

Mid-Continent Railway Historical Society, Inc.

Minutes of the February 2010 Special Board of Directors Meeting

Date: February 6, 2010

Location: MCRHS Office Building

Roll Call:

Present:

B. Anderson by phone
J. Bloohm
S. Brist by phone
M. Deets
B. Handschin by phone
J. Nelson by phone
C. O'Brien by phone
J. Sorrel 1:35 pm
D. Schumacher
D. Viste 1:31 pm

Absent:

Guests: D. Meyer

Meeting called to order 1:30 PM

STCO #2:

The owner, Roland Lichter, wants to bring the boiler back sooner rather than later. He must provide a list of work done on the running gear. What work was performed, by whom, using what materials, and what work is left to be done. Joint inspection: we want a joint inspection; there are two candidates who could perform the inspection on behalf of Mid-Continent: Chris Zahrt and Scott Lindsay. Lindsey has submitted a proposal for the inspections of STCo #2 and WC&C #1 coinciding at same time. \$5,000 fee would be for both locomotives. If the board only wants the #2 inspected, then that fee would be \$4,000. The fee includes travel; our responsibility, in addition, would include all related expenses, such as lodging and meals. Scott Lindsay would want to start mid-March. He would need use of the inspection pit in the engine house. This may conflict with what Mr. Lichter wants in terms of a time frame, which is before the end of the February. Our agreement gives us the prerogative to ask for this inspection, but doesn't require it.

1:50 pm: B. Handschin moves and M. Deets seconds to hire Scott Lindsey to perform the inspections on both engines at the stated fee and including lodging etc. Motion passed unanimously

Badger #2:

Avalon claims we owe them an additional \$81,366.99 for the B2 restoration. Avalon has sent us a letter from their attorney stating we owe this money and why they think we do. They have suggested they will waive the late fee and work out a payment plan if we agree to pay. We have stated to them we do not feel we owe them the money by the terms of the signed agreement. In the agreement in point number one, Avalon agreed to provide services and materials from attachment A. Don Meyer had not received the attachment as it was an estimated amount but that it was always fluid based upon the work to be done. Avalon feels this is a controlling factor in the agreement. We do not agree. Point two of the agreement says price will be based on time and materials but at a cap of \$1,000,000. And further, that the only way Avalon could exceed that amount would be by written permission from Mid-Continent. We have never given them such written permission. In addition the \$300,000 deposit was to cover the final amount. The problem is now that expenditure by Avalon exceeded the \$1,000,000 cap, and depleted the \$300,000. And then Avalon failed to show that this was the case because the last two invoices didn't arrive until after they had exceeded all funds. Don Meyer feels we do not owe them because this was a failure of accounting on their side. Don Meyer would like to resolve this amicably, but he strongly feels we are not liable for this money. Especially as Avalon over the course of the last few weeks of the project stated the project would come in under budget. Additionally as we were short of the total money needed for the trucking and cranes to return the car, Don Meyer asked Avalon to refund money to cover that amount and they sent us the \$6,000 to cover it. It is Don Meyer's opinion that at this point everything points to a breakdown in accounting on their side, over which we had no control.

As of October 15, 2009 we paid Avalon \$804,806, to date we have paid Avalon \$949,486, plus by agreement with Avalon, we paid directly to sub-contractors \$80,494.

President Bloohm took a copy of the signed agreement to his attorney. This attorney feels we would win the case if it went to court. He gave President Bloohm the name of an attorney near Milwaukee that has dealt with similar disputes in the past. The attorney in Milwaukee also agreed that we would have a good chance of winning the case. But this second opinion is without seeing the agreement. She could give a better opinion after reading the agreement and all documents related to the case for a fee of \$1,000. If her firm represents us through arbitration, the fee could run up to \$12,000.

The management committee does not believe we own this money. Meyer thinks we can respond on our own. We could afford the initial \$1,000 cost for a more thorough investigation by the Milwaukee firm. Don would have liked to send more work to them, but not given the way they have handled their end of the project. President Bloohm's Attorney recommended that we not go to arbitration without counsel. President Bloohm feels we should go into the arbitration with council.

Don Meyer also makes the point that exhibit A was never signed/initialed by us, as we had not seen it.

2:23 pm: B. Anderson moves and B. Handschin seconds that we spend money in the amount of \$1,000 to get an opinion from Kim Hurtado of Hurtado, S. C., Counselors at Law.

2:37 pm: S. Brist moves to make a friendly amendment, seconded by D. Viste that we will pay the \$1,000 for an initial analysis and then have the attorney draft a letter to Avalon's attorney to state our position which President Bloohm will negotiate as credit to a further amount should we continue to full arbitration. Amendment accepted by B. Anderson and B. Handschin. Amendment passed unanimously.

Main motion vote: Motion passed unanimously.

2:40 pm: M. Deets move and D. Schumacher seconds to adjourn the meeting. Motion passed unanimously.

Kelly R. Bauman
Secretary
Mid-Continent Railway Historical Society, Inc.

Approved by the Board at the March 20, 2010 Regular Board Meeting