

SERVICE DATE – MAY 29, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42168

TWIN CITY METALS, INC.

v.

KET, LLC

Digest:¹ This decision denies a motion to stay, directs the parties to inform the Board whether they are interested in Board-sponsored mediation, and addresses issues pertaining to the submission of a proposed procedural schedule.

Decided: May 28, 2020

On April 24, 2020, Twin City Metals, Inc. (TCM), a business that receives, stores, and distributes scrap steel, iron, and other metals, filed a complaint against KET, LLC (KET), a Class III rail carrier that operates approximately 1.28 miles of track in and around the City of Kennewick, Wash. In its complaint, TCM asserts that KET has eliminated and refused to provide rail service to TCM and seeks relief for alleged violations of 49 U.S.C. §§ 11101(a), 10702(2), 11103, and 10744. (Compl. 5-8.) TCM also requests partial revocation of the exemption from regulation applicable to the transportation of iron and steel scrap (49 C.F.R. § 1039.11) for the rail service disputes at issue. (*Id.* at 7-8.) On May 13, 2020, KET filed its answer and a “response to [TCM]’s implied petition to partially revoke KET’s class exemption.” On May 13, 2020, KET also filed a motion to stay the complaint based on TCM’s alleged failure to comply with a provision of the Board’s regulations.

TCM replied to the motion to stay on May 15, 2020, asserting that the stay motion is based on a regulation that does not apply to this type of proceeding and arguing that the Board should deny the motion and order the parties to provide a proposed procedural schedule. (Reply to Mot. for Stay 1-2.) TCM also expresses interest in exploring the possibility of settlement. (*Id.* at 3.)

As discussed below, the Board will deny the motion to stay. Furthermore, the Board strongly encourages the parties to participate in Board-sponsored mediation, directs the parties to inform the Board if they are interested in doing so, and addresses issues pertaining to the submission of a proposed procedural schedule.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

Motion for Stay. As TCM notes, KET bases its motion to stay on a regulation that relates to complaints filed pursuant to the Board's simplified standards for rate reasonableness. (See Mot. 1; 49 C.F.R. § 1111.10(e) (previously located at 49 C.F.R. § 1111.9(d)).)² There is no corresponding provision in the regulations applicable to other types of complaints. See generally 49 C.F.R. pt. 1111. Therefore, the motion to stay will be denied.

Board-Sponsored Mediation. The Board favors the resolution of disputes through alternative dispute resolution in lieu of formal Board proceedings whenever possible, and strongly encourages the parties here to resolve their disputes through mediation.³ Accordingly, the parties are directed to inform the Board by June 5, 2020, whether they agree to participate in Board-sponsored mediation and, if so, whether they wish to hold this proceeding in abeyance pending the conclusion of mediation.

Submission of Proposed Procedural Schedule. If the parties agree to mediation and wish to hold this proceeding in abeyance, the submission of a proposed schedule would be suspended pending further order of the Board. If either party objects to mediation or does not wish to hold the proceeding in abeyance, the parties are directed to submit a proposed procedural schedule by June 24, 2020. The proposed procedural schedule should address whether the parties are seeking discovery and, if so, include a proposed timetable for expeditiously conducting and completing that discovery.

It is ordered:

1. KET's motion to stay is denied.
2. The parties shall inform the Board whether they agree to participate in Board-sponsored mediation and, if so, whether they wish to hold this proceeding in abeyance pending conclusion of mediation, by June 5, 2020.
3. The parties shall comply with the directives relating to the submission of a proposed procedural schedule set forth in this decision.

² KET also states that TCM seeks to revoke the operating authority KET received pursuant to a notice of exemption published in 2018 under the Board's class exemption procedures. (Mot. 1-2.) As TCM points out, its revocation request is limited to the exemption at 49 C.F.R. § 1039.11, and TCM is not seeking revocation of KET's operating authority. (See Reply to KET Response 1, May 18, 2020.)

³ While parties participating in a mediation are encouraged to work out as many issues as possible, the scope of the mediation would not, under 49 C.F.R. § 1109.1, encompass any grant, denial, stay, or revocation of regulatory authority.

4. This decision is effective on its service date.

By the Board, Board Members Begeman, Fuchs, and Oberman.