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March 2, 2004

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Room 700
Washington, D. C. 20423

**ENTERED
Office of Proceedings**

MAR - 2 2004

**Part of
Public Record**

RE: Docket No. 42086, *Terminal Warehouse, Inc. v. CSX Transportation, Inc.*

Dear Secretary Williams:

Enclosed are the original and 10 copies CSX Transportation, Inc.'s Answer and three diskettes containing the file Answer.doc.

Please time and date stamp the additional copy of this letter and the Answer, and return them to our messenger. Thank you for your assistance.

If you have any questions, call or email me.

Sincerely yours,

Louis E. Gitomer
Attorney for CSX Transportation, Inc.

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

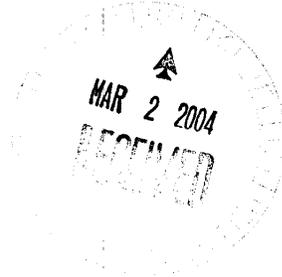
Docket No. 42086

TERMINAL WAREHOUSE, INC.
v.
CSX TRANSPORTATION, INC.

ANSWER OF CSX TRANSPORTATION, INC.
TO COMPLAINT OF TERMINAL WAREHOUSE, INC.

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Attorneys for: CSX TRANSPORTATION,
INC.

Dated: March 2, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. 42086

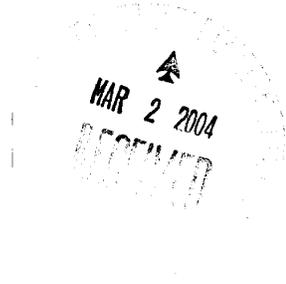
TERMINAL WAREHOUSE, INC.
v.
CSX TRANSPORTATION, INC.

ANSWER OF CSX TRANSPORTATION, INC.
TO COMPLAINT OF TERMINAL WAREHOUSE, INC.

Pursuant to 49 C.F.R. § 1111.4 CSX Transportation, Inc. (“CSXT”) answers the formal complaint filed by Terminal Warehouse, Inc. (“Complainant”) in this proceeding on February 11, 2004. CSXT denies all averments made by Complainant that CSXT has violated 49 U.S.C. § 11101(a) and related sections and Surface Transportation Board (the “Board”) regulations regarding CSXT’s 0.07-mile line of railroad known as the Lumber Lead between former Conrail mileposts 11.49 and 11.56, in Summit County, OH (the “Line”).

The bridge on the Line over Eastwood Avenue (the “Eastwood Avenue Bridge”) that connected the Line to the remainder of CSXT’s system was damaged beyond repair by a third party contractor installing fiber optic cable on or about February 11, 2002. The damage caused the Eastwood Avenue Bridge to become structurally unsound, thus necessitating the closure of Eastwood Avenue by the City of Akron.¹

¹ The Eastwood Avenue Bridge was about 100 years old when it collapsed. Eastwood Avenue was one eight-foot wide lane under Eastwood Avenue Bridge.



During the first two weeks of June 2002 the Eastwood Avenue Bridge was taken down by a contractor so that Eastwood Avenue could be reopened to vehicular traffic.² The City of Akron then widened Eastwood Avenue. After the Eastwood Avenue Bridge was removed, CSXT issued embargo number 4-02 on August 2, 2002, in compliance with the Association of American Railroad's embargo rules, even though there had been no request for service in over one and one-half years.

The last shipment over the Line occurred on January 20, 2001. CSXT received no request for service over the Line after the last shipment moved. CSXT filed a Notice of Exemption under 49 C.F.R. 1152 Subpart F on March 26, 2003 (the "Notice") in order to abandon the Line. The notice became effective on May 15, 2003. *CSX Transportation, Inc.—Abandonment Exemption—in Summit County, OH*, STB Docket No. AB-55 (Sub-No. 631X) (STB served April 15, 2003) ("*Decision*"). By letter filed with the Board on May 27, 2003, CSXT notified the Board that the abandonment had been consummated on May 23, 2003. CSXT believes the embargo of the Line at all times since August 2, 2002 has been lawful and appropriate.

To the extent that CSXT does not specifically admit an averment made in the complaint, that averment is denied.

1. CSXT is without sufficient information to admit or deny the information provided by Complainant in Paragraph 1 of the complaint.
2. CSXT admits the averments in Paragraph 2 of the complaint.

² The damage to the Eastwood Avenue Bridge was such that it could not be properly stabilized in order to protect the vehicular traffic beneath the structure. As a result, removal was the only means readily available to allow for the expeditious reopening of Eastwood Avenue.

3. CSXT admits the averments in the first sentence of Paragraph 3 of the complaint.

CSXT denies the averments of the second sentence of Paragraph 3 of the complaint. CSXT has abandoned and sold the Line.

4. CSXT is without sufficient information to admit or deny the information provided by Complainant in Paragraph 4 of the complaint.

5. CSXT is without sufficient information to admit or deny the information provided by Complainant in Paragraph 5 of the complaint.

6. CSXT denies the averments in Paragraph 6 of the complaint.

7. CSXT admits the averments in Paragraph 7 of the complaint.

8. CSXT admits the averments in Paragraph 8 of the complaint, except that CSXT denies that its filing of the Notice was not a normal abandonment procedure before the Board.

9. CSXT denies the averments in Paragraph 9 of the complaint. The traffic referred to in the first sentence that was delivered by CSXT to Complainant on January 6 and 22, 2001 falls outside the two year window in the out-of-service abandonment regulations at 49 C.F.R. § 1152.50(b).

10. CSXT denies the averments in Paragraph 10 of the complaint. CSXT takes special exception to the misleading references in paragraphs 16, 17, 18, and 19 of Complainant's Exhibit C, the affidavit of Bill Hanlon, that at a minimum infer that the Eastwood Avenue Bridge was damaged and taken out of service before September 2001, when Complainant well knows and states elsewhere in the complaint (paragraphs 4, 5, and 9) that the Eastwood Avenue Bridge was not damaged until February 2002.

11. CSXT denies the averments in Paragraph 11 of the complaint. CSXT takes special exception to the misleading references in paragraphs 16, 17, 18, and 19 of Complainant's Exhibit

C, the affidavit of Bill Hanlon, that at a minimum infer that the Eastwood Avenue Bridge was damaged and taken out of service before September 2001, when Complainant well knows and states elsewhere in the complaint (paragraphs 4, 5, and 9) that the Eastwood Avenue Bridge was not damaged until February 2002.

12. CSXT denies the averments in Paragraph 12 of the complaint.

13. CSXT denies the averments in Paragraph 13 of the complaint. Complainant was notified that CSXT would file a Notice of Exemption by proper publication in the Akron Beacon Journal on March 14, 2003, and was notified of the filing of the Notice of Exemption by proper publication by the Surface Transportation Board in the Federal Register of April 15, 2003, at 68 Fed. Reg. 18327-18328.

14. CSXT admits that Complainant filed a Petition to revoke the Notice. CSXT denies the accuracy of Complainant's characterization of the basis for the Petition.

15. CSXT denies the averments in Paragraph 15 of the complaint. At no time between January 20, 2001, and May 23, 2003, was CSXT requested to provide rail transportation service over the Line.

16. CSXT denies the averments in Paragraph 16 of the complaint. CSXT takes special exception to the misleading references in paragraphs 16, 17, 18, and 19 of Complainant's Exhibit C, the affidavit of Bill Hanlon, that at a minimum infer that the Eastwood Avenue Bridge was damaged and taken out of service before September 2001, when Complainant well knows and states elsewhere in the complaint (paragraphs 4, 5, and 9) that the Eastwood Avenue Bridge was not damaged until February 2002.

17. CSXT denies the averments in Paragraph 17 of the complaint. CSXT takes special exception to the misleading references in paragraphs 16, 17, 18, and 19 of Complainant's Exhibit

C, the affidavit of Bill Hanlon, that at a minimum infer that the Eastwood Avenue Bridge was damaged and taken out of service before September 2001, when Complainant well knows and states elsewhere in the complaint (paragraphs 4, 5, and 9) that the Eastwood Avenue Bridge was not damaged until February 2002.

18. CSXT denies the averments in Paragraph 18 of the complaint.

19. CSXT denies the averments in Paragraph 19 of the complaint.

20. CSXT is without sufficient information to admit or deny the information provided by Complainant in Paragraph 20 of the complaint.

21. CSXT denies the averments in Paragraph 21 of the complaint.

22. CSXT is without sufficient information to admit or deny the information provided by Complainant in Paragraph 22 of the complaint.

23. CSXT denies the averments in Paragraph 23 of the complaint.

24. CSXT admits the averment in Paragraph 24 of the complaint. CSXT has not applied for, been provided, or used funding from the Akron Regional Transit Authority, the Ohio Rail Development Commission, or any other government entity to repair or maintain the Line since February 2002.

25. CSXT admits that it filed a Notice of Exemption with the Board to abandon the Line on March 26, 2003. CSXT denies the implication that the reason for filing the abandonment was because CSXT did not apply or accept government financial assistance to repair the Eastwood Avenue Bridge. The reason CSXT did not repair the bridge and abandoned the Line was because of the failure of any shippers, including Complainant, to request or use rail service over the Line at any time after January 20, 2001.

26. CSXT denies the averments in Paragraph 26 of the complaint. The Board authorized abandonment of the Line in the *Decision*. CSXT consummated the abandonment of the Line on May 23, 2003. CSXT admits that the Board has not ruled on Complainant's Petition to Revoke.

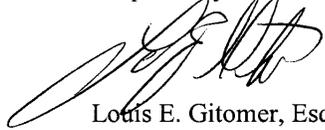
27. CSXT denies the averments in Paragraph 27 of the complaint.

28. CSXT denies the averments in Paragraph 28 of the complaint.

PRAYER

For the foregoing reasons, CSXT requests the Board to (1) conclude that CSXT has not violated any provision of 49 U.S.C. Subtitle IV with respect to the Line; (2) dismiss the complaint; (3) discontinue this proceeding; and (4) award CSXT such other relief to which it is entitled.

Respectfully submitted,



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Attorneys for: CSX TRANSPORTATION,
INC.

Dated: March 2, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing document to be served upon counsel for Terminal Warehouse, Inc., by express mail.



Louis E. Gitomer
March 2, 2004