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SEC

SERVICE DATE - SEPTEMBER 29, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42043

FARMCO, INC. v. CENTRAL KANSAS RAILWAY L.L.C. AND
KANSAS SOUTHWESTERN RAILWAY L.L.C.

Decided: September 28, 1999

On June 4, 1999, Farmco, Inc. (FMCO), a farmers' cooperative, filed a complaint alleging that, between July 1, 1998, and September 30, 1998, Central Kansas Railway, L.L.C. (CKR) and Kansas Southwestern Railway, L.L.C. (KSW) (collectively, defendants) failed to deliver hopper cars that were guaranteed under the grain car allocation procedures prescribed in Union Pacific Railroad Company (UP) tariffs. On June 22, 1999, defendants jointly filed their answer to the complaint. On July 7, 1999, FMCO filed a reply to defendants' answer. A procedural schedule was established in a decision that was served on July 21, 1999.

On July 26, 1999, FMCO amended its complaint to include shipments that moved during the period between October 1, 1998, and January 10, 1999. On August 12, 1999, defendants filed their answer to the amended complaint. On August 26, 1999, FMCO filed a reply to the defendants' answer.¹

On September 8, 1999, FMCO filed a motion to compel answers to specific document requests. FMCO asserts that, through discovery, it had requested that defendants provide copies of "interchange lists," showing cars interchanged between CKR and UP between October 1, 1998, and January 10, 1999. According to FMCO, defendants responded to the request by producing more than 1,000 pages of documents, including: lists of empty cars interchanged by CKR and UP, switch lists, track lists and lists of loaded cars. FMCO asserts that the material it received from the defendants was redundant, but did not include the "interchange lists" that it had specifically requested. FMCO asks that defendants be directed to produce the "interchange lists" it had requested.

FMCO also filed a motion requesting a new procedural schedule. FMCO contends that it needs considerable time to examine the documents that the defendants produced in discovery in order to identify FMCO cars interchanged between October 1, 1998, and January 10, 1999. In

¹ On September 14, 1999, the defendants filed a motion to strike FMCO's reply, contending that the Board's procedures do not permit the filing of a reply to an answer. Defendants assert further that FMCO's reply discusses irrelevant matters and raises issues relating to discovery requests. FMCO filed a reply to the motion to strike on September 27, 1999. The Board will rule on the motion when it addresses the merits of FMCO's complaint.

addition, in a letter filed September 17, 1999, FMCO indicates that several witnesses who have agreed to submit testimony to support the complaint are involved with the fall harvest and need additional time to prepare their testimony. FMCO proposes the following new procedural schedule:

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|-------------------|-------------------------------|
| November 1, 1999 | FMCO's opening evidence |
| December 15, 1999 | Defendants' reply evidence |
| January 14, 2000 | FMCO's rebuttal evidence |
| February 14, 2000 | The parties will file briefs. |

On September 24, 1999, defendants replied to FMCO's filings. Opposing FMCO's motion to compel, defendants indicate that, on August 11, 1999, they responded to FMCO's request and produced more than 1,000 pages of interchange reports. Defendants claim that they produced all of the interchange documents in their files when they responded to FMCO's discovery request. Defendants state further that FMCO has had ample opportunity to ask for clarification of the documents produced under discovery. Defendants assert that there is no valid reason for further discovery because there are no additional documents to produce.

Defendants indicate that they would object to any extension of the procedural schedule to permit further discovery. However, defendant state that they would agree to the revised procedural schedule proposed by FMCO to enable it to prepare testimony for its opening statement.

FMCO's motion to compel copies of "interchange lists" will be denied. FMCO's motion to compel seeks to produce interchange information in a specific form. While the interchange information produced by defendants was not in the specific form requested by FMCO, that information was contained in the documents which were produced on August 11, 1999. Defendants have substantially complied with FMCO's request for interchange information.

Good cause exists for granting FMCO's request for a new procedural schedule to enable complainant to prepare its opening evidence. The revised schedule proposed by FMCO will be adopted.

It is ordered:

1. FMCO's motion to compel will be denied.
2. FMCO's request for a new procedural schedule is granted.

3. This decision is effective on the date served.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary