

37487
SEC

SERVICE DATE – FEBRUARY 5, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42094 (Sub-No. 1)

PCI TRANSPORTATION, INC.

v.

FORT WORTH & WESTERN RAILROAD COMPANY

Decided: February 2, 2007

On October 26, 2006, PCI Transportation, Inc. (PCI), filed a complaint and a request for injunctive and other relief against Fort Worth & Western Railroad Company (FWWR). FWWR requested an extension of time (until November 27, 2006) to answer PCI's complaint, which was granted in a decision served on November 20, 2006. FWWR did not file an answer to PCI's complaint but, on November 24, 2006, filed a motion to dismiss the complaint, which remains pending, arguing that the Board lacks subject matter jurisdiction. PCI requested an extension of time to reply to FWWR's motion to dismiss. The extension request was granted in a decision served on December 11, 2006, and PCI filed its reply on December 21, 2006.

An answer to a complaint must be filed with the Board within 20 days after the complaint is served on the defendant, see 49 CFR 1111.4, and must be accompanied by a certificate of service on the complainant. See 49 CFR 1104.12. The answer should be responsive to the complaint and fully advise the Board and the parties of the nature of the defense. A motion to dismiss may accompany the answer to a complaint, see 49 CFR 1111.5, but the filing of a motion to dismiss does not relieve the defendant of its obligation to answer the complaint or comply with other procedural requirements. Accordingly, FWWR will be directed to file an answer to PCI's complaint within 20 days from the service date of this decision. See, e.g., Ocean Logistics Management, Inc. v. NPR, Inc., and Holt Cargo Systems, Inc., STB Docket No. WCC-102 (STB served July 27, 1999).

The parties are reminded that discussions on discovery and procedural matters must take place within 12 days after the answer to the complaint is filed, and that a proposed procedural schedule must be filed with the Board within 19 days after the answer is filed. See 49 CFR 1111.10. Because FWWR is being directed to file an answer within 20 days from the service date of this decision, the dates for conducting procedural discussions and for filing the proposed procedural schedule will be calculated from the date FWWR's answer must be filed, or 32 days and 39 days, respectively, from the service date of this decision.

The Board will address the motion to dismiss at a future date.

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

It is ordered:

1. FWWR is directed to file an answer to PCI's complaint by February 26, 2007.
2. The parties are directed to discuss discovery and procedural matters by March 9, 2007.
3. The parties are directed to file a proposed procedural schedule by March 16, 2007.
4. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary