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SEC

SERVICE DATE – DECEMBER 14, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34920

SAVANNAH PORT TERMINAL RAILROAD, INC.–  
PETITION FOR DECLARATORY ORDER–  
CERTAIN RATES AND PRACTICES AS APPLIED TO CAPITAL CARGO, INC.

Decided: December 13, 2006

On October 6, 2006, the Savannah Port Terminal Railroad, Inc. (SPTR) filed a Petition for Declaratory Order asking the Board to consider issues referred by the Superior Court of Chatham County, in the Eastern Judicial Circuit of the State of Georgia in Capital Cargo, Inc. v. Rail Link, Inc., Savannah Port Terminal Railroad, Inc. and Georgia Ports Authority, Civil Action No. CV05-0755-AB. At issue in the court proceeding is whether Capital Cargo, Inc. (Capital) is obligated for \$149,648 in demurrage and related charges that allegedly accrued from April 1, 2003, through May 31, 2005.

The petition asks that the Board determine that Capital failed to provide a written notice of objection to the demurrage charges as provided in governing tariffs for the months of April 2003 through March 2005 and therefore is precluded from raising any defenses for nonpayment of those charges. The petition also asks the Board to determine that the demurrage charges accrued for April and May 2005 were reasonable, applying the facts of the case, and, alternatively, for the period of April 2003 through March 2005 should the Board find that Capital is not preempted from challenging the reasonableness of those charges.

By decision served October 20, 2006, Capital was granted an extension of time to file its response to SPTR's petition. On November 30, 2006, Capital timely filed an answer and dismissal request and, in the alternative, a cross-complaint.

In its response, Capital asserts that the transportation and service at issue in this proceeding, including demurrage charges, are not subject to Board jurisdiction, because they are governed by contract and the tariffs cited by SPTR are not part of that contract. According to Capital, the contract does not include a written objection requirement but does include a provision that the failure of either party to complain of any act or omission on the part of the other party shall not be deemed to be a waiver of any rights under the contract. Capital contends that SPTR has not met its contractual obligation to provide three deliveries per day of three cars

each to its facility. Capital also cites this service failure by SPTR as the basis for its cross-complaint and contends that the demurrage charges are unreasonable.

By motion filed on December 7, 2006, as amended on December 8, 2006, SPTR requests an extension of time until January 31, 2007, to file a response to Capital's dismissal request and cross-complaint. SPTR states that it needs sufficient time to respond to the substantial and complex issues relating to the contracts governing the parties' relationship and the applicability and interpretation of tariffs. SPTR's counsel cites involvement in other litigation scheduled for hearing this month and indicates that Capital does not object to the extension request.

The request is reasonable and will be granted. SPTR's response will be due January 31, 2007.

It is ordered:

1. SPTR's motion, as amended, for an extension of time for filing a response to Capital's dismissal request and cross-complaint is granted.
2. SPTR's response is due by January 31, 2007.
3. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary