

SERVICE DATE – LATE RELEASE MAY 10, 2018

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42159

CENTRAL VALLEY AG GRINDING, INC. AND CENTRAL VALLEY AG TRANSPORT
INC.

v.

MODESTO AND EMPIRE TRACTION COMPANY

Decided: May 10, 2018

On May 1, 2018, Central Valley Ag Grinding Inc. and Central Valley Ag Transport Inc. (collectively, CVAG) filed a complaint under 49 U.S.C. §§ 10702, 10704, 10744, 11101, and 11701, seeking a determination from the Board, injunctive relief, and monetary damages pertaining to certain actions and practices engaged in, and common carrier tariffs and rules issued, by Modesto and Empire Traction Company (MET). CVAG is a full-service transloading company that has an agricultural feed commodities transloading facility in Modesto, Cal. CVAG's Modesto facility is served exclusively by MET, a short line common carrier.

Concurrent with its complaint, CVAG filed a petition for preliminary injunction under 49 U.S.C. § 1321(b)(4), requesting that the Board order MET to: (1) establish and adhere to reasonable service delivery plans for service to CVAG; and (2) maintain reasonable service delivery arrangements and cease various "self-help" initiatives to reduce service and otherwise interfere with the reasonable interchange, delivery, and return of CVAG trains.¹ CVAG asserts that preliminary injunctive relief is required because MET allegedly has recently ceased unit train delivery and blocked interchange with connecting Class I carriers to CVAG in violation of MET's obligations as a common carrier. CVAG further alleges that MET has imposed "unprecedented, targeted, and punitive" prepay demands that have no cost justification.

CVAG requests that the injunctive relief it seeks remain in effect during the pendency of the complaint proceeding to ensure that dairy farms can continue to receive the feed that their livestock requires, which is delivered through CVAG, and to prevent irreparable harm to CVAG, the dairy industry, and agricultural shippers.

¹ CVAG also has requested a service order under 49 U.S.C. § 11123(a) and that the Board initiate a separate formal investigation of regional service disruptions, pursuant to 49 U.S.C. § 11701. MET filed a reply to CVAG's request for a Section 11123(a) service order on May 8, 2018.

In light of these allegations and CVAG's request for an expedited decision, MET's reply to the petition for preliminary injunction will be due no later than May 14, 2018.²

It is ordered:

1. MET's reply to the petition for preliminary injunction is due no later than May 14, 2018.
2. This decision is effective on its service date.

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

² Pursuant to 49 C.F.R. §§ 1111.4(c) and 1104.13(a), MET's answer to the complaint, as well its reply to CVAG's request for a Section 11701 investigation, will continue to be due by May 21, 2018.