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245756

May 17, 2018

Ms. Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

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

Re: Docket No. FD 36131, *Utah Central Railway Company, LLC v. Kenco Logistics Services, LLC, Kenco Group, and Specialized Rail Service, Inc.*

Dear Ms. Brown:

In accordance with the Board's decision served May 15, 2018 in this proceedings, Utah Central Railway Company, LLC ("UCRY") is efilng its Petition to Withdraw or Amend Admissions under 49 C.F.R. 1114.27(b).

Thank you for your assistance. If you have any questions, please contact me.

Sincerely yours,



Melanie B. Yasbin
Attorney for Utah Central Railway
Company, LLC

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 36131

UTAH CENTRAL RAILWAY COMPANY, LLC
v.
KENCO LOGISTICS SERVICES, LLC, KENCO GROUP,
AND SPECIALIZED RAIL SERVICE, INC.

PETITION TO WITHDRAW OR AMEND ADMISSIONS UNDER 49 C.F.R. 1114.27(b)

Eric Crossman, Esq.
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Attorneys for Utah Central Railway
Company, LLC

Dated: May 17, 2018

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 36131

UTAH CENTRAL RAILWAY COMPANY, LLC
v.
KENCO LOGISTICS SERVICES, LLC, KENCO GROUP,
AND SPECIALIZED RAIL SERVICE, INC.

PETITION TO WITHDRAW OR AMEND ADMISSIONS UNDER 49 C.F.R. 1114.27(b)

Utah Central Railway Company, LLC (“UCRY”) respectfully requests that the Surface Transportation Board withdraw the admissions served on May 1, 2018 (“May 1 decision”) in this proceeding or amend the admissions in the May 1 decision to make them consistent with UCRY’s responses to requests for admissions served on both Specialized Rail Services, Inc. (“SRS”) and Kenco Logistics Services, LLC (“Kenco”). See Exhibits A and B. UCRY asserts that good cause exists to withdraw or amend the admissions served in the May 1 decision.

It took UCRY longer than anticipated to gather the information requested by Kenco and SRS. Both Kenco’s and SRS’s requests for admission required review of hundreds of documents by multiple individuals and discussions with various individuals in multiple departments within UCRY and Patriot Rail Corp. As a Class III rail carrier, many of the individuals that had direct knowledge of the information requested were out in the field conducting railroad operations and not available to review documents and responses in a more timely manner. Moreover, Kenco and SRS will not be prejudiced by the use of UCRY’s actual responses to their discovery requests, even though the facts may not be beneficial to the presentation of their claims.

Based on a review of documents and discussions with individuals with knowledge of the information requested, UCRY answered Kenco's and SRS's requests for admissions prior to the May 1 decision. If the Board were to allow the admissions in the May 1 decision that are inconsistent with UCRY's admissions sent to Kenco and SRS to stand, it would create undue prejudice against UCRY in this demurrage proceeding. It would effectively amend UCRY's demurrage tariff without finding that the tariff constitutes an unreasonable practice, which it does not, limit UCRY's arguments, and prevent the use of the actual facts in this proceeding that are relevant to the collection of legitimate demurrage charges as mandated by 49 U.S.C. 10746..

Take for example both Kenco's and SRS's Request for Admissions No. 9:

Admit that at times, You assessed demurrage to SRS (Kenco) on railcars sitting on SRS's (Kenco's) spur after SRS (Kenco) notified You to switch the railcar.

Response: Deny. UCRY denies this admission and explains that when SRS (Kenco) notified UCRY that railcars were ready to be switched and were empty demurrage stopped.

This is the process required under the relevant UCRY tariffs that apply to all shippers in the Business Depot Ogden, which includes Kenco and SRS. If UCRY were deemed to admit this request UCRY would be in violation of its own tariff. It would shift the burden of proof from Kenco/SRS to UCRY to show that for each individual car at issue the process in the tariff was followed. This shift would unduly prejudice UCRY's ability to seek recovery of demurrage owned. Moreover, it would reward Kenco and SRS for their unreasonable behavior, in an attempt to avoid demurrage charges, of notifying UCRY that cars had been unloaded and were released as empty when those cars had not been unloaded, were not empty, and were not ready to be picked up..

UCRY respectfully asserts that good cause exists to withdraw or amend the admissions served in the May 1 decision.

Respectfully submitted,



Eric Crossman, Esq.
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(410) 296-2250
Lou@lgrailaw.com
Attorneys for Utah Central Railway
Company, LLC

Dated: May 17, 2018

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing document to be served upon all parties of record by electronic delivery:

Shawn T. Richards, Esq.
Brinton M. Wilkins, Esq.
Kirton McConkie
Kirton McConkie Building.
50 E. South Temple #400
Salt Lake city, UT 84111



Melanie Yasbin
May 17, 2018

EXHIBIT –A

RESPONSES TO SPECIALIZED RAIL SERVICE, INC'S REQUESTS FOR ADMISSIONS

Melanie Yasbin

From: Melanie Yasbin
Sent: Monday, April 16, 2018 2:55 PM
To: 'Diane Olson'
Subject: RE: Discovery Response and Documents in FD-36131
Attachments: 20180416 Response SRS First Set of Discovery to UCRY (1).pdf

Diane,

Here UCRY's response to Specialized's first set of discovery. Can you confirm for me the megabit attachment size you can receive.

Thank you,

Melanie

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Towson, MD 21204
(410)296-2205
Melanie@lgraillaw.com

This email message may contain information that is privileged and/or confidential. The information contained in this email message is intended only for use of the person to whom it is addressed. If the reader of this message is not (1) the intended recipient or (2) the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (202-466-6532) or email at Melanie@lgraillaw.com, and destroy the original message. Thank you.

From: Diane Olson [mailto:dolson@kmclaw.com]
Sent: Monday, April 16, 2018 1:44 PM
To: Melanie Yasbin <Melanie@lgraillaw.com>
Cc: Brinton M. Wilkins <bwilkins@kmclaw.com>
Subject: RE: Discovery Response and Documents in FD-36131

I'll have our I.T. department send it out again. You should have also already received the link to the folder. Here is that link if you did not receive it either:

Diane Olson granted access to folder [Utah Central Railway Production](#)

"Folder where UCR documents may be uploaded"

Admission are anything other than an unqualified admission, state with particularity the factual basis and reason for Your response.

Response: See response to Admissions.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Admit that the documents produced in response to these Discovery Requests are true and accurate copies of originals.

Response: Admit

REQUEST FOR ADMISSION NO. 2: Admit that UCRY experienced maintenance issues in the winter of 2015-2016 at the BDO, including broken or unusable track.

Response: Admit that for a limited period of time in the winter of 2015-2016 that the switch locomotive was down. Admit that for a limited period the track leading into SRS was unusable.

REQUEST FOR ADMISSION NO. 3: Admit that UCRY is (or was, as the case may be) in a dispute with Union Pacific regarding insufficient interchanges during the timeframe for which it assessed demurrage to SRS that is the subject of this STB matter

Response: Deny. UCRY must accept rail cars provided in interchange.

REQUEST FOR ADMISSION NO. 4: Admit that UCRY is (or was, as the case may be) in a dispute with BNSF regarding insufficient interchanges during the timeframe for which it assessed demurrage to SRS that is the subject of this STB matter.

Response: Deny. UCRY must accept rail cars provided in interchange.

REQUEST FOR ADMISSION NO. 5: Admit that You did not provide SRS with timely switches for all times during which You are seeking demurrage against SRS in this matter.

Response: Deny. When railcars destined for SRS were available and there was sufficient room on SRS's track UCRY provided timely switching.

REQUEST FOR ADMISSION NO. 6: Admit that some railcars that You constructively placed for SRS, and for which You are now seeking demurrage, were not constructively placed by You due to the fault of SRS.

Response: To vague admit or deny

REQUEST FOR ADMISSION NO. 7: Admit that during the time You assessed demurrage to SRS, and that You are now trying to recover in this STB action, You experienced bunching on Your tracks due to no fault of SRS.

Response: Deny, UCRY did not experience bunching on its tracks.

REQUEST FOR ADMISSION NO. 8: Admit that during the time You assessed demurrage to SRS, and that You are now trying to recover in this STB action, You placed more railcars than SRS could handle at a given time.

Response: Deny. UCRY actually placed cars up to the capacity of SRS track and then constructively placed all other cars.

REQUEST FOR ADMISSION NO. 9: Admit that at times, You assessed demurrage to SRS on railcars sitting on SRS's spur after SRS notified You to switch the railcar.

Response: Deny, when Kenco notified UCRY that railcars were ready to be switched and were empty demurrage stopped.

REQUEST FOR ADMISSION NO. 10: Admit that the total amount of demurrage You assessed to SRS is higher in amount than any fees/penalties You paid (or have been asked to pay) to Class 1 railroads for the railcars subject to Your demurrage assessment.

Response: Admit

DATED: April 16, 2018

Louis Gitomer

/s/ Louis E. Gitomer

Louis E. Gitomer, Esq.

Melanie Yasbin

Law Offices of Louis E. Gitomer

600 Baltimore Avenue, Suite 301

Towson, MD 21204

(410) 296-2250

lou@lgraillaw.com

Attorney for Utah Central Railway

Company, LLC

CERTIFICATE OF SERVICE

I certify that on the 16th day of April 2018, I caused a true and correct copy of the foregoing to be served via email on the following:

Brinton M. Wilkins, Esq.
Kirton McConkie
500 East South Temple, 4th Floor
P.O. Box 45120
Salt Lake City, UT, 84145-0120
srichards@kmclaw.com

/s/ Melanie Yasbin

EXHIBIT-B

RESPONSES TO KENCO LOGISTICS SERVICES, LLC'S REQUESTS FOR ADMISSIONS

Melanie Yasbin

From: Melanie Yasbin
Sent: Tuesday, April 17, 2018 10:18 AM
To: 'srichards@kmclaw.com'
Subject: FD-36131 Discovery Documents
Attachments: 20160416 Response Kenco First Set of Discovery to UCRY (1).pdf

Attached please find Utah Central Railway's Response to Kenco's First Set of Discovery Requests. Because of the size of the documents, you will receive two more emails. If you have any questions please let me know.

Thank you,
Melanie Yasbin

Melanie Yasbin
600 Baltimore Avenue
Suite 301
Towson, MD 21204
(410)296-2205
Melanie@lgrailaw.com

This email message may contain information that is privileged and/or confidential. The information contained in this email message is intended only for use of the person to whom it is addressed. If the reader of this message is not (1) the intended recipient or (2) the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (202-466-6532) or email at Melanie@lgrailaw.com, and destroy the original message. Thank you.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1: Admit that the Documents produced in response to these Discovery Requests are true and accurate copies of originals.

Response: Admit

REQUEST FOR ADMISSION NO. 2: Admit that UCRY experienced maintenance issues in the winter of 2015-2016 at the BDO, including broken or unusable track.

Response: Admit that for a limited period of time in the winter of 2015-2016 that the switch locomotive was down.

REQUEST FOR ADMISSION NO. 3: Admit that UCRY is (and/or was, as the case may be) in a dispute with Union Pacific regarding insufficient interchanges during the timeframe for which it assessed demurrage to Kenco that is the subject of the Federal Action and this STB matter

Response: Deny. UCRY must accept rail cars provided in interchange.

REQUEST FOR ADMISSION NO. 4: Admit that UCRY is (or was, as the case may be) in a dispute with BNSF regarding insufficient interchanges during the timeframe for which it assessed demurrage to Kenco that is the subject of the Federal Action and this STB matter.

Response: Deny. UCRY must accept rail cars provided in interchange.

REQUEST FOR ADMISSION NO. 5: Admit that You did not provide Kenco with timely switches for all times during which You are seeking demurrage against Kenco in this matter.

Response: Deny. When railcars destined for Kenco were available and there was sufficient room on Kenco's track UCRY provided timely switching.

REQUEST FOR ADMISSION NO. 6: Admit that some railcars that You constructively placed for Kenco, and for which You are now seeking demurrage, were not constructively placed due to the fault of Kenco.

Response: To vague admit or deny.

REQUEST FOR ADMISSION NO. 7: Admit that during the time You assessed demurrage to Kenco, and that You are now trying to recover in this STB action, You experienced bunching on Your tracks due to no fault of Kenco.

Response: Deny, UCRY did not experience bunching on its tracks.

REQUEST FOR ADMISSION NO. 8: Admit that during the time You assessed demurrage to Kenco, and that You are now trying to recover in this STB action, You placed more railcars than Kenco could handle at a given time.

Response: Deny. UCRY actually placed cars up to the capacity of Kenco track and then constructively placed all other cars.

REQUEST FOR ADMISSION NO. 9: Admit that at times, You assessed demurrage to Kenco on railcars sitting on Kenco's spur after Kenco notified You to switch the railcars.

Response: Deny, when Kenco notified UCRY that railcars were ready to be switched and were empty demurrage stopped.

REQUEST FOR ADMISSION NO. 10: Admit that the total amount of demurrage You assessed to Kenco is higher in amount than any fees/penalties (including car hire charges) You paid (or have been asked to pay) to Class 1 railroads for the railcars subject to Your demurrage assessment.

Response: Admit

REQUEST FOR ADMISSION NO. 11: Admit that the problems with the RailConnect system contributed delayed railcar deliveries to Kenco.

Response: Deny. UCRY does not use a system called RailConnect.

DATED

Louis Gitomer

/s/ Louis E. Gitomer

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