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SERVICE DATE – NOVEMBER 9, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42170

KINGSBURY ELEVATOR, INC.

v.

GRAND TRUNK WESTERN RAILROAD COMPANY

Docket No. EP 346 (Sub-No. 24)¹

RAIL GENERAL EXEMPTION AUTHORITY—MISCELLANEOUS MANUFACTURED
COMMODITIES

Decided: November 6, 2020

On August 6, 2020, in Docket No. NOR 42170, Kingsbury Elevator, Inc. (KE) filed a complaint against Grand Trunk Western Railway Company (GTW) alleging a number of violations of 49 U.S.C. subtitle IV part A related to GTW's transportation of canola meal, corn gluten meal, gluten feed pellets, and fertilizer. KE claims that the Board currently lacks regulatory authority over these commodities, except for fertilizer, because they are exempt from Board regulation under the class exemption established in Rail General Exemption Authority—Miscellaneous Manufactured Commodities, 6 I.C.C.2d 186 (1989) and codified at 49 C.F.R. § 1039.11. (Pet. 3.) KE therefore filed at the same time a petition in Docket No. EP 346 (Sub-No. 24) for partial revocation of this class exemption to the extent necessary for the Board to entertain the complaint.² On October 5, 2020, KE filed a motion to amend its complaint.³

On October 26, 2020, GTW filed an answer to the amended complaint in Docket No. NOR 42170 and a reply to the petition in Docket No. EP 346 (Sub-No. 24).⁴ In its reply, GTW argues that, although Kingsbury's complaint does not provide a Standard Transportation Commodity Code (STCC) for any of the commodities at issue, it appears to refer to gluten meal (STCC 2041928), canola meal pellets (STCC 2093922) and/or canola seed meal

¹ These proceedings have not been consolidated but are being addressed in the same decision for administrative convenience.

² On August 13, 2020, and again on September 25, 2020, the Board extended the deadlines to answer the complaint and reply to the petition at the request of the parties.

³ GTW does not oppose KE's motion to amend the complaint. (Answer 1 n.1, NOR 42170.) The Board will grant KE's unopposed motion to amend the complaint.

⁴ On November 5, 2020, KE filed a report pursuant to 49 C.F.R. § 1111.11(a) setting forth a proposed procedural schedule.

(STCC 2093939), each of which GTW has transported by rail to KE. (Reply 2.) GTW claims that these commodities are not exempt from Board regulation under the class exemption established in Miscellaneous Manufactured Commodities. (Id. at 1.) Accordingly, GTW argues that the petition for partial revocation should be denied as unnecessary. (Id.)

In light of GTW's reply, KE will be directed to respond to the assertion that the petition for exemption is unnecessary. If KE disagrees that the petition is unnecessary, it should provide the STCCs for the commodities at issue in its complaint and explain why it believes these commodities (other than fertilizer) are exempt from Board regulation.

It is ordered:

1. KE's motion to amend its complaint is granted.
2. KE shall submit the additional information described above by November 20, 2020.
3. This decision is effective on its service date.

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