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SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. WCC-105

DHX, INC.

v.

MATSON NAVIGATION COMPANY AND SEA-LAND SERVICE, INC.

Decided: October 16, 2003

This case involves a challenge by DHX, Inc. (DHX), a freight forwarder, to the reasonableness of certain rates and practices of Matson Navigation Company (Matson) and Sea-Land Service, Inc. (Sea-Land),¹ (defendants) two water carriers in the noncontiguous domestic trade between the United States mainland and Hawaii.² In a decision served on September 5, 2003, the Board granted a joint motion filed by the parties to establish a new procedural schedule. Under the schedule, DHX's opening statement is due on October 21, 2003, reply statements are due on December 5, 2003, and the rebuttal statement is due on January 7, 2004.

On October 3, 2003, DHX filed a motion that included a request to stay the procedural schedule pending action on a renewed motion to compel Sea-Land to produce certain documents, and a request to permit the parties to defer the filing of a public version of their evidentiary submissions until 20 days after the date that DHX's rebuttal statement is filed with the Board. In a simultaneously filed motion, DHX requests expedited consideration of its motion to stay the procedural schedule. Both Matson and Sea-Land filed replies.

¹ In a letter dated July 13, 2000, Sea-Land Service, Inc., advised that its name had changed to SL Service, Inc. (SL). SL's business and operations were subsequently transferred to a separate company known as CSX Lines, LLC. On February 24, 2003, CSX, Inc., sold a majority interest in CSX Lines, LLC, and a successor entity, Horizon Lines, LLC, was formed.

² The procedural schedule in this proceeding was suspended in a decision served on June 6, 2002. In a decision served on May 14, 2003, the Board extended the time until June 30, 2003, for the parties to complete outstanding discovery matters before restarting the procedural schedule. The time to complete discovery matters was further extended until August 4, 2003, in decisions served on May 30, 2003, and July 10, 2003. The parties were directed to confer and submit a joint proposal for a new procedural schedule upon completion of outstanding discovery matters.

Procedural Schedule. According to DHX, counsel for the parties were able to establish a schedule for depositions and also worked out informal agreements for the production of documents and answers to interrogatories. Notwithstanding this agreement, and despite several assurances by Sea-Land's counsel that the documents were forthcoming, DHX states that Sea-Land has not yet provided all of the agreed upon documents to its own counsel. DHX submits that the sought documents are necessary to its case and are highly relevant and material to the claims presented in the amended complaint. Therefore, because the filing of the motion to compel does not suspend the procedural schedule, DHX requests that the due date for filing its opening statement be postponed until 30 days after the date that Sea-Land produces the requested documents.

Matson submits that, while it takes no position on the motion to compel Sea-Land to produce documents, it strongly objects to the request to stay the procedural schedule. First, Matson argues that the time frames contained in the procedural schedule were agreed to following negotiations by the parties. Second, Matson asserts that, although the motion to compel involves only one of 14 remaining counts in the amended complaint, a stay of the procedural schedule would severely prejudice the presentation of Matson's case and its ability to respond to the case of DHX, because DHX would have an indeterminate, and possibly substantial, extension of time to prepare its case against Matson, without giving Matson any additional time following the receipt of DHX's evidence to prepare its response. Matson argues that fundamental fairness would require that Matson (and Sea-Land) be given an equivalent elongation of the period between DHX's filing date and the date for defendants to submit their evidentiary filings.

Sea-Land states that its counsel has conferred with counsel for DHX in an attempt to resolve DHX's concerns. Because some of the sought documents were provided to DHX only within the last week, Sea-Land states that it agrees with DHX that the parties should seek a 7-day postponement of the procedural schedule for all parties. Sea-Land also has undertaken to provide DHX with a stipulation confirming the representative nature of the documents provided. Based on these undertakings and Sea-Land's agreement to a short extension of the procedural schedule, DHX assertedly has authorized Sea-Land to state that DHX withdraws those portions of its October 3, 2003 motion requesting re-activation of earlier discovery requests and seeking a stay of the proceedings pending production of additional documents. According to Sea-Land, Matson also does not object to a 7-day extension of the procedural schedule. Therefore, based on the agreement of the parties to resolve the matter, a short extension of the procedural schedule is warranted and will be granted.

Public Version of Pleadings. DHX submits that a decision permitting the parties to defer the filing of a public version of their evidentiary submissions until 20 days after the rebuttal is filed will ensure a just and inexpensive determination of the issues and is warranted so long as there is a lack of prejudice. DHX states that any public version of its case will be required to be extensively redacted due to the nature of the information involved. Because defendants have already been provided the designation of the information that remains confidential versus public, DHX argues that they cannot be harmed by deferral of the filing of its public version.

Both Matson and Sea-Land oppose DHX's request to defer the filing of public versions of the evidentiary submissions. Matson argues that the request must be rejected because, under DHX's proposal, defendants would be required to assemble their entire evidentiary filings without ever being able to show their own clients any part of the DHX evidentiary submission to which they must respond, or even say anything of substance to them about it. Matson asserts that such a situation would be completely unworkable and would violate the fundamental fairness and principles of due process. Sea-Land concurs with the position taken by Matson on this point.

DHX's request is opposed by both defendants and is contrary to the Board's policy of requiring that parties file a public version of their submissions simultaneously with any Highly Confidential or Confidential Version they might also choose to file. See, e.g., Procedures to Expedite Resolution of Rail Rate Challenges to be Considered Under the Stand-Alone Cost Methodology, STB Ex Parte No. 638, slip. op. at 9-10 (STB served Apr. 3, 2003). DHX has not shown good cause to deviate from the Board's stated policy and, accordingly, the request to defer the filing of public versions of evidentiary submissions will be denied.

It is ordered:

1. DHX's motion to stay the procedural schedule in this proceeding is granted in part, and the revised procedural schedule in this proceeding is as follows:

October 28, 2003	Opening statement due
December 12, 2003	Reply statements due
January 14, 2004	Rebuttal statement due.

2. DHX's motion to compel Sea-Land to produce certain documents is moot.

3. DHX's request to permit the parties to defer the filing of a public version of their evidentiary submissions until 20 days after the date that DHX's rebuttal statement is filed with the Board is denied.

4. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary