

STB Docket No. WCC-105

DHX, INC. v MATSON NAVIGATION COMPANY AND SEA-LAND SERVICE, INC.

Statement of Judy Holyfield, Paralegal Specialist, Office of Proceedings

Good morning Chairman Nober and Commissioner Morgan.

The draft decision before you acts on two motions involving an amended complaint that DHX, Inc., a freight forwarder, filed challenging the reasonableness of certain rates and practices of Matson Navigation Company and Sea-Land Service, Inc., two water carriers operating in the noncontiguous domestic trade between the United States mainland and Hawaii.

In the first motion, DHX seeks an order directing Matson to submit more definite answers to certain averments in the amended complaint. The draft decision denies the motion, finding that Matson's answers, together with the statements contained in its general answer section, were, in fact, responsive under the circumstances here.

In the second motion, Sea-Land seeks dismissal of two counts in the amended complaint: Count 2 in Part II; and the joint count in Part III.

In Part II, Count 2, DHX alleges that Sea-Land's water carrier movements should be governed by a rate provision in the National Motor Freight Classification that would produce lower rates. But because the motor carrier tariff that DHX wants to apply is not incorporated by reference into the text of the applicable water carrier tariff, the draft decision would grant Sea-Land's motion to dismiss Part II, Count 2.

Arguing that the Board lacks jurisdiction over antitrust law violations, Sea-Land also moved to dismiss Part III of the amended complaint, which alleges that the two defendants conspired to fix prices. In reply, DHX argued that Part III of the amended complaint was really meant to show only that the rates that defendants charge them and other freight forwarders are unreasonable because they are higher than the rates effectively available to shippers that own their cargo.

The draft decision would grant the motion to dismiss Part III, finding DHX's approach to be no more than a broad-ranging allegation that the defendants' rates are discriminatory. Because the provision that prohibited unreasonable discrimination by water carriers was repealed in the ICC Termination Act, the draft finds that DHX cannot possibly prevail in its argument that the assailed rates are unreasonable even if it shows that different shippers pay different rates for services that are arguably similar.

Finally, the draft decision allows the parties an additional 45 days to complete outstanding discovery matters before restarting the procedural schedule.

That concludes my statement. If you have any questions, we will be happy to answer them.