

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Burlington Northern Inc., U.S. District Court, D. Minnesota, 1971 Trade Cases ¶73,419, (Jan. 25, 1971)

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United States v. Burlington Northern Inc.

1971 Trade Cases ¶73,419. U.S. District Court, D. Minnesota, Third Division. Civil Action No. 3-70-361. Entered January 25, 1971. Case No. 2148, Antitrust Division, Department of Justice.

Sherman Act

Tying—Railroad Traffic Clauses—Consent Decree.—A railroad was required by a consent decree to cancel and delete from all spur track agreements and industrial contracts for the lease or sale of any of its real property, to which it or any of its predecessor companies may be a party, any provision that restricts the choice of carrier or mode of transportation that may be utilized for any movement of freight to or from any other party to any such agreement. The railroad must notify all shippers with such agreements or contracts that these provisions are being cancelled and deleted, and will not be enforced.

For plaintiff: Richard W. McLaren, Asst. Atty. Gen., Baddia J. Rashid, William D. Kilgore, Jr., Joseph J. Saunders, Harry N. Burgess, William L. Jaeger and Ernest S. Carsten, Attys., Dept. of Justice.

For defendant: Donald Engle, Associate Gen. Counsel.

Final Judgment

NEVILLE, D. J.: Plaintiff, United States of America, having filed its Complaint herein and the plaintiff and the defendant having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting evidence or an admission by any party hereto with respect to any such issue;

Now, Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties as aforesaid, it is hereby:

Ordered, Adjudged and Decreed, as follows:

I.

[*Jurisdiction*]

This Court has jurisdiction of the subject matter of this action and of the parties hereto under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended (15 U. S. C. §4), commonly known as the Sherman Act, and the Complaint states a claim upon which relief may be granted against the defendant under Section 1 of said act as amended (15 U. S. C. § 1).

II.

[*Definitions*]

As used in this Final Judgment:

1. "Defendant" means Burlington Northern Inc., its subsidiaries, successors and assigns.
2. "Spur Track Agreement" means any written or oral contract whereby the Defendant agrees to construct, maintain or operate spur tracks for the provision of railroad service to premises owned or occupied by the other party or parties to such contract.

3. "Industrial Agreement" means any written or oral contract for the lease or sale of real property to which Defendant is a party.

III.

[*Applicability*]

The provisions of this Final Judgment applicable to the Defendant shall also apply to each of its officers, directors, agents and employees and to each of its subsidiaries, successors, and assigns, and all persons, firms and corporations acting in its behalf or under its direction and control, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV.

[*Choice of Carrier*]

Defendant is enjoined and restrained from directly or indirectly entering into, renewing, enforcing or claiming any rights under any spur track agreement or industrial agreement which may now or hereafter exist to which it may be a party, which restricts the choice of carrier or mode of transportation which may be utilized for any movements of freight to or from any other party to any such agreement.

V.

[*Notification*]

The defendant is ordered and directed within ninety (90) days from the date of entry of this Final Judgment to:

(A) Terminate and cancel any provisions or terms of any spur track agreement or industrial agreement to which it is a party which restricts the choice of carrier or mode of transportation which may be utilized for any movements of freight to or from any other party to any such agreement;

(B) Send to each of the parties to these agreements at their last known address a notice of such termination and cancellation, setting forth that as of the date thereof defendant will not enforce any provisions or terms of any spur track agreement or industrial agreement to which it is a party which restrict the choice of carrier or mode of transportation which may be utilized for any movements of freight to or from any other party to any such agreement; that such notice shall be in the form attached hereto and made a part hereof and marked Exhibit "A"; and

(C) Send to the Department a report setting forth the names and addresses of the parties to whom Exhibit "A" was sent.

VI.

[*Compliance and Inspection*]

For the purpose of determining or securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice, upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the consenting defendant, made k> its principal office, shall be permitted, subject to any legally recognized claim of privilege, (a) access during the office hours of said defendant to such books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession, custody or control of said defendant which relate to any matters contained in this Final Judgment; and (b) subject to the reasonable convenience of said defendant and without restraint or interference from it, to interview officers or employees of said defendant, who may have counsel present, regarding such matters.

Upon the written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, the defendant shall submit such reports in writing with respect to any of the matters contained in this Final Judgment as from time to time may be requested.

No information obtained by the means provided in this Paragraph VI shall be divulged by any representative of the Department of Justice to any person other than a duly(authorized representative of the Executive Branch of the plaintiff, except in the course of legal proceedings to which the United States is a party, for the purpose of securing compliance with this Final Judgment or as otherwise by law.

VII.

[*Jurisdiction Retained*]

Jurisdiction is retained for the purpose of enabling either of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions contained herein, for the enforcement of compliance therewith, and the punishment of any violation of any of the provisions contained herein.

Exhibit A

Burlington Northern Inc.
St. Paul, Minnesota

(Date)

Pursuant to a Final Judgment entered on by the United States District Court for the District of Minnesota in *United States v. Burlington Northern Inc.*, Burlington Northern is required by this Final Judgment to cancel and delete from all spur track agreements and contracts for the lease or sale of any of its real property to which it or any of its predecessor companies (Great Northern Railway Company, Northern Pacific Railway Company and Chicago, Burlington & Quincy Railroad Company) may be a party, any provision which in any manner restricts you in your choice of carrier or mode of transportation which you may use for the shipment of freight. This provision is often designated as a "traffic clause."

Burlington Northern Inc therefore notifies you of the cancellation of all such provisions as well as any oral understandings to the same effect.

Burlington Northern Inc.

By