator for this board at the time of the issuance of my order to show case on March 1, 2004.

22. Public Law Board No. 6575 was docketed on November 7, 2002. The document on this board is similar to Attachment 30. In the agreement, it stated that the compensation and expenses of the arbitrator shall be set and paid by the NMB. The parties had not selected an arbitrator for this board at the time of the issuance of my order to show case on March 1, 2004.

23. Public Law Board No. 6576 was docketed on November 7, 2002. The document on this board is similar to Attachment 30. In the agreement, it stated that the compensation and expenses of the arbitrator shall be set and paid by the NMB. The parties had not selected an arbitrator for this board at the time of the issuance of my order to show case on March 1, 2004.

24. Public Law Board No. 6591 was docketed on December 10, 2002. The document on this board is similar to Attachment 30. In the agreement, it stated that the compensation and expenses of the arbitrator shall be set and paid by the NMB. The parties had not selected an arbitrator for this board at the time of the issuance of my order to show case on March 1, 2004.

25. Public Law Board No. 6592 was docketed on December 10, 2002. The document on this board is similar to Attachment 30. In the agreement, it stated that the compensation and expenses of the arbitrator shall be set and paid by the NMB. The parties had not selected an arbitrator for this board at the time of the issuance of my order to show case on March 1, 2004.

26. Public Law Board No. 6593 was docketed on December 10, 2002. The document on this board is similar to Attachment 30. In the agreement, it stated that the compensation and expenses of the arbitrator shall be set and paid by the

