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SEC

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SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-103 (Sub-No. 14)

THE KANSAS CITY SOUTHERN RAILWAY COMPANY—
ADVERSE DISCONTINUANCE APPLICATION—A LINE OF
ARKANSAS AND MISSOURI RAILROAD COMPANY

Decided: January 11, 1999

On November 30, 1998, Arkansas and Missouri Railroad Company (AMR) filed an application under 49 U.S.C. 10903 requesting that the Board find that the public convenience and necessity require and permit the discontinuance of trackage rights held by The Kansas City Southern Railroad Company (KCS) over an approximately 5.5-mile segment of rail line owned by AMR in Sebastian County, AR, and LeFlore County, OK. Notice of the application was served and published in the Federal Register (63 FR 70182) on December 18, 1998. Written comments or protests to the application are due January 14, 1999.

On January 6, 1999, KCS filed a motion to compel responses to the following two discovery requests: (1) that AMR produce its 100 percent traffic waybill data from January 1, 1995, through the present date; and (2) that AMR state the factual basis for the assertion on page 6 of its application that “there has been no relevant decline in traffic over the Subject Line.” KCS submits that these requests were contained in its third set of discovery requests that were served on AMR on December 9, 1998. When AMR served its responses on December 22, 1998, AMR assertedly objected to the first request as irrelevant, overbroad, and unduly burdensome, and objected to the second request as irrelevant information that was already included in the application. KCS requests that the Board issue an order compelling AMR to provide the requested information, and also asks that the January 14, 1999 deadline for filing written comments or protests to the application be extended until 15 days after AMR has provided the information. Under the governing regulations at 49 CFR 1114.31, KCS should have filed its motion to compel by January 4, 1999. Therefore, pursuant to 49 CFR 1117.1, KCS seeks waiver or a two-day extension of the filing deadline because of the intervening holidays and the absence of counsel from the office during those holidays.

In its reply filed January 7, 1999, AMR argues that the motion to compel should be rejected as not timely filed, or, alternatively, that it be denied. AMR submits that KCS has failed to explain how 100 percent waybill data for AMR’s entire system would be relevant to this proceeding. Moreover, AMR submits that the information sought in the second request is already in KCS’s possession.

In addition, on January 8, 1999, AMR filed a motion to compel responses to 46 interrogatories and 26 document production requests that it served on KCS on December 18, 1998.

According to AMR, when KCS served its responses and objections by facsimile on January 4, 1999, KCS assertedly objected to every discovery request and refused to provide any responsive information. Therefore, AMR requests that the Board order KCS to provide meaningful responses to the discovery requests by January 19, 1999. Action on AMR's motion will be handled in a later decision. However, because AMR's motion warrants expedited action, KCS should file any reply to the motion no later than January 13, 1999.

KCS has failed to show good cause why its late-filed motion to compel should be accepted for filing. The Board's stated policy is that contested discovery will be granted in abandonment proceedings only when the party seeking discovery shows that the information sought is relevant and might affect the result of the case, and that it ought to be obtained through discovery rather than some other means. See SWKR Operating Co.—Abandonment Exemption—In Cochise County, AZ, STB Docket No. AB-441 (Sub-No. 2X), slip op. at 2 (STB served Feb. 14, 1997) (SWKR). Although KCS cites an earlier decision in SWKR served January 7, 1997, as precedent for granting an extension of time to file a motion to compel, the parties in that proceeding had agreed to the extension and the extension request was timely filed. Here, AMR not only strenuously objects to an extension of time or waiver, it argues that the information sought in the first discovery request is not relevant to the application and that KCS already has the information sought in second discovery request. Under the circumstances here, the request for waiver or a two-day extension of the due date for filing a motion to compel under 49 CFR 1114.31 will be denied and the late-filed motion to compel will be rejected.¹

It is ordered:

1. The request for waiver or a two-day extension of the due date for filing a motion to compel under 49 CFR 1114.31 is denied, and KCS's late-filed motion to compel responses to interrogatories and production of documents is rejected.

2. If KCS wishes to reply to AMR's motion to compel filed January 8, 1999, it should do so no later than January 13, 1999.

¹ Even if the motion to compel had been timely filed, KCS has failed to show that the information that it seeks is relevant and might affect the result of the proceeding. For example, the relevance of AMR's traffic over its entire system in a proceeding that involves an adverse discontinuance of overhead trackage rights held by KCS has not been shown. Moreover, because the only overhead traffic moving over the line is that moved by KCS, KCS would already know whether AMR's statement that there has been no relevant decline in traffic over the subject line is true or false.

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3. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary