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June 21, 2013

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Record

EXPEDITED CONSIDERATION REQUESTED

BEFORE THE
SURFACE TRANSPORTATION BOARD

NORTH AMERICA FREIGHT CAR
ASSOCIATION

Complainant,

v.

BNSF RAILWAY COMPANY, et al

Defendants.



DECISION ID NO.: 43178

DECIDED DATE: 6/25/13

SERVICE DATE: 6/26/13

APPROVED: *Rachel D. Campbell*
Director

Office of
Proceedings



Docket NOR 42137

MOTION TO EXTEND PROCEDURAL SCHEDULE

Comes now Complainant, North America Freight Car Association (“NAFCA”), and requests that the Board extend the procedural schedule in this case as set forth below. Counsel for NAFCA has conferred with counsel for the defendants in this case, who have authorized counsel to represent that they do not oppose this motion. In further support of this motion NAFCA states the following:

The Board established the procedural schedule in this case by decision served March 26, 2013. That decision established June 24, 2013 as the date for the close of document discovery, as well as the remaining dates for deposition discovery and the filing of evidence. Since the issuance of that decision, the parties have engaged in document discovery and produced substantial responsive material to each other. However, timely completion of document production has been unavoidably delayed. First, completion of NAFCA’s production has been delayed because one of NAFCA’s co-counsel in this case has suffered from persistent health

issues over the past several months that have prevented him from actively engaging in discovery efforts on a consistent basis. These health issues have adversely affected the ability of NAFCA's co-counsel to coordinate their efforts to process and produce responsive documents to defendants in a timely manner. Accordingly, an extension of the document discovery period is needed to complete NAFCA's production and address any follow up issues raised by defendants.¹

Second, on June 11, 2013, defendant Association of American Railroads produced an encrypted hard drive containing over 300,000 pages of electronic versions of documents. This material was in addition to tens of thousands of pages of documents previously produced in late May and June by the AAR and by the other defendants in the case, which NAFCA counsel is still in the process of reviewing. Moreover, the start of NAFCA's review of the material produced by the AAR on June 11 was delayed for several business days due to technical issues accessing the hard drive and the documents. The review and assessment of the materials produced by the defendants in May and June, and the determination of the number of depositions NAFCA might wish to take during the deposition discovery period, if any, will take multiple days, if not longer, to complete. Accordingly, an extension of the schedule is justified on these grounds as well.

Finally, non-lawyer representatives of the parties in this case have been engaged in discussions about the possibility of reaching a commercial resolution of this dispute. A face-to-face meeting of party representatives is scheduled for June 27, 2013 to continue those discussions. While these discussions have not yet reached the point that the parties believe holding this case in abeyance would be the appropriate action, the pending meeting provides

¹ While the date of this request is inside the 10-day period for seeking extensions set forth in 49 CFR §1104.7(b), NAFCA submits that good cause exists for waiving that requirement since the facts giving rise to the request were not fully known until very recently, and all parties are aware of and in agreement with, the requested extension.

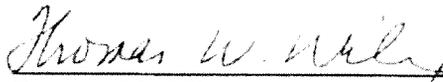
further justification for a brief extension of the procedural schedule requested by this motion in the interests of efficient allocation of the parties' resources.

Accordingly, NAFCA hereby requests, consistent with the foregoing, and taking into account the 2013 Holiday Season, that the Board adopt the following revised procedural schedule in this case:

Close of Document Discovery	July 31, 2013
Close of Deposition Discovery	September 20, 2013
Complainant's Opening Evidence	October 7, 2013
Defendants' Reply Evidence	December 13, 2013
Complainant's Rebuttal Evidence	January 10, 2014

WHEREFORE, Complainant NAFCA requests that the Board grant this unopposed motion and adopt the revised procedural schedule set forth above.

Respectfully Submitted,



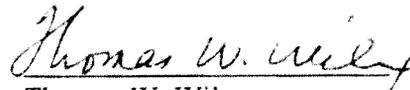
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June 21, 2013

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Motion to Extend Procedural Schedule has been served this 21st day of June, 2013 on counsel for each of the defendants by electronic mail and by first-class mail, postage prepaid.


Thomas W. Wilcox