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SERVICE DATE - FEBRUARY 18, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42050

SOUTH-TEC DEVELOPMENT WAREHOUSE, INC. AND R.R. DONNELLEY & SONS
COMPANY--PETITION FOR DECLARATORY ORDER--ILLINOIS CENTRAL RAILROAD
COMPANY

Decided: February 14, 2000

By petition filed on December 10, 1999, South-Tec Development Warehouse, Inc. (South-Tec), a warehouse company operating a warehouse facility at Kankakee, IL, seeks a declaratory order to resolve a dispute over demurrage charges assessed by the Illinois Central Railroad Company (IC) for shipments of paper stored in transit and destined for delivery to the printing plant of R.R. Donnelley & Sons Company (Donnelley) at Mattoon, IL. South-Tec proposes a procedural schedule for the filing of evidence and argument. In a concurrently filed pleading, Donnelley seeks to join in South-Tec's petition and submits a statement of facts and argument. IC did not reply.

This matter is on referral from the United States District Court for the Northern District of Illinois in Illinois Central Railroad v. South-Tec Development Warehouse v. R.R. Donnelley & Sons Company, Case No. 97 C 5720. The court proceeding was instituted by IC in order to collect from South-Tec demurrage charges in the amount of \$160,170.00 which allegedly accrued between September of 1994 and December of 1995. South-Tec in turn filed a third-party action against Donnelley seeking indemnification. Subsequent to answering the third-party action, Donnelley, joined by South-Tec, filed a motion in District Court to stay the court proceedings and refer certain issues to the Board, namely: "whether Illinois Central's demurrage rate is unreasonable, the method by which it calculates the demurrage charge is unreasonable, and/or the practice by which demurrage charges accrue is discriminatory with respect to shippers such as Donnelley." See Court referral order of U.S. District Court Judge George M. Marovich dated July 15, 1999.

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 referral from a federal court are routinely accepted and treated procedurally in the same manner as a complaint.¹

¹ 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 1011.8(c)(6).

Under the Board's authority in 5 U.S.C. 554(e) and 49 U.S.C. 721, a proceeding is instituted to resolve the controversy here. The matter has been referred by a federal court and otherwise appears to be within our primary jurisdiction. The Board will resolve this matter pursuant to the modified procedure rules at 49 CFR part 1112. A procedural schedule is set forth below.²

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

It is ordered:

1. A declaratory order proceeding is instituted. This proceeding will be handled under the modified procedure, on the basis of written statements submitted by the parties. All parties must comply with the Rules of Practice at 49 CFR subchapter B, including 49 CFR 1112 and 1114.
2. Opening statements by South-Tec and Donnelley³ are due by March 20, 2000.
3. A reply statement by IC is due by April 19, 2000.
4. Rebuttal statements by South-Tec and Donnelley are due by May 4, 2000.
5. This decision is effective on its service date.

² South-Tec and Donnelley requested that IC be directed to make the initial filing, alleging that the burden of proof is on IC to establish that its demurrage charge is reasonable. As noted above, a court-referred declaratory order petition is tantamount to a complaint. Therefore, South-Tec will be required to file its opening statement first.

³ South-Tec and Donnelley are encouraged to file a joint pleading, if possible. 49 CFR 1112.5.

6. A copy of this decision will be served on:

United States District Court for the Northern
District of Illinois, Eastern Division
(Attn: District Judge George M. Marovich)
(RE: No. 97 C 5720)
U.S. Courthouse
219 South Dearborn Street
Chicago, IL 60604

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

Vernon A. Williams
Secretary