

LAW OFFICE
THOMAS F. McFARLAND, P.C.
208 SOUTH LASALLE STREET - SUITE 1666
CHICAGO, ILLINOIS 60604-1228
TELEPHONE (312) 236-0204
mcfarland@aol.com

300867

July 10, 2020

ENTERED
Office of Proceedings
July 10, 2020
Part of
Public Record

By e-filing

Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

Re: Docket No. NOR 42169, *Bell Oil Terminal, Inc. v. BNSF Railway Company*

Dear Ms. Brown:

Hereby transmitted is a Complaint for filing with the Board in the above referenced matter.

Also included is \$350 for the filing fee.

FILED
July 10, 2020
SURFACE
TRANSPORTATION BOARD

Respectfully submitted,

/s/ Thomas F. McFarland

Thomas F. McFarland
Attorney for Complainant

TMcF:mg:enc:\1877\efSTB1

FEE RECEIVED
July 10, 2020
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

BELL OIL TERMINAL, INC.,	)	
	)	DOCKET NO.
<u>Complainant,</u>	)	NOR 42169
v.	)	
	)	
BNSF RAILWAY COMPANY,	)	
	)	
<u>Defendant.</u>	)	
	)	

COMPLAINT

BELL OIL TERMINAL, INC.
3741 South Pulaski Road
Chicago, IL 60632

Complainant

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1666
Chicago, IL 60604-1228
(312) 236-0204
mcfarland@aol.com

Attorney for Complainant

DATE FILED: July 10, 2020

BEFORE THE
SURFACE TRANSPORTATION BOARD

BELL OIL TERMINAL, INC.,	)	
	)	DOCKET NO.
<u>Complainant,</u>	)	NOR 42169
v.	)	
	)	
BNSF RAILWAY COMPANY,	)	
	)	
<u>Defendant.</u>	)	
	)	

COMPLAINT

Pursuant to 49 C.F.R. Part 1111, BELL OIL TERMINAL, INC. (Bell) hereby files this formal Complaint against BNSF RAILWAY COMPANY (BNSF), as follows:

I

Bell is engaged in the business of wholesale distribution of asphalt liquid binder used in road construction and repair. Bell's place of business is located at 3741 South Pulaski Road, Chicago, IL 60632.

II

BNSF is a common carrier by rail in interstate commerce subject to the jurisdiction of the Surface Transportation Board (the Board or the STB) under the Interstate Commerce Act, as amended, 49 U.S.C. § 10101, *et seq.* BNSF's corporate office is located at Forth Worth, TX.

III

As here pertinent, Bell receives rail shipments of liquid asphalt from Canadian and interstate origins. BNSF participates in transportation of those shipments.

IV

Prior to April 13, 2020, Bell received rail service at its terminal three days per week. Effective April 13, 2020, BNSF reduced its service to Bell from three to two days per week.

V

The only prior notice of that reduction of service was an e-mail message from Mr. Aaron Mathews of BNSF to Messrs. Peter Wittich and Luis Padilla of Bell, delivered at 4:05 p.m. on Good Friday, April 10, 2020, viz:

Based on historical volumes, Operations has made adjustments to your service days. Effective next week, the service days at your Chicago facility will by (sic) adjusted to Tuesday and Thursday of each week.

VI

The number of days per week on which a rail carrier provides service to a shipper is a common carrier service term within the meaning of that term in 49 U.S.C. § 11101(c).

VII

It is provided in 49 U.S.C. § 11101(c) that a rail carrier may not change any common carrier service term unless 20 days have expired after written or electronic notice is provided to any person who within the previous 12 months has made arrangements with the carrier for a shipment that would be subject to such changed term.

VIII

Within the 12-month period prior to April 13, 2020, Bell made arrangements with BNSF for shipments that would have been subject to the changed common carrier service term.

IX

BNSF failed to provide the requisite notice to Bell of the changed common carrier service term, i.e., the reduction of service from three to two days per week.

X

The rail volume of liquid asphalt received by Bell did not substantially change during the period immediately before the service reduction compared to other recent historical volumes received by Bell.

XI

As a result of BNSF's failure to provide statutory notice, the reduction of service to Bell from three to two days per week did not lawfully take effect on April 13, 2020. Requisite statutory notice not having been given, the reduction of service has not lawfully taken effect.

XII

By reason of the foregoing facts and circumstances, BNSF has violated, and is continuing to violate 49 U.S.C. § 11101(c), by failing to have provided statutory notice to Bell of a reduced common carrier service term.

XIII

By reason of BNSF's continuing violation of 49 U.S.C. § 11101(c), Bell has incurred, and is continuing to incur, damages including, but not limited to, lost profits on business that Bell would have participated in but for the service reduction.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, for the reasons stated, the Board should accept this Complaint for filing and provide that the parties should abide by the Board's regulations governing complaints in 49 C.F.R., Part 1111.

Respectfully submitted,

BELL OIL TERMINAL, INC.
3741 South Pulaski Road
Chicago, IL 60632

Complainant

/s/ Thomas F. McFarland

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1666
Chicago, IL 60604-1228
(312) 236-0204
mcfarland@aol.com

Attorney for Complainant

DATE FILED: July 10, 2020

CERTIFICATE OF SERVICE

In accordance with 49 C.F.R. § 1111.4, I hereby certify that on July 10, 2020, I served a copy of this Complaint by UPS overnight mail for Monday delivery on July 13, 2020, on Roger Nober, Esq., BNSF Railway Company, 2500 Lou Menk Drive, Fort Worth, TX 76131.

I also certify that the front of the overnight express courier envelope includes the legend “Service of STB Complaint.”

/s/ Thomas F. McFarland

Thomas F. McFarland