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SEC

SERVICE DATE - JUNE 24, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42079

AG PROCESSING INC.

v.

NORFOLK SOUTHERN RAILWAY COMPANY

Decided: June 23, 2004

On May 29, 2003, AG Processing Inc. (AGP), filed a complaint and a petition for injunctive relief under 49 U.S.C. 721(b)(4) to prevent Norfolk Southern Railway Company (NS) from terminating all use on its lines of order bills of lading or straight bills of lading containing restrictive delivery provisions, as designated in "NS Conditions of Carriage # 1-E." On May 30, 2003, NS replied to the petition. In a letter filed on July 11, 2003, AGP informed the Board that because of discussions between National Grain and Feed Association and NS, NS was considering certain actions that could moot AGP's complaint. AGP requested that the Board take no action in this matter at that time. In letters filed on August 12, 2003, and October 22, 2003, AGP again asked the Board to take no action on its complaint.

On June 22, 2004, AGP filed a motion to dismiss its complaint without prejudice. AGP states that the specific sales circumstances causing AGP to require the prior payment assurances of an order bill of lading have been obviated and, therefore, there is no present need for AGP to use order bills of landing on NS or pursue its complaint against NS's cancellation of order bills of lading. Accordingly, AGP's complaint will be dismissed without prejudice.

It is ordered:

1. The motion to dismiss is granted, without prejudice.
2. The proceeding is discontinued.
3. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary