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SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33386

DECATUR COUNTY COMMISSIONERS, ET AL.
v.
CENTRAL RAILROAD COMPANY OF INDIANA

Decided: September 24, 1997

By complaint filed April 2, 1997, Decatur County Commissioners, et al.[1] (complainants) allege that the Central Railroad Company of Indiana (Central Railroad or respondent) has: (1) discontinued operations over and abandoned that portion of its line between Shelbyville, IN (MP 81.0), and Greendale (Lawrenceburg Junction), IN (MP 23.0), without obtaining appropriate authority under 49 U.S.C. 10903 or an exemption under 49 U.S.C. 10502; and (2) issued Tariff CIND-9010, the provisions of which are unlawful and the publication of which is an unreasonable practice in violation of 49 U.S.C. 10701-10704. On April 22, 1997, Central Railroad filed an answer denying the allegations of statutory violations.

On May 6, 1997, complainants filed a proposed procedural schedule under 49 CFR 1111.9 for processing this proceeding. On May 16, 1997, respondent filed its own proposed procedural schedule. On May 23, 1997, complainants replied to respondent's pleading. Before the Board could issue a decision establishing a plan for processing this proceeding, however, respondent, on July 2, 1997, filed a motion to stay the proceeding. Then, on July 22, 1997, complainants filed: (1) a reply in opposition to the motion to stay;[2] (2) a motion to strike the statement of Christopher J. Burger, respondent's president, submitted with respondent's stay request; and (3) a motion for an order compelling responses to discovery.

As the complaint states reasonable grounds for investigation and action, the Board will initiate an investigative proceeding under 49 U.S.C. 11701. This decision also disposes of several motions and establishes a procedural schedule for the submission of evidence.

PROCEDURAL DISPOSITION

It is undisputed that Central Railroad has ceased providing service over the subject line without having obtained regulatory approval from the Board for the cessation. It also is undisputed that the railroad has embargoed the line.[3] The primary matter in dispute is whether the embargo was necessitated and the cessation of service legitimate. An investigation of this matter is warranted and will be instituted.

Central Railroad seeks a delay in the processing of this proceeding. The respondent grounds its request in assertions that it is in the process of preparing a filing seeking approval for

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[1] Complaining governmental bodies are identified as "Decatur County Commissioners, Decatur County, Indiana, City of Shelbyville, Shelby County, Indiana." It is unclear whether the intent is to name two, three, or four different entities. Complainants should clarify their identities. The remaining complainants are Consolidated Grain and Barge Co., Premier Ag. Coop, Greensburg Milling Inc., Kolkmeier Bros. Feed & Grain, Kova Fertilizer, Inc., Lowe's Pellet & Grain Co., and Knauf Fiber Glass, GmbH. We are told that these seven entities include six shippers and one interested party. Complainants should specify which is which.

[2] Complainants' submission is accompanied by various exhibits in support of their brief in opposition to the motion to stay.

[3] Service ceased on or about February 24, 1997; the embargo became effective on April 10, 1997.

abandonment of the line. In respondent's view, it would be inefficient for it to respond to complainants' pending discovery requests (served June 4, 1997) and to make filings in this proceeding prior to and apart from its making a presentation in an abandonment proceeding. Complainants see no valid justification for a delay.

As a framework for their position, the parties have addressed the criteria for stay set forth in Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977). Within the confines of those criteria, the parties have commenced debating the matter of whether Central Railroad successfully can gain approval for abandonment of the line. The parties' approach is doubly misplaced. First, the stay criteria are not relevant here. The Board has taken no action that can be the subject of a stay. Respondent will be deemed to have requested that the processing of the complaint proceeding be held in abeyance. Second, the question of whether abandonment would be justified is wholly different from the issue presented by the complaint before us, i.e., the issue of whether the cessation of service was justified. The focus of an abandonment proceeding is prospective. The focus of this proceeding is on the circumstances under which service was discontinued without our approval.

We will deny the request that we hold in abeyance the processing of this proceeding. Processing already has been delayed, and no good reason appears to delay it further. Respondent has referred to preparations for an abandonment proceeding. As noted, however, an abandonment proceeding would involve issues far different from those involved here. We see no reason why respondent's intention to prosecute such a proceeding should preclude our moving forward here. Respondent's assertions that it would unnecessarily be forced to expend duplicative effort are unconvincing.

For these reasons, we will also deny the motion to strike the Burger statement. Complainants have assailed the statement as improperly verified and inadmissible as evidence. The statement contains matter intended to support abandonment, which is not in issue here. In any event, it will not be considered as an evidentiary submission because it was filed before the Board entered a decision initiating an investigation and providing for the filing of statements. As the statement will not be considered as evidence, there is no need to strike it. Hence, we will not do so.

Finally, we will decline to rule on complainants' motion for an order compelling answers to discovery. We see no reason why extensive discovery is necessary here. The focus of discovery necessarily would be on the justification for the cessation of service. But matter supporting the cessation of service, including details regarding alleged washouts, erosion, unsafe operating conditions, etc., is information that we would expect respondent to submit after complainants have made their evidentiary submission presenting details of the cessation. We also see no reason to provide for an extended period for discovery. Central Railroad can quickly respond to properly focused and limited discovery requests.

We will process this proceeding under the modified procedure. It appears that substantially all material issues of fact can be resolved through the submission of written statements, and efficient disposition of this proceeding can be accomplished without oral testimony. 49 CFR 1112.1. In light of the various pleadings that have been filed since the parties submitted their proposed procedural schedules, and in light of our discussion above, we will not consider the parties' proposed schedules, but will adopt the schedule set forth below.[4] We expect that the parties will cooperate with each other in providing discovery material as well as any other information required for the prompt, efficient disposition of this proceeding.

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[4] We are disappointed that the parties were unable to agree on and submit a single proposed procedural schedule, as contemplated by 49 CFR 1111.9. By that rule, the Board sought to foster the efficient processing of proceedings and not what is evidenced here in an added round of pleadings in which the parties trade recriminations.

It is ordered:

1. An investigative proceeding is initiated under 49 U.S.C. 11701.

2. Respondent's request that the processing of this proceeding be held in abeyance is denied.

3. Complainants' motion to strike the statement of Christopher J. Burger is denied.

4. This proceeding will be processed under the modified procedure.

5. Complainants' opening statement is due October 30, 1997.

6. Respondent's reply statement is due December 1, 1997.

7. Complainants' rebuttal statement is due December 19, 1997.

8. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary