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SERVICE DATE – DECEMBER 20, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42102

RAILROAD SALVAGE & RESTORATION, INC.—PETITION FOR
DECLARATORY ORDER—REASONABLENESS OF DEMURRAGE CHARGES

STB Docket No. 42103

G.F. WIEDEMAN INTERNATIONAL, INC.—PETITION FOR
DECLARATORY ORDER—REASONABLENESS OF DEMURRAGE CHARGES

Decided: December 19, 2007

By petition filed on October 5, 2007, Railroad Salvage & Restoration, Inc. (RSR), seeks a declaratory order to resolve a dispute over demurrage charges assessed by Missouri & Northern Arkansas Railroad Company, Inc. (MNA). RSR submitted a proposed procedural schedule under the Board's modified procedure provisions at 49 CFR part 1112. MNA filed a reply on October 25, 2007, in which it concurs in the declaratory order request and agrees with RSR's proposed schedule, with one exception.

This matter was referred by the United States District Court for the Western District of Missouri, Southwestern Division, on September 27, 2007, in Missouri & Northern Arkansas Railroad Company, Inc. v. Railroad Salvage & Restoration, Inc., No. 07-5017-CV-SE-DW. MNA initiated the court proceeding to collect from RSR: (1) \$195,575 in demurrage charges, which allegedly accrued between January 2005 and October 2006, plus interest and attorney fees; (2) \$2,300 in diversion/reconsignment charges, which allegedly accrued between December 2005 and April 2006, plus interest; and (3) \$500 in overload charges, which allegedly accrued in September 2006, plus interest.

On October 29, 2007, G.F. Wiedeman International, Inc. (Wiedeman), also filed a petition seeking a declaratory order to resolve a similar dispute over demurrage charges assessed by MNA. Wiedeman submitted a proposed procedural schedule under the Board's modified procedure provisions at 49 CFR part 1112. MNA filed a reply on November 16, 2007, in which it concurs in the declaratory order request and with Wiedeman's proposed schedule.

This matter was referred by the Circuit Court of Jasper County, Missouri on October 24, 2007, in Missouri & Northern Arkansas Railroad Company, Inc. v. G.F. Wiedeman International, Inc., No. 07AO-CC00112. MNA initiated the court proceeding

to collect from Wiedeman \$11,895 in demurrage charges, which allegedly accrued between September 2006 and January 2007, plus interest

In the respective federal and state court cases, RSR and Wiedeman (collectively, petitioners) filed motions to stay the court proceedings and to refer a number of questions to the Board for determination. Specifically, petitioners seek a determination as to whether it is an unreasonable practice under 49 U.S.C. 10702(2) to collect demurrage charges for: (1) cars constructively placed if notice of such placement is not timely given; and (2) private cars held on private track. Petitioners also seeks a determination as to whether it is an unreasonable practice for MNA to collect demurrage charges for cars: (1) held in its yard in anticipation of car orders not yet made by petitioners; (2) petitioners were able to receive but were not delivered because of MNA's own disability; and (3) for which MNA lacks adequate proof of dates of actual or constructive placement and/or release.

Additionally, Wiedeman requests that these proceedings be consolidated. According to Wiedeman, the two proceedings involve identical issues, MNA is the rail carrier seeking to collect demurrage charges in both cases, and petitioners are commonly controlled corporations and are located at the same address. MNA agrees that the proceedings should be consolidated.

Under 5 U.S.C. 554(e), the Board has discretionary authority to issue a declaratory order to terminate a controversy or remove uncertainty. The Board and its predecessor, the Interstate Commerce Commission (ICC), have exercised broad authority in handling such requests, considering a number of factors, including the significance to the industry and the ripeness of the controversy. See Delegation of Authority- Declaratory Order Proceedings, 5 I.C.C.2d 675, 676 (1989). There, the ICC noted that petitions for issuance of a declaratory order premised on a court referral are routinely accepted and treated procedurally in the same manner as a complaint. It then delegated the responsibility for taking initial action in disposing of such matters to the Director of the Office of Proceedings. See 49 CFR 1011.7(c)(6).

Pursuant to the Board's authority under 5 U.S.C. 554(e) and 49 U.S.C. 721, proceedings will be instituted to resolve the controversies at issue here. These matters have been referred by courts of competent jurisdiction and otherwise appear to be within the Board's primary jurisdiction. The Board will consider these matters under the modified procedure rules at 49 CFR part 1112.

Because these proceedings are substantially similar and are at the same procedural stage, their consolidation should not result in an undue delay. Accordingly, Wiedeman's consolidation request will be granted.

The procedural schedule proposed by RSR would complete discovery 90 days from the filing date of its declaratory order petition. MNA agrees that the proceeding should be handled under the modified procedure schedule proposed by RSR, except that discovery should be completed 90 days from the date the Board institutes the proceeding.

The procedural schedule proposed by Wiedeman adopts RSR's proposed schedule, but provides that discovery be completed 90 days from the date the Board institutes these proceedings. The procedural schedule set forth below provides 90 days from the service date of this decision for the completion of discovery. In all other respects, the Board's procedural schedule adopts the schedule proposed by petitioners.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The requests for institution of declaratory order proceedings are granted.
2. The request for consolidation is granted. The consolidated proceedings will be handled under the modified procedure on the basis of written statements submitted by the parties. All parties must comply with the Rules of Practice at 49 CFR subchapter B, including 49 CFR parts 1112 and 1114.
3. Discovery will be completed by March 19, 2008.
4. Petitioners' opening statements are due by April 18, 2008.
5. MNA's reply statements are due by July 17, 2008.
6. Petitioners' rebuttal statements are due by August 1, 2008.
7. This decision is effective on its service date.

8. Copies of this decision will be mailed to:

The Honorable Dean Whipple
United States District Court for the Western District of Missouri
Southwestern Division
222 N. John Q. Hammons Parkway
Springfield, MO 65808

RE: No. 07-5017-CV-SE-DW

and

The Honorable David C. Dally
Circuit Court of Jasper County
Jasper County Courthouse
Carthage, MO 64836

RE: No. 07AO-CC00112

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary