

STATEMENT OF MELANIE YASBIN
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Engelhard Corporation – Petition for Declaratory Order – Springfield Terminal Railway Company and Consolidated Rail Corporation, STB Docket No. 42075

Good morning, Chairman Nober, Vice Chairman Mulvey, and Commissioner Buttrey.

The decision submitted for your consideration answers two questions that were referred to the Board by the United States District Court for the District of Massachusetts concerning Freight Tariff RIC 6007-L, the most recent version of industrywide mileage allowance provisions applicable to privately owned tank cars (which I will refer to as the Tariff). These questions arise out of a dispute currently before the District Court. The dispute involves the non-payment of car mileage allowances for movement of Engelhard Corporation's private tank cars by Consolidated Rail Corporation and Springfield Terminal Railway Company over a 155-mile portion of a line of railroad.

The first question referred by the District Court is whether a cause of action involving a disputed failure to pay car mileage allowances under the Tariff arises 1 month and 10 days after the end of the month in which the obligation is incurred, or 4 months after the date on which a railroad refuses to pay or act on a claim, or on the occurrence of some other date or event? The draft decision finds that, under the procedures of the Tariff, a cause of action would arise when the private car owner is informed that it will not receive compensation for its car movements or 4 months from the date the private car owner's claim was submitted to the railroad, whichever occurs first, if the private car owner takes no additional action. If the private car owner timely resubmits its claim to the railroad, the cause of action arises when the private car owner is notified of the railroad's action on the resubmitted claim or when the period for the railroad to reply has expired, whichever occurs first. The draft decision finds that a cause of action does not arise 1 month and 10 days after the end of the month in which the obligation was incurred because this interpretation would force car owners immediately to file court actions to recover car allowances before the Tariff's mechanism for informal dispute resolution began, thus making a portion of the Tariff meaningless.

The second question referred by the District Court is whether a railroad is obligated to pay compensation under the Tariff only to the owner of a car's reporting mark, or if Item 180 of that tariff permits the owner of the mark to assign the right to receive payment to a lessee of a car? The draft decision finds that the Tariff permits the owner of a car's reporting marks to assign the right to receive mileage allowance payments to a lessee of the car if such assignment is recorded in The Official Railway Equipment Register. However, the draft decision goes on to find that the court, if appropriate, may find that the Tariff's notification requirements have been altered by a course of dealing between the parties.

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