

28558
SEC

SERVICE DATE - FEBRUARY 5, 1998

SURFACE TRANSPORTATION BOARD¹

Finance Docket No. 32821

BAR ALE, INC.

v.

CALIFORNIA NORTHERN RAILROAD CO. AND
SOUTHERN PACIFIC TRANSPORTATION COMPANY

Decided: February 2, 1998

This proceeding was instituted by complaint filed by Bar Ale, Inc. (complainant), on November 13, 1995, against the California Northern Railroad Company (CNR) and Southern Pacific Transportation Company (SPT) (collectively defendants). On November 30, 1995, a Notice of Complaint and a copy of the complaint alleging an unlawful embargo and an unlawful abandonment were served on defendants. Defendants filed separate answers on December 20, 1995. A procedural schedule under the modified procedure was served on January 26, 1996, and provided for complainant to submit its opening statement on or before February 26, 1996. Subsequently, discovery disputes required the postponement of the submission of opening statements. By decision served April 9, 1996, the procedural schedule was suspended pending action on complainant's motions to compel, and on the completion of discovery.

On May 1, 1996, complainant requested the issuance of a protective order to facilitate resolution of the discovery disputes. Complainant indicated that the only remaining discovery dispute involved the lease agreement between CNR and SPT. SPT stated that it was "willing to provide this information to Bar Ale once an appropriate protective order has been agreed to by SPT, CNR and Bar Ale and entered by the Board." SPT response, April 22, 1996, at 4. On August 21, 1996, a protective order was issued. On September 18, 1996, complainant filed with the Board a copy of its answers and responses to SPT's First and Second Set of Interrogatories as well as a signed confidentiality statement pursuant to the August 21 decision. Since that time, neither party has made any filings with the Board.

Over a year has passed without any discernable action by either party. Parties to proceedings before the Board are obligated to prosecute their claims and defenses with reasonable diligence, or to inform the Board that the controversy is no longer in dispute. Accordingly, we will vacate the April 9, 1996 order suspending the procedural schedule, and the parties will be ordered to

¹ The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), which was enacted on December 29, 1995, and which took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). This decision relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903 and 11101.

advise the Board whether the case has been settled. If the controversy has not been resolved, defendants are ordered to provide Bar Ale a copy of SPT-CNR lease pursuant to the protective order. In addition, a new procedural schedule is being established so that record development can be promptly completed in the event that the parties require a resolution by the Board.

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

It is ordered:

1. The April 9, 1996 decision suspending the procedural schedule in this proceeding is vacated.
2. Parties shall indicate, by February 20, 1998, whether they desire the Board to proceed with this complaint.
3. If the controversy has not been resolved, defendants are directed to furnish to complainant the SPT-CNR lease agreement pursuant to the protective order by March 2, 1998.
4. Should defendants timely comply with the directive set forth in the preceding paragraph, the following procedural schedule is established:
 - a. Complainant shall file its opening statement by April 1, 1998.
 - b. Defendants shall file their replies by May 1, 1998.
 - c. Complainant shall file its rebuttal by May 21, 1998.
5. This decision is effective on the service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

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