

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42094 (Sub-No. 1)

PCI TRANSPORTATION, INC.

v.

FORT WORTH & WESTERN RAILROAD COMPANY

Decided: May 11, 2007

On October 26, 2006, PCI Transportation, Inc. (PCI), filed a complaint and a request for injunctive and other relief against Fort Worth & Western Railroad Company (FWWR). The complaint and request for relief relate to FWWR's allegedly wrongful assessment of demurrage charges. Instead of filing an answer to PCI's complaint, FWWR filed a motion to dismiss, which remains pending, arguing that the Board lacks subject matter jurisdiction. PCI filed a reply to FWWR's motion on December 21, 2006.

In a decision served on February 5, 2007, the Board directed FWWR to file an answer to PCI's complaint. The Board also directed the parties to discuss discovery and procedural matters by March 9, 2007, and to file a proposed procedural schedule by March 16, 2007.

On February 26, 2007, FWWR filed an answer to PCI's complaint and a counterclaim for declaratory relief. In the counterclaim, FWWR seeks damages in the amount of the allegedly overdue demurrage charges and attorney fees and costs to compensate it for pursuing this action. PCI filed a motion for leave to file an answer to FWWR's counterclaim on March 29, 2007, and concurrently filed an answer.

FWWR and PCI filed reports and competing proposed procedural schedules on March 16, 2007. PCI's proposed procedural schedule calls for an extensive period for discovery; simultaneous opening, reply, and rebuttal statements; and oral hearing on November 29-30, 2007. According to PCI, the extended discovery period is needed to obtain evidence that FWWR's allegedly improper demurrage practices applied not only to PCI but to other shippers as well.

FWWR proposed alternative procedural schedules. FWWR's preferred proposal is a simplified modified procedure schedule that does not allow for discovery; calls for simultaneous opening, reply, and rebuttal statements; and closes the record by July 15, 2007. According to FWWR, new or additional discovery is not needed because extensive discovery already occurred when the case was before the U. S. District Court for the Northern District of Texas. FWWR's second proposal provides for 60 days of discovery; simultaneous opening, reply, and rebuttal statements; and oral hearing on September 5-6, 2007.

PCI includes oral hearing in its proposed procedural schedule, but it has not indicated why the Board's modified procedure is inadequate for it to present its case and defend against FWWR's counterclaim. Nor has PCI justified almost 4 months of discovery. The following procedural schedule should be adequate to accommodate PCI's need for discovery and the filing of pleadings.

June 29, 2007	Discovery completed
July 20, 2007	PCI's opening statement in support of complaint FWWR's opening statement in support of counterclaim
August 17, 2007	PCI's reply statement in opposition to counterclaim FWWR's reply statement in opposition to complaint
September 14, 2007	PCI's rebuttal statement in support of complaint FWWR's rebuttal statement in support of counterclaim

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

It is ordered:

1. The procedural schedule set out above is adopted for this proceeding.
2. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary