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SERVICE DATE – LATE RELEASE OCTOBER 22, 2010

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35387

AG PROCESSING INC A COOPERATIVE—PETITION FOR DECLARATORY
ORDER

Decided: October 22, 2010

On July 20, 2010, Ag Processing Inc A Cooperative (Ag Processing) filed a petition for declaratory order challenging one part of a Norfolk Southern Railway Company (NSR) tariff that addresses rail cars that are loaded in excess of their weight limits. Specifically, Ag Processing is concerned about how the tariff treats cars that become overloaded because of weather conditions.

NSR notified the Board that it had amended what it believed to be the controversial language and wanted to discuss the change with Ag Processing. Accordingly, NSR asked that the Board make its reply to Ag Processing's petition due on August 23, 2010. The Board granted this request in a decision served on August 6, 2010.

On August 23, 2010, NSR filed an answer to Ag Processing's July 20 petition. On the same day, Ag Processing filed an amended petition.¹ By letter filed on September 10, 2010, NSR alerted the Board that Ag Processing was going to file another amended petition, and the carrier asked that the Board make its reply to the forthcoming petition due 20 days after Ag Processing filed that petition. The Board granted this request in a decision served on September 14, 2010. Ag Processing filed its second amended petition on September 15, 2010,² and NSR filed an answer on September 24, 2010.

In a motion filed on September 28, 2010, Ag Processing and the other petitioners ask that the Board use its best efforts to bring about mediation of this case pursuant to 49 C.F.R. § 1109.1, and that the proceeding be held in abeyance pending the outcome of mediation. The petitioners believe that this proceeding has genuine mediation

¹ In the amended petition, Bunge North America, Inc. (Bunge) also appeared as a petitioner challenging NSR's tariff.

² In the second amended petition, in addition to Ag Processing and Bunge, Archer Daniels Midland Company, Louis Dreyfus Corporation, and Perdue Agribusiness, Inc. also appeared as petitioners challenging NSR's tariff.

possibilities. NSR filed a reply in which it states that it has no objection to the petitioners' requests for mediation and to hold the proceeding in abeyance.

The Board's regulations provide for the use of alternative dispute resolution (ADR), including mediation, in cases such as this upon the mutual consent of the parties. See 49 C.F.R. § 1109.1. Because the parties have consented to mediation in writing, the Board will provide for a 90-day period for non-binding mediation, and will designate a staff member to serve as mediator.³ The case will be held in abeyance for 90 days while the parties pursue a mediated agreement.

Within 5 business days of the effective date of this decision, the mediator shall contact the parties to discuss ground rules and the time and location of any meetings. At least 1 principal of each party who has the authority to commit that party, shall participate in the mediation and be present at any session at which the mediator requests that the principal be present. The parties are instructed to inform the Board when mediation has ended, with or without a resolution. The Board will take appropriate action at that point.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Mediation is ordered as described above. A member of the Board staff will be designated to serve as mediator pursuant to the instructions set forth above.
2. This case is held in abeyance for 90 days while ADR procedures are ongoing.
3. This decision is effective on its date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

³ Under 49 C.F.R. § 1109.1, additional 90-day periods can be requested.