

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42075

ENGELHARD CORPORATION — PETITION FOR DECLARATORY ORDER —
SPRINGFIELD TERMINAL RAILWAY COMPANY AND CONSOLIDATED RAIL
CORPORATION

Decided: March 31, 2003

On September 26, 2002, Engelhard Corporation (Engelhard) filed a petition for declaratory order following a referral of certain matters to the Board by the United States District Court for the District of Massachusetts, in Engelhard Corporation v. Springfield Terminal Railway Co., Inc. and Consolidated Rail Corporation, Civil Action No. C.A. 01-10829-RGS (May 22, 2002) (referral order). The court referred the following questions to the Board (the involved issues):

- (a) Does a cause of action involving a disputed failure to pay car mileage allowances under Tariff 6007¹ arise one month and ten days after the end of the month in which the obligation is incurred, or four months after the date on which a railroad refuses to pay or act on a claim, or on the occurrence of some other date or event?
- (b) Is a railroad obligated to pay compensation under Tariff 6007 only to the owner of a car's reporting mark, or does Item 180 of such tariff permit the owner of the mark to assign the right to payment to a lessee of a car?

On October 16, 2002, Consolidated Rail Corporation (Conrail) and Springfield Terminal Railway Company (Springfield Terminal) filed separate replies requesting that the Board establish a procedural schedule. The court stayed all proceedings in this action pending Board action on the referral.

Engelhard supplies kaolin clay mined in Georgia to customers engaged in paper manufacturing at facilities located in the northeastern United States. Engelhard's customers arrange for the transportation of the kaolin with Conrail and Springfield Terminal. Engelhard, however, provides Conrail and Springfield Terminal with private equipment, including tank, hopper and sparger cars,

¹ Freight Tariff RIC 6007-L, "Mileage Allowances and Rules Governing the Handling of and the Payment of Mileage also Charges on Cars of Private Ownership," is the most recent version of industry-wide mileage allowance provisions.

which it owns or leases. Conrail and Springfield Terminal compensate Engelhard for the use of its equipment in accordance with private car mileage allowances published in Freight Tariff 6007.

The dispute currently before the district court involves the alleged non-payment of car mileage allowances generated by the movement of privately owned tank cars over a 155-mile line of railroad (the line segment) between Selkirk, NY, and Barber, MA.² The line segment is owned by Conrail and operations over it are governed by an “Agreement Dated as of March 31, 1990 between Consolidated Rail Corporation and The Boston and Maine Corporation and The Springfield Terminal Railway Company” (Haulage Agreement). According to Engelhard, Conrail has paid, or approved for payment all required mileage allowances on the shipments in question over all segments of its line up to but not beyond Selkirk, and Springfield Terminal has also paid, or approved for payment, all required mileage allowances on the shipments in question over all segments of its lines from Barber Station to destinations in New England. While citing the terms of the Haulage Agreement, Conrail has refused all payment for mileage allowances on the 155-mile segment from Selkirk to Barber Station. Springfield Terminal, however, has paid mileage allowances over the line segment for certain shipments in accordance with its interpretation of the Haulage Agreement.

On May 15, 2001, Engelhard filed its original complaint in the United States District Court for the District of Massachusetts and on November 14, 2001, Engelhard filed an amended complaint. Conrail and Springfield Terminal filed a motion to dismiss mileage claims they viewed as time-barred and those based on state law. By decision issued on April 2, 2002, United States District Judge Richard G. Stearns dismissed the state law based claims of the amended complaint as preempted by the Interstate Commerce Act and held that the two-year statute of limitations applied. Additionally, the decision invoked the primary jurisdiction doctrine and found that the involved issues should be referred to the Board for determination. The referral order directed Engelhard to take the action necessary to institute a declaratory order proceeding before the Board.

The Board has discretionary authority under 5 U.S.C. 554(e) to issue a declaratory order to terminate a controversy or remove uncertainty. Petitions for issuance of a declaratory order premised on referral from a federal court are routinely accepted. See Delegation of Authority — Declaratory Order Proceedings, 5 I.C.C.2d 675, 676 (1989).

Under 5 U.S.C. 554(e) and 49 U.S.C. 721, a proceeding is instituted to resolve the controversy here. This matter appears to be within the Board’s jurisdiction and has been referred by a federal court. The Board will resolve this matter pursuant to the modified procedure rules at 49 CFR 1112. A procedural schedule is set forth below.

² Barber Station, MA, is the interchange point between Conrail and Springfield Terminal.

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

It is ordered:

1. A declaratory order proceeding is instituted. This proceeding will be handled under the modified procedure, on the basis of written statements submitted by the parties. All parties must comply with the Rules of Practice, including 49 CFR 1112 and 1114.

2. Opening statements by Engelhard are due on May 16, 2003. Replies by Conrail and Springfield Terminal are due on June 30, 2003. Engelhard's rebuttal is due on July 30, 2003.

3. This decision is effective on the date of service.

4. A copy of this decision will be served on:

Honorable Richard G. Stearns
(RE: Civil Action No. C.A. 01-10829-RGS)
United States District Court
for the District of Massachusetts
Suite 2300
One Courthouse Way
Boston, MA 02210

Clerk of the Court
(RE: Civil Action No. C.A. 01-10829-RGS)
United States District Court
for the District of Massachusetts
One Courthouse Way
Boston, MA 02210

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary