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SERVICE DATE – MAY 29, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42106

AMEROPAN OIL CORPORATION—PETITION FOR DECLARATORY ORDER—  
REASONABLENESS OF DEMURRAGE CHARGES

Decided: May 28, 2008

By petition filed on March 19, 2008, Ameropan Oil Corporation (AOC) seeks a declaratory order to resolve a dispute over demurrage charges assessed by Illinois Central Railroad Company (IC). AOC submitted a proposed procedural schedule under the Board's modified procedure provisions at 49 CFR part 1112. IC did not reply.

This matter was referred by the United States District Court for the Northern District of Illinois, on March 13, 2008, in Illinois Central Railroad Company v. Ameropan Oil Corporation, No. 1:07-CV-03833. IC initiated the court proceeding to collect from AOC \$152,000 in demurrage and railcar empty release charges, which allegedly accrued between February 2004 and November 2007, plus interest and costs. The court stayed the case before it, granting AOC's motion to refer to the Board the issue of "whether collection of demurrage charges is reasonable in light of Ameropan Oil's allegation that Illinois Central did not complete delivery on a timely basis because of its own service failure or disability."

Under 5 U.S.C. 554(e), the Board has discretionary authority to issue a declaratory order to terminate a controversy or remove uncertainty. The Board and its predecessor, the Interstate Commerce Commission (ICC), have exercised broad authority in handling such requests, considering a number of factors, including the significance to the industry and the ripeness of the controversy. See Delegation of Authority-Declaratory Order Proceedings, 5 I.C.C.2d 675, 676 (1989). There, the ICC noted that petitions for issuance of a declaratory order premised on a court referral are routinely accepted and treated procedurally in the same manner as a complaint. It then delegated the responsibility for taking initial action in disposing of such matters to the Director of the Office of Proceedings. See 49 CFR 1011.7(b)(6).

Pursuant to the Board's authority under 5 U.S.C. 554(e) and 49 U.S.C. 721, a proceeding will be instituted to resolve the controversies at issue here. This matter has been referred by a court of competent jurisdiction and otherwise appears to be within the Board's primary jurisdiction. The Board will consider this matter under the modified procedure rules at 49 CFR part 1112.

Because the procedural schedule submitted by AOC is similar to the one adopted by the Board in Railroad Salvage & Restoration, Inc.—Petition for Declaratory Order—Reasonableness

of Demurrage Charges, STB Docket No. 42102, et al. (STB served Dec. 20, 2007), and because IC did not submit a reply, AOC's proposed procedural schedule will be adopted.

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

It is ordered:

1. The request for institution of a declaratory order proceeding is granted.
2. This proceeding will be handled under the modified procedure on the basis of written statements submitted by the parties. The parties must comply with the Rules of Practice at 49 CFR subchapter B, including 49 CFR parts 1112 and 1114.
3. Discovery will be completed by August 27, 2008.
4. AOC's opening statement is due by September 26, 2008.
5. IC's reply statement is due by October 27, 2008.
6. AOC's rebuttal statement is due by November 17, 2008.
7. This decision is effective on its service date.
8. Copies of this decision will be mailed to:

The Honorable William J. Hibbler  
United States District Court for the Northern District of Illinois  
Eastern Division  
1225 U.S. Courthouse  
219 South Dearborn Street  
Chicago, IL 60604

RE: No. 1:07-CV-03833

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan  
Acting Secretary