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October 26, 2020

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

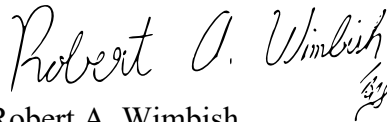
Re: **Docket No. NOR 42170**
Kingsbury Elevator, Inc. v.
Grand Trunk Western Railroad Company

Dear Ms. Brown:

Attached for filing in the above-captioned proceeding is the **Answer of Grand Trunk Western Railroad Company to Amended Complaint of Kingsbury Elevator, Inc.**, dated October 26, 2020.

Please feel free to contact me should any questions arise regarding this filing.
Thank you for your assistance on this matter.

Respectfully submitted,



Robert A. Wimbish
Attorney for Grand Trunk Western
Railroad Company

RAW:bjs

Attachment

cc: Thomas F. McFarland, Esq.

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. NOR 42170

KINGSBURY ELEVATOR, INC.

v.

GRAND TRUNK WESTERN RAILROAD COMPANY

**ANSWER OF GRAND TRUNK WESTERN RAILROAD COMPANY
TO AMENDED COMPLAINT OF KINGSBURY ELEVATOR, INC.**

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**ATTORNEYS FOR GRAND TRUNK WESTERN
RAILROAD COMPANY**

Dated: October 26, 2020

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. NOR 42170

KINGSBURY ELEVATOR, INC.
v.
GRAND TRUNK WESTERN RAILROAD COMPANY

**ANSWER OF GRAND TRUNK WESTERN RAILROAD COMPANY
TO AMENDED COMPLAINT OF KINGSBURY ELEVATOR, INC.**

Respondent Grand Trunk Western Railroad Company (“GTW”) hereby answers the amended complaint of Kingsbury Elevator, Inc. (“KE”) in this proceeding.¹ Allegations not specifically admitted are denied.

THE PARTIES

1

KE is engaged in the business of distributing canola meal, corn gluten meal, gluten feed pellets, and fertilizer to the agricultural community in and near Kingsbury, Indiana.

ANSWER: GTW has insufficient information regarding the allegations to form a basis for a belief as to the truth thereof and therefore denies the same. However, GTW avers that it transports gluten meal (STCC 2041928), canola meal pellets (STCC 2093922), canola seed meal (STCC 2093939) and fertilizer (STCC 2871315), among other commodities, to Kingsbury Elevator in Kingsbury, Indiana.

¹ KE’s Complaint was initially filed on August 6, 2020. Pursuant to Board decisions served August 13, 2020 and September 25, 2020, GTW’s time for filing an answer to the Complaint was extended to October 26, 2020. On October 5, 2020, KE filed a motion for leave to amend Count Three of its Complaint, to substitute an unreasonable practice claim under 49 U.S.C. § 10702(2) for an overcharge claim under 49 U.S.C. § 11101(e). GTW does not object to KE’s October 5th motion for leave to amend its Complaint, and is answering KE’s Complaint as amended.

GTW 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.* GTW is a subsidiary of Canadian National Railway Company (CN). CN's corporate office is located at Montreal, Quebec, Canada.

ANSWER: GTW admits that it is a common carrier by rail in interstate commerce subject to the jurisdiction of the Surface Transportation Board. GTW denies that it is a subsidiary of Canadian National Railway Company, but admits that it is indirectly controlled by Canadian National Railway Company. GTW admits that Canadian National Railway Company's headquarters is in Montreal, Quebec, Canada.

JURISDICTION AND REGULATORY AUTHORITY

GTW participates in transportation of canola meal, corn gluten meal, gluten feed pellets, and fertilizer from origins generally in Western Canada and the Western United States to KE's place of business at Kingsbury, Indiana. That international and interstate transportation is subject to the Board's jurisdiction, but the Board currently lacks regulatory authority over those commodities (except fertilizer) because they are included in the miscellaneous manufactured commodities that have been exempted from Board regulation as a class in *Rail General Exemption Authority – Miscellaneous Manufactured Commodities*, 6 ICC 2d 186 (1989). *See* 49 C.F.R. § 1039.11 (Ex Parte Docket No. 346 (Sub-No. 24)).

ANSWER: GTW admits that it transports by rail gluten meal (STCC 2041928), canola meal pellets (STCC 2093922), canola seed meal (STCC 2093939) and fertilizer (STCC 2871315) to KE's facility in Kingsbury, Indiana from Western Canada or in

interline movements from the Western United States. The commodity exemption adopted in *Rail Exemption – Misc. Manufactured Commodities*, 6 I.C.C.2d 186 (1989), Docket EP No. 346 (Sub-No. 24) and codified at 49 C.F.R. § 1039.11(a) does not apply to canola meal pellets (STCC 2093922), canola seed meal (STCC 2093939) and gluten meal (STCC 2041928). GTW further states that canola meal pellets (STCC 2093922), canola seed meal (STCC 2093939) and gluten meal (STCC 2041928) are not otherwise subject to a commodity exemption. GTW denies that the Board has jurisdiction over movements to the extent they occur outside of the United States or under rail transportation contracts.

4

Simultaneously with the filing of this Complaint, KE is filing a Petition for Partial Revocation of Class Exemption to the extent necessary for the Board to entertain this Complaint. *See Rail General Exemption Authority — Miscellaneous Manufactured Commodities*, Ex Parte No. 346 (Sub-No. 24), 6 ICC 2d 186 (1989). If that Petition were to be granted, the Board would have both jurisdiction and regulatory authority over rail transportation of all commodities involved in this Complaint.

ANSWER: GTW admits that KE has filed a Petition for Partial Revocation of a Class Exemption concurrently with its Complaint. GTW further incorporates and adopts here its answer to Paragraph 3.

COUNT ONE - FAILURE TO PROVIDE STATUTORY NOTICE OF CHANGED COMMON CARRIER SERVICE TERM IN VIOLATION OF 49 U.S.C. § 11101(c)

5

A long-recognized standard of reasonable frequency of rail service at destination is one switch per day, five days per week, performed no later than the day after a car arrives at the carrier's local yard.

ANSWER: The allegations are legal conclusions that do not require a response.

To the extent a response is required, GTW denies the allegations.

6

Prior to March 20, 2020, KE received rail service at Kingsbury seven days per week. On that date, GTW purported to reduce its service to KE from seven to three days per week.

ANSWER: GTW denies the allegations. GTW further avers that it has provided rail service to KE at Kingsbury three days per week since December 1, 2019, and that on March 29, 2020 GTW's service schedule to KE at Kingsbury was shifted from Monday/Wednesday/Friday to Tuesday/Thursday/Saturday.

7

The volume of traffic received by KE in the period before the service reduction was not substantially less than the volume received in other historic periods.

ANSWER: GTW denies the allegations.

8

The only prior notice of GTW's reduction of service was an e-mail message from Paul Dorn, Sr. Representative, GTW Customer Service, Southern Region, to Ed Lindborg of KE, dated March 20, 2020, viz:

We are changing the Service Days to Sunday, Tuesday, Thursday and the Service Window 0800 to 2000. We normally provide a 10-day notice but can begin with service this Sunday if you are able to waive the 10 days. Please let us know if you are okay with the change right away and if you have any questions. This will change your service back to the L520 out of South Bend instead of L521 out of Battle Creek and would result in earlier service as L520 would have Kingsbury as first stop where L521 was last stop (when they had time).

ANSWER: GTW admits that the quoted e-mail message was sent on March 20, 2020 from Paul Dorn, Sr. Representative, CN Customer Service, Southern Region, with a

subject of “Change in Service Days” and otherwise speaks for itself. GTW denies the remaining allegations.

9

KE did not waive notice of the service reduction nor otherwise agree to it in any way. GTW reduced KE’s service from seven to three days per week beginning on or about March 30, 2020.

ANSWER: GTW denies the allegations.

10

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).

ANSWER: The allegations are legal conclusions to which no response is required. To the extent a response is required, GTW denies the allegations.

11

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.

ANSWER: To the extent the allegation is a quotation or paraphrase of the statutory language of 49 U.S.C. 11101(c), the statute speaks for itself and no response is required.

12

Within the 12-month period prior to March 30, 2020, KE made arrangements with GTW for shipments that would have been subject to the changed common carrier service term.

ANSWER: GTW denies the allegations.

13

GTW failed to provide the requisite statutory notice to KE of the changed common carrier service term, i.e., the reduction of service from seven to three days per week.

ANSWER: The allegations include legal conclusions for which no response is required. To the extent a response is required, GTW denies the allegations.

14

As a result of GTW's failure to provide statutory notice, the reduction of service to KE from seven to three days per week did not lawfully take effect on or about March 30, 2020. Inasmuch as the requisite statutory notice has not been given to date, a reduction of rail service has not lawfully taken effect. GTW continues to be statutorily required to provide rail service to KE seven days per week, but has been providing such service only three days per week since the end of March, 2020.

ANSWER: The allegations include legal conclusions for which no response is required. To the extent a response is required, GTW denies the allegations.

15

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

ANSWER: The allegations are legal conclusions for which no response is required. To the extent a response is required, GTW denies the allegations.

16

By reason of GTW's continuing violation of 49 U.S.C. § 11101(c), KE has incurred, and

is continuing to incur damages including, but not limited to, lost profits on business that KE would have participated in but for the service reduction.

ANSWER: The allegations are legal conclusions for which no response is required. To the extent a response is required, GTW denies the allegations. GTW further denies that KE is entitled to any damages.

COUNT TWO - CONSISTENT PATTERN OF UNREASONABLE DELAY IN DELIVERY OF SHIPMENTS TO KE IN VIOLATION OF 49 U.S.C. § 11101(a)

17

KE realleges the assertions in Paragraphs 1-4 of this Complaint.

ANSWER: GTW re-states and incorporates by reference its responses to paragraphs 1–4 as if fully set forth herein.

18

Rail carriers are required by 49 U.S.C. § 11101(a) to provide rail transportation on reasonable request.

ANSWER: To the extent the allegation is a quotation or paraphrase of the statutory language of 49 U.S.C. 11101(a), the statute speaks for itself and no response is required.

19

The duty of a rail common carrier under 49 U.S.C. § 11101(a) includes providing reasonably prompt delivery of shipments at destination.

ANSWER: The allegations are legal conclusions for which no response is required. To the extent a response is required, GTW denies the allegations.

20

On numerous occasions, GTW has failed and refused to provide rail transportation to KE in a reasonably timely manner, with the result that KE's supply of canola meal has been exhausted, and KE has been forced to shut down its business until canola meal is delivered.

ANSWER: GTW has insufficient information regarding the allegations related to KE's canola meal supply and business operations to form a belief as to the truth thereof and therefore denies the same. GTW denies the remaining allegations. GTW further avers it has provided and continues to provide rail transportation to KE's facility in Kingsbury, Indiana. GTW further denies that KE is entitled to any damages.

21

GTW's repeated failure to make reasonably prompt delivery of shipments to KE has been a consistent pattern of behavior, not sporadic instances of service failures.

ANSWER: GTW denies the allegations.

22

When such a rail service failure and shutdown occurs, GTW personnel transmit a "Customer Shutdown Form" to KE on which GTW's customer is requested to provide details regarding the shutdown and the impact of the shutdown on the customer's business.

ANSWER: GTW admits that a "Customer Shutdown Form" is made available to customers, and such form speaks for itself. GTW denies the remaining allegations.

23

Inasmuch as the Customer Shutdown Forms are presented to KE by GTW personnel and contain a CN logo, it has been reasonable for KE to conclude that the forms are for the purpose of determining reimbursement to Customers for damages suffered by reason of GTW's rail service failures and resulting customer shutdowns.

ANSWER: GTW denies the allegations. GTW further denies that KE is entitled to any damages.

24

KE has completed and sent to GTW numerous Customer Shutdown Forms on which KE explained how GTW's failure to provide timely delivery to KE at Kingsbury and resulting shutdown of KE's canola meal business has had a serious adverse effect on KE's overall business.

ANSWER: GTW admits that it has received Customer Shutdown Forms from KE, and that such forms speak for themselves. GTW denies the remaining allegations. GTW further denies that KE is entitled to any damages.

25

In disregard of its own Customer Shutdown Forms, GTW has refused to pay amounts claimed by KE in the "Impact of Shutdown to Customer" sections of the Customer Shutdown Forms, or any other amounts caused by GTW's pattern of service failures and resulting customer shutdowns.

ANSWER: GTW admits that it has declined to pay amounts claimed by KE. GTW denies the remaining allegations. GTW further denies that KE is entitled to any damages.

26

By reason of the foregoing facts and circumstances, GTW has violated, and is continuing to violate 49 U.S.C. § 11101(a) by repeatedly failing and refusing to provide reasonably prompt delivery of shipments to KE.

ANSWER: The allegations are legal conclusions for which no response is

required. To the extent a response is required, GTW denies the allegations.

27

By reason of GTW's continuing violation of 49 U.S.C. § 11101(a), KE has incurred, and is continuing to incur, damages, including, but not limited to, lost profits on business that KE would have participated in but for GTW's failure and refusal to provide rail transportation on reasonable request.

ANSWER: The allegations are legal conclusions for which no response is required. To the extent a response is required, GTW denies the allegations. GTW further denies that KE is entitled to any damages.

**AMENDED COUNT THREE –UNREASONABLE PRACTICE IN
VIOLATION OF 49 U.S.C. § 10702(2) –
PRIVATE CARS HELD ON GTW TRACKS PRIOR TO UNLOADING**

28

KE realleges the assertions made in Paragraphs 1-4 of this Complaint.

ANSWER: GTW re-states and incorporates by reference its responses to paragraphs 1–4 as if fully set forth herein.

29

It is provided in 49 U.S.C. § 10702(2) that a rail carrier providing transportation or service subject to the jurisdiction of the Board is required to establish reasonable rules and practices on matters relating to that transportation or service.

ANSWER: To the extent the allegation is quotation or paraphrase of statutory language, the statute speaks for itself and no response is required.

30

It is provided in GTW Tariff 9000 that a charge of \$75 per car per day will be imposed on KE when privately-owned or privately-leased railcars are held on GTW tracks prior to being unloaded at KE's elevator. That charge is referred to as a private equipment charge.

ANSWER: GTW admits that Item 9200 of Tariff CN 9000, under the general heading of "Private Railcars on CN Tracks" provides for a charge for private railcars held on GTW's tracks prior to unloading, and that such item otherwise speaks for itself. GTW denies the remaining allegations.

31

GTW has assessed a total of \$15,300 in private equipment charges against KE in 2019 which have not been paid.

ANSWER: GTW admits that it issued three invoices to KE in October, 2019 totaling \$15,300 for charges under Item 9200 of Tariff CN 9000 which have not been paid.

32

The charges referred to in Paragraph 31 accrued when an employee of GTW having apparent authority stated to a representative of KE that in view of excess track space in GTW's South Bend yard at the time, KE could store the private equipment in that yard for the foreseeable future without charge.

ANSWER: The allegations contain insufficient information for GTW to form a basis for belief as to their truth and GTW therefore denies the same. GTW further states that the allegation regarding "apparent authority" is a legal conclusion for which no response is required; to the extent a response is required, GTW denies the allegation.

33

Collection of private equipment charges in those circumstances would be an unreasonable practice related to transportation or service in violation of 49 U.S.C. § 10702(2).

ANSWER: The allegations are legal conclusions for which no response is required. To the extent a response is required, GTW denies the allegations.

34

Wherefore, for the reasons stated, the Board should find that GTW cannot collect the private equipment charges at issue.

ANSWER: GTW denies the allegations.

35-36

Paragraphs 35 and 36 are withdrawn.

**COUNT FOUR - REFUSAL TO PAY ALLOWANCES FOR SERVICES
PERFORMED BY KE AT CN'S REQUEST IN VIOLATION OF 49 U.S.C. § 10745**

37

KE realleges the assertions made in Paragraphs 1-4 of this Complaint.

ANSWER: GTW re-states and incorporates by reference its responses to paragraphs 1–4 as if fully set forth herein.

38

It is provided in 49 U.S.C. § 10745:

A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part may establish a charge or allowance for transportation or service for property when the owner of the property, directly or indirectly, furnishes a service related to or an instrumentality used in the transportation or service. The Board may prescribe the maximum reasonable charge or allowance a rail carrier subject to its jurisdiction may pay for a service or instrumentality

furnished under this section. The Board may begin a proceeding under this section on its own initiative or on application.

ANSWER: To the extent the allegation is quotation of statutory language, the statute speaks for itself and no response is required.

39

The turnout switch at Kingsbury is located on the south track of the GTW double track main line. As a result, KE is efficiently served by eastbound trains.

ANSWER: GTW admits the switch to KE's facility at Kingsbury, Indiana is located on the south track of GTW's double track main line at that location. GTW denies the remaining allegations.

40

Until approximately one year ago, GTW provided rail service to KE primarily by means of eastbound trains via Chicago and Kirk Yard (Gary, IN).

ANSWER: GTW denies the allegations. GTW further avers that, until October 1, 2018, GTW provided service to KE's facility at Kingsbury, Indiana with a train assignment based at Kirk Yard in Gary, Indiana.

41

Approximately one year ago, GTW began to provide rail service to KE by means of westbound trains via Battle Creek, MI and South Bend, IN.

ANSWER: GTW denies the allegations. GTW further avers that, since October 1, 2018, GTW has provided service to KE's facility at Kingsbury Indiana with local train assignments based in South Bend, Indiana or Battle Creek, Michigan.

42

When providing service to KE in westbound trains, GTW positions loaded cars behind

the locomotive and pushes them onto KE's tracks. At the specific request of GTW, KE personnel uncouple the cars and switch them as required. KE repositions empty cars behind the locomotive, which then proceeds eastbound to South Bend with the empty cars at the rear of the locomotive.

ANSWER: GTW denies the allegations.

43

If KE personnel did not uncouple loaded cars and perform switching to recouple empty cars on KE tracks, the GTW locomotive would be required to operate westbound to Valparaiso, in order to turn around and proceed eastbound to provide service to KE.

ANSWER: GTW denies the allegations.

44

The rail operations performed by KE personnel at Kingsbury enable GTW to save approximately 2.5 hours per trip by not being required to operate to Valparaiso and turn the locomotive there.

ANSWER: GTW denies the allegations.

45

KE is billing GTW to reflect the savings to GTW resulting from the services performed by KE personnel at GTW's specific request, but GTW refuses to pay any amount as a reasonable allowance for services performed by KE at GTW's request.

ANSWER: GTW admits that KE has submitted bills to GTW. GTW denies the remaining allegations and that KE is entitled to any allowance or payment.

46

By reason of the foregoing facts and circumstances, GTW's refusal to pay reasonable allowances for the services performed by KE personnel at GTW's request has constituted, and is

continuing to constitute, a violation of 49 U.S.C. § 10745.

ANSWER: The allegations are legal conclusions for which no response is required. To the extent a response is required, GTW denies the allegations.

47

The Board should require that GTW cease and desist from such violations and require that GTW pay all such reasonable allowances billed and to be billed during the pendency of this Complaint.

ANSWER: The allegations are legal conclusions for which no response is required. To the extent a response is required, GTW denies the allegations. GTW further denies that KE is entitled to any allowance or payment.

**COUNT FIVE - UNREASONABLE PRACTICE - ASSESSING A
“NO-PULL” CHARGE IN VIOLATION OF 49 U.S.C. § 10702(2)**

48

KE realleges the assertions in Paragraph 1-4 of this Complaint.

ANSWER: GTW re-states and incorporates by reference its responses to paragraphs 1–4 as if fully set forth herein.

49

Item 6100 of CN Tariff 9000 provides a charge to be assessed against a consignee if a railcar has been released by a consignee but, for a reason attributable to the consignee, is not available at the time of the rail carrier’s pull of released empty cars (“no-pull” charge).

ANSWER: GTW admits that Item 6100 of Tariff CN 9000, under the heading of “Released railcars – not available to pull” provides for a fee to be assessed against the consignee if a railcar has been released by the consignee but, for a reason attributable to the consignee, is not available at the time of the pull, and that such item otherwise speaks

for itself.

50

The table below identifies representative examples of no-pull charges assessed by GTW to KE:

<u>Date</u>	<u>Number of Cars</u>	<u>Charge per Car</u>	<u>Total Charge</u>
September 20, 2018	1	\$200	\$200
May 11, 2019	1	\$200	\$200
October 11, 2019	1	\$250	\$250
October 28, 2019	3	\$250	\$750

ANSWER: GTW admits that it issued four invoices to KE in a total amount of \$1,400 for charges under Item 6100 of Tariff CN 9000 arising in 2018 and 2019.

51

A typical GTW invoice for a no-pull charge contains the following entry:

Kingsbury Elevator switches the empty cars to an empty track where CN crew reported not finding the empty AEX 22957 to pull, therefore the car is subject to a charge.

ANSWER: GTW admits that Invoice #754296680, dated October 23, 2019, issued to KE contains the quoted language.

52

There is no assigned “empty track” at KE’s facility. When KE releases empty cars, it moves them to the front of tracks to make them easily accessible to GTW. When GTW delivers loaded cars to KE, it often operates over more than one KE track, but it inexplicably refuses to do so when it picks up empty cars. GTW refuses to switch empty cars from more than one track in pulling them following release.

ANSWER: GTW has insufficient knowledge with regard to KE's operations within its own facility to form the basis for a belief regarding the truth of the allegations thereof, and therefore denies the same. GTW denies the remaining allegations.

53

Cars released by KE are made reasonably accessible by KE for pickup by GTW.

ANSWER: GTW denies the allegations as to railcars against which GTW has assessed a charge under Item 6100 of Tariff CN 9000.

54

GTW recovers the cost of empty car switching at KE's sidetracks by means of an element for that cost in the line-haul rate that CN-GTW collects for transportation of loaded cars from origin to Kingsbury, IN.

ANSWER: GTW denies the allegations.

55

Assessment of a no-pull charge in addition to that line-haul rate results in double recovery of GTW's costs.

ANSWER: GTW denies the allegations.

56

By reason of the foregoing facts and circumstances, GTW's no-pull charge is an unreasonable practice related to transportation in violation of 49 U.S.C. § 10702(2).

ANSWER: The allegations are legal conclusions for which no response is required. To the extent a response is required, GTW denies the allegations.

The Board should require that GTW cease and desist from such violations and require that GTW refund or waive all such no-pull charges billed to date and to be billed during the pendency of this Complaint.

ANSWER: The allegations are legal conclusions for which no response is required; to the extent a response is required, GTW denies the allegations. GTW further denies that KE is entitled to any refund or waiver of charges.

**COUNT SIX - DEMURRAGE CHARGES ASSESSED
IN VIOLATION OF 49 U.S.C. § 10702(2) AND 49 U.S.C. § 10746**

KE realleges the assertions in Paragraphs 1-4 of this Complaint.

ANSWER: GTW re-states and incorporates by reference its responses to paragraphs 1–4 as if fully set forth herein.

It is provided in 49 U.S.C. § 10702(2) as follows:

A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part shall establish reasonable—

(2) rules and practices on matters related to that transportation or service.

ANSWER: To the extent an allegation is quotation of statutory language, the statute speaks for itself and a response is not required.

It is provided in 49 U.S.C. § 10746 as follows:

A rail carrier providing transportation subject to the jurisdiction of the Board under this part shall compute demurrage charges, and establish rules related to those charges, in a way that fulfills the national needs

related to—

(1) freight car use and distribution; and

(2) maintenance of an adequate supply of freight cars to be available for transportation of property.

ANSWER: To the extent the allegations are a quotation of statutory language, the statute speaks for itself and no response is required.

61

Item 9050 of CN Tariff 9000 provides for a demurrage charge of \$200 per car per day for detention of rail-owned cars beyond free time.

ANSWER: To the extent the allegation purports to be a paraphrase of tariff language, the tariff speaks for itself and no response is required.

62

Demurrage charges assessed against KE accrued as a result of circumstances beyond the reasonable control of KE, such that assessment of such charges would not incentivize KE to take steps to avoid such charges.

ANSWER: GTW denies the allegations. GTW admits that it has invoiced KE for demurrage in 2018 through March, 2020 in the amount of \$6,780 that is unpaid.

63

By reason of the foregoing facts and circumstances, the Board should find that collection of the involved demurrage charges would be an unreasonable practice related to transportation in violation of 49 U.S.C. § 10702(2), and would be inconsistent with the provisions of 49 U.S.C. § 10746. Any such charges mistakenly paid by KE should be refunded with interest.

ANSWER: The allegations are legal conclusions for which no response is required; to the extent a response is required, GTW denies the allegations. GTW further denies that KE is entitled to any refund of charges.

UNSUCCESSFUL INFORMAL ATTEMPTS TO RESOLVE DISPUTES

KE has verbally complained and has sent numerous informal claims to GTW attempting to resolve the foregoing disputes. GTW's consistent response has been a cryptic statement "Invoice Deemed Correct", with no explanation nor purported justification for such response. GTW's intransigence in that respect has not been conducive to a private resolution of such disputes.

ANSWER: GTW denies the allegations. GTW further avers that it maintains a robust process staffed with dedicated personnel in which customers may raise questions about invoices and dispute charges that they believe to be inappropriate. GTW has engaged directly with KE to provide explanations for GTW's charges to KE, including, as reflected the answer to paragraph 51, above.

AFFIRMATIVE DEFENSES OF GRAND TRUNK WESTERN RAILROAD COMPANY

1. KE fails to state a claim under 49 U.S.C. Subtitle IV for which the Board can grant relief.
2. KE has no standing to seek the relief it purports to seek.
3. The subject matter of the complaint is governed in whole or in part by transportation service contracts. The Board has no jurisdiction or authority over such matters pursuant to 49 U.S.C. 10709.

4. The Board has no jurisdiction over transportation that occurs outside of the United States.

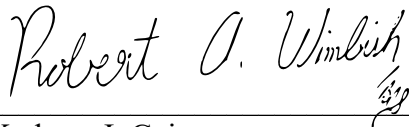
5. Rail transportation provided to KE by GTW to the extent subject to the jurisdiction of the Board was reasonable under the circumstances.

6. KE failed to mitigate any damages purportedly incurred.

7. GTW's charges to KE for demurrage and accessorial services are valid and appropriate.

WHEREFORE, GTW respectfully requests that the Amended Complaint be dismissed with prejudice, that no relief of any kind be awarded to KE, and that the Board grant GTW such other and further relief as may be appropriate.

Respectfully submitted,

By: 

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**ATTORNEYS FOR GRAND TRUNK WESTERN
RAILROAD COMPANY**

Dated: October 26, 2020

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of October, 2020, a copy of the foregoing
**Answer of Grand Trunk Western Railroad Company to Amended Complaint of Kingsbury
Elevator, Inc.** was served by electronic delivery and U.S. first class mail, postage prepaid, upon:

Thomas F. McFarland, Esq.
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Bradon J. Smith