

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA
THIRD DIVISION

UNITED STATES OF AMERICA,)
Plaintiff,)
v.) Civil Action No. 3-70-361
BURLINGTON NORTHERN INC.,) Filed: December 22, 1970
Defendant.)

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action against the defendant named herein and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 4 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. §4), commonly known as the Sherman Act, in order to prevent and restrain the continuing violations by the defendant, as hereinafter alleged, of Section 1 of the Sherman Act (15 U.S.C. §1).

2. Defendant Burlington Northern Inc., has its principal offices, transacts business and is found within the Third Division of the District of Minnesota.

THE DEFENDANT

3. Burlington Northern Inc. (hereinafter referred to as Burlington Northern) is hereby made the defendant herein. Burlington Northern is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in St. Paul, Minnesota. As a result of merger on March 2, 1970, Burlington Northern is the corporate successor of Great Northern Railway Company (hereinafter referred to as Great Northern), Northern Pacific Railway Company (hereinafter referred to as Northern Pacific), Pacific Coast R.R. Company, Chicago Burlington & Quincy Railroad Company, and Spokane, Portland and Seattle Railway Company. Burlington Northern is engaged primarily in the transportation of freight by railroad.

III

TRADE AND COMMERCE

4. Railroad transportation is an important mode of freight transportation in the United States, accounting for approximately 43 percent of total freight ton miles. Railroad companies, including Burlington Northern, and other modes of transportation, including motor carriers and water carriers, compete for the transportation of substantial amounts of freight in interstate commerce.

5. Burlington Northern is the largest rail carrier in the United States in terms of miles of road. It operates approximately 24,000 miles of line and serves numerous centers of industrial, commercial and agricultural activity in seventeen states of the United States and in two

provinces of Canada. Burlington Northern is the nation's fourth largest rail carrier in terms of operating revenues. Its predecessor companies accounted for approximately \$900 million of such revenues in 1969. During the same year, such companies transported approximately 60.7 billion ton miles of freight. Burlington Northern is the dominant rail carrier in the Northern Tier States (Washington, Montana, North Dakota and Minnesota), transporting approximately 67 percent of all rail ton miles of freight in such states.

6. Railroads are interested in attracting new industries to trackside locations and in maximizing income from real estate development sources and from traffic generated by on-line siting of new plants and facilities. Burlington Northern has at least 23,000 acres of prime industrial property currently available for development. Its predecessor companies, Northern Pacific and Great Northern, pursued industrial development programs which included selling or leasing railroad-owned property to firms which might be sources of transportation business.

7. Restraints on shipper choice of interstate transportation services imposed by Northern Pacific in connection with sale and lease of its lands, many of which were obtained as land grants upon construction of its original line, were the subject of litigation between that railroad and the Government commencing in 1949. By decrees of the United States District Court for the Western District of Washington entered on August 31, 1956 and January 28, 1959, Northern Pacific was enjoined from including in agreements for the sale or lease of property

any provisions requiring shippers to ship freight over Northern Pacific's lines or otherwise restricting the mode of transportation which the shipper might employ.

8. For many years, both prior to and subsequent to the aforesaid antitrust litigation involving Northern Pacific's sale and lease agreements, Great Northern, in connection with sale and lease of property which it owned to shippers and receivers, including numerous portions of its original right-of-way, required such shippers and receivers to utilize Great Northern's services exclusively for the shipment of freight which they controlled so long as its rates were as low as those of other railroads or in some instances as those of any means of transportation. In 1969 Great Northern entered into at least 425 such lease agreements with shippers and receivers of freight. Approximately \$6 million in rail freight revenues were generated by shipments from these shippers and receivers during the same year, a substantial part of which was received by Great Northern for shipments over its lines. Burlington Northern presently has at least 8,000 such lease agreements outstanding with shippers and receivers of freight.

9. Essential to efficient rail transportation is convenient access by shippers and receivers to rail lines. One of the principal means of such access is connection by spur track over which rail cars can be moved between a shipper's or receiver's premises and a carrier's branch or main lines. For many years, Northern Pacific and Great Northern, separately entered into and were parties to agreements with shippers and receivers of freight for

the construction and maintenance of spur tracks to their premises which agreements required such shippers and receivers to utilize the contracting carrier's services exclusively for the shipment of freight which they controlled so long as its rates, and in some instances rates and service, were no less favorable than those of other railroads or in some instances than those of any means of transportation. In 1969 there were approximately 500 such spur track agreements outstanding with shippers or receivers of freight. Approximately \$33 million in rail freight revenues were generated by shipments from and to these shippers and receivers during the same year, a substantial part of which was received by Great Northern for shipments over its lines.

10. Substantial amounts of freight received from and delivered to those shippers and receivers that were parties to the aforesaid lease or spur track agreements were transported in interstate commerce by Burlington Northern and its predecessor companies, Northern Pacific and Great Northern.

IV

OFFENSES CHARGED

11. Prior to March 2, 1970, Northern Pacific and Great Northern separately entered into certain agreements and understandings with shippers and receivers of freight relating to the sale or lease of railroad-owned property, or to the construction and maintenance of spur tracks to serve the premises of such shippers and receivers. Such agreements and understandings required and do require that shippers and receivers of freight utilize the railroad party's services exclusively for the shipment of freight which they control so long as its rates, and in some instances rates and service, are no less favorable

than those of other railroads or in some instances than those of any means of transportation. Such agreements and understandings have been and are in unreasonable restraint of the aforesaid interstate trade and commerce in freight transportation, in violation of Section 1 of the Sherman Act (15 U.S.C. §1). On March 2, 1970, Burlington Northern succeeded Northern Pacific and Great Northern as the railroad party in interest to such agreements and understandings, of which there are at least 8,500 presently in effect. Said offenses are continuing and will continue unless the relief hereinafter prayed for is granted.

V

EFFECTS

12. The aforesaid violations have had the following effects, among others:

- (a) shippers have been deprived of free choice of carrier and mode of transport for shipment of their freight;
- (b) competing railroads and other carriers of freight have been foreclosed from transporting substantial amounts of freight to and from shippers and receivers located on or near the lines of Burlington Northern and its predecessor companies, Northern Pacific and Great Northern; and
- (c) competition between Burlington Northern and its predecessor companies, Northern Pacific and Great Northern, on the one

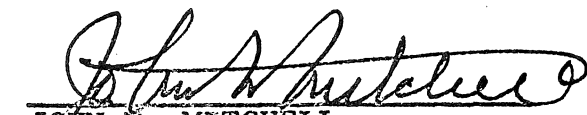
hand and other railroads and other means of transportation, on the other hand, has been restrained and lessened.

PRAYER

WHEREFORE, the plaintiff prays:


1. That the Court adjudge and decree that the aforesaid agreements and understandings involving requirements that traffic be shipped on the lines of Burlington Northern or its predecessor companies, Northern Pacific and Great Northern, are in violation of Section 1 of the Sherman Act.
2. That the Court order Burlington Northern to expunge or eliminate all such traffic requirements from all agreements or understandings presently in effect, to which it is a party.
3. That Burlington Northern, its predecessors and successors, and all persons, firms, divisions, and corporations acting in its behalf or under its direction and control be permanently enjoined from engaging in, carrying out or renewing any contracts, agreements, policies, practices or understandings having the purpose or effect of continuing, reviving, or renewing the aforesaid violations of the Sherman Act, or any contract, agreement, policy, practice, or understanding having a like or similar purpose or effect.
4. That the plaintiff have such other and further relief as the nature of the case may require and the Court may deem just and proper.

5. That the plaintiff may recover the costs of this action.



JOHN N. MITCHELL
Attorney General

WILLIAM L. JAEGER
Attorney, Department of
Justice



RICHARD W. McLAREN
Assistant Attorney General



BADDIA J. RASHID

JOSEPH J. SAUNDERS

Attorneys, Department of
Justice

United States Attorney