

SERVICE DATE – AUGUST 9, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42172

A.F. GELHAR COMPANY, INC., AND GREDE HOLDINGS, LLC

v.

C&NC RAILROAD COMPANY

Decided: August 9, 2021

On July 30, 2021, Grede Holdings, LLC (Grede), which operates a foundry in New Castle, Ind. (the New Castle Foundry), and A.F. Gelhar Company, Inc. (Gelhar), a sand extraction and supply business that supplies sand to the New Castle Foundry (collectively, Complainants) filed a complaint against rail carrier C&NC Railroad Company (C&NC), which operates over the rail line that serves the New Castle Foundry. The complaint alleges that under 49 U.S.C. § 11101, an “embargo” imposed by C&NC on rail service to Grede and Gelhar is unlawful, and that under 49 U.S.C. § 11701, several charges C&NC has billed the Complainants are unreasonable.

In addition, the complaint includes an application for emergency service order under 49 U.S.C. § 11123. The application requests that the Board direct C&NC to provide continued and uninterrupted transportation of Gelhar railcars containing sand ultimately bound for the New Castle Foundry until the Board can rule on the merits of the claims alleged in the complaint.¹ (Pet. 3.) In the alternative, Complainants petition the Board to issue a temporary injunction under 49 U.S.C. § 1321(b)(4) and 49 C.F.R. § 1117.1 requiring C&NC to restore and maintain rail service to prevent irreparable harm.

Complainants state that C&NC has been transporting Gelhar railcars containing sand between an interchange in New Castle and the Neal Metal Scrap facility, where the sand is off-loaded and transported by truck to Grede’s New Castle Foundry. (Pet. 3.) According to the application, even though Grede, C&NC’s sole rail customer, previously arranged to pay for the rail transportation, C&NC recently began billing both Gelhar and Grede for various charges allegedly due to C&NC. (*Id.*) Complainants state that they have paid some of those charges but have disputed others as overlapping or unreasonable. (*Id.* at 3-4.) Complainants allege that, as a result of the outstanding invoices, C&NC has revoked their credit, refused to accept and deliver

¹ In a separate proceeding, C&NC has filed a petition under 49 U.S.C. § 10502 for exemption from the prior approval requirements of 49 U.S.C. § 10903 to discontinue its service over the rail lines at issue, which are owned by Norfolk Southern Railway Company. See C&NC R.R.—Discontinuance Exemption in Wayne & Henry Cntys., Ind., Docket No. AB 1093 (Sub-No. 2X).

loaded Gelhar rail cars, imposed additional charges, and imposed an “embargo” on rail service to Gelhar and Grede. (Id. at 4-5.)

Additional information is necessary for the Board to consider the application for emergency service order and alternative petition for injunction in a timely manner. Accordingly, C&NC will be directed to respond to the application and petition no later than August 13, 2021. Also, Complainants will be directed to file a submission that addresses whether the sand at issue is an exempt commodity, see 49 C.F.R. § 1039.11, and, if so, the impact of the exemption on the Board’s ability to grant the requested relief. If the commodity is exempt, Complainants should indicate whether they intend to seek revocation of the exemption.

It is ordered:

1. C&NC is directed to respond to the application for emergency service order and petition for injunction by August 13, 2021.
2. Complainants shall file the submission discussed above by August 13, 2021.
3. This decision is effective on its date of service.

By the Board, Valerie O. Quinn, Acting Director, Office of Proceedings.