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SERVICE DATE – MARCH 2, 2010

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42102

RAILROAD SALVAGE & RESTORATION, INC.—PETITION FOR  
DECLARATORY ORDER—REASONABLENESS OF DEMURRAGE CHARGES

STB Docket No. 42103

G.F. WIEDEMAN INTERNATIONAL, INC.—PETITION FOR  
DECLARATORY ORDER—REASONABLENESS OF DEMURRAGE CHARGES

Decided: March 1, 2010

Railroad Salvage & Restoration, Inc. (Railroad Salvage) filed a petition for a declaratory order in this consolidated proceeding on October 5, 2007. The petition was filed in response to a court action to collect demurrage charges and accrued interest initiated by Missouri & Northern Arkansas Railroad Company, Inc. (MNA), in the United States District Court for the Western District of Missouri, Southwestern Division, in Missouri & Northern Arkansas Railroad Company, Inc. v. Railroad Salvage & Restoration, Inc., No. 07-5017-CV-SE-DW. The District Court granted Railroad Salvage's motion to stay the action and to refer a number of issues to the Board on September 27, 2007. The Board, in a decision served on December 20, 2007, instituted these declaratory order proceedings, granted the request of G.F. Wiedeman International, Inc., to consolidate them, and adopted a procedural schedule, which was amended several times at the request of the parties.

In a petition filed on February 3, 2010, Railroad Salvage requested leave to voluntarily withdraw, with prejudice, its petition for a declaratory order. According to Railroad Salvage, the District Court dismissed MNA's action with prejudice and, in the absence of a timely appeal, that dismissal became final and unappealable. Thus, Railroad Salvage argued that a voluntary withdrawal was justified because the District Court's dismissal mooted the Court's referral to the Board.

On February 16, 2010, Railroad Salvage filed a letter reporting that MNA has filed motions with the District Court seeking a Relief from Judgment under Rule 60(b)(1) of the Federal Rules of Civil Procedure and an extension of time to file a Notice of Appeal under Rule 4(a)(5) of the Federal Rules of Appellate Procedure. Stating that it is in the process of replying to these motions, Railroad Salvage requests that the Board hold the petition to withdraw its petition for a declaratory order in abeyance until the District Court rules on MNA's motions. MNA, in a letter filed on February 19, 2010, concurred in Railroad Salvage's abeyance request,

stating that upon receipt of a decision from the District Court, it will notify the Board and respond to Railroad Salvage's petition to withdraw its petition for a declaratory order.

Railroad Salvage's request, supported by MNA, to hold in abeyance its petition to withdraw its petition for a declaratory order is reasonable and will be granted.

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

It is ordered:

1. Railroad Salvage's request that its motion to withdraw its petition for a declaratory order be held in abeyance until the District Court rules on MNA's motions is granted.
2. This decision is effective on its service date.
3. Copies of this decision will be mailed to:

The Honorable Dean Whipple  
United States District Court for the Western District of Missouri Southwestern  
Division  
222 N. John Q. Hammons Parkway  
Springfield, MO 65808

RE: No. 07-5017-CV-SE-DW

and

The Honorable David C. Dally  
Circuit Court of Jasper County  
Jasper County Courthouse  
Carthage, MO 64836

RE: No. 07AO-CC00112

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