

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42108

THE SPRINGFIELD TERMINAL RAILWAY COMPANY—PETITION FOR
DECLARATORY ORDER—REASONABLENESS OF DEMURRAGE CHARGES

Decided: October 28, 2009

The Springfield Terminal Railway Company (ST) filed a petition for declaratory order seeking to have the Board resolve a dispute over demurrage charges that ST assessed against Fore River Warehousing and Storage Co., Inc. (Fore River) in 2004 (2004 charges) and in 2006 (2006 charges). By decision served on February 10, 2009 (February 10 decision), the Board instituted a declaratory order proceeding, but only for the 2006 charges, as collection of the 2004 charges appeared to be time-barred. The Board explained that demurrage charges can be pursued only in court and that, because the United States District Court for the District of Maine had dismissed ST's underlying claims, any action by the Board regarding the 2004 charges appeared to have been mooted, as any re-filed court claim would be time-barred under the 3-year statute of limitation for civil complaints involving demurrage charges, set forth at 49 U.S.C. 11705(a).¹ Subsequently, the procedural schedule was extended, at the request of the parties, by two decisions, with the latest extension enlarging the scheduling deadlines and making Fore River's reply statement due by October 28, 2009, and ST's rebuttal statement due by November 23, 2009.

On October 6, 2009, Fore River filed a motion to compel responses to discovery requests, and to enlarge scheduling deadlines. In a reply filed on October 23, 2009, ST objects to Fore River's motion to compel, but states that it is willing to accommodate Fore River's need for a brief additional period to finalize its reply statement. Because Fore River's reply statement is due before the Board will decide its motion to compel, the motion to enlarge the scheduling deadlines will be granted and the procedural schedule will be held in abeyance until the Board rules on the discovery motion. The Board will address the new procedural schedule at that time.

Pending the Board's ruling on the discovery motion, the parties should address an additional matter. Given the passage of time, the Board is now concerned that if ST has not instituted a new civil action in court, its claim for the 2006 charges (the latest of which were incurred in August 2006), like its claim for the 2004 charges, may be time-barred and any Board

¹ The Board provided that, if ST obtains an order from the court that the 2004 charges are not time-barred, then the Board would consider ST's petition concerning the 2004 charges. See February 10 decision, slip op. at 4, n.6.

action regarding those charges may be moot. Therefore, ST shall inform the Board by November 10, 2009, of the status of any collection action it may be pursuing as to the charges at issue here, and, if such an action is not pending, why this proceeding should not be dismissed as moot. Fore River may reply to ST's filing no later than November 17, 2009.

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

It is ordered:

1. The procedural schedule is held in abeyance, as discussed above.
2. The motion to enlarge the scheduling deadlines is granted to the extent discussed above.
3. ST shall inform the Board by November 10, 2009, of the status of any collection action it may be pursuing as to the charges at issue here, and, if such an action is not pending, why this proceeding should not be dismissed as moot.
4. Fore River may reply to ST's filing no later than November 17, 2009.
5. This decision is effective on its date of service.

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

Anne K. Quinlan
Acting Secretary