

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42082

MARTIN GAS SALES, INC.—PETITION FOR DECLARATORY ORDER—CERTAIN RATES
AND PRACTICES OF UNION PACIFIC RAILROAD COMPANY

Decided: June 15, 2004

On July 7, 2003, Martin Gas Sales, Inc. (Martin), a wholesaler of asphalt, filed a petition for a declaratory order to resolve a dispute over demurrage charges assessed by the Union Pacific Railroad Company (UP) for shipments of asphalt received at Martin's bulk facility in the Neches Industrial Park, near Beaumont, TX. This matter is on referral from the United States District Court for the Eastern District of Texas, Tyler Division, in Union Pacific Railroad Company v. Martin Gas Sales, Inc., Civil Action No. 6:02-cv-180 (referral order dated May 27, 2003). The court proceeding was initiated by UP to collect from Martin \$737,150 in demurrage charges, which allegedly accrued from December 2000 to February 2002. UP alleged that Martin failed to timely return rail cars pursuant to the provisions of UP's Rail Car Demurrage Tariff 6004. Martin filed a counterclaim alleging that the demurrage charges are: (1) unreasonable and violate 49 U.S.C. 10701, 10702(1), and 10704(a)(1); and (2) an unreasonable practice in violation of 49 U.S.C. 10702(2) and 10704(a)(1). The court referred the matter to the Board to consider the issues raised in Martin's counterclaim and stayed its proceedings pending Board action on the referral. Martin, in its petition, requested that a procedural schedule, including a reasonable period for discovery, be established.

By decision served on November 14, 2003, the Board instituted a declaratory order proceeding and established a procedural schedule, as modified by decisions served on January 27, 2004, February 26, 2004, March 26, 2004, and April 30, 2004.

On June 7, 2004, Martin filed a motion to dismiss the petition for declaratory order in this proceeding. Martin states that on May 18, 2004, the parties entered into a settlement agreement and mutual release that resolves all issues in both this proceeding and the suit pending in federal court.¹ Because the parties have settled their dispute, there appears to be no reason to continue this proceeding. Accordingly, the Board will grant Martin's request and dismiss this declaratory order proceeding.

¹ As part of the settlement agreement, Martin states that it is required to file a motion to dismiss the declaratory order proceeding and UP is required to file a stipulation of dismissal of the lawsuit with the court.

It is ordered:

1. The motion to dismiss the petition for declaratory order is granted.
2. This decision is effective on the date of service.
3. A copy of this decision will be served on:

The Honorable William M. Steger
United States District Court
for the Eastern District of Texas
211 W. Ferguson, Room 106
Tyler, TX 75702

RE: Civil Action No. 6:02-cv-180

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary