

BEFORE THE
SURFACE TRANSPORTATION BOARD

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Docket No. FD 36131

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March 30, 2018
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Public Record

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

**KENCO LOGISTIC SERVICES, INC.'S MOTION TO: (1) DEEM REQUESTS FOR
ADMISSION ADMITTED; AND (2) COMPEL ANSWERS TO INTERROGATORIES
AND RESPONSES TO REQUESTS FOR PRODUCTION OR, IN THE ALTERNATIVE,
TO STRIKE UCERY'S DEMURRAGE CLAIM AND DISMISS THE PETITION
ON THE MERITS**

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Dated: March 30, 2018

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. 36131

UTAH CENTRAL RAILWAY COMPANY, LLC
v.
KENCO LOGISTIC SERVICES, LLC, KENCO GROUP,
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**KENCO LOGISTIC SERVICES, INC.’S MOTION TO: (1) DEEM REQUESTS FOR
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TO STRIKE UCRY’S DEMURRAGE CLAIM AND DISMISS THE PETITION
ON THE MERITS**

Kenco Logistic Services, LLC and Kenco Group (collectively, “Kenco”) requests that the Board: (1) deem Utah Central Railway Company, LLC (“UCRY”) as having admitted the requests for admission that Kenco served on UCRY on February 22, 2018; and (2) order UCRY to answer and provide responses to Kenco’s interrogatories and requests for production or, in the alternative, strike UCRY’s demurrage claim and dismiss UCRY’s petition on the merits. Kenco also requests its attorneys’ fees as provided by 49 C.F.R. § 1114.31(d).

I. FACTUAL BACKGROUND

1. On February 22, 2018, Kenco served its First Set of Interrogatories, Requests for Production, and Requests for Admission to Petitioner (the “Discovery Requests”) upon UCRY.¹

2. The Discovery Requests included 34 requests for production, 23 interrogatories, and 11 requests for admission.²

¹ A copy of the Discovery Requests and their Certificate of Service are attached, collectively, as Exhibit 1.

² See Ex. 1 at pp. 7-17.

3. The Discovery Requests required UCRY to provide answers to the requests for production, interrogatories, and requests for admission within 15 days.³

4. On March 8, 2018, Kenco's attorney, Shawn T. Richards, sent the following e-mail to UCRY's attorney, Louis E. Gitomer:

Dear Lou:

Would you be amenable to a brief extension of our deadline to serve discovery responses (for SRS and Kenco)? They are due this coming Monday and we'd like to have until Friday, March 16. We'd be happy to have your responses due the same day.⁴

5. Later that same day, Mr. Gitomer responded: "How about Tuesday the 20th? I'm traveling at the end of the week."⁵

6. To which Mr. Richards replied: "That works well. Let's plan on Tuesday the 20th."⁶

7. Kenco then provided responses and objections to UCRY's discovery requests on March 20, 2018.

8. On March 22, co-counsel for co-respondent Specialized Rail Service, Inc. ("SRS"), Brinton M. Wilkins, sent the following e-mail to Mr. Gitomer regarding UCRY's failure to respond to SRS's discovery requests, which were also due on March 22: "Please let me know when we can expect to receive UCRY's discovery responses and documentation."⁷

9. Later that day, Mr. Gitomer responded: "We are working on providing documents with our client. I will check with them on production and let you know."⁸

³ See Ex. 1 at p. 2.

⁴ A copy of this e-mail is attached as Exhibit 2.

⁵ See Ex. 2.

⁶ *Id.*

⁷ A copy of this e-mail is attached as Exhibit 3.

⁸ See Ex. 3.

10. As of March 30, 2018, UCRY has not provided objections or responses to any of Kenco's the Discovery Requests.⁹

II. BY FAILING TO ADMIT OR DENY THE REQUESTS FOR ADMISSION, THOSE REQUESTS ARE ADMITTED.

Under 49 C.F.R. § 1114.27(a), a request for admission "is admitted unless, within a period designated in the request, not less than 15 days after service thereof, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or his representative or counsel."

In accordance with this rule, the Discovery Requests required UCRY to respond to the requests for admission by no later than March 9, 2018 (i.e., 15 days after February 22, 2018, the date of service). The parties then agreed to extend the deadline until March 20.

As of the date of this motion, UCRY has not responded or objected. Accordingly, by matter of law, the requested admissions are deemed admitted. Kenco therefore requests that the Board deem Kenco's 11 requests for admission admitted for all purposes going forward.

Specifically, Kenco requests that the Board deem UCRY as having admitted the following:

- That the documents produced in response to the Discovery Requests are true and accurate copies of originals.
- That UCRY experienced maintenance issues in the winter of 2015-2016 at the BDO, including broken or unusable track.
- 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 Kenco that is the subject of this STB matter.

⁹ See Affidavit of Shawn T. Richards attached as Exhibit 4.

- 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 this STB matter.
- That UCRY did not provide Kenco with timely switches for all times during which UCRY is seeking demurrage against Kenco in this matter.
- That some railcars that UCRY constructively placed for Kenco, and for which UCRY is now seeking demurrage, were not constructively placed by UCRY due to no fault of Kenco.
- That during the time UCRY assessed demurrage to Kenco, and that UCRY is now trying to recover in this STB action, UCRY experienced bunching on UCRY's tracks due to no fault of Kenco.
- That during the time UCRY assessed demurrage to Kenco, and that UCRY is now trying to recover in this STB action, UCRY placed more railcars than Kenco could handle at a given time.
- That at times, UCRY assessed demurrage to Kenco on railcars sitting on Kenco's spur after Kenco notified UCRY to switch the railcar.
- That the total amount of demurrage UCRY assessed to Kenco is higher in amount than any fees/penalties UCRY paid (or has been asked to pay) to Class 1 railroads for the railcars subject to UCRY's demurrage assessment.
- That problems with the RailConnect system contributed [sic] delayed railcar deliveries to Kenco.

(See Ex. 1 at Requests for Admission.)

III. UCRY SHOULD BE ORDERED TO PROVIDE RESPONSES TO KENCO'S INTERROGATORIES AND REQUESTS FOR PRODUCTION OR THEIR PETITION DISMISSED.

A. The Board Should Order UCRY to Respond.

Under 49 C.F.R. § 1114.31(a), if a “party fails to answer . . . written interrogatories . . . the party seeking discovery may apply for an order compelling an answer by motion filed with the Board. . . .” Such a motion must be filed “within 10 days after expiration of the period allowed for submission of answers to interrogatories.” Section 1114.31 also permits the Board to compel compliance with requests for production when the recipient of a request fails to provide responses.¹⁰

UCRY has not answered any of Kenco's interrogatories, nor has it responded to any of Kenco's requests for production. UCRY has not provided any justification for this failure, nor has it asked to be excused from the March 20 deadline. Accordingly, this Motion is timely and the Board should order UCRY to provide responses. Kenco also requests that it be awarded its attorneys' fees incurred as provided by 49 C.F.R. § 1114.31(d).¹¹

B. The Board Should Dismiss UCRY's Petition.

Under 49 C.F.R. § 1114.31(d), if a party fails to respond to interrogatories, “the Board on motion and notice may strike out all or any part of any pleading of that party . . . or dismiss the proceeding or any part thereof.” As set forth above, UCRY has not responded to any of Kenco's interrogatories. In fact, it appears that UCRY has simply ignored its deadline to respond, despite the fact that it suggested the deadline be March 20. As a result, in the alternative to issuing an

¹⁰ See 49 C.F.R. § 1114.31(b)(2).

¹¹ “[T]he Board *shall* require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the Board finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.” (Emphasis added).

order compelling responses, the Board should strike UCRY's demurrage claim and dismiss UCRY's petition on the merits.

IV. CONCLUSION

For the reasons set forth above, Kenco requests that: (1) the Board deem UCRY as having admitted Kenco's requests for admission; and (2) the Board order UCRY to answer the interrogatories and provide responses to the requests for production or, in the alternative, that the Board strike UCRY's demurrage claim and dismiss UCRY's petition on the merits. Kenco also requests its attorneys' fees as provided by 49 C.F.R. § 1114.31(d).

DATED this 30th day of March, 2018.

KIRTON McCONKIE

/s/ Shawn T. Richards

Shawn T. Richards

Jackie Bosshardt

Attorneys for Kenco

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of March, 2018, I caused a true and correct copy of the foregoing **KENCO's MOTION TO: (1) DEEM REQUESTS FOR ADMISSION ADMITTED; AND (2) COMPEL ANSWERS TO INTERROGATORIES AND RESPONSES TO REQUESTS FOR PRODUCTION OR, IN THE ALTERNATIVE, TO STRIKE UCRY's DEMURRAGE CLAIM AND DISMISS THE PETITION ON THE MERITS** to be served by email and U.S. Mail, postage prepaid, on the following:

Louis E. Gitomer
LAW OFFICES OF LOUIS E. GITOMER, LLC
600 Baltimore Avenue, Suite 301
Towson, Maryland 21204-4022
lou@lgrailaw.com

/s/Terri White _____

Exhibit 1

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

**KENCO LOGISTIC SERVICES, LLC'S FIRST SET OF REQUESTS
FOR PRODUCTION, INTERROGATORIES AND REQUESTS
FOR ADMISSIONS TO PETITIONER**

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Jackie Bosshardt, Esq.
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Salt Lake City, UT 84145-0120
srichards@kmclaw.com
Attorneys for Respondents

Dated: February 22, 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.

**KENCO LOGISTIC SERVICES, LLC'S FIRST SET OF REQUESTS
FOR PRODUCTION, INTERROGATORIES AND REQUESTS
FOR ADMISSIONS TO PETITIONER**

Respondent, Kenco Logistic Services, LLC ("Kenco"), through counsel and pursuant to 49 C.F.R. §§ 1114.26, 1114.27, 1114.30, propounds the following Requests for Production, Interrogatories, and Requests for Admission (collectively the "Discovery Requests") to Petitioner Utah Central Railway Company, LLC ("UCRY") to be answered separately and fully, in writing, within 15 days.

In answering the ensuing Discovery Requests, UCRY must produce all information, documents and things that are available to it or subject to its reasonable inquiry, including information in the possession of its attorneys, accountants, advisors, or other persons directly or indirectly employed by or connected with it, and anyone else otherwise subject to its control. Kenco requests that the responses to its Discovery Requests, including all documents and things, be produced at the offices of Kirton McConkie, c/o Shawn T. Richards and Jackie Bosshardt, 50 East South Temple, Suite 400, Salt Lake City, Utah 84111.

DEFINITIONS AND INSTRUCTIONS

The following Definitions and Instructions are incorporated by reference in these Discovery Requests:

A. “UCRY” shall mean and refer to Utah Central Railway Company, LLC, including its agents, principals, employees, or any others acting on behalf of UCRY.

B. “Kenco” shall mean and refer to Kenco Logistic Services, LLC, including its agents, principals, employees, or any others acting on behalf of Kenco.

C. “BNSF” shall mean and refer to the Burlington Northern and Santa Fe Railway, including its agents, principals, employees, or any others acting on behalf of BNSF.

D. “Union Pacific” shall refer to the Union Pacific Railroad, including its agents, principals, employees, or any others acting on behalf of Union Pacific.

E. The term “BDO” refers to the Business Depot Ogden.

F. “Class I railroad” has the meaning as defined by the Surface Transportation Board.

G. The terms “You,” “Your,” or “Yours” shall mean and refer to UCRY.

H. The terms “switch” and “spot” shall refer to the process by which UCRY removes railcars that have been released by a customer and/or brings consigned cars to a customer.

I. “Interchange” shall refer to the process by which railcars are transferred to or from a Class I railroad.

J. The term “Federal Action” shall refer to Case No. 17-cv-00020, in the United States District Court for District of Utah, initiated by UCRY through filing the Complaint, and styled as *Utah Central Railway Company, LLC v. Kenco Logistic Services, LLC and Kenco Group*, including all claims and defenses included therein.

K. The term “Complaint” shall refer to the Complaint filed by UCRY in the Federal Action.

L. The term “Petition” shall refer to the Petition filed by UCRY in this action before the STB, Docket No. FD 361310.

M. The conjunctives “and” and “or” as used herein shall be construed both conjunctively and disjunctively and each shall include the other wherever such dual construction will serve to bring within the scope of these Discovery Requests information which would otherwise not be brought within their scope.

N. All words in any gender shall be deemed to include the masculine, feminine, or neutral gender, all singular words shall include the plural, and all plural words shall include the singular, as the context may require.

O. “Person” means, in the plural as well as in the singular, any natural person, governmental entity, agency, commission, company, authority, firm, corporation, partnership, association, joint venture, or other form of legal entity, or any representative thereof.

P. “Document” means all writings or recordings within the scope of 49 CFR 1114.30, and shall include the most expansive view of that term, including but not limited to, electronic documents and data, papers, notes, records, books and writings; photostats, photographs, sound, film, video and/or digital recordings; computer disks or files; every other means of recording upon any tangible thing, including any form of communication or representation, including letters, e-mails, words, pictures, sounds or symbols or any combinations thereof, memoranda (internal, interoffice, or otherwise), notes, shorthand or stenographer’s notebooks, correspondence, telexes and telegrams (whether received or sent) and/or minutes or notes of meetings; contracts, agreements, understandings, commitments,

proposals, or other similar business dealings; accountants' notes, working papers, and reports; recordings, transcriptions, memoranda or notes made of any telephone communication or face-to-face oral conversation between or among any persons; computer printouts, reports or other output and the applicable program or programs therefore; instruments of assignment, transfer or conveyance; expense reports, financial reports, financial statements, income statements, balance sheets, and ledgers, including pro forma financials; calendar, day timer or diary entries; and studies, reports, books, pamphlets and brochures.

Q. In answering, You must furnish all information available to You, including, by way of illustration only and not limited to, all information in the possession of Your attorneys or their investigators or in the possession of Your advisors, accountants, agents, or representatives.

R. If You are unable to answer any Discovery Request fully and completely after exercising due diligence to make inquiry and secure the information necessary to do so, because the subject matter is privileged or otherwise unavailable, please so state, answer each such interrogatory and request to the extent possible, specify the portion of such interrogatory or request that You claim You are unable to answer fully and completely, state the facts on which you rely to support Your contention that You are unable to answer that interrogatory or request fully and completely, and state what knowledge, information and belief You have concerning the unanswered portion of each such interrogatory or request.

S. The terms "identify" or "identity" when applied to a person shall mean to state the full name, occupation, job title, employer's name and address and present or last known (specify which) office and home address(es) and telephone numbers of such person.

T. The terms "identify" or "identity" when applied to a business or other entity shall mean to state its full name, the address of its principal place of business or principal place of

activity if it is not a business, its telephone number, all fictitious names or trade names under which such entity conducts business or any other activity, the type of organization it is, the state and date of incorporation or establishment, its chief executive or operating officer, and its principal business or other activity.

U. The terms “identify” or “identity” when applied to documents, including written agreements, shall mean to state their dates, titles, Bates number, and the substance thereof, and identify their authors, addressees, and carbon copy addressees, with such reasonable particularity as to suffice for a specific request for production, and their present or last known (specify which) custodian and location.

V. The terms “identify” or “identity” when applied to an oral communication or verbal agreement shall mean to state the date and substance thereof, whether such oral communication or agreement took place by telephone, face-to-face or otherwise, identify each person and witness thereto.

W. The term “evidencing” as used herein, means pertaining to, concerning, referring to, relating to, reflecting, describing, supporting, memorializing, constituting, disclosing, embodying, associated or connected with the matter discussed.

X. The terms “communication” or “correspondence” “means all verbal, telephone, written and/or electronic communications, including those you have possession of, access to and/or knowledge of.

Y. If any Discovery Request is objected to by a claim of privilege, You are directed to identify the document, communication, or other information which is withheld by the claim of privilege, state the general subject matter of the document, communication, or other information withheld, and state the privilege claimed. In addition, if You withhold from production any

document on the ground that it is protected by any privilege or by the work product doctrine, furnish the following information:

1. Date of document;
2. Author(s);
3. Addressee(s);
4. Persons who received copies;
5. Title of file in which document was contained;
6. Name of person who prepared and maintained files;
7. Subject of document; and
8. Nature of privilege claimed

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1: Produce all Documents referred to and/or relied upon by You in (a) preparing the Complaint, (b) preparing the Petition, and (c) responding to the ensuing Interrogatories, and Requests for Admission.

REQUEST NO. 2: Produce all Documents that in any way support Your claim against Kenco for demurrage, including without limitation all Documents and records that support Your methodology for calculating demurrage.

REQUEST NO. 3: Produce all Documents and evidence that You intend to present to the STB in support of your claims in the Petition.

REQUEST NO. 4: Produce all Documents and communications related to railcars consigned and/or sent to Kenco that were interchanged, placed, constructively placed, switched, or spotted by You during 2015 and 2016.

REQUEST NO. 5: Produce all Documents containing or related to communications between UCRY and Kenco for the years 2015 through 2016.

REQUEST NO. 6: For the years 2015 and 2016, produce all Documents and communications between UCRY and BNSF related to switching and/or interchanging railcars as it relates to all railcars inbound and/or outbound to and/or from Kenco.

REQUEST NO. 7: For the years 2015 and 2016, produce all Documents and communications between UCRY and Union Pacific related to switching and/or interchanging railcars as it relates to railcars inbound and/or outbound from the BDO.

REQUEST NO. 8: Produce all internal Documents and communications mentioning or relating to Kenco for the years 2015 and 2016.

REQUEST NO. 9: Produce all Documents and communications relating to any alleged or claimed congestion, bunching, or stacking on UCRY's rails and/or the Class I railroads at or within 100 miles of the BDO during 2015 and 2016.

REQUEST NO. 10: Produce all Documents and communications relating to demurrage charges against Kenco for the years 2015 and 2016.

REQUEST NO. 11: Produce all Documents and communications relating to UCRY's efforts to collect demurrage charges against Kenco for the years 2015 and 2016.

REQUEST NO. 12: Excluding attorney/client communications, produce all internal communications between UCRY agents, employees and/or representatives for the years 2015 and 2016 that relate in any way to (a) problems or concerns with BNSF and/or Union Pacific regarding interchanges in the area of the BDO, (b) repairs or maintenance of track or locomotives at the BDO, (c) problems or concerns relating to the need for additional equipment,

employees, or contractors at the BDO to meet customer requests for spotting, switching, and/or placing.

REQUEST NO. 13: Produce all Documents, including but not limited to policies and communications, related to granting demurrage credit.

REQUEST NO. 14: Produce all Documents, including but not limited to policies, related to demurrage billing, collection of demurrage, and settlement of demurrage disputes.

REQUEST NO. 15: Produce all Documents and communications related to UCRY's efforts to bill, collect, or settle demurrage charges with Kenco.

REQUEST NO. 16: Produce all Documents including, but not limited to, formal or informal complaints and/or communications from all UCRY customer(s) relating to requests for switches, lack of switches, late switches, and/or inconsistent switches for the years 2013 through 2016.

REQUEST NO. 17: Produce all Documents, including but not limited to communications, evidencing notice from UCRY to Kenco of the delivery, constructive placement, and/or actual/physical placement of all railcars consigned to and/or delivered to Kenco in 2015 and 2016

REQUEST NO. 18: Excluding attorney-client communications, produce all communications between UCRY on one hand and any person on the other that relates or refers in any way to Kenco, the Federal Action, and/or the Petition,

REQUEST NO. 19: Excluding attorney-client communications, produce all communications between UCRY on one hand and any person on the other that relates or refers in any way to lack of switches, late switches, need for more interchanges with a Class I railroad, staffing problems, and/or equipment problems.

REQUEST NO. 20: Produce all Documents, including without limitation communications, between UCRY and BNSF that relate in any way to UCRY expressing a concern for insufficient switches and/or interchanges.

REQUEST NO. 21: Produce all Documents reflecting fees assessed, and the calculation of such fees, against UCRY by BNSF and/or Union Pacific, including car hire charges for the years 2013 through 2016, for all cars delivered to and/or from Kenco.

REQUEST NO. 22: Produce all Documents and Communications between UCRY and the Surface Transportation Board related to attempts by the STB to mediate UCRY's dispute with Kenco.

REQUEST NO. 23: Produce all Documents related to UCRY's conversion to the RailConnect system, including the timeline for converting to the RailConnect system, process for converting to RailConnect, potential system glitches, actual system glitches, any training provided to UCRY customers (including Kenco), any support provided to UCRY customers, etc.

REQUEST NO. 24: Produce all Documents and Communications reflecting complaints UCRY has received from customers, employees, Union Pacific, and BNSF regarding problems, glitches, difficulties, and any other errors with the RailConnect system.

REQUEST NO. 25: Produce all UCRY internal communications regarding problems, glitches, difficulties, and any other errors with the RailConnect system.

REQUEST NO. 26: Produce all Documents, including without limitation communications, between UCRY and Union Pacific that relate in any way to UCRY expressing a concern for insufficient switches and/or interchanges.

REQUEST NO. 27: Produce all Documents related to and/or sufficient to show the amount in fees and/or penalties UCRY was assessed from BNSF for all railcars UCRY is seeking to collect demurrage on from Kenco.

REQUEST NO. 28: Produce all Documents related to and/or sufficient to show how much in fees and/or penalties UCRY was assessed from Union Pacific for all railcars UCRY is seeking to collect demurrage on from Kenco.

REQUEST NO. 29: Produce all Documents related to and/or sufficient to show how much in fees and/or penalties UCRY was assessed from any other Class 1 railroad (other than Union Pacific and BNSF) for all railcars UCRY is seeking to collect demurrage on from Kenco.

REQUEST NO. 30: Produce all Documents related to and/or sufficient to show the amount of demurrage UCRY collected from all customers, on a customer by customer basis, at the BDO during 2013 through 2016.

REQUEST NO. 31: Produce all Documents related to and/or sufficient to show the amount of fees/penalties UCRY was assessed from any Class 1 railroad during 2013 through 2016.

REQUEST NO. 32: If You are taking, or have taken, the position that there were insufficient interchanges between You and Union Pacific, BNSF and/or any other Class 1 railroad during the years 2015 through 2016 for railcars inbound and/or outbound from the BDO, produce all Documents supporting that position and all Documents in which that position was asserted.

REQUEST NO. 33: Produce all Documents from any source that relate and/or refer in any way to any railcar for which you are seeking demurrage against Kenco.

REQUEST NO. 34: Produce all Documents and communications regarding the reason and/or cause for You constructively placing railcars for Kenco rather than physically/actually placing the railcars. Your response to this Request should be limited to only railcars for which you assessed demurrage that You are now seeking to recover and should be sufficient to identify each railcar.

INTERROGATORIES

INTERROGATORY NO. 1: Identify all persons involved in deciding when and whether UCRY will switch or spot cars for any particular customer at the BDO.

INTERROGATORY NO. 2: Identify all persons involved in deciding when and whether UCRY will interchange cars with a Class I railroad for railcars inbound and/or outbound from the BDO.

INTERROGATORY NO. 3: Explain UCRY's methodology for deciding which customers at the BDO it will service each day.

INTERROGATORY NO. 4: Explain the methodology and process for how UCRY determines demurrage credit.

INTERROGATORY NO. 5: Identify all UCRY personnel authorized to grant demurrage credit.

INTERROGATORY NO. 6: For each invoice attached to the Complaint and for which you seek payment, explain how UCRY determined the number of credit days to apply to each car listed in the invoice.

INTERROGATORY NO. 7: Explain in detail Your position on whether UCRY received adequate interchanges with Union Pacific, BNSF and/or any other Class 1 railroad for railcars bound for the BDO during the years 2015 and 2016.

INTERROGATORY NO. 8: For all railcars that were constructively placed by You for Kenco and upon which You are seeking demurrage, identify with particularity all reasons and/or justifications as to why the subject railcar was constructively placed and not actually/physically placed.

INTERROGATORY NO. 9: Identify the total amount of fees and/or other penalties (including car hire charges) that You were assessed by Union Pacific for railcars placed by You for Kenco and upon which you claim demurrage is owing by Kenco. Your answer to this Interrogatory should include the identity of the subject railcar and the amount of the fee and/or penalty assessed by Union Pacific for that railcar.

INTERROGATORY NO. 10: Identify the total amount of fees and/or other penalties (including car hire charges) that You were assessed by BNSF for railcars placed by You for Kenco and upon which you claim demurrage is owing by Kenco. Your answer to this Interrogatory should include the identity of the subject railcar and the amount of the fee and/or penalty assessed by Union Pacific for that railcar.

INTERROGATORY NO. 11: Identify the total amount of fees and/or other penalties (including car hire charges) that You were assessed by any Class 1 railroad (other than BNSF and Union Pacific) for railcars placed by You for Kenco and upon which you claim demurrage is owing by Kenco. Your answer to this Interrogatory should include the identity of the subject railcar and the amount of the fee and/or penalty assessed by the Class 1 railroad for that railcar.

INTERROGATORY NO. 12: For all railcars that were constructively placed by You for Kenco and upon which You are seeking demurrage as part of this STB action, identify any person and/or entity (other than Kenco) who/that contributed to the railcar being constructively placed rather than physically/actually placed.

INTERROGATORY NO. 13: For each railcar that was constructively placed by You and for which you are seeking demurrage as a part of this STB action, identify with specificity each and every reason You attribute to Kenco as to why each such railcar was constructively placed rather than physically/actually placed. Your answer this this Interrogatory should be specific to each time demurrage was assessed for a particular railcar.

INTERROGATORY NO. 14: Identify all railcars that You constructively placed for Kenco, and upon which You are now seeking demurrage in this STB action, that were constructively placed due to the fault of someone other than Kenco.

INTERROGATORY NO. 15: Identify all demurrage at issue in this STB action that You assessed to Kenco for railcars sitting on Kenco's spur after Kenco notified You that said railcars were ready to be switched.

INTERROGATORY NO. 16: Identify all demurrage that you are seeking to recover in this STB action for constructively placed cars that accrued after Kenco notified You that it had room on its spur for the railcars.

INTERROGATORY NO. 17: Identify all communications between UCRY and the Surface Transportation Board related to attempts by the STB to mediate UCRY's dispute with Kenco.

INTERROGATORY NO. 18: Outline UCRY's process for adopting the RailConnect system, including when it began considering adoption, why it chose to adopt RailConnect, the

steps involved in the adoption, notice provided to customers, training provided to customer, timeline for adoption and training, etc.

INTERROGATORY NO. 19: Identify all complaints UCRY has received from customers, employees, Union Pacific, and BNSF related to glitches, problems, or difficulties with the RailConnect system.

INTERROGATORY NO. 20: Identify all problems, difficulties, and glitches that UCRY has experienced with the RailConnect System.

INTERROGATORY NO. 21: For each railcar on which You assessed demurrage to Kenco, identify whether bunching or stacking caused by a Class 1 railroad contributed to the demurrage. Your response to this Interrogatory should identify the specific railcar at issue, the total demurrage assessed for that railcar, and an explanation on how bunching or stacking from the Class 1 railroad contributed to the demurrage.

INTERROGATORY NO. 22: For each railcar on which You assessed demurrage to Kenco identify whether inadequate interchanges with the Class 1 railroad contributed to the demurrage. Your response to this Interrogatory should identify the specific railcar at issue and the total demurrage assessed for that railcar and the reason insufficient interchanges from the Class 1 railroad contributed to the demurrage.

INTERROGATORY NO. 23: If any of Your responses to the ensuing Requests for Admission are anything other than an unqualified admission, state with particularity the factual basis and reason for Your response.

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.

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.

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

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.

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.

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.

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.

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.

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.

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.

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

DATED this 22nd day of February, 2018

KIRTON McCONKIE

/s/ Shawn T. Richards
Shawn T. Richards
Jackie Bosshardt
50 E. South Temple, Suite 400
Salt Lake City, UT 84111
Attorneys for Specialized Rail Services, LLC;
Kenco Logistic Services, LLC

CERTIFICATE OF SERVICE

I certify that on the 22nd day of February 2018, I caused a true and correct copy of the foregoing **KENCO LOGISTIC SERVICES, LLC's FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION, AND REQUESTS FOR ADMISSION TO**

PETITIONER to be served on the foregoing by email and U.S. Mail, postage prepaid:

LAW OFFICES OF LOUIS E. GITOMER, LLC

Louis E. Gitomer

lou@lgrailaw.com

600 Baltimore Avenue, Suite 301

Towson, Maryland 21204-4022

/s/ Terri L. White

Exhibit 2

From: Shawn T. Richards
Sent: Thursday, March 08, 2018 3:26 PM
To: 'Louis E. Gitomer'
Cc: Brinton M. Wilkins
Subject: RE: FD 36131 Utah Central v. Kenco and SRS

That works well. Let's plan on Tuesday the 20th.

Thank you,
Shawn

From: Louis E. Gitomer [<mailto:Lou@lgraillaw.com>]
Sent: Thursday, March 08, 2018 3:25 PM
To: Shawn T. Richards
Cc: Brinton M. Wilkins
Subject: RE: FD 36131 Utah Central v. Kenco and SRS

Shawn – How about Tuesday the 20th? I'm traveling at the end of the week. Lou

Louis E. Gitomer

600 Baltimore Avenue, Suite 301
Towson, MD 21204
(410) 296-2250
Lou@lgraillaw.com

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From: Shawn T. Richards [<mailto:srichards@kmclaw.com>]
Sent: Thursday, March 08, 2018 5:23 PM
To: Louis E. Gitomer
Cc: Brinton M. Wilkins
Subject: RE: FD 36131 Utah Central v. Kenco and SRS

Dear Lou:

Would you be amenable to a brief extension of our deadline to serve discovery responses (for SRS and Kenco)? They are due this coming Monday and we'd like to have until Friday, March 16. We'd be happy to have your responses come due the same day.

Please let us know.

Thanks,

Shawn

Shawn T. Richards

Attorney

o 801-328-3600

d 801-323-5931

From: Louis E. Gitomer [<mailto:Lou@lgraillaw.com>]

Sent: Thursday, February 22, 2018 1:04 PM

To: Shawn T. Richards

Subject: FW: FD 36131 Utah Central v. Kenco and SRS

Shawn – I tried to send this yesterday and it bounced back. I'm trying again. Let me know if you receive it. Thanks. Lou

Louis E. Gitomer

600 Baltimore Avenue, Suite 301

Towson, MD 21204

(410) 296-2250

Lou@lgraillaw.com

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From: Louis E. Gitomer

Sent: Wednesday, February 21, 2018 5:01 PM

To: 'Shawn T. Richards'

Subject: FD 36131 Utah Central v. Kenco and SRS

Shawn – Attached are UCRY's discovery requests. Let me know if you have any questions. Thanks. Lou

Louis E. Gitomer

600 Baltimore Avenue, Suite 301

Towson, MD 21204

(410) 296-2250

Lou@lgraillaw.com

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Exhibit 3

Subject: FW: STB Docket No. FD 36131

From: Louis E. Gitomer [<mailto:Lou@lgrailaw.com>]
Sent: Thursday, March 22, 2018 1:47 PM
To: Brinton M. Wilkins
Subject: RE: STB Docket No. FD 36131

Brinton – We are working on providing documents with our client. I will check with them on production and let you know. Lou

Louis E. Gitomer

600 Baltimore Avenue, Suite 301
Towson, MD 21204
(410) 296-2250
Lou@lgrailaw.com

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From: Brinton M. Wilkins [<mailto:bwilkins@kmclaw.com>]
Sent: Thursday, March 22, 2018 3:44 PM
To: Louis E. Gitomer
Subject: STB Docket No. FD 36131

Mr. Gitomer,

I represent Specialized Rail Service ("SRS"). SRS served discovery responses and documentation on Tuesday, March 20. Please let me know when we can expect to receive UCRY's discovery responses and documentation.

Thanks,
Brinton

KIRTON | McCONKIE

Kirton McConkie Building
50 E. South Temple #400
Salt Lake City, UT 84111
kmclaw.com

Brinton M. Wilkins
Attorney

o 801-328-3600
d 801-350-7620
f 801-321-4893
bwilkins@kmclaw.com

CONFIDENTIALITY NOTICE: This communication may contain attorney-client privileged information. If you received this communication in error, please alert me by reply email, and delete it immediately. Do not misuse or transmit the information to anyone. Thank you.

Exhibit 4

AFFIDAVIT OF SHAWN T. RICHARDS

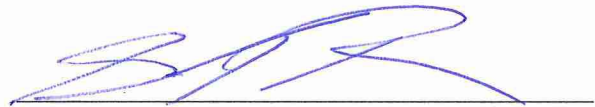
STATE OF UTAH)
 :SS
COUNTY OF SALT LAKE)

I, SHAWN T. RICHARDS, declare the following under oath:

1. I am over the age of 18 and am competent to make the statements contained in this affidavit. Furthermore, I make this affidavit based upon my own knowledge.

2. I am counsel for Kenco Logistic Services, LLC and Kenco Group (collectively, "Kenco"), in the matter currently pending before the Surface Transportation Board: *Utah Central Railway Company, LLC v. Kenco Logistic Services, LLC, Kenco Group, and Specialized Rail Service, Inc.*, Docket No. 36131.

3. As of March 30, 2018, at the filing of this Affidavit, Utah Central Railway Company, LLC ("UCRY") has not provided objections or any response to the interrogatories, requests for production, and requests for admission that Kenco served on UCRY on February 22, 2018.


Shawn T. Richards

SUBSCRIBED AND SWORN to before me this 30th day of March, 2018.




Notary Public
State of Utah