

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42120

CARGILL, INCORPORATED v. BNSF RAILWAY COMPANY

Decided: April 12, 2011

Cargill, Incorporated (Cargill), has filed a complaint challenging as an unreasonable practice under 49 U.S.C. § 10702(2) the fuel surcharges collected by BNSF Railway Company (BNSF) under BNSF Rules Book 6100-A, Item 3375L Section B, and its predecessor and successor iterations. On March 31, 2011, Cargill filed a motion asking the Board to compel BNSF to produce certain documents Cargill seeks in its January 11 and February 1, 2011 discovery requests and to overrule 9 of BNSF's general objections to those discovery requests. BNSF filed a reply on April 11, 2011 which appears to have narrowed the issues in dispute.

Pursuant to the expedited discovery rules at 49 C.F.R. § 1114.31(3)-(4),¹ Board staff within 5 business days after the filing of a reply to a motion to compel may convene a conference with the parties to discuss the dispute, attempt to narrow the issues, and gather any further information needed to render a ruling. To assist the Board in determining whether a discovery conference is needed here, Cargill is directed to respond to BNSF's April 11, 2011 reply by April 15, 2011.

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

It is ordered:

1. Cargill is directed to respond to BNSF's April 11, 2011 reply by April 15, 2011.
2. This decision is effective on the service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

¹ The provisions at 49 C.F.R. § 1114.31(a)(1)-(4) were promulgated pursuant to Procedures to Expedite Resolution of Rail Rate Challenges to Be Considered Under the Stand-Alone Cost Methodology, EP 638 (STB served Apr. 3, 2003). The Board adopted these procedures at Cargill's request in a decision served on January 4, 2011.