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SERVICE DATE – AUGUST 2, 2010

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35302

BELL OIL TERMINAL, INC. v. BNSF RAILWAY COMPANY

Decided: July 30, 2010

On October 6, 2009, Bell Oil Terminal, Inc. (Bell Oil), filed a complaint against BNSF Railway Company (BNSF), alleging that BNSF has violated 49 U.S.C. § 11103 by failing to construct, maintain, and operate a switch connection between BNSF's rail line and a private side track to be constructed by Bell Oil at its Pulaski Terminal in Chicago, Ill., and asking the Board to require BNSF to do so. On October 26, 2010, BNSF separately filed an answer and a motion to dismiss the complaint, alleging that Bell Oil's complaint is premature.

On May 19, 2010, Bell Oil and BNSF jointly filed a written request that the Board mediate this dispute and issue a 60-day "housekeeping" stay to permit the Board-supervised mediation. By decision served on June 4, 2010, the Board ordered a 60-day period for non-binding mediation, provided for a staff member to be designated to serve as mediator, and held this proceeding in abeyance for 60 days (until August 3, 2010), while the parties pursued a mediated agreement.¹

In a letter filed on July 21, 2010, Bell Oil requests that the Board extend the mediation process for an additional 90 days, or until November 1, 2010, and represents that it is authorized to state that BNSF supports the requested extension. Bell Oil also indicates that the parties have made some progress, but need more time to resolve their dispute through mediation.

The request is reasonable and will be granted. Accordingly, the time for mediation will be extended until November 1, 2010, and the proceeding will be held in abeyance until then while the parties pursue a mediated agreement.

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

¹ A request from Bell Oil to hold the complaint in abeyance pending the disposition of the motion to dismiss currently is pending before the Board. It will be considered in a subsequent decision, if necessary.

It is ordered:

1. The request to extend the time to mediate is granted, and the mediation period is extended until November 1, 2010.
2. The proceeding is held in abeyance until November 1, 2010, while mediation between the parties is ongoing.
3. This decision is effective on its date of service.

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