

30663
SEC

SERVICE DATE - JANUARY 14, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. WCC-102

OCEAN LOGISTICS MANAGEMENT, INC.

v.

NPR, INC., AND HOLT CARGO SYSTEMS, INC.

Decided: January 12, 2000

By complaint filed October 6, 1998, under 49 U.S.C. 13701(c), Ocean Logistics Management, Inc. (OLMI or complainant), a non-vessel operating common carrier, seeks a finding that NPR, Inc., doing business as NPR, Navieras and Navieras Puerto Rico (NPR), a vessel operating common carrier providing transportation between the United States and Puerto Rico, has engaged in certain unreasonable practices in violation of 49 U.S.C. 13701(a)(1)(B), as a result of which complainant has suffered damages of \$4 million. Holt Cargo Systems, Inc. (Holt), NPR's affiliate, has also been named as a defendant.¹ NPR and Holt filed answers to the complaint, respectively, on May 17, 1999, and August 16, 1999.

In a decision served July 27, 1999, the Board, inter alia, denied defendants' motion to dismiss the complaint as to Holt, granted defendants' motion for a protective order quashing the deposition of Mr. Thomas Holt, Sr., and denied complainant's motion to strike NPR's answer and for entry of a default judgment against both defendants. The Board established a procedural schedule for this proceeding by a decision served on September 20, 1999.

Defendants filed a motion on October 6, 1999, seeking a 25-day extension of time to respond to complainant's second set of interrogatories and production of documents request. On October 12, 1999, complainant filed a reply in opposition to the extension motion and a cross-motion to compel discovery. Defendants replied in opposition to the cross-motion to compel in a pleading filed October 28, 1999. Also on October 28, complainant filed a motion for leave to reply to defendants' reply, accompanied by the reply itself.

In the interim, complainant also filed a motion on October 26, 1999, seeking clarification of the Board's July 27, 1999 order and to compel defendants' compliance with discovery in the form of OLCMI'S first request for document production. To date, defendants have not replied to this motion.

On November 8, 1999, defendants filed their own motion to compel discovery in the form of responses to a first set of interrogatories and request for document production. Defendant now seeks to withdraw its previous motion to compel by a motion filed on

¹ The complaint was amended on March 25, 1999.

November 23, 1999, to which OLM I replied on November 24, 1999.

DISCUSSION AND CONCLUSIONS

1. Defendant NPR's motion to withdraw its motion to compel. As indicated, NPR had sought to compel discovery in the form of a first set of interrogatories and request for document production. Complainant had originally indicated that it would make boxes of business records and other documents available for review by defendants in Puerto Rico, and submitted various objections to NPR's discovery request. Defendant argued that this was not a suitable response and sought an order from the Board compelling compliance with discovery. Subsequently, however, on November 22, 1999, OLM I responded more fully to NPR's discovery requests. As a result, NPR now seeks Board permission to withdraw its motion to compel. NPR's request will be granted.

2. Defendants' request for an extension of time. Defendants originally requested an extension of time, from October 4, 1999, to October 29, 1999, to comply with complainant's second set of interrogatories and request for document production, citing its "extreme breadth." OLM I refused to agree to a 25-day extension and instead offered to extend the response deadline 2 days, until October 6, 1999. Defendants then turned to the Board for an extension.

In its reply, complainant correctly notes that this motion for an extension of time to respond to discovery is a motion for a protective order under the Board's Rules of Practice. Such an order may be entered upon a showing of good cause in order to protect a person or party from undue burden or expense. See 49 CFR 1114.21(c). Because this decision will be entered and served on dates well beyond the extension date sought by defendants, the extension request is now moot and there is no need for the Board to enter a protective order at this time. Defendants have now had ample time to comply with the discovery requests at issue and should do so.

In a related matter, in its cross-motion to compel, complainant argues that defendants have waived their right to object to any of its interrogatories because they failed to respond by the agreed-upon date. Complainant is incorrect. Defendants have stated that they sought an extension in order to compile responses to the interrogatories, and that they could not offer reasonable objections to any interrogatories before discerning the merits of the discovery sought. OLM I has not demonstrated that this assertion is meritless, despite pointing out that defendants' responses to previous discovery requests resulted in objections to 16 of 17 document production requests and 24 out of 28 interrogatories. However, despite the conclusion here that defendants have not waived their right to file objections to outstanding interrogatories, with the denial of defendants' extension request, the Board again expects them to comply with discovery in a prompt and forthright manner. The parties are reminded that discovery at this stage of the proceeding is very broad. Any matter, not privileged, which is relevant to the subject matter involved in a proceeding is discoverable. See 49 CFR 1114.21(a). The cross-motion to compel will not be granted.

3. Complainant's motion for leave to reply to defendants' reply. OLM I seeks leave to reply to defendants' reply to complainant's cross-motion to compel. Under the Board's Rules of Practice,

a reply to a reply is not permitted, 49 CFR 1104.13(c), although the Board may waive Rule 1104.13(c) pursuant to Rules 1100.3 and 1110.9 for good cause shown. See Delaware and Hudson Railway Co. v. Consolidated Rail Corp., 9 I.C.C.2d 989, 990 (1993). Here, however, complainant has not met that standard. Much of the reply to reply consists of evidence and argument related to the substance of the complaint — material not relevant to, or properly introduced in, a discovery context. Moreover, to the extent that the pleading seeks to correct any misstatements allegedly made by defendants regarding discovery, or voices complaints about defendants' discovery conduct, those concerns will be resolved in this decision. As there has been no persuasive showing that an exception to Rule 1104.13(c) should be made, the motion will be denied.

4. Complainant's motion for clarification and to compel. Complainant also seeks clarification of the Board's July 27, 1999 decision in which the Board quashed the deposition of Mr. Thomas Holt, Sr., president of NPR. Complainant is correct in discerning that the Board's rationale in granting the protective order was that there may be other NPR employees who have more direct knowledge of the facts at issue and, therefore, deposing Mr. Holt at the outset of discovery would have been unduly burdensome. Complainant is also correct in arguing that this rationale does not extend the protective order to the request for documents, and that Mr. Holt, and other NPR personnel, should turn over all properly discoverable documents sought in OLM's first request for document production.

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

It is ordered:

1. Defendant NPR's motion for permission to withdraw its motion to compel is granted.
2. Defendants' motion for an extension of time to respond to discovery is denied as moot.
3. Complainant's motion for leave to reply to defendants' reply is denied.
4. Complainant's motion for clarification is granted.
5. Complainant's motions to compel are denied.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary