

32043
SEC

SERVICE DATE - LATE RELEASE JULY 27, 2001

SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Finance Docket No. 32821

BAR ALE, INC.
v.
CALIFORNIA NORTHERN RAILROAD CO.
AND
SOUTHERN PACIFIC TRANSPORTATION COMPANY

July 27, 2001

NOTICE TO THE PARTIES:

In the decision served on July 20, 2001, in the above proceeding, formatting errors appear on pages 1 and 2 of the decision. Attached are corrected copies of pages 1 and 2 which should be substituted for the incorrect pages.

Vernon A. Williams
Secretary

29194
EB

SERVICE DATE - JULY 20, 2001

SURFACE TRANSPORTATION BOARD¹

DECISION

Finance Docket No. 32821

BAR ALE, INC.

v.

CALIFORNIA NORTHERN RAILROAD CO. AND
SOUTHERN PACIFIC TRANSPORTATION COMPANY

Decided: July 18, 2001

This complaint proceeding involves the embargo of a rail line in Petaluma, CA, that served the former facilities of complainant Bar Ale, Inc. (Bar Ale). The embargo was placed on the line by California Northern Railroad Company (CNR), which operated the line under a lease from Southern Pacific Transportation Company (SP). In its complaint, Bar Ale alleges that the embargo was unlawful and requests damages from defendants, CNR and Union Pacific Railroad Company (UP), successor in interest to SP.² The parties filed statements pursuant to a procedural schedule established in a decision served on February 5, 1998.³

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). Section 204(b)(1) of the ICCTA provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the ICCTA. 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(a) and 11101(a). Therefore, this decision applies the law in effect prior to the ICCTA.

² UP has acquired SP's interest in the line pursuant to the Board's decision in Union Pacific/Southern Pacific Merger, 1 S.T.B. 233 (1996).

³ Due to discovery disputes, the filing of evidence under a prior procedural schedule was delayed and that schedule was eventually vacated and replaced by the current one, under which complainant filed its opening statement on April 1, 1998, CNR and UP filed separate reply statements on May 1, 1998, and Bar Ale filed separate rebuttal statements to the replies on May 21, 1998.

MOTION TO STRIKE

Because Bar Ale's opening statement was not verified in accordance with the Board's regulations, UP moves to strike all unverified assertions of fact in the statement and seeks dismissal of the complaint for failure to present a prima facie case.

Bar Ale counters that substantially all of the evidence it relied upon in its opening statement either was supplied by defendants in response to interrogatories or was supported by exhibits attached to Bar Ale's opening statement.⁴ Bar Ale maintains that it was under no obligation to verify information provided by defendants and that defendants should be precluded from challenging information that they themselves provided in response to discovery requests.

We will deny UP's motion to strike. Almost all of the information contained in complainant's opening statement is corroborated either through reference to documents provided by the parties or through information provided by UP or CNR in discovery. We will not accord any weight to disputed factual allegations⁵ that are not directly supported by the record.

BACKGROUND

Bar Ale is a manufacturer, wholesaler and retailer of livestock feed and related supplies. It owned and operated a milling plant in Petaluma, CA, which was scheduled to be torn down shortly after April 1, 1998.⁶ Bar Ale received inbound shipments of various agricultural commodities⁷ by rail to its former Petaluma plant, which was located on First Street at the end of

⁴ Bar Ale prefaced many of its factual assertions in the opening statement with "[t]here is no dispute."

⁵ UP submits that Bar Ale's "so-called" undisputed facts are disputed.

⁶ Bar Ale's new facility is located in Williams, CA.

⁷ Bar Ale states that it received 121 carloads in 1992 and 70 carloads from January 1, 1993, through November 11, 1993. CNR reports the carload figures as 120 and 69, respectively.