

LAW OFFICE
THOMAS F. MCFARLAND, P.C.
208 SOUTH LASALLE STREET - SUITE 1666
CHICAGO, ILLINOIS 60604-1228
TELEPHONE (312) 236-0204
mcfarland@aol.com

THOMAS F. MCFARLAND

December 14, 2018

By UPS overnight mail
Monday delivery

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:

Hereby transmitted is the original and 10 copies of a Complaint for filing with the Board
in the above referenced matter.

Also enclosed is a check in the amount of \$350 for the filing fee.

Very truly yours,



Thomas F. McFarland
Attorney for Complainant

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FILED
December 17, 2018
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
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TRANSPORTATION BOARD



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ENTERED
Office of Proceedings
December 17, 2018
Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD



AMEROPAN OIL CORPORATION,	)	
	)	DOCKET NO.
<u>Complainant,</u>	)	NOR 42161
v.	)	
	)	
CANADIAN NATIONAL RAILWAY	)	
COMPANY,	)	
	)	
<u>Defendant.</u>	)	

COMPLAINT

AMEROPAN OIL CORPORATION
3301 South California Avenue
Chicago, IL 60608

Complainant

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street, Suite 1666
Chicago, IL 60604-1228
(312) 236-0204
mcfarland@aol.com

Attorney for Complainant

DATE FILED: December 17, 2018

BEFORE THE
SURFACE TRANSPORTATION BOARD

AMEROPAN OIL CORPORATION,	)	
	)	DOCKET NO.
<u>Complainant,</u>	)	NOR 42161
v.	)	
	)	
CANADIAN NATIONAL RAILWAY	)	
COMPANY,	)	
	)	
<u>Defendant.</u>	)	



COMPLAINT

Pursuant to 49 U.S.C. § 11701(b), 49 U.S.C. § 11704(c), and 49 C.F.R. § 1111.1, AMEROPAN OIL CORPORATION (AOC) hereby complains against CANADIAN NATIONAL RAILWAY COMPANY (CN) as follows:

I

AOC is engaged in the business of receiving, storing, and distributing asphalt. AOC's principal place of business is located at 3301 South California Avenue, Chicago, IL 60608.

II

CN is a common carrier by rail subject to the jurisdiction of the Surface Transportation Board (the Board) under Title 49 U.S. Code, Part A. CN's main office is located at 935 de la Gauchetiere Street West, Montreal, Quebec, Canada.

III

The Board has subject matter jurisdiction over the Complaint under 49 U.S.C. § 11101(a), which prohibits inadequate rail service; under 49 U.S.C. § 11101(c), which requires 20

days' notice of changes of common carrier service terms; and under 49 U.S.C. § 10702(2), which prohibits unreasonable practices in matters related to transportation or service.

IV

The standard of adequate rail service provided to the vast majority of rail shippers is one switch every weekday, i.e., service five days per week Monday through Friday.

V

AOC owns and operates facilities for receipt, storage, and distribution of asphalt at 3301 South California Avenue, Chicago, IL 60608. Those facilities are rail served solely by CN.

VI

For many years prior to November 3, 2018, CN provided rail service to AOC's facilities at Chicago five days per week, i.e., Monday through Friday.

VII

Effective November 3, 2018, CN reduced rail service to AOC from five days per week to two days per week.

VIII

The only prior notice of CN's change of service from five days to two days per week was an e-mail message to Mr. Luis Padilla of AOC from Ms. Kelly Somers Trzebiatowski of CN, dated October 24, 2018, that was received by Mr. Padilla on that date stating that rail service provided by CN to AOC would be reduced from five days per week to two days per week, effective on November 3, 2018, i.e., CN provided 10 days' notice for its changed common carrier service term.

IX

Ms. Trzebiatowski's message to Mr. Padilla did not provide a purported justification for the reduction of AOC's rail service. CN has not provided a purported justification for that reduction of service, nor has any CN representative attempted to explain to AOC the reason or reasons for the service reduction.

X

On information and belief, CN's reduction of service to AOC was in retaliation for AOC's challenge to the lawfulness of certain demurrage charges and freight rates assessed on AOC's traffic.

XI

The reduction of rail service harms AOC because it reduces the volume of asphalt that can be distributed by AOC, thereby resulting in lost business and profits.

XII

The reduction of rail service harms AOC because it reduces the volume of asphalt that can be received by AOC, thereby exposing AOC to penalties for failing to meet the minimum annual volume requirement in CN's tariff.

XIII

The reduction of rail service harms AOC because it is likely to result in an increase in the amount of demurrage charges assessed by CN.

CONCLUSION AND REQUESTED RELIEF

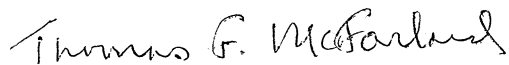
WHEREFORE, for the reasons stated, the Board should find that CN's reduction of rail service constitutes a failure to provide adequate rail service to AOC in violation of 49 U.S.C. § 11101(a); a failure to provide adequate notice of its change of common carrier service terms in violation of 49 U.S.C. § 11101(c); and an unreasonable practice in the matter of transportation and service in violation of 49 U.S.C. § 10702(2).

The Board is respectfully requested to order CN to cease and desist from such violations by requiring CN to restore service to AOC five days per week, and to award damages to AOC for such violations as may be proven in an investigation of this Complaint.

Respectfully submitted,

AMEROPAN OIL CORPORATION
3301 South California Avenue
Chicago, IL 60608

Complainant



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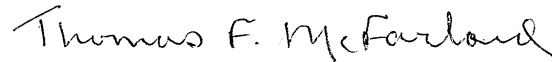
CERTIFICATE OF SERVICE

In accordance with 49 C.F.R. § 1111.3, I hereby certify that on December 14, 2018, I served a copy of this Complaint by UPS overnight mail for delivery on Monday, December 17, 2018, on the Chief Legal Officer of Canadian National Railway Company (CN) and on its outside counsel known to represent CN in this matter as follows:

Sean Finn
Chief Legal Officer
Canadian National Railway Company
935 de la Gauchetieri
Montreal, Quebec Canada H3B 2M9

John Fiorilla, Esq.
Capehart Scatchard
8000 Midlantic Dr, Ste 300S
Post Office Box 5016
Mount Laurel, NJ 08054

I also certify that the front of the overnight express courier envelopes includes the legend
“Service of STB Complaint.”



Thomas F. McFarland