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SEC

SERVICE DATE – JUNE 10, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42102

RAILROAD SALVAGE & RESTORATION, INC.—PETITION FOR  
DECLARATORY ORDER—REASONABLENESS OF DEMURRAGE CHARGES

STB Docket No. 42103

G.F. WIEDEMAN INTERNATIONAL, INC.—PETITION FOR  
DECLARATORY ORDER—REASONABLENESS OF DEMURRAGE CHARGES

Decided: June 9, 2008

On October 5, 2007, Railroad Salvage & Restoration, Inc. (Railroad Salvage), filed a petition seeking a declaratory order to resolve a dispute over demurrage charges assessed by Missouri & Northern Arkansas Railroad Company, Inc. (MNA). On October 29, 2007, G.F. Wiedeman International, Inc. (Wiedeman), filed a petition seeking a declaratory order to resolve a similar dispute over demurrage charges assessed by MNA. Wiedeman also requested that the proceedings be consolidated.

In a decision served on December 20, 2007, the Board instituted and consolidated the requested declaratory order proceedings and adopted a procedural schedule. That procedural schedule was postponed at the request of the parties in a decision served on February 29, 2008, to give them additional time to negotiate a settlement. In decisions served on April 10 and 11, 2008, respectively, the Board, at the parties' request, reinstated the procedural schedule and modified it to extend the discovery completion date to April 30, 2008, and the date for Railroad Salvage and Wiedeman (petitioners) to file their opening statements to June 3, 2008. At petitioners' request, the Board, in a decision served on May 7, 2008, extended the due dates for petitioners' opening statements to June 19, 2008, for MNA's reply statements to September 3, 2008, and for petitioners' rebuttal statements to September 18, 2008.

On May 30, 2008, petitioners filed a letter requesting an additional 30-day extension of all of the filing dates in the current procedural schedule. Petitioners state that MNA furnished 1,254 pages of documents in discovery on April 30, 2008, and an additional 118 pages of documents in response to petitioners' initial discovery request on May 29, 2008. They claim that the additional time is needed for their consultant to analyze the documents and review them in connection with several studies being undertaken in defense of the disputed demurrage charges.

In a reply filed on June 2, 2008, MNA states that it agreed, and remains agreeable, to an additional one-week extension, but opposes a 30-day extension. According to MNA, it produced

1,492 pages of documents (including identifying information), but it had previously issued these documents to petitioners in the ordinary course of business. Similarly, MNA states that it produced an additional 150 pages of documents, but these documents were for car orders which petitioners should have in their own records.

MNA adds that petitioners should have retained the documents that were issued to them in the ordinary course of business and should have made them available to their counsel and consultant on a timely basis. Further, MNA contends that petitioners were well aware of the volume of documents they were requesting and that MNA would produce, agreed to all schedule dates for the completion of discovery and the submission of pleadings, and had more than enough time from the initial production of documents to conduct any studies. MNA argues that petitioners' lack of diligence should not be rewarded by further delaying the payment of more than \$500,000 in demurrage charges that have accrued to date.

In view of MNA's objection and the fact that the great bulk of the materials sought in discovery were produced on or before April 30, 2008, petitioners have failed to justify a full 30-day extension. Petitioners' extension request will therefore be granted in part. Their opening statements will be due on or before July 7, 2008. The due dates for MNA to file reply statements and for petitioners to file rebuttal statements will both be extended to September 18 and October 3, 2008, respectively.

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

It is ordered:

1. Petitioners' request to revise the modified procedure schedule adopted in the decision served on May 7, 2008, is granted in part.
2. Petitioners' opening statements are due on or before July 7, 2008.
3. MNA's reply statements are due on or before September 18, 2008.
4. Petitioners' rebuttal statements are due on or before October 3, 2008.
5. This decision is effective on its service date.
6. Copies of this decision will be mailed to:

The Honorable Dean Whipple  
United States District Court for the Western District of Missouri  
Southwestern Division  
222 N. John Q. Hammons Parkway  
Springfield, MO 65808

RE: No. 07-5017-CV-SE-DW

and

The Honorable David C. Dally  
Circuit Court of Jasper County  
Jasper County Courthouse  
Carthage, MO 64836

RE: No. 07AO-CC00112

By the Board, Anne K. Quinlan, Acting Secretary.

Anne K. Quinlan  
Acting Secretary