

SERVICE DATE – MAY 1, 2018

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: May 1, 2018

Upon referrals from 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). The Board granted a joint request for a 60-day extension of the deadline for replies to UCRY’s petition. Utah Cent. Ry.—Pet. for Declaratory Order, FD 36131 (STB served July 10, 2017). The Board also served a separate decision directing the parties to confer on the possibility of mediation or arbitration. Utah Cent. Ry.—Pet. for Declaratory Order, FD 36131 (STB served Nov. 27, 2017). The parties did not agree to mediation or arbitration, and in a decision served December 14, 2017, the Board instituted a proceeding and adopted a procedural schedule, which included a period for discovery. On April 13, 2018, the Board adopted a revised procedural schedule.

On February 22, 2018, SRS and Kenco each served UCRY with a separate but similar “First Set of Requests for Production, Interrogatories and Requests for Admissions to Petitioner.” (SRS Mot., Ex. 1; Kenco Mot., Ex. 1.) Both sets of requests asked UCRY to respond in writing within 15 days; thereafter, however, the parties agreed that responses would be due on March 20, 2018. (SRS Mot., Exs. 1 & 2; Kenco Mot., Exs. 1 & 2.)

On March 29 and 30, 2018, SRS and Kenco, respectively, filed motions to compel, asserting that to date they had received no responses to their discovery requests. (SRS Mot., Ex. 4; Kenco Mot., Ex. 4.) Kenco and SRS each request that the Board: (1) deem UCRY as having admitted its requests for admission; (2) order UCRY to answer the interrogatories and provide responses to the requests for production (Kenco requests, in the alternative, that UCRY’s demurrage claim be struck and UCRY’s petition be dismissed); and (3) order UCRY to pay respondents’ attorneys’ fees. (SRS Mot. 5; Kenco Mot. 7.)

The deadlines to reply to the SRS and Kenco motions were April 18, 2018, and April 19, 2018, respectively. See 49 C.F.R. § 1114.31(a)(1). UCRY did not reply to either motion, but it filed an opening statement on April 20, 2018. The opening statement did not refer to the pending motions to compel.

Pursuant to 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.” The parties agreed upon March 20, 2018, as the date to serve discovery responses. (SRS Mot., Ex. 2; Kenco Mot., Ex. 2.) UCRY did not respond by the agreed-upon deadline, nor did UCRY reply to the subsequent motions filed by Kenco and SRS. Accordingly, the unopposed motions from Kenco and SRS to deem UCRY as having admitted their respective requests for admission will be granted. UCRY’s admissions are for the purposes of the pending proceeding only. 49 C.F.R. § 1114.27(a), (b).

Moreover, Kenco and SRS are entitled to a response from UCRY to their other discovery requests. Therefore, to the extent it has not already done so, UCRY will be directed to respond to the shippers’ interrogatories and requests for production of documents by May 8, 2018.

Kenco’s and SRS’s requests for attorneys’ fees will be addressed in a future decision.

It is ordered:

1. SRS’s motion filed on March 29, 2018, is granted to the extent discussed above.
2. Kenco’s motion filed on March 30, 2018, is granted to the extent discussed above.
3. UCRY is deemed to have admitted the requests for admission served upon UCRY by Kenco and SRS on February 22, 2018.
4. UCRY is directed to respond to the interrogatories and document production requests served upon UCRY by Kenco and SRS on February 22, 2018, by May 8, 2018.
5. This decision is effective on its date of service.

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