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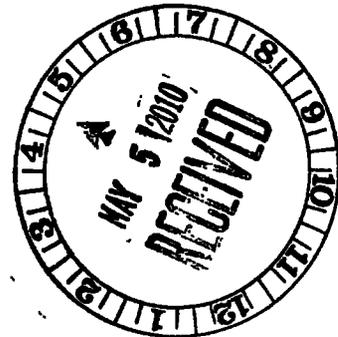
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May 5, 2010



BY HAND

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Re: Docket No. 42119, North American Freight Car Association v. Union Pacific Railroad Company

Dear Ms. Brown:

Enclosed for filing in the above-referenced matter, please find the original and ten copies of the Answer of Union Pacific Railroad Company.

I have also enclosed an additional copy of Union Pacific's Answer to be date-stamped and returned to our messenger.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael L. Rosenthal'.

Michael L. Rosenthal

cc: Andrew P. Goldstein, Esq.

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BEFORE THE
SURFACE TRANSPORTATION BOARD

NORTH AMERICAN FREIGHT CAR
ASSOCIATION,

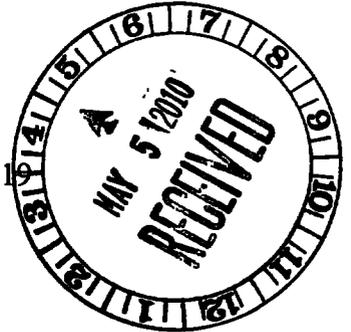
Complainant,

v.

UNION PACIFIC RAILROAD COMPANY,

Defendant.

Docket No. 42119



ANSWER OF UNION PACIFIC RAILROAD COMPANY

Union Pacific Railroad Company (“UP”) hereby answers the Complaint of North American Freight Car Association (“NAFCA”), filed on April 15, 2010. To the extent UP does not specifically admit an allegation in the Complaint, that allegation is denied. UP responds to the allegations in each separately numbered paragraph of the Complaint as follows:

1. UP lacks knowledge or information sufficient to form a belief as to the truth of the allegation in the first sentence of Paragraph 1. UP admits that freight cars manufactured or leased by NAFCA members, and private and railroad-owned freight used by NAFCA members, move over UP lines from time to time; that some of those movements are subject to Item 200-A of UP Freight Tariff 6004 Series (“Item 200-A”). By way of further response, UP states that Item 200-A is intended to promote safe and efficient rail transportation and to reduce risks to public health and safety by encouraging parties responsible for loading and unloading railcars to avoid contamination or to clean any commodity residue resulting from the loading or unloading process from railcar wheels and all safety appliances on the railcars, and to secure and seal all valves and discharge ports to prevent leakage during rail movement.

2. UP admits that it is a common carrier by rail subject to the jurisdiction of the Surface Transportation Board, and that, as of the date of this Answer, UP has been unable to resolve the concerns raised in the Complaint through communications with representatives of NAFCA. By way of further response, UP states that it believes the issues raised by NAFCA could be productively addressed in mediation, and that UP intends to propose in the parties' meeting to discuss procedural matters, *see* 49 C.F.R. § 1111.10, that the parties agree to participate in Board-sponsored mediation pursuant to 49 C.F.R. § 1109.1.

3. UP admits that Appendix A to the Complaint is an accurate copy of Item 200-A. UP denies that the language quoted in Paragraph 3 is an accurate quotation from Item 200-A.

4. UP denies that the language quoted in Paragraph 4 is an accurate quotation from Item 200-A. UP admits that Item 200-A addresses the assessment of handling and switching charges as published in UP Tariff-6004 series that may apply to the additional handling necessitated by mitigation or responses to conditions arising from external contamination.

5. UP denies that the language quoted in Paragraph 5 is an accurate quotation from Item 200-A. By way of further response, UP states that it has not assessed the \$650 surcharge provided for in Item 200-A against any shipper because its customers have generally accepted responsibility for their contamination of rail cars and cleaned the cars, though UP has incurred handling costs associated with removing cars from trains.

6. UP denies that the language quoted in Paragraph 6 is an accurate quotation from Item 200-A.

7. The first sentence of Paragraph 7 states a legal conclusion to which no response is required. UP denies the allegations in the second sentence of Paragraph 7. By way of further response, UP states that Item 200-A is designed to promote safe and efficient rail transportation

and to reduce risks to public health and safety. UP also states by way of further response that NAFCA's Complaint appears to represent an effort by certain parties to avoid responsibility for unsafe conditions they create when they load or unload rail cars.

8. Paragraph 8 states a legal conclusion to which no response is required; to the extent that a response is deemed to be required, UP denies the allegations in Paragraph 8. By way of further response, UP states that consignors and consignees are responsible for loading and unloading rail cars in a manner consistent with safe rail movement.

9. UP denies the allegations in the first sentence of Paragraph 9. The remainder of Paragraph 9 consists of legal arguments and conclusions regarding interpretation and application of Item 200-A and federal regulations to which no response is required. By way of further response, UP states that Item 200-A in no way seeks to relieve UP of its obligations under federal regulations and that Item 200-A is designed to promote safe and efficient rail transportation and reduce risks to public health and safety.

10. Paragraph 10 consists of legal arguments and conclusions regarding interpretation and application of Item 200-A, federal regulations, and other law to which no response is required. To the extent a response is deemed to be required, UP denies the allegations in Paragraph 10. By way of further response, UP has attached photographs of cars stopped in transit pursuant to Item 200-A that are illustrative of cars with external contamination or leakage that Item 200-A is intended to prevent. *See Attachment A.*

11. UP denies the allegation in the first sentence in Paragraph 11 because it lacks knowledge or information sufficient to form a belief as to its truth. The second sentence of Paragraph 11 consists of legal arguments and conclusions regarding interpretation and application of Item 200-A in hypothetical situations to which no response is required. To the

extent that a response is deemed to be required, UP denies the allegations in the second sentence of Paragraph 11.

12. UP denies the allegation in the first sentence in Paragraph 12. UP admits the allegation in the third sentence of Paragraph 12. The remainder of Paragraph 12 consists of a series of arguments about the application of Item 200-A in hypothetical situations to which no response is required. To the extent a response is deemed to be required, UP denies the remaining allegations in Paragraph 12. By way of further response, UP states that parties responsible for loading and unloading railcars are in a better position than UP to prevent unsafe contamination of railcars from occurring during the loading and unloading process and to recognize and remedy any such contamination when it occurs and before it creates a threat to other shippers, railroad employees, or the public.

13. UP admits the allegation in the first sentence in Paragraph 13. UP further admits that the quotation from Appendix D of 40 C.F.R. Part 215 in Paragraph 13 is accurate, and states that the regulation speaks for itself. The remainder of Paragraph 13, with the exception of the last sentence, consists of legal arguments and conclusions regarding the interpretation of federal regulations to which no response is required. UP denies the last sentence in Paragraph 13 because it lacks knowledge or information sufficient to form a belief as to its truth.

14. Paragraph 14 consists of legal arguments and conclusions to which no response is required. To the extent that a response is deemed to be required, UP denies the allegations in Paragraph 14. By way of further response, UP denies that Item 200-A reflects any effort by UP to bypass required inspections or otherwise violate federal regulations or any other legal obligations.

15. Paragraph 15 consists of legal arguments and conclusions regarding interpretation and application of Item 200-A to which no response is required; to the extent that a response is deemed to be required, UP denies the allegations. To the extent the allegations in Paragraph 15 might be interpreted as alleging that the indemnification provisions of Item 200-A are overly broad or otherwise unreasonable, UP denies the allegations.

16. With respect to the allegations in the five unnumbered paragraphs beginning on page 8 of the Complaint that allege violations of various provisions of the Interstate Commerce Commission Termination Act by UP, the allegations consist of legal arguments and conclusions regarding interpretation of Item 200-A or other law to which no response is required. To the extent that a response is deemed to be required, UP denies the allegations in these paragraphs.

DEFENSES

1. The Complaint fails to state a claim for failure to establish reasonable practices under 49 U.S.C. § 10702.

2. The Complaint fails to state a claim for failure to furnish safe and adequate car service or to establish, observe, and enforce reasonable rules and practices on car service under 49 U.S.C. § 11121.

3. The Complaint fails to state a claim that Item 200-A violates 49 U.S.C. § 11706.

4. The Complaint fails to state a claim that Item 200-A constitutes an unreasonable practice in violation of 49 U.S.C. § 11702.

5. The Complaint fails to state a claim that UP has violated any duty to furnish safe and clean cars under 49 U.S.C. § 11101 or 49 U.S.C. § 11121.

WHEREFORE, UP requests that the Complaint be dismissed with prejudice; that NAFCA's request that the Board enter an order requiring UP to cease and desist from publishing

Item 200-A, or any Item with similar provisions, be denied; that no relief of any kind be awarded to NAFCA; that UP be awarded its costs; and that the Board grant UP such other and further relief as may be appropriate.

Respectfully submitted,



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Attorneys for Union Pacific Railroad Company

May 5, 2010

ATTACHMENT A







ENT-7

ENT-7

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, certify that on this 5th day of May, 2010, I caused a copy of Union Pacific Railroad Company's Answer to the Complaint of North American Freight Car Association to be served by hand on:

Andrew P. Goldstein
John M. Cutler, Jr.
McCarthy, Sweeney & Harkaway, P.C.
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Washington, DC 20006
(202) 775-5560



Michael L. Rosenthal