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SERVICE DATE – SEPTEMBER 29, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35406

PORTLAND & WESTERN RAILROAD, INC.—PETITION FOR DECLARATORY
ORDER—RK STORAGE & WAREHOUSING, INC.

Digest:¹ In an administratively final decision, the Board affirms its earlier calculation of demurrage charges—charges for detaining a railroad’s rail cars beyond the free time stated in the railroad’s tariffs—that could be derived from a reasonable interpretation of the record in this case.

Decided: September 27, 2011

BACKGROUND

In 2009, Portland & Western Railroad (PNWR or the Railroad) filed an action against its customer, RK Storage & Warehousing, Inc. (RK) in an Oregon state court seeking payment of demurrage charges allegedly owed for detaining rail cars during the period June 2006 through July 2008.² RK denied owing the amount sought on the 14 disputed demurrage invoices and filed a counterclaim seeking payment from PNWR of “storage fees.” At the Railroad’s request, the court referred to the Board all matters that fall within the Board’s jurisdiction.

The Railroad filed with the Board a petition for a declaratory order seeking a ruling that the demurrage charges it sought were reasonable under the Interstate Commerce Act. After receiving evidence and argument, the Board issued a decision on July 27, 2011 (July decision) in which it found that the reasonable amount of demurrage is \$19,390 (compared to \$104,120 billed by PNWR), explained its methodology in calculating that amount, and informed the parties that the Board’s workpapers were available upon request. The Board stated that the July decision was not final and afforded the parties 20 days (by August 16, 2011) to comment on its methodology for ascertaining the reasonable amount of demurrage. Finally, the decision provided that, after reviewing any comments, the Board would issue a final decision either making any necessary adjustment to the reasonable amount of demurrage or affirming the calculation in the July decision.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² Portland & W. R.R. v. RK Storage & Warehousing, Inc., No. 0907-10274 (Or. Cir. Ct., Multnomah Cty. filed July 24, 2009).

In response to the July decision, both parties requested copies of the Board's workpapers, but no comments have been filed. Accordingly, we affirm the calculation of \$19,390 as the reasonable amount of demurrage for the 14 disputed invoices.

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

It is ordered:

1. The calculation in the July decision of \$19,390 as the reasonable amount of demurrage for the 14 disputed invoices is affirmed.

2. This decision is administratively final.

3. A copy of this decision will be served on:

Presiding Court Judge
Circuit Court of State of Oregon for Multnomah County
Multnomah County Courthouse
1201 SW Fourth Avenue
Portland, OR 97204

Re: No. 0907-10274

4. This decision is effective on its service date.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.