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SERVICE DATE - DECEMBER 17, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33593

HARBISON-WALKER REFRACTORIES COMPANY
v.
CHICAGO SOUTHSHORE & SOUTH BEND RAILROAD

Decided: December 16, 1998

On May 5, 1998, Harbison-Walker Refractories Company (Harbison) filed a complaint alleging that Chicago SouthShore & South Bend Railroad (CSS) has failed and refused to provide rail transportation on reasonable request in violation of 49 U.S.C. 11101(a). Harbison seeks a cease-and-desist order and an award of damages. CSS moves to dismiss the complaint.

Harbison states that for approximately 40 years it has been serviced over track extending from CSS's main line to Harbison's plant.¹ This service terminated, however, on September 17, 1997, when CSS embargoed the track claiming poor conditions on the track. Harbison contends that this embargo was unjustified and unwarranted and, accordingly, brings this action before the Board.

In Chicago SouthShore & South Bend Railroad—Petition for Declaratory Order—Status of Track at Hammond, IN, STB Finance Docket No. 33522 (STB served Dec. 17, 1998), a proceeding that was pending at the time the complaint was filed (and to which Harbison was a party), the Board issued a declaratory order finding that the track that serves Harbison is exempt trackage under 49 U.S.C. 10906. In light of this finding, CSS is not required to obtain Board approval under 49 U.S.C. 10903 to abandon or otherwise end service over this track. As a consequence, the complaint is moot.

Accordingly, the complaint will be dismissed.

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

¹ This track is approximately 1.8 miles (9,520 feet) long and connects by a switch at milepost 64.2 to Parish Siding, which in turn connects to CSS's main-line track at mileposts 63.8 and 64.9, at or near Hammond, IN. It terminates inside Harbison's facility.

It is ordered:

1. CSS's motion to dismiss is granted and the complaint is dismissed.
2. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary