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SERVICE DATE – JUNE 4, 2010

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35302

BELL OIL TERMINAL, INC. v. BNSF RAILWAY COMPANY

Decided: June 3, 2010

This decision holds the proceeding in abeyance while the parties mediate a dispute over a switch connection request.

On October 6, 2009, Bell Oil Terminal, Inc. (Bell Oil), filed a complaint against BNSF Railway Company (BNSF), alleging that BNSF has violated 49 U.S.C. § 11103 by failing to construct, maintain, and operate a switch connection between BNSF's rail line and a private side track to be constructed by Bell Oil at its Pulaski Terminal in Chicago, Ill., and asking the Board to require BNSF to do so. On October 26, 2009, BNSF separately filed an answer and a motion to dismiss the complaint, alleging that Bell Oil's complaint is premature.

On May 19, 2010, Bell Oil and BNSF jointly filed a request that the Board mediate this dispute and issue a 60-day "housekeeping" stay to permit the Board-supervised mediation. The Board's regulations provide for the use of alternative dispute resolution (ADR), including mediation, in cases such as this upon the mutual consent of the parties. See 49 C.F.R. § 1109.1. Because the parties jointly have consented to mediation in writing, the Board will provide for a 60-day period for non-binding mediation, and will designate a staff member to serve as mediator. The proceeding will be held in abeyance for 60 days while the parties pursue a mediated agreement.¹

Within 5 business days of the effective date of this decision, the mediator shall contact the parties to discuss ground rules and the time and location of any meetings. At least 1 principal of each party, who has the authority to commit that party, shall participate in the mediation and be present at any session at which the mediator requests that the principal be present. The parties are instructed to inform the Board when mediation has ended, with or without a resolution.

The parties are expected to work together to develop an appropriate confidentiality agreement and, if necessary, request that a protective order be issued by the Board.

¹ A request from Bell Oil to hold the complaint in abeyance pending the disposition of the motion to dismiss currently is pending before the Board. It will be considered in a subsequent decision, if necessary.

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

It is ordered:

1. Mediation is ordered as described above. A member of the Board staff will be designated to serve as mediator pursuant to the instructions set forth above.
2. The proceeding is held in abeyance for 60 days while ADR procedures are ongoing.
3. This decision is effective on its date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.