

32512
SEC

SERVICE DATE - MARCH 19, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 41230

GS ROOFING PRODUCTS COMPANY, INC., BEAZER WEST, INC., D/B/A GIFFORD-HILL & COMPANY, BEAN LUMBER COMPANY AND CURT BEAN LUMBER COMPANY

v.

ARKANSAS MIDLAND RAILROAD COMPANY AND
PINSLY RAILROAD COMPANY, INC.

Decided: March 15, 2002

This proceeding involves a determination of damages for an unlawful embargo of portions of the Norman Branch line between Gurdon and Birds Mill, AR, that occurred during the period December 24, 1993, through April 15, 1994. In Caddo Antoine and Little Missouri Railroad Company—Feeder Line Acquisition—Arkansas Midland Railroad Company Line Between Gurdon and Birds Mill, AR, Finance Docket No. 32479 et al. (STB served May 5, 2000), the Board, inter alia, denied damages for lost profits related to a contract. In GS Roofing Products v. Surface Transp. Bd., 262 F.3d 767 (8th Cir. 2001), the United States Court of Appeals for the Eighth Circuit substantially affirmed the Board's decision, but found that damages for lost profits should have been awarded. The court remanded the proceeding to the Board for computation of the amount of damages due under the contract.

On December 17, 2001, the Board issued a decision reopening this proceeding to allow the parties, GS Roofing Products Company, Inc. (GS Roofing) and Arkansas Midland Railroad Company (AMR), to submit additional evidence and argument on the computation of damages related to the contract and to address other factors normally considered in determining damages for a breach of contract.

In a Motion to Dismiss filed on February 21, 2002, GS Roofing states that, on January 30, 2002, the parties agreed to settle all remaining claims in this proceeding and executed a Confidential Settlement Agreement and General Release. Therefore, GS Roofing requests that this proceeding be dismissed with prejudice. By letter received on February 22, 2002, AMR states that it concurs with GS Roofing's request for a dismissal of the proceedings with prejudice. The request will be granted.

It is ordered:

1. This proceeding is dismissed with prejudice.
2. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary