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SERVICE DATE – LATE RELEASE DECEMBER 14, 2017

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36131

UTAH CENTRAL RAILWAY COMPANY, LLC V. KENCO LOGISTICS SERVICES, LLC;
KENCO GROUP; AND SPECIALIZED RAIL SERVICE, INC.—PETITION FOR
DECLARATORY ORDER

Decided: December 14, 2017

Upon referrals from the court in two cases before the United States District Court for the District of Utah, Northern Division, Utah Central Railway Company, LLC (UCRY), filed this case with the Board on June 27, 2017. UCRY requests that the Board issue a declaratory order in its favor regarding unpaid demurrage charges assessed to Kenco Logistics Services, LLC, and Kenco Group (collectively “Kenco”); and Specialized Rail Service, Inc. (SRS). On September 14, 2017, SRS and Kenco filed replies.

On October 26, 2017, the parties jointly filed a proposed procedural schedule. By decision served on November 27, 2017, the Board directed the parties to confer on the possibility of mediation or arbitration. On December 12, 2017, the parties notified the Board that they conferred but could not agree to arbitrate or mediate.

The Board has discretionary authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321 to issue a declaratory order to terminate a controversy or to remove uncertainty. Petitions for issuance of a declaratory order premised on a court referral are routinely accepted. Delegation of Auth.—Declaratory Order Proceedings, 5 I.C.C.2d 675, 676 (1989).

These matters have been referred by a court of competent jurisdiction and otherwise appear to be within the Board’s primary jurisdiction. Pursuant to the Board’s authority under § 554(e) and § 1321, a proceeding will be instituted to resolve the controversies at issue here. The Board will consider these matters under the modified procedure rules at 49 C.F.R. part 1112.

The parties’ proposed procedural schedule is based on the service date of the Board’s decision granting the request:

Completion of discovery	90 days from service
UCRY opening evidence	120 days from service
Respondents’ reply evidence	165 days from service
UCRY rebuttal evidence	185 days from service

The parties' joint proposed procedural schedule is reasonable and therefore will be adopted.

It is ordered:

1. A declaratory order proceeding is instituted.
2. All parties must comply with the Rules of Practice at 49 C.F.R. subchapter B including 49 C.F.R. parts 1112 and 1114.
3. The parties' joint motion for procedural schedule is granted.
4. The procedural schedule for the proceeding is:

Completion of discovery	March 14, 2018
UCRY opening evidence	April 13, 2018
Respondents' reply evidence	May 29, 2018
UCRY rebuttal evidence	June 18, 2018

5. This decision is effective on its date of service.
6. Copies of this decision will be mailed to:

The Honorable Dale A. Kimball
United States District Court for the District of Utah, Northern Division
351 South West Temple, Room 1.100
Salt Lake City, Utah 84101

The Honorable Robert J. Shelby
United States District Court for the District of Utah, Northern Division
351 South West Temple, Room 1.100
Salt Lake City, Utah 84101

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.