

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

242113

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Public Record

RICHARD BEST TRANSFER, INC.,	)	
	)	
Complainant,	)	
	)	
v.	)	NOR 42149
	)	
UNION PACIFIC RAILROAD COMPANY,	)	
	)	
Defendant.	)	
	)	

ANSWER

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November 23, 2016

RICHARD BEST TRANSFER, INC.,
Complainant,
v.
UNION PACIFIC RAILROAD COMPANY,
Defendant.

Union Pacific Railroad Company (“Union Pacific”) hereby answers the Complaint of Richard Best Transfer, Inc. (“RBT”) filed November 3, 2016. In many cases, RBT’s Complaint contains multiple factual allegations, characterizations of its claims, arguments, and legal conclusions within the same paragraph, and often within a single sentence. In this Answer, Union Pacific has done its best to answer what appear to be the central allegations in each numbered paragraph. To the extent that Union Pacific does not specifically admit an allegation in the Complaint, that allegation is denied.

The unnumbered paragraphs on pages 1 through 4 of the Complaint consist of a narrative summary of RBT's allegations, legal arguments, and requested relief, to which no response is required.

1. Union Pacific lacks sufficient information to form a belief about the truth of the allegations in Paragraph 1.

2. Union Pacific admits that it is a Delaware corporation; that it is a common carrier by rail engaged in the transportation of freight in interstate commerce; and that it is generally subject to the jurisdiction of the Surface Transportation Board under the Interstate Commerce Commission Termination Act of 1995. The allegations in the third sentence of Paragraph 2 consist of legal arguments and conclusions to which no response is required.

3. Union Pacific admits that RBT operates a rail transloading facility located at Dinuba or Ivory, California, known as RBT-Ivory, and that it receives bulk agricultural feed products at RBT-Ivory in unit train service, including the products described in Paragraph 3. Union Pacific lacks sufficient information to form a belief about the truth of the remaining allegations in Paragraph 3.

4. Union Pacific admits that the shippers named in Paragraph 4 have shipped to RBT-Ivory. Union Pacific lacks sufficient information to form a belief about the truth of the remaining allegations in Paragraph 4.

5. Union Pacific admits the allegations in the first sentence of Paragraph 5. Union Pacific denies the allegations in the second sentence of Paragraph 5.

6. Union Pacific admits that RBT completed upgrades to RBT-Ivory in 2011 and that Union Pacific reestablished unit train rates to RBT-Ivory after the upgrades were completed. Union Pacific lacks sufficient information to form a belief about RBT's costs to upgrade RBT-Ivory or the operations performed by the San Joaquin Valley Railroad ("SJVR") at RBT-Ivory. Union Pacific denies the allegations in the fourth sentence of Paragraph 6. The remaining allegations in Paragraph 6 consist of arguments to which no response is required.

7. Union Pacific lacks sufficient information to form a belief about the truth of the allegations in Paragraph 7.

8. Union Pacific admits that RBT's investments at RBT-Ivory do not impose costs on Union Pacific. Union Pacific lacks sufficient information to form a belief about the truth of the remaining allegations in Paragraph 8.

9. Union Pacific admits that RBT has a facility served by SJVR at Hollis, California, which is near Famoso, California, and that Union Pacific has had discussions with Gavilon regarding RBT's plans to expand its facilities at Hollis. Union Pacific lacks sufficient information to form a belief about the truth of the remaining allegations in Paragraph 9.

10. Union Pacific lacks sufficient information to form a belief about the truth of the allegations in the first sentence of Paragraph 10, except Union Pacific denies that it interchanges unit trains destined for RBT-Ivory with SJVR at Fresno, California. Union Pacific states that the Open and Prepay Station List speaks for itself. Union Pacific further states that SJVR may not establish rates or switch fees on through freight services with Union Pacific for shipments to RBT-Ivory, but that SJVR is not prohibited from entering into refund agreements or similar agreements with shippers or RBT-Ivory relating to shipments to RBT-Ivory.

11. Union Pacific states that the Open and Prepay Station List speaks for itself, and that it lacks sufficient information to form a belief about the truth of the remaining allegations in Paragraph 11.

12. Union Pacific states that the Open and Prepay Station List speaks for itself. Union Pacific denies that it has blocked BNSF from delivering unit trains to SJVR at Fresno or Hanford, California. Union Pacific denies that BNSF Railway ("BNSF") can deliver only single cars to SJVR. Union Pacific lacks sufficient information to form a belief about the truth of the remaining allegations in Paragraph 12.

13. Union Pacific states that the map attached to RBT's Complaint speaks for itself. Union Pacific further states that the map does not show all stations served by railroads in the area depicted by the map. Union Pacific denies that the map shows how traffic moves to RBT-Ivory.

14. Union Pacific admits that tariff UP 4053 is a pricing authority that Union Pacific has long used for movements of certain feed ingredients to Central California. Union Pacific admits that in some instances multiple rail stations are treated as origin groups or destination groups for purposes of establishing the same rates on movements to or from multiple stations.

15. Union Pacific admits that from October 2011 through October 31, 2016, tariff UP 4053 included RBT-Ivory as a destination for unit train movements and that rates for shipments to RBT-Ivory were the same as rates to nearby facilities that Union Pacific serves directly. Union Pacific denies that all receivers located anywhere throughout the Central or San Joaquin Valley are or were included in the "Central Cal Train Group" or the "CA Group." Union Pacific denies that all receivers included in the "Central Cal Train Group" or the "CA Group" are "like receivers." Union Pacific further states that tariff UP 4053 speaks for itself.

16. Union Pacific admits that from October 2011 through October 31, 2016, tariff UP 4053 included RBT-Ivory as a destination for unit train movements and that rates for shipments to RBT-Ivory were the same as rates to nearby facilities that Union Pacific serves directly, including Western Milling's facility at Goshen Junction. Union Pacific further states that tariff UP 4053 speaks for itself. The remaining allegations in Paragraph 16 consist of arguments and legal conclusions to which no response is required.

17. Union Pacific states that Item 4011-BH of tariff UP 4053-C speaks for itself.

18. Union Pacific states that Item 4021-U of tariff UP 4053-C speaks for itself.

19. Union Pacific states that Item 4431-Z of tariff UP 4053-C speaks for itself.

20. Union Pacific admits that it issued Announcement Number AG2016-50 on September 22, 2016, and states that Announcement Number AG2015-50 speaks for itself.

21. Union Pacific admits that Western Milling has addressed with Union Pacific the issue of rates to locations on Union Pacific's main line and locations on SJVR in the Fresno area.

22. Union Pacific admits that it restored the rate differential to SJVR-served destinations in tariff UP 4053 in part to address issues raised by Western Milling regarding rates to locations on Union Pacific's main line and locations on SJVR in the Fresno area.

23. Union Pacific admits that it implemented revisions to tariff UP 4053 in accordance with Announcement Number AG2016-50 and state that the tariff provisions speak for themselves.

24. Union Pacific states that Item 4011-BJ of tariff UP 4053 speaks for itself.

25. Union Pacific states that Item 4021-V of tariff UP 4053 speaks for itself.

26. Union Pacific states that Item 4431-AA of tariff UP 4053 speaks for itself.

27. Union Pacific states that tariff UP 4053 speaks for itself, but denies that facilities directly served by Union Pacific are similar to RBT-Hollis, which is located on SJVR.

28. Union Pacific admits that RBT was informed that the similar rate differentials would be applied to other commodities moving to RBT facilities located on SJVR, as compared with commodities moving to facilities located on Union Pacific's main line in the Fresno area. The remaining allegations in Paragraph 28 consist of arguments to which no response is required.

29. Union Pacific admits that the rate differentials at issue apply to facilities located on SJVR. The remaining allegations in Paragraph 29 consist of arguments and legal conclusions to which no response is required.

30. Union Pacific admits that a \$250-per-car rate differential would amount to \$25,000 for a 100-car unit train. Union Pacific denies the allegations in the second sentence of Paragraph 30.

31. Union Pacific denies that it has unfairly targeted RBT. Union Pacific admits that RBT previously owned a transloading facility located on SJVR at Conner, California, and that rates for unit train shipments of feed products to Conner are \$125 more than the rates charged for unit train shipments of feed products to Western Milling's facility located on Union Pacific's main line at Famoso, California. Union Pacific lacks sufficient information to form a belief about the truth of the remaining allegations in Paragraph 31.

32. Union Pacific admits that Quality Grain operates the facility that RBT formerly operated at Conner. Union Pacific denies that it raised rates to Conner in response to a request from Western Milling. Union Pacific denies that it has blocked BNSF unit train access to RBT-Ivory. Union Pacific lacks sufficient information to form a belief about the truth of the remaining allegations in Paragraph 32.

33. Union Pacific denies that facilities located on its main line are not superior in some respects to RBT-Ivory. Union Pacific denies that providing unit train service to RBT-Ivory before RBT upgraded its facilities at RBT-Ivory did not impose costs on Union Pacific. Union Pacific admits that it told RBT that RBT-Ivory had to upgrade its facilities in order for Union Pacific to reestablish market-based rates for unit train shipments to RBT-Ivory. Union Pacific lacks sufficient information to form a belief as to the truth of RBT's allegations regarding the amount RBT spent to upgrade its facilities at RBT-Ivory.

34. Union Pacific lacks sufficient information to form a belief as to the truth of RBT's allegations in Paragraph 34, except it denies that RBT's investments at RBT-Ivory since 2011 have benefited Union Pacific's operations.

35. Union Pacific denies that RBT-Ivory's facilities are not inferior in some respects to facilities located on Union Pacific's main line. The remaining allegations Paragraph 35 consist of arguments to which no response is required.

36. Union Pacific denies the allegations in Paragraph 36.

37. Union Pacific lacks sufficient information to form a belief as to the truth of RBT's allegations in Paragraph 37.

38. Union Pacific denies the allegations in the first sentence of Paragraph 38. Union Pacific lacks sufficient information to form a belief as to the truth of RBT's remaining allegations in Paragraph 38, several of which consist of arguments to which no response is required.

39. Union Pacific admits that RBT likely does not know the exact compensation arrangements between Union Pacific and SJVR.

40. Paragraph 40 consists of arguments to which no response is required. Union Pacific states that it sets the rates shippers pay for the traffic it interchanges with SJVR and that SJVR's compensation consists of a negotiated fee that cannot be unilaterally altered by SJVR or Union Pacific.

41. Union Pacific lacks sufficient information to form a belief as to the truth of RBT's allegations in Paragraph 41. Union Pacific admits that the rate adjustment is not intended to reflect an *increase* in Union Pacific's compensation to SJVR.

42. Paragraph 42 consists of arguments to which no response is required. Union Pacific states that it does incur higher costs on movements to RBT-Ivory than on movements to Goshen Junction, as shown in its reply to RBT's petition for a preliminary injunction.

43. Paragraph 43 consists of arguments to which no response is required. Union Pacific states that it does incur higher costs on movements to RBT-Ivory than on movements to Goshen Junction, as shown in its reply to RBT's petition for a preliminary injunction.

44. Union Pacific admits that it must pay crew costs and cover other operating costs when moving trains. Union Pacific further admits that when moving unit trains to Western Milling's facility at Goshen Junction it drops off the cars for unloading and the crew typically returns with the locomotive consist to Fresno. Union Pacific further admits that it typically sends a crew and locomotive consist from Fresno to retrieve empty cars at Goshen Junction. Union Pacific also admits that it must maintain its main line between Fresno and Goshen Junction, and that trains moving between Fresno and Goshen Junction consume capacity on that line.

45. Union Pacific denies the allegations in Paragraph 45. Union Pacific states that it typically interchanges unit trains destined to RBT-Ivory with SJVR at Union Pacific's Irrigosa Siding, and that Union Pacific compensates SJVR for delivering the trains to RBT-Ivory.

46. Paragraph 46 consists of arguments to which no response is required. Union Pacific states that it does incur higher costs on movements to RBT-Ivory than on movements to Goshen Junction, as shown in its reply to RBT's petition for a preliminary injunction.

47. Union Pacific admits that RBT counsel sent a letter to Union Pacific on October 25, 2016, and that the letter speaks for itself. Union Pacific denies that it did not respond in writing to RBT's letter.

48. Paragraph 48 consists of legal arguments and conclusions to which no response is required.

49. Union Pacific states that the Railroad Industry Agreement (“RIA”) speaks for itself.

50. Paragraph 50 consists of legal arguments and conclusions to which no response is required. Union Pacific further states that the RIA speaks for itself.

51. Paragraph 51 consists of legal arguments and conclusions to which no response is required. Union Pacific further states that the RIA speaks for itself.

52. Paragraph 52 consists of legal arguments and conclusions to which no response is required. Union Pacific further states that the RIA speaks for itself.

53. Union Pacific states that RBT’s letter to Union Pacific speaks for itself. Union Pacific admits that it has not reversed its tariff changes.

54. Union Pacific incorporates its answers to paragraphs 1-53 as if repeated in their entirety.

55. Union Pacific states that 49 U.S.C. § 10702 speaks for itself.

56. Paragraph 56 consists of legal arguments and conclusions to which no response is required.

57. Paragraph 57 consists of legal arguments and conclusions to which no response is required.

58. Union Pacific denies that RBT-Ivory’s facilities are equivalent to facilities at other destinations to which Union Pacific’s rate adjustment did not apply. Union Pacific denies that its costs of serving RBT-Ivory are no greater than its costs of directly serving nearby

facilities on its main line. The remaining allegations in Paragraph 58 consist of arguments to which no response is required.

59. Union Pacific denies that its rate adjustment does not serve a legitimate purpose. The remaining allegations in Paragraph 59 consist of arguments to which no response is required.

60. Union Pacific denies the allegation in Paragraph 60.

61. Paragraph 61 consists of arguments to which no response is required.

62. Paragraph 62 consists of arguments to which no response is required.

63. Paragraph 63 consists of arguments to which no response is required.

64. Paragraph 64 consists of arguments to which no response is required.

65. Paragraph 65 consists of arguments to which no response is required.

66. Paragraph 66 consists of arguments to which no response is required.

67. Paragraph 67 consists of arguments to which no response is required.

68. Paragraph 68 consists of arguments to which no response is required.

69. Paragraph 69 consists of legal arguments and conclusions to which no response is required.

70. Paragraph 70 consists of legal arguments and conclusions to which no response is required.

71. Paragraph 71 consists of legal arguments and conclusions to which no response is required.

72. Paragraph 72 consists of legal arguments and conclusions to which no response is required.

73. Paragraph 73 consists of legal arguments and conclusions to which no response is required.

74. Paragraph 74 consists of legal arguments and conclusions to which no response is required.

75. Union Pacific incorporates its answers to paragraphs 1-74 as if repeated in their entirety.

76. Union Pacific states that 49 U.S.C. § 10701(b) speaks for itself.

77. Union Pacific states that 49 U.S.C. § 10741(a) speaks for itself.

78. Paragraph 78 consists of legal arguments and conclusions to which no response is required.

79. Union Pacific denies that there is no legitimate cost or other justification for Union Pacific's rate adjustment. The remaining allegations in Paragraph 79 consist of legal arguments and conclusions to which no response is required.

80. Union Pacific denies the allegations in the first sentence of Paragraph 80. The remaining allegations in Paragraph 80 consist of legal arguments and conclusions to which no response is required.

81. Union Pacific denies that its costs of serving traffic moving to RBT-Ivory and other SJVR-served destinations are the same as those it incurs in serving nearby facilities on its main line. The remaining allegations in Paragraph 81 consist of legal arguments and conclusions to which no response is required.

82. Paragraph 82 consists of legal arguments and conclusions to which no response is required.

83. Paragraph 83 consists of legal arguments and conclusions to which no response is required.

84. Paragraph 84 consists of legal arguments and conclusions to which no response is required.

WHEREFORE Clause (on page 27): Union Pacific denies that RBT is entitled to any relief.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim for Relief)

1. RBT fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

(Jurisdiction)

2. The Board lacks jurisdiction over RBT's claims to the extent the claims involve movements pursuant to contracts.

WHEREFORE, Union Pacific requests that the Complaint be dismissed with prejudice; that no relief of any kind be awarded to RBT; that Union Pacific be awarded its costs; and that the Board grant Union Pacific such other and further relief as may be appropriate.

Respectfully submitted,

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November 23, 2016

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of November, 2016, I caused a copy of the foregoing document to be served by hand on all parties of record in Docket No. 42149.

/s/ Michael L. Rosenthal