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20 June 2006
by hand delivery, or express
Office of Proceedings

Hon. Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

JUN 20 2006

Part of
Public Record

ORIGINAL

Re: PYCO Industries, Inc. -- Alternative Rail Service
-- South Plains Switching, F.D. 34802: Reply to
SAW's Letter dated 16 June

Immediate distribution requested

Dear Mr. Secretary:

Letter dated June 16, 2006, filed Monday, June 19, incumbent rail carrier South Plains Switching Ltd. (SAW) claimed that alternative service provider West Texas & Lubbock (WTL) ran a switch, caused a derailment, and as a result inhibited service to SAW customers on 14 June. SAW uses this incident as an excuse to make some more arguments to this Board on the issue of whether further alternative rail service is justified. Because SAW's letter was filed in an alternative service (49 C.F.R. Part 1146) proceeding in which a ruling is expected on termination or continuation of such service by the end of the week, PYCO Industries, Inc. requests immediate distribution of this response.

PYCO Industries, Inc., is informed by alternative service provider WTL that the derailment was the result of SAW's improper maintenance of its trackage and in particular SAW's improper maintenance of a switch. As PYCO has pointed out both in this proceeding and in its feeder line application(s) (F.D. 34844 and F.D. 34890), SAW does not maintain its track, and repairs its track and switches only when derailments occur. WTL many times has requested PYCO (as well as WTL's own attorney) to object to this Board that SAW is not properly inspecting or maintaining track over which WTL operates. Indeed, SAW's failure properly to inspect or maintain its track is another reason for PYCO's feeder line application: the track is worn out, SAW does nothing or next to nothing to maintain it, and the track needs a major rehabilitation for rail service to continue on a reliable basis. PYCO needs

reliable service, not service when and if it pleases SAW. Other shippers fear to complain solely because SAW has a reputation for not just threatening to withdraw service if a shipper complains, but actually implementing its threats if complaint is made. SAW's threats include not simply an economic dimension but a physical dimension as well.

Mr. Ellis, president of WTL, points out that SAW continues to refuse to participate in morning conference calls with BNSF and WTL, and that if SAW had, then problems could have been more readily mitigated.

An email explanation from Mr. McConville (WTL) to Mr. Ellis (WTL), along with Mr. Ellis's cover note to myself and WTL counsel Mr. Heffner, is enclosed in corroboration of the statements above concerning the derailment. PYCO has confirmed that the company repairing the switch has determined that the switch was defective. PYCO will file a complete report as soon as same is available. PYCO has previously supplied Declarations and Verified Statements both by itself and by other shippers (e.g., Lacy of PYCO, Kidwell of HPBB, and Floyd of Floyd Trucking) of the threats of retaliation, both economic and physical, in the face of complaints.

SAW's attitude toward its track and its service obligations is inconsistent with discharge of common carrier obligations. SAW's continued refusal to participate in daily conference calls with BNSF and WTL to deal with problems is also symptomatic of SAW's broad failure as a rail provider. SAW's attitude and objectives remain exactly the same at they were on November 18, 2005, when SAW told PYCO that PYCO would have to figure out how to take care of itself in terms of rail service.

SAW argues that PYCO is no longer experiencing a service emergency and thus is not entitled to alternative service. An analogy shows SAW's lack of logic. If one is in a shipwreck in the north Atlantic, one is in an emergency situation. The fact that one is thrown a life raft, climbs in, and thus does not drown does not mean that the life raft should or must be taken away because there is no longer an emergency. Just as one would drown without a life raft, one would drown if it were taken away.

SAW argues in its Letter that PYCO showed only one incident of service failure by SAW (lack of service at Plant 2). That is revisionism par excellence. SAW directed its staff to provide only one switch per day to PYCO Plant No. 1, refused to spot cars where requested, and otherwise took measures drastically to curtail service to PYCO. SAW simply refused to move PYCO's inventory with sufficient velocity to allow PYCO to remain in business. The fact

that SAW continues to deny what happened last November, compounded with SAW's myriad pleadings to this agency that take the position that it is perfectly consistent with SAW's common carrier obligations for SAW to take whatever retaliation or to render whatever inadequate service pleases SAW management in respect to PYCO (or other shippers) is itself evidence that SAW remains neither able nor prepared to provide adequate rail service. To go back to our shipwreck analogy, all the evidence indicates that SAW's ship is still a wreck. All SAW proposes is to wreck the life rafts as well.

PYCO continues to face a service emergency. PYCO continues to need alternative rail service.

By my signature below, I certify service on all the copied parties below by express service, next business day delivery, to their address of record.

Respectfully submitted,



Charles H. Montange
counsel for PYCO Industries

Encl. (1 page)

cc. Thomas McFarland, Esq. (w/encl.) (for SAW)
Gary McLaren, Esq. (w/encl.) (for PYCO)
John Heffner, Esq. (w/encl.) (for WTL)
William Sippel, Esq. (w/encl.) (for USRP)

c.montange

From: "Ed Ellis" <ellise@iowapacific.com>
To: "c.montange" <c.montange@verizon.net>; "John D. Heffner" <j.heffner@verizon.net>; <jheffner@comcast.net>
Cc: "Steve Gregory" <gregorys@iowapacific.com>
Sent: Saturday, June 17, 2006 5:17 AM
Subject: Fw: Derailment on the SAW trackage

This is exactly the kind of thing I have been concerned about, and the reason I have asked John to raise that concern with the Board. I should note that no one from SAW participated in the daily conference call the morning after the derailment, which would have allowed them to either assist in handling it, plan for repairs, or assert some cause.

----- Original Message -----

From: Mike McConville
To: Ed Ellis ; Henry Weller ; Steve Gregory
Sent: Wednesday, June 14, 2006 8:27 PM
Subject: Derailment on the SAW trackage

Late this afternoon the pyco job went on the ground with 2 cars of a 6 car train on the east switch of the runaround located near the east side of the Farmers Compress property. The train was shoving the 6 loaded cars into the siding with the conductor protecting the point of the move. The lead truck went over the switch into the siding the trailing truck of the lead car was not completely switched to the siding and went on the ground causing the other end to be forced off the rails and the next car fouled.

With our forces still working on the TNMR derailment Hans asked Eldon Martin to help with the re-railing. While looking things over Eldon noticed that the #1 bridle rod on the switch was loose and the points are bad. It is Eldon's opinion that the switch has not been properly maintained and that is what caused the derailment.

HMM