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February 25, 2019

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 42161, *Ameropan Oil Corporation v. Canadian National Railway Company*

Dear Ms. Brown:

Please consider the following in response to a reply to reply filed by Illinois Central Railroad Company (IC) on February 25, 2019.

The number of days on which IC will provide rail service to AOC's terminal in Chicago, IL has recently been reduced from five days to two days per week, a sudden and radical service reduction. No prior notice of any kind was provided by IC before that change.

How frequently rail service is to be provided to a shipper's facility is as important to a shipper as the rate to be assessed for that service. For that reason, at least 20 days' notice is required in 49 U.S.C. § 11101(c) before a rail carrier can lawfully "increase any common carrier rates or change any common carrier service terms". It is beyond dispute that frequency of rail service is a common carrier service term within the meaning of § 11101(c).

The provisions of 49 U.S.C. § 11101(c) and other service-related provisions can be negated if they are covered differently in a contract under 49 U.S.C. § 10709. The contract in this case is the Master Agreement between the parties. Although there were a number of instances in which tariff provisions such as demurrage terms and conditions were adopted by reference in the Master Agreement, that Agreement did not purport to either adopt or negate the provision governing frequency of rail service. Even if the Master Agreement were assumed to govern frequency of rail service, a contract amendment would have been required for a reduction of service from five to two days per week. No such contract amendment occurred.

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AOC brings these fundamental legal principles to the attention of the Board at this time because IC is now arguing that the prior notice requirements of 49 U.S.C. § 11101(c) and other service-related shipper protections are of no legal effect when there is a § 10709 contract in place, even when that contract does not purport to negate the common carrier service terms that would otherwise apply. (IC Reply dated Feb. 25, 2019, "a contract. . .contains all the duties to which the parties are required to adhere. . .[and] prohibits other duties beyond the contract. . .").

That cannot be the law. Congress could not have intended that fundamental common carrier service protections would be negated by contract unless the contract makes it clear that a shipper is voluntarily surrendering those protections.

Very truly yours,

A handwritten signature in dark ink that reads "Tom McFarland". The signature is written in a cursive, slightly slanted style.

Thomas F. McFarland
Attorney for Ameropan Oil Corporation

TMcF:mg:\1827\efSTB3

cc: Thomas J. Litwiler, Esq.