

SERVICE DATE — MAY 24, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42171

SANIMAX USA LLC

v.

UNION PACIFIC RAILROAD COMPANY

Decided: May 24, 2023

Sanimax USA LLC (Sanimax) filed a complaint against Union Pacific Railroad Company (UP) alleging that UP's reduction in service from five days per week to three days per week, coupled with service issues, constitutes a failure to provide adequate rail service in violation of 49 U.S.C. § 11101(a), a failure to provide adequate notice of a change in common carrier service terms as required by 49 U.S.C. § 11101(c), and an unreasonable practice in a matter related to transportation and service in violation of 49 U.S.C. § 10702(2).

In a decision served on November 2, 2021, the Board partially revoked the commodity exemptions for the relevant commodities, denied UP's motion to dismiss the complaint, and set a procedural schedule. Sanimax USA LLC v. Union Pac. R.R., NOR 42171 (STB served Nov. 2, 2021). On February 25, 2022, the Board clarified that it will consider whether the issues raised in Sanimax's complaint warrant relief prospectively from the date the commodity exemptions were partially revoked, but the record may include arguments based on, and discovery into, events that occurred prior to the date of partial revocation, to the extent that they are relevant. Sanimax USA LLC v. Union Pac. R.R., NOR 42171, slip op. at 4-5 (STB served Feb. 25, 2022).

After the parties filed evidence and arguments according to the procedural schedule, UP filed a second motion to dismiss on May 24, 2022. UP argues that in Sanimax's opening and rebuttal evidence, the only relief that Sanimax requested was five days of rail service each week. (UP Mot. to Dismiss 1.) According to UP, "Sanimax has 'received the ... [remedy] it sought,'" rendering the complaint moot. (*Id.* at 3.) Sanimax opposes UP's motion to dismiss, arguing that it has not received the full relief sought in the complaint.¹ (Sanimax Reply 1, June 13, 2022.) On June 23, 2022, UP filed a motion for leave to file a surreply, and tendered a surreply. Sanimax filed a reply to UP's motion on June 29, 2022, and the motion remains pending.

The Board will request a status update from the parties. Sanimax and UP will be directed to file with the Board a joint status report, if possible, or separate status reports, if necessary, by June 7, 2023. In the status report(s), Sanimax and UP must state how many days per week UP is

¹ Sanimax also argues that its damages claim and questions related to the partial revocation of the commodity exemption remain unresolved. (Sanimax Reply 5-8.)

currently providing service to Sanimax. Sanimax and UP must also state whether UP has made any commitments regarding service frequency going forward and, if so, what those commitments are and for how long. Additionally, Sanimax and UP must state whether they have engaged in any additional settlement discussions.

It is ordered:

1. Sanimax and UP shall file with the Board a joint status report, if possible, or separate status reports, if necessary, by June 7, 2023, as explained above.
2. This decision is effective on its service date.

By the Board, Mai T. Dinh, Director, Office of Proceedings.