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SERVICE DATE – LATE RELEASE DECEMBER 17, 2001

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. 41230

GS ROOFING PRODUCTS COMPANY, INC., BEAZER WEST, INC., D/B/A/ GIFFORD
HILL & COMPANY, BEAN LUMBER COMPANY AND CURT BEAN LUMBER
COMPANY

v.

ARKANSAS MIDLAND RAILROAD COMPANY AND
PINSLY RAILROAD COMPANY, INC.

Decided: December 13, 2001

This proceeding was remanded to us by the United States Court of Appeals for the Eighth Circuit in GS Roofing Products v. Surface Transp. Bd., 262 F.3d 767 (8th Cir. 2001). In that decision, the court substantially affirmed our decision in Caddo Antoine and Little Missouri Railroad Company—Feeder Line Acquisition—Arkansas Midland Railroad Company Line Between Gurdon and Birds Mill, AR, Finance Docket No. 32479 et al. (STB served May 5, 2000), but found that we erred by denying the GS Roofing Products Company, Inc. (GS Roofing) request for damages for lost profits related to a contract with Celotex Corporation. The court remanded this proceeding to us to determine the specific amount of damages due under the contract.

On August 24, 2001, GS Roofing filed a motion for the entry of a final order computing damages. GS Roofing states that it is entitled to lost profits in the amount of \$240,975, plus interest in the amount of \$96,568.88,¹ based on the figures submitted by John W. Smith as Attachment 2 to his Verified Statement dated July 20, 1994.

By petition filed on September 14, 2001, Arkansas Midland Railroad Company (AMR) requests the establishment of a procedural schedule to determine the amount of lost profit damages to which GS Roofing is entitled. AMR argues that the court's decision addressing the lost profit issue contemplates that the Board would receive and consider additional evidence to determine the specific amount of damages due, not just accept GS Roofing's statement of losses and calculation of interest. To determine the amount of GS Roofing's lost profit damages, AMR argues that the Board must consider a variety of factors, such as GS Roofing's material,

¹ Interest was calculated from January 1, 1995, through August 24, 2001. GS Roofing states that it is willing to waive any interest that would have accrued prior to January 1, 1995.

production, and overhead costs, transportation costs, and whether the profits were in fact lost or simply delayed for some period of time. In a response filed on September 18, 2001, GS Roofing opposes AMR's request for a procedural schedule, alleging that the time for filing evidence has passed and that, if AMR desired to contest GS Roofing's calculations of damages concerning the Celotex contract, AMR should have done so earlier in this proceeding.

We will grant AMR's petition. Because we have not previously addressed the computation of damages related to the Celotex contract, we will reopen this proceeding and permit the parties to submit additional evidence and argument on the computation of damages and to address the factors noted by AMR that are normally considered in determining damages for a breach of contract. A more complete record will enable us to make an accurate determination of damages in accordance with the court remand. The procedural schedule is set forth below.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Simultaneous opening statements are due by January 16, 2002.
3. Simultaneous replies may be filed by February 5, 2002.
4. This decision is effective on the service date.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary