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LAW OFFICE
THOMAS F. MCFARLAND, P.C.
208 SOUTH LASALLE STREET - SUITE 1890
CHICAGO, ILLINOIS 60604-1112
TELEPHONE (312) 236-0204
FAX (312) 201-9695
mcfarland@aol.com

THOMAS F. MCFARLAND

April 27, 2010

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By e-filing

Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

Re: Docket No. NOR-42102, *Railroad Salvage & Restoration, Inc. -- Petition for Declaratory Order -- Reasonableness of Demurrage Charges*

Dear Ms. Brown:

Please refer to my letter to the Board in the above proceeding dated February 16, 2010, and the Board's decision served March 2, 2010, in response to that letter.

In an order entered on April 26, 2010, copy attached, Judge Whipple has reinstated the complaint of Missouri & Northern Arkansas Railroad Company (M&NA) against Railroad Salvage & Restoration, Inc. (RSR).

In view of that order, RSR hereby moves for leave to withdraw its prior motion to voluntarily withdraw its Petition for Declaratory Order in the above proceeding. In clarification of that double negative, the Court's reinstatement of M&NA's judicial complaint causes RSR to request the Board to continue to process RSR's Petition for Declaratory Order.

Respectfully submitted,

Tom McFarland

Thomas F. McFarland
*Attorney for Railroad Salvage
& Restoration, Inc.*

TMcF:kl-wp8.011262lefSTB3

cc: Louis Gitomer, Esq., *by e-mail to lou_gitomer@verizon.net*
Dan Whitworth, Esq., *by e-mail to ddwhitworth@sbcglobal.net*
Mr. G.W. Jackson, *c/o Ryan Jackson, by e-mail to ryan1308jackson@yahoo.com*

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION**

MISSOURI & NORTHERN ARKANSAS)	
RAILROAD COMPANY, INC.,)	
)	
Plaintiff,)	
)	
v.)	No. 07-CV-5017-DW
)	
RAILROAD SALVAGE & RESTORATION,)	
INC. ,)	
)	
Defendant.)	

ORDER

Before the Court is Plaintiff's Motion for Relief from Judgment (Doc. 38). In its motion, Plaintiff asks the Court to exercise its discretion under Rule 60(b) of the Federal Rules of Civil Procedure to vacate its December 30, 2009 Order of Dismissal (Doc. 37). Under Rule 60(b)(1), "the court may relieve a party..from a final judgment, order or proceeding for...mistake, inadvertence, surprise, or excusable neglect." This Court issued an Order of Dismissal in this case based on both parties' failure to respond to an October 22, 2009 Order requiring the parties to file a status report (Doc. 35) and a December 1, 2009 Order requiring the parties to show cause as to why this action should not be dismissed for failure to prosecute (Doc. 36).

In Plaintiff's current motion and related briefing, Plaintiff states that it did not receive notice of the Court orders mentioned herein. The Court consulted with the Clerk's office regarding this matter, and learned that, during the time period relevant to these proceedings, at least some of the CM/ECF settings for Plaintiff's counsel were not properly configured so as to ensure that each of the e-mail addresses registered by Plaintiff's counsel received notice of all docket activity in this case. This was an issue over which Plaintiff had no control, and those settings have now been fixed. Given this technical glitch, the Court finds that Plaintiff's failure to respond to the Court's Orders was due to inadvertence or surprise, and that relief is justified in

this instance.¹

For the reasons stated herein, and pursuant to Federal Rule of Civil Procedure 60(b)(1), the Court hereby ORDERS that:

- 1) Plaintiff's Motion for Relief from Judgment (Doc. 38) is GRANTED.
 - 2) The Court hereby SETS ASIDE the Order of Dismissal issued on December 30, 2009 (Doc. 37). The Clerk of the Court is directed to reopen this case.
 - 3) The Court's referral of this case to the Surface Transportation Board remains in place.
 - 4) The Parties shall provide the Court with a report as to the status of this case within thirty (30) days of the date of this Order, and again every thirty (30) days thereafter until receiving further notice from the Court.
 - 5) Plaintiff's Motion for Extension of Time for Filing Notice of Appeal (Doc. 39) and Request to File Additional Reply Suggestions (Doc. 44) are hereby DENIED as moot.
- SO ORDERED.

Date: April 27, 2010

/s/ Dean Whipple
Dean Whipple
United States District Judge

¹ The Court also notes that the October 22, 2009 Order requiring the Parties to update the Court as to the status of this case (Doc. 35) was explicitly directed to both parties, and that both Plaintiff and Defendant failed to respond to this Order.