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ENTERED
Office of Proceedings
February 10, 2014
Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

NORTH AMERICA FREIGHT CAR
ASSOCIATION

Complainant,

v.

BNSF RAILWAY COMPANY, et al

Defendants.

 GRANTED Office of Proceedings	DECISION ID NO.: <u>43646</u>
	DECIDED DATE: <u>2/21/14</u>
	SERVICE DATE: <u>2/24/14</u>
	APPROVED: <u>Rachel D Campbell</u> Director
Docket NOR 42137 ☐	

MOTION TO DISMISS COMPLAINT

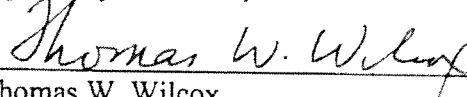
By Decision served on July 31, 2013, the Director of Proceedings granted the parties' joint motion to hold this proceeding in abeyance, pending possible dismissal of complainant North America Freight Car Association's (NAFCA) Complaint upon the formal conclusion of the parties' settlement discussions. NAFCA hereby informs the Board that the parties have successfully concluded their settlement discussions. An outcome of those discussions is a formal Settlement Agreement which has been executed by NAFCA and each of the defendants, and which is also binding on NAFCA's members. As part of the Settlement Agreement, NAFCA has agreed to dismiss its Complaint in its entirety, with such dismissal being with prejudice as to any "Covered Claim," as that term is defined in the Settlement Agreement, for any "Existing AAR Rule," as that term is defined in the Settlement Agreement, including but not limited to AAR

Interchange Rule 46.A.1.h. The parties' Settlement Agreement does not call for dismissal with prejudice of the Complaint with respect to any other claims or requests for relief, and the Complaint is therefore to be dismissed without prejudice as to any claims and requests for relief that are not "Covered Claims" for any "Existing AAR Rule." Accordingly, NAFCA requests that the Board:

- (1) Dismiss the Complaint in its entirety;
- (2) Dismiss with prejudice the claims in the Complaint that are "Covered Claims" for any "Existing AAR Rule," as each of those terms has been defined by the parties in their Settlement Agreement; and
- (3) Dismiss the Complaint without prejudice as to any other claims and requests for relief that are not "Covered Claims" for an "Existing AAR Rule," as each of those terms have been defined by the parties in their the Settlement Agreement.

The undersigned is authorized by counsel for each of the defendant parties in this case to represent to the Board that none of the defendant parties opposes this motion.

Respectfully submitted,



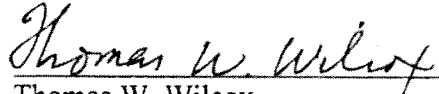
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Attorneys for North America Freight Car Association

Dated: February 10, 2014

CERTIFICATE OF SERVICE

I do hereby certify that on this 10th day of February, 2014, I have served a copy of the foregoing Motion to Dismiss Complaint by e-mail upon counsel for all Defendants.



Thomas W. Wilcox