

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. WCC-104

TRAILER BRIDGE, INC.

v.

SEA STAR LINES, LLC

Decided: May 11, 2001

By complaint filed on July 1, 1999, Trailer Bridge, Inc. (Trailer Bridge or complainant) alleges that Sea Star Lines, LLC (Sea Star or defendant) has engaged in certain unreasonable practices in violation of 49 U.S.C. 13701(a)(1)(B).¹ Specifically, Trailer Bridge asserts that Sea Star is providing transportation service between the U.S. mainland and Puerto Rico at rates that are noncompensatory in an effort to disrupt the trade. Complainant further alleges that defendant's continuing violation of section 13701(a)(1)(B) has caused, and is continuing to cause, economic injury to Trailer Bridge. Sea Star filed an answer to the complaint on July 26, 1999, in which it denied these allegations.

BACKGROUND

On January 7, 2000, Sea Star responded to complainant's first set of interrogatories and requests for document production. In its response, defendant refused to answer most of the requests on grounds that they allegedly sought confidential and irrelevant information, were burdensome, or were overbroad. As a result, Trailer Bridge filed a motion to compel discovery, together with a request for leave to file that motion out of time, on February 22, 2000. Sea Star replied on March 13, 2000.² On April 19, 2000, Sea Star filed a motion to compel responses to its first and second sets of interrogatories and requests for document production. Trailer Bridge replied on April 28, 2000, and also asked the Board to appoint an Administrative Law Judge

¹ Originally, Trailer Bridge also alleged a violation of the National Transportation Policy (NTP) set forth at 49 U.S.C. 13101(a)(1)(C) and (D) as a separate count of its complaint. In a decision served on December 10, 1999, the Board agreed with defendant that the NTP does not give rise to a separate cause of action. Thus, we dismissed Count I of the complaint, but noted that the policy guidelines set forth at 49 U.S.C. 13101 will necessarily inform our consideration of the remaining count.

² On that date, defendant also requested issuance of a protective order, to which complainant replied on April 3, 2000. A protective order was issued in a decision served on May 10, 2000.

(ALJ) to preside over any remaining discovery disputes. In a letter filed on May 4, 2000, Sea Star agreed with complainant's suggestion that their discovery disputes be referred to an ALJ.

By a decision served October 27, 2000 (October decision), we denied the parties' request for an ALJ; granted, in part, complainant's motion to compel; and denied defendant's motion to compel as premature, although complainant was directed to respond to all outstanding discovery requests. On November 30, 2000, counsel for Trailer Bridge wrote to defendant's counsel regarding discovery. Sea Star suggested, as a means to facilitate settlement, that the parties agree to an independent financial audit of Sea Star's operating costs and revenues to establish whether Sea Star's rate structure is noncompensatory. Trailer Bridge rejected this offer and renewed its request for defendant to comply with discovery. Sea Star then sought to establish a simultaneous exchange of replies and documents. Trailer Bridge also rejected this proposal.

By motion filed January 12, 2001, Trailer Bridge again sought an order compelling Sea Star to respond to discovery and for sanctions should Sea Star fail to do so. On January 31, 2001, defendant filed a cross-motion to compel discovery and for sanctions. The pleading also included defendant's opposition to complainant's motion to compel.

On February 16, 2001, complainant filed a reply to the cross-motion to compel. Complainant stated that, on the same day Sea Star filed its cross-motion, defendant also submitted confidentiality undertakings pursuant to the protective order in this proceeding. According to Trailer Bridge, it was the lack of such undertakings by defendant which had delayed complainant's own compliance with the October decision. Complainant also pointed out that it served responses and objections to Sea Star's first and second sets of interrogatories and requests for production of documents on February 16, 2001. Thus, according to Trailer Bridge, defendant's cross-motion to compel is now moot. Finally, complainant asserted that, as a result of Sea Star's actions, two other competitors in the Puerto Rico trade, NPR, Inc. d/b/a Navieras (NPR) and CSX Lines, have suffered significant ongoing losses.

By letter filed March 23, 2001, Trailer Bridge alleged that Sea Star still had not complied with the October decision. Complainant also asserted that, on March 21, 2001, NPR, its parent Holt Group, Inc., and 23 other affiliated companies filed for Chapter 11 protection in the Bankruptcy Court in Delaware. Trailer Bridge attributed this filing to defendant's conduct in the Puerto Rico trade.

Sea Star replied by letter filed March 27, 2001. Defendant explained that conflicts in one of its counsel's schedules had delayed its production of documents. Sea Star added that it had recently produced what documents it could and that it would provide the remaining documents as they become available. Sea Star also noted that Trailer Bridge had interposed objections to most of its discovery requests. Defendant added that it was continuing to seek full responses and additional documents from complainant, but indicated that another motion to compel would likely be necessary. Finally, according to Sea Star, NPR's recent actions amounted to a

voluntary strategic restructuring of debt that have nothing to do with any conduct on Sea Star's part and that do not show harm to competition in the Puerto Rico trade.³

On May 2, 2001, Trailer Bridge filed a letter which, among other things, asserted that Sea Star had provided "only a handful of unresponsive documents to Trailer Bridge in response to the Board's October 27, 2000 order." On May 8, 2001, Sea Star replied, claiming that it had produced documents responsive to Trailer Bridge's discovery requests. In addition, Sea Star claimed that Trailer Bridge's responses failed to provide requested information and documents pertaining to Trailer Bridge's costs and alleged damages.

DISCUSSION AND CONCLUSIONS

Outstanding requests for relief in this proceeding consist of a motion to compel and motions for sanctions from each party. The Board has already granted Trailer Bridge's motion to compel discovery, so there is no need to grant another motion. Therefore, Sea Star must turn over the remaining documents at issue within 20 days. Should Sea Star fail to comply with this order, we will pursue appropriate action to enforce the order. For now, complainant's request for sanctions will be denied.

Defendant's cross motion to compel and motion for sanctions now appear to be moot because Trailer Bridge has now served answers and objections to Sea Star's discovery requests. If Sea Star believes Trailer Bridge's responses are inadequate, defendant should work with Trailer Bridge to obtain fuller responses. A motion to compel, should one become necessary, should be as specific as possible.

Our October decision anticipated that the parties could conduct discovery, aided by the guidance we provided. That has proven not to be the case. The May filings by both parties underscore this failure. In light of the lack of cooperation and need for more direct oversight, we will appoint an ALJ to oversee any further discovery disputes.

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

³ It would be premature to consider NPR's bankruptcy filing at this time. The effects of defendant's alleged conduct would be more properly considered in the parties' evidentiary submissions.

It is ordered:

1. Complainant's motion to compel is denied as moot.
2. Complainant's motion for sanctions is denied.
3. Defendant is ordered to comply with the Board's October 27, 2000 decision within 20 days from the service date of this decision.
4. Defendant's cross-motion to compel and for sanctions is denied as moot.
5. An administrative law judge will be appointed to oversee any further discovery disputes.
6. This decision is effective on the date of service.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary