

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42149

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

Decided: December 22, 2016

On November 3, 2016, Richard Best Transfer, Inc. (RBT), a transloading company, filed a complaint and a petition for a preliminary injunction with regard to certain revisions made by Union Pacific Railroad Company (UP) to UP Tariff 4053-C. RBT states that these tariff revisions would increase rates to its Ivory, Cal. transloading facility by \$250 per car. RBT alleges in its complaint that these tariff revisions constitute an unreasonable practice in violation of 49 U.S.C. § 10702 and unreasonable discrimination in violation of 49 U.S.C. §§ 10701(b) and 10741.<sup>1</sup> In its petition for preliminary injunction, RBT sought to enjoin UP from implementing the revisions, which were effective November 1, 2016.

On November 8, 2016, the Board issued an order requiring UP to reply to the petition for preliminary injunction on an expedited schedule. On November 16, 2016, UP filed its reply to the petition, and on November 23, 2016, UP filed its answer to the complaint. On December 12, 2016, the parties filed a joint report on their procedural conference and a request to adopt a procedural schedule.

The parties substantially agree on the procedural schedule, but disagree about when the procedural schedule should begin. RBT argues that the procedural schedule should be calculated from the date the Board rules on RBT's petition for preliminary injunction, while UP argues that the procedural schedule should begin immediately. (Joint Report 2.) The parties also state that they "have agreed to defer the issue of post-evidentiary briefing" at this time. (*Id.*)

Because the Board, concurrently with this decision, has served a decision denying RBT's petition for preliminary injunction in this proceeding, the parties' disagreement as to whether the procedural schedule should begin before or after a decision on the petition is moot. The Board therefore adopts the procedural schedule outlined below, which is consistent with the schedule proposed by the parties. This schedule is also consistent with the Board's prior practices and procedures. Although the schedule does not require the parties to file final briefs, the Board may order final briefs at a later time if it believes they are necessary based on the development of the evidentiary record.

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<sup>1</sup> RBT also states that it brings its complaint under 49 U.S.C. §§ 10704 and 11701, but it does not make any specific allegations under those sections of the code.

The following procedural schedule is adopted:

|                |                                     |
|----------------|-------------------------------------|
| March 22, 2017 | Completion of discovery             |
| May 8, 2017    | RBT's opening evidence and argument |
| June 20, 2017  | UP's reply evidence and argument    |
| July 20, 2017  | RBT's rebuttal                      |

It is ordered:

1. The procedural schedule described above is adopted.
2. This decision is effective on its service date.

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