

SERVICE DATE – JUNE 9, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42168

TWIN CITY METALS, INC.

v.

KET, LLC

Decided: June 9, 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 motion to stay the complaint, to which TCM replied on May 15, 2020.

In a decision served on May 29, 2020, the Board denied the motion to stay and directed the parties to inform the Board whether they agree to participate in Board-sponsored mediation and, if so, wished to hold this proceeding in abeyance pending the conclusion of mediation. Both parties state that they are agreeable to Board-sponsored mediation and to holding this proceeding in abeyance. (TCM Letter 1, June 2, 2020; KET Letter 1, June 4, 2020.)

Accordingly, mediation will be initiated and this proceeding will be held in abeyance.¹ The Chairman will soon appoint one or more mediators pursuant to 49 C.F.R. § 1109.3(a). Once appointed, the mediator or mediators will contact the parties to discuss the timing and logistics for conducting the mediation, and other matters. At least one principal of each party, who has authority to commit that party, shall participate in the mediation and be present at any session at which the mediator or mediators request(s) that the principal be present. The mediation period shall be 30 days, beginning on the date of the first mediation session. 49 C.F.R. § 1109.3(b). The Board may extend mediation pursuant to mutual written requests of all parties to the mediation proceeding. *Id.* The mediator or mediators are instructed to inform the Board when mediation has ended, with or without a resolution.

¹ While the parties are encouraged to work out as many issues as possible, the scope of the mediation will not encompass any grant, denial, stay, or revocation of regulatory authority. See 49 C.F.R. § 1109.1.

It is ordered:

1. Mediation will be initiated as discussed above.
2. This proceeding is held in abeyance pending the conclusion of mediation.
3. The submission of a proposed procedural schedule is suspended pending further order of the Board.
4. This decision is effective on its service date.

By the Board, Allison C. Davis, Director, Office of Proceedings.