

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42119

NORTH AMERICA FREIGHT CAR ASSOCIATION v. UNION PACIFIC RAILROAD
COMPANY

Decided: May 10, 2012

This decision grants a petition filed by Union Pacific Railroad Company (UP) for the simultaneous filing of final briefs.

On April 15, 2010, the North America Freight Car Association (NAFCA) filed a complaint against UP, alleging that provisions of Item 200-A of UP's Freight Tariff 6004 Series constitute unreasonable practices and violations of UP's common carrier obligation. The proceeding was held in abeyance to allow the parties to engage in informal discovery and consider mediation to resolve the dispute or narrow the issues. On July 7, 2011, NAFCA: (1) filed its first amended complaint; (2) notified the Board that the parties had failed to reach a negotiated agreement and advised the Board that no further negotiations appear warranted; and (3) submitted for the Board's consideration a procedural schedule negotiated by the parties with a request for a Board order embracing the proposed procedural schedule. By a decision served on August 2, 2011, the Board adopted the procedural schedule, which included discovery; NAFCA's opening statement; UP's reply statement; and NAFCA's rebuttal. By a decision served September 26, 2011, the Board altered the procedural schedule to accommodate completion of the discovery process. The parties completed their submissions of evidence when NAFCA filed its rebuttal on March 5, 2012.

On March 23, 2012, UP submitted a petition for an order directing simultaneous final briefs, limited to no more than 20 pages, with no attachments, exhibits, or new evidence. UP argues that such requests are consistently granted, and that final briefs provide an opportunity to summarize and highlight key issues in the proceeding. On March 30, 2012, NAFCA submitted a reply in opposition to UP's request for final briefs. NAFCA argues that UP reneged on the procedural schedule that the parties had agreed to and that the Board adopted. NAFCA also argues that UP's motion failed to cite Board precedent where the parties initially agreed on a procedural schedule and then one party, later, demanded closing briefs. Finally, NAFCA asserts that each party has had ample opportunity to set forth its positions and key issues in its statements filed under the procedural schedule, and that additional filings will increase litigation costs and decrease fairness. On April 3 and April 4, 2012, UP and NAFCA, respectively, filed letters disputing whether UP agreed to forego final briefs when it consented to the procedural schedule that the Board adopted in its August 2 decision.

In complex cases such as this, the Board has in the past ordered final briefs to focus the issues and assist in analyzing a complex record. While the procedural schedule did not provide for final briefs, permitting them now is appropriate. A single round of simultaneous final briefs will allow each party to set forth its position on key issues in light of the full record and identify issues that have been narrowed or are no longer in dispute. It is in the Board's discretion to permit final briefs, and it will not be overly burdensome for the parties to submit them. Accordingly, by this decision, UP's petition to permit the filing of briefs will be granted.

The final briefs shall be due by June 11, 2012. Such briefs may not exceed 20 pages in length and may not include attachments, exhibits, or new evidence, but may refer to exhibits or other material already in the record.

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

It is ordered:

1. UP's petition for simultaneous filing of final briefs is granted.
2. As described above, briefs are due by June 11, 2012.
3. This decision is effective on its date of service.

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