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SEC

SERVICE DATE – FEBRUARY 22, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34608

OHIO VALLEY RAILROAD COMPANY – PETITION TO RESTORE SWITCH
CONNECTION AND OTHER RELIEF

Decided: February 20, 2007

On October 22, 2004, Ohio Valley Railroad Company (OVR) and Mid-America Locomotive & Car Repair, Inc. (Mid-America) (collectively, petitioners) filed a petition with the Board, asking that two switches connecting OVR's lines with those of Indiana Southwestern Railway Co. (ISW) be restored. Petitioners also sought relief under 49 CFR 1146 and 1147 and asked the agency to confirm that OVR possesses a contractual right to engage in direct interchange with CSX Transportation, Inc. (CSXT) over ISW's track. By decision served February 23, 2005, the Board denied petitioners' request for temporary emergency and alternative service relief under 49 CFR 1146 and 1147, but ordered ISW to restore the south end switch connection with OVR. Petitioners' request that the Board confirm OVR's contractual right to a direct interchange with CSXT was denied.

On May 16, 2005, OVR and Mid-America filed a supplemental petition with the Board alleging that ISW was engaging in unreasonable and discriminatory practices against them in violation of 49 U.S.C. 10701, 10741, and 10742. Petitioners sought various types of relief, including Board prescription of an interchange agreement, proper reinstallation by ISW of the switch connection (as petitioners took the position that the switch connection had not been reinstalled properly), and remedies against ISW's pricing practices. The Board served a decision on August 29, 2005, directing the parties to participate in a meeting to address the service issues presented by petitioners, and to clarify the factual record and explore the possibility of narrowing the issues in the case. On September 27, 2005, the parties met with Melvin F. Clemens, Director of the Board's Office of Compliance and Enforcement (now the Office of Compliance and Consumer Assistance). The Board has received no written submissions from the parties since OVR filed a letter in December 2005 stating that the parties had not yet resolved their differences.

As indicated, Director Clemens held a meeting in September 2005, in an effort to help Mid-America, OVR, and ISW narrow their areas of disagreement. Moreover, Director Clemens and his staff have made themselves available since the inception of this dispute to assist the parties in reaching an accommodation. The fact that the Board has not received any written communications from the parties in over 13 months suggests that the parties are addressing the issues raised in this proceeding without formal Board intervention, and there would appear to be no reason to keep this proceeding open. Petitioners will therefore be directed to show cause by

March 14, 2007, why this proceeding should not be dismissed. ISW will have until April 3, 2007, to respond.

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

It is ordered:

1. Petitioners are directed to show cause by March 14, 2007, why this proceeding should not be dismissed. ISW will have until April 3, 2007, to respond.

2. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary