

BNSF chief waives compensation clause in Berkshire Hathaway deal

(The following story by John D. Boyd appeared on The Journal of Commerce website on November 10, 2009.)

WASHINGTON, D.C. — The planned purchase of BNSF Railway by Warren Buffett's Berkshire Hathaway will not trigger a special compensation package for the railroad's CEO, who plans to stay aboard and has officially waived his rights to either stock or retirement severance awards in connection with this deal.

Matthew K. Rose, who is chairman and president of the rail firm as well as CEO, had already said that he and other top managers are staying in place at BNSF, and that the Berkshire acquisition will not put in a new team to run the nation's second-largest railroad. The carrier issued a message to customers as well, reassuring them the current team will remain.

But a BNSF spokesman said Rose gave the company a formal waiver as a way to underscore that he is not getting any extra personal benefit from the deal with Buffett, which takes BNSF private and makes it a Berkshire subsidiary.

A New Orleans city pension fund last week sued both firms over the accord, for having quickly agreed to terms without offering others a chance to bid up BNSF's share price. Berkshire already owns nearly 23 percent of BNSF and pledged a 30 percent premium to sew up the deal. Debt ratings agencies have also said they may cut Berkshire's rating because of the additional leverage it may take on to buy BNSF.

Rose's waiver letter to his company, submitted Nov. 6 and filed three days later with the Securities and Exchange Commission, does not spell out his reasons for taking the action. Spokesman John Ambler said Rose "wanted to make it clear that he is not getting any special compensation" as a result of the acquisition agreement.

BNSF's stock incentive plan that covers Rose and his retirement benefit agreement have severance and accelerated vesting awards that can be triggered, under certain conditions, if he leaves his job in connection with a change in control of the company.

But in his letter to Roger Nober, BNSF's executive vice president for law, Rose wrote "I hereby waive my right to receive any compensation or benefits payable under the change in control agreement" of the stock plan, "in the event that I terminate my employment for 'good reason' in connection with the transactions contemplated by the merger agreement."

He also waived his right to compensation or benefits from the pertinent section of his retirement agreement "in the event that I terminate my employment for any reason following the transactions."

Click here <http://www.sec.gov/Archives/edgar/data/934612/000095015709000845/ex10-1.htm> to read the entire letter filed with the SEC.