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THOMAS F MCFARLAND

March 18, 2008

By UPS overnight mail

Anne K. Quinlan, Esq
Acting Secretary
Surface Transportation Board
395 E Street, S.W., Suite 1149
Washington, DC 20024

FILED
MAR 19 2008
**SURFACE
TRANSPORTATION BOARD**

Re Docket No NOR-42106, *Ameropan Oil Corporation -- Petition For Declaratory Order -- Reasonableness Of Demurrage Charges*

Dear Ms Quinlan

Enclosed please find an original and 10 copies of Petition For Declaratory Order for filing with the Board in the above referenced matter

Also enclosed is a check in the amount of \$1,000 for the filing fee

Very truly yours,

Tom McFarland

Thomas F. McFarland
Attorney for Petitioner

FEE RECEIVED
MAR 19 2008
**SURFACE
TRANSPORTATION BOARD**

1 McF kl enc wps 0-1301 ltrstbl

ENTERED
Office of Proceedings
MAR 19 2008
Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD



AMEROPAN OIL CORPORATION --)
PETITION FOR DECLARATORY) DOCKET NO
ORDER -- REASONABLENESS OF) NOR-42106
DÉMURRAGE CHARGES)

PETITION FOR DECLARATORY ORDER

FILED

MAR 19 2008

**SURFACE
TRANSPORTATION BOARD**

AMEROPAN OIL CORPORATION
3301 South California Avenue
Chicago, IL 60608-5113

Petitioner

FEE RECEIVED

MAR 19 2008

**SURFACE
TRANSPORTATION BOARD**

THOMAS F McFARLAND
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Attorney for Petitioner

DATE FILED March 19, 2008

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BEFORE THE
SURFACE TRANSPORTATION BOARD

AMEROPAN OIL CORPORATION --)
PETITION FOR DECLARATORY) DOCKET NO
ORDER -- REASONABLENESS OF) NOR-42106
DEMURRAGE CHARGES)

PETITION FOR DECLARATORY ORDER

Pursuant to 5 U S C § 554(c) and 49 U S C § 721(a), AMEROPAN OIL CORPORATION (AOC) hereby petitions for an order declaring that collection of certain rail demurrage charges by ILLINOIS CENTRAL RAILROAD COMPANY (IC) would be an unreasonable practice related to IC's transportation and service in violation of 49 U S C § 10702(2) ^{1/}

In an order entered on March 13, 2008, in *Illinois Central Railroad Company v Ameropan Oil Corporation* , USDC, N D , Ill , E D , No 1 07-CV-3833, United States District Judge William J Hibbler referred the following issue to the Board under the primary jurisdiction doctrine

Whether collection of demurrage charges is reasonable in light of Ameropan Oil's allegation that Illinois Central did not complete delivery on a timely basis because of its own service failure or disability

A copy of Judge Hibbler's Order of March 13, 2008 is attached as Appendix 1

^{1/} 49 U S C § 10702(2) provides as follows

Authority for rail carriers to establish rates, classifications, rules, and practices A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part shall establish reasonable . . . (2) rules and practices on matters related to that transportation or service

Also appended to this Petition are copies of the following documents from the Court's file

Appendix 2 - Amended Complaint

Appendix 3 - Answer to Amended Complaint

AOC suggests the adoption of the following procedural schedule

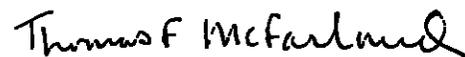
- Day 1 - Board institutes declaratory order proceeding
- Day 90 - Discovery concludes
- Day 120 - Petitioner's Opening Statement due
- Day 150 - Respondent's Statement due
- Day 170 - Petitioner's Rebuttal Statement due

WHEREFORE, the Board should institute a proceeding in response to this Petition

Respectfully submitted,

AMEROPAN OIL CORPORATION
3301 South California Avenue
Chicago, IL 60608-5113

Petitioner



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Attorney for Petitioner

DATE FILED March 19, 2008

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APPENDIX 1

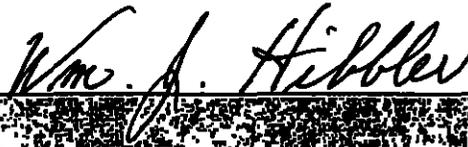
United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	William J. Hibbler	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	07 C 3833	DATE	March 13, 2008
CASE TITLE	Illinois Central Railroad Co v. Ameropan Oil Corp		

DOCKET ENTRY TEXT:

The Court GRANTS the motion to refer (doc #17) and STAYS the case pending the STB's consideration of the referred issue

■ [For further details see text below]



Notices distributed
in open court.

STATEMENT

Illinois Central Railroad Company sued Ameropan Oil Corporation alleging that it had wrongfully failed to pay demurrage charges assessed by the Railroad. Ameropan Oil moves to stay the proceedings so that it can apply to the Surface Transportation Board for a ruling as to whether the demurrage charges are unreasonable.

The primary jurisdiction doctrine allows a court to "refer" an issue or an entire claim to an administrative agency that has concurrent jurisdiction over the claim. *See United States v W Pac R R Co*, 352 U.S. 59, 64, 77 S.Ct. 161, 1 L.Ed. 2d 126 (1956), *see also* 28 U.S.C. § 1336 (authorizing referral to the STB). Although no fixed formula for referral exists, referral is appropriate where a claim involves technical matters central to an agency's mission and expertise. *Id.*, *Baltimore & Ohio Chicago Terminal R R Co v Wisconsin Central Ltd*, 154 F.3d 404, 411 (7th Cir. 1988). Generally, where a tariff is attacked as unreasonable, primary jurisdiction lies with the STB. *See W Pac R R Co*, 352 U.S. at 63, *Great N Ry Co v Merchants Elevator Co*, 259 U.S. 285, 291 (1922); *Illinois Central R R v South Tec Development Warehouse*, No. 97 C 5720, 1999 WL 519042 at *2 (N.D. Ill. Jul. 15, 1999) (noting that reasonableness of demurrage rates "fits squarely within the exclusive primary jurisdiction of the STB").

Illinois Central argues that this case involves only a determination of the meaning of a tariff and the application of the tariff to undisputed facts, and therefore, referral is not appropriate. *See* Pl. Response at 6 (citing *CSX Transp Co v Novolog Bucks County*, 502 F.3d 247, 253 (3d Cir. 2007)). *CSX Transp*, however, is not applicable here. For one, in that case, the party seeking referral did not raise the issue until after the district court had rendered its judgment, thereby waiving it. *Id.* Second, the issue in *CSX Transp* did not concern the reasonableness of demurrage charges, but only their applicability. Moreover, Illinois Central's representation

jhc

of the issues involved in this case considers only their claim, and not Ameropan Oil's affirmative defense — that alleges the demurrage charges are unreasonable because of delays attributable to Illinois Central

Because Ameropan Oil argues that the demurrage charges sought by Illinois Central are unreasonable, resolution of Illinois Central's claims involves an interpretation and application of its tariff in light of technical facts (particularly, what caused the delays and whether those delays affected Ameropan Oil's ability to timely complete the loading or unloading of freight) within the expertise of the STB. See *Springfield Terminal Ry Co v Fore River Warehousing & Storage Co*, No 07-52-P-S, 2007 WL 2344970 (D Me Aug 15 2007) (referring to STB, among other issues, the reasonableness of demurrage charges in light of the fact that railroad company's own delays caused the backup of railroad cars), see also *Illinois Central R R v South Tec Development Warehouse*, 337 F.3d 813, 815 (7th Cir 2003) (where district court had referred issue whether tariff was unreasonable because it assessed demurrage charges for en route delays); *Illinois Central R R v South Tec Development Warehouse*, No 97 C 5720, 1999 WL 519042 at *2 (N.D Ill Jul 15, 1999) Demurrage charges are subject to [STB] regulation under 49 U S C 10702, which requires railroads to establish reasonable rates and transportation-related rules and practices, and thus the issue Ameropan Oil seeks to refer to the STB falls squarely within that agency's primary jurisdiction.

The Court GRANTS the motion to refer and STAYS the case pending the STB's resolution of the issue of whether the collection of demurrage charges is reasonable in light of Ameropan Oil's allegation that Illinois Central did not complete delivery on a timely basis because of its own service failure or disability

APPENDIX 2

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ILLINOIS CENTRAL RAILROAD COMPANY,)
)
 Plaintiff,)

vs.)

AMEROPAN OIL CORPORATION,)
)
 Defendant.)

No. 1:07 cv 03833

Judge William J. Hibbler

AMENDED COMPLAINT

Now comes the plaintiff Illinois Central Railroad Company by its attorneys and as its amended complaint against defendant Ameropan Oil Corporation states as follows:

1. Plaintiff Illinois Central Railroad Company is an Illinois Corporation with its principal place of business in Chicago, Illinois.

2. Defendant Ameropan Oil Corporation is a New York corporation doing business in Cook County, Illinois.

3. Plaintiff and its connecting carriers at all relevant times were common carriers by railroad engaged in interstate commerce.

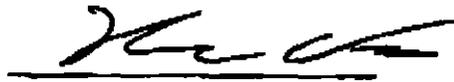
5. The subject matter of this action stems from charges assessed under circulars and tariffs published by plaintiff for demurrage and railcar empty release at Crawford Yard in Illinois performed or arising from interstate transportation services by plaintiff for defendant.

6. Jurisdiction of this action is pursuant to 28 USCA §1337(a) and 49 USCA §10743(a) being a suit for interstate freight and transportation charges.

7. At times between February, 2004 and November 2007 defendant incurred the charges referenced in paragraph 5 above as detailed in Exhibit A attached hereto and made a part hereof.

8. Said charges have been billed by plaintiff to defendant and plaintiff has demanded payment of such bills from defendant but defendant has wrongfully failed and refused to pay such bills or any part thereof and payment thereof is past due and currently owing.

WHEREFORE, Plaintiff demands judgment in its favor against defendant in the amount of \$152,000 together with prejudgment interest, and costs plus such other and further relief as the Court deems just.

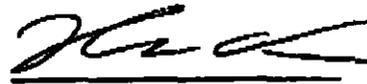


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312/236-0267

CERTIFICATE OF SERVICE

I, Richard M. Kates, certifies service of this amended complaint on defendant's counsel electronically through the United States District Court in Chicago as well as by fax to opposing counsel on January 4, 2008.



Ameropan Oil (027475) December 2007

Invoice Number	CS Bill Number	Amount	Notes	Tariff
1	750594012	\$ 9,000.00	Unloading Demurrage, Pvt Car @ Crawford, Ill February 2004	9000 D (2)
2	750608656	\$ 6,500.00	Unloading Demurrage, Pvt Car @ Crawford, Ill March 2004	9000 D (3)
3	750654082	\$ 2,000.00	Unloading Demurrage, Pvt Car @ Crawford, Ill June 2004	9000 D (6)
4	750756721	\$ 10,125.00	Unloading Demurrage, Pvt Car @ Crawford, Ill December 2004	9000 D (10)
5	750771741	\$ 42,500.00	Unloading Demurrage, Pvt Car @ Crawford, Ill January 2005	9000 E (1)
6	750790031	\$ 13,625.00	Unloading Demurrage, Pvt Car @ Crawford, Ill February 2005	9000 E (2)
7	750805737	\$ 3,000.00	Unloading Demurrage, Pvt Car @ Crawford, Ill March 2005	9000 E (3)
8	750920902	\$ 875.00	Unloading Demurrage, Pvt Car @ Crawford, Ill September 2005	9000 E (8)
		\$ 875.00		
9	750932637	\$ 250.00	Unloading Demurrage, Pvt Car @ Crawford, Ill October 2005	9000 E (9)
10	750991381	\$ 5,875.00	Unloading Demurrage, Pvt Car @ Crawford, Ill January 2006	9000 F (1)
11	751006996	\$ 2,250.00	Unloading Demurrage, Pvt Car @ Crawford, Ill February 2006	9000 G (0)
12	751026461	\$ 5,625.00	Unloading Demurrage, Pvt Car @ Crawford, Ill March 2006	9000 G (1)
13	751045341	\$ 10,500.00	Unloading Demurrage, Pvt Car @ Crawford, Ill April 2006	9000 G (1)
14	751066376	\$ 1,125.00	Unloading Demurrage, Pvt Car @ Crawford, Ill May 2006	9000 G (1)
15	751088114	\$ 2,875.00	Unloading Demurrage, Pvt Car @ Crawford, Ill June 2006	9000 G (1)
16	751107567	\$ 1,625.00	Unloading Demurrage, Pvt Car @ Crawford, Ill July 2006	9000 G (3)
17	751127380	\$ 6,625.00	Unloading Demurrage, Pvt Car @ Crawford, Ill August 2006	9000 G (4)
18	751150406	\$ 13,000.00	Unloading Demurrage, Pvt Car @ Crawford, Ill September 2006	9000 G (5)
19	751202666	\$ 3,375.00	Unloading Demurrage, Pvt Car @ Crawford, Ill December 2006	9000 G (7)
20	751214405	\$ 8,000.00	Unloading Demurrage, Pvt Car @ Crawford, Ill January 2007	9000 H (0)
21	751386627	\$ 3,250.00	Unloading Demurrage, Pvt Car @ Crawford, Ill November 2007	9000 H (9)
		\$ 31,375.00		
Grand Total:		\$ 152,000.00		

EXHIBIT A

APPENDIX 3

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ILLINOIS CENTRAL RAILROAD)	
COMPANY,)	
)	No 1 07-cv-03833
Plaintiff,)	
v)	
)	Judge William J Hibbler
AMEROPAN OIL CORPORATION,)	
)	
Defendant)	

ANSWER TO AMENDED COMPLAINT

Defendant AMEROPAN OIL CORPORATION (Ameropan) hereby answers the Amended Complaint of Plaintiff, Illinois Central Railroad Company (IC), filed on January 7, 2008, as follows

1 Plaintiff Illinois Central Railroad Company is an Illinois Corporation with its principal place of business in Chicago, Illinois

Answer Ameropan admits the allegations of Paragraph 1

2 Defendant Ameropan Oil Corporation is a New York corporation doing business in Cook County, Illinois

Answer Ameropan admits the allegations of Paragraph 2

3 Plaintiff and its connecting carriers at all relevant times were common carriers by railroad engaged in interstate commerce

Answer Ameropan admits the allegations of Paragraph 3

4

Answer There is no Paragraph 4 in the Amended Complaint

5 *The subject matter of this action stems from charges assessed under circulars and tariffs published by plaintiff for demurrage and railcar empty release at Crawford Yard in Illinois performed or arising from interstate transportation services by plaintiff for defendant*

Answer Ameropan admits the allegations of Paragraph 5

6 *Jurisdiction of this action is pursuant to 28 USCA § 1337(a) and 49 USCA § 10743(a) being a suit for interstate freight and transportation charges*

Answer Ameropan admits the allegations of Paragraph 6

7 *At times between February, 2004 and November 2007 defendant incurred the charges referenced in paragraph 5 above as detailed in Exhibit A attached hereto and made a part hereof*

Answer Ameropan denies the allegations of Paragraph 7

8 *Said charges have been billed by plaintiff to defendant and plaintiff has demanded payment of such bills from defendant but defendant has wrongfully failed and refused to pay such bills or any part thereof and payment thereof is past due and currently owing*

Answer Ameropan admits that IC has billed charges and demanded payment and that Ameropan has refused to pay such billing, as alleged in Paragraph 8, but Ameropan denies that its refusal to pay such billing is wrongful and that such billing is past due and owing

AFFIRMATIVE DEFENSES

1 The involved demurrage charges are not collectible because IC failed to comply with the terms of the tariff that governs assessment of such charges

2 Collection of the involved demurrage charges would be an unreasonable practice related to IC's rates, transportation and service in violation of 49 U S C § 10702, and would be an unreasonable car service practice in violation of 49 U S C § 11121(a), because IC failed to provide adequate rail service as to the railcars on which demurrage charges allegedly accrued, which was the proximate cause of such charges

3 Affirmative Defense number 2 above is within the primary jurisdiction of the Surface Transportation Board (STB) That defense should be referred to the STB for disposition The Court should stay further judicial proceedings pending the STB's resolution of that defense All other issues should remain subject to the jurisdiction of this Court

WHEREFORE, this Court should determine that Ameropan is not liable to IC for demurrage charges in any amount

/s Thomas F McFarland

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(312) 201-9695 (fax)
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*Attorney for Defendant
Ameropan Oil Corporation*

DATE FILED February 13, 2008

CERTIFICATE OF SERVICE

I, Thomas F McFarland, an attorney, certify service of this Answer to Amended Complaint on opposing counsel by e-mail and electronically through the court on February 13, 2008

s/ Thomas F McFarland

Thomas F McFarland

CERTIFICATE OF SERVICE

I hereby certify that on March 18, 2008, I served the foregoing document, Petition For Declaratory Order, by UPS overnight mail, on the following

Hon William J Hibbler
United States District Judge
USDC, Northern District of Illinois
Eastern Division
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