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September 11, 2019

Ms. Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D. C. 20423

ENTERED
Office of Proceedings
September 11, 2019
Part of
Public Record

Re: Docket No. 42166, *Alonzo Benton v. CSX Transportation, Inc.*

Dear Ms. Brown:

I have enclosed for efilng CSX Transportation, Inc.'s Answer to Complaint.

Thank you for your assistance. Please contact me if you have any questions.

Very Truly Yours,

/s/ *Louis E. Gitomer*

Louis E. Gitomer

Enclosure

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ALONZO BENTON Complainant	
v.	
CSX TRANSPORTATION, INC. Defendant	

Docket No. NOR 42166

CSX TRANSPORTATION, INC.'S ANSWER TO COMPLAINT

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Attorneys for: CSX TRANSPORTATION,
INC.

Dated: September 11, 2019

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ALONZO BENTON

Complainant

v.

CSX TRANSPORTATION, INC.

Defendant

Docket No. NOR 42166

CSX TRANSPORTATION, INC.’S ANSWER TO COMPLAINT

Pursuant to 49 C.F.R. § 1111.4, CSX Transportation, Inc. (“CSXT”) respectfully submits this Answer to the Complaint filed by Complainant Alonzo Benton in STB Docket No. 42166 on August 22, 2019 (“Complaint”).

CSXT denies all of the allegations of the Complaint except where this Answer specifically states otherwise.

With respect to the paragraph titled Preface Preserving Federal Claim, CSXT (1) admits the first sentence; (2) denies the second sentence that CSXT has argued that Mr. Benton’s claim “must be filed at the Surface Transportation [Board] in the first instance” because it misrepresents CSXT’s pending motion to dismiss in the action pending in the U.S. District Court for the Eastern District of Pennsylvania, which is grounded in federal preemption but does not argue that Mr. Benton’s claim must be filed with the STB;¹ (3) denies the third sentence that the

¹ By filing this answer, CSXT specifically preserves, and does not waive, the arguments in its pending motion to dismiss in the matter captioned *Benton v. CSX Transportation, Inc.*, Case No. 2:19-cv-00109-PBT (E.D. Pa.), namely that that Plaintiff’s state law negligence claims are preempted by federal law. That does not mean that CSXT argued that Plaintiff must file his claims with the Board, and CSXT did not take that position.

Board should hold the Complaint in abeyance, and instead, CSXT urges the Board to dismiss the Complaint as set forth in the concurrently filed Motion to Dismiss; and (4) is without sufficient information to admit or deny the fourth sentence. CSXT denies that 49 U.S.C. §10101(8) creates a federal claim of action. CSXT is without sufficient information to admit or deny the address of the Complainant. CSXT admits it is a rail carrier but denies the rest of what is labeled III. The section labeled IV states a legal conclusion to which no response is necessary. CSXT addresses the allegations of Surface Transportation Board (the “Board”) jurisdiction in the accompanying concurrently filed Motion to Dismiss.

CSXT’s RESPONSE TO ALONZO BENTON’S ALLEGATIONS

CSXT responds to the allegations in each separately numbered paragraph of the Complaint as follows:

1. CSXT is without sufficient information to admit or deny the information provided by Complainant in Paragraph 1 of the complaint. To the extent a response is required, CSXT denies the allegations in Paragraph 1.
2. CSXT admits that it owns and operates the railroad tracks but denies all other allegations in Paragraph 2.
3. CSXT denies the allegations in Paragraph 3.
4. CSXT denies the allegations of Paragraph 4 of the Complaint to the extent they contemplate more than reasonable maintenance, safety, care, repair, and remediation in compliance with any applicable regulations or industry standards.
5. CSXT denies the allegations in Paragraph 5 of the Complaint to the extent they contemplate more than reasonable maintenance, safety, care, repair, and remediation in compliance with any applicable regulations or industry standards.

6. Paragraph 6 states a legal conclusion to which no response is required. To the extent a response is required, CSXT denies the allegations of Paragraph 6 of the Complaint.

7. Paragraph 7 states a legal conclusion to which no response is required. To the extent a response is required, CSXT denies the allegations of Paragraph 7 of the Complaint.

8. Paragraph 8 states a legal conclusion to which no response is required. To the extent a response is required, CSXT denies all allegations of Paragraph 8 of the Complaint.

9. CSXT is without sufficient information to admit or deny the information provided by Complainant in Paragraph 9 of the complaint.

10. CSXT is without sufficient information to admit or deny the information provided by Complainant in Paragraph 10 of the Complaint. To the extent a response is required, CSXT denies the allegations in Paragraph 10.

11. Paragraph 11 states a legal conclusion to which no response is required. To the extent a response is required, CSXT denies the allegations in Paragraph 11.

12. CSXT is without sufficient information to admit or deny the information provided by Complainant in Paragraph 12.

13. CSXT denies the allegations in Paragraph 13 of the Complaint.

14. CSXT denies all allegations in Paragraph 14.

15. CSXT intends to challenge the finding of the report. To the extent that a response is required, CSXT denies the allegations in Paragraph 15.

16. CSXT denies all allegation in Paragraph 16.

17. Paragraph 17 states a legal conclusion to which no response is required. To the extent a response is required, CSXT is without sufficient information to admit or deny the information provided by Complainant in Paragraph 17.

18. CSXT is without sufficient information to admit or deny the information provided by Complainant in Paragraph 18.

19. CSXT is without sufficient information to admit or deny the information provided by Complainant in Paragraph 19.

20. CSXT is without sufficient information to admit or deny the information provided by Complainant in Paragraph 20.

21. CSXT is without sufficient information to admit or deny the information provided by Complainant in Paragraph 21. To the extent that a response is required, CSXT denies Paragraph 21.

22. Paragraph 22 states a legal conclusion to which no response is required. To the extent a response is required, CSXT denies the allegations in Paragraph 22.

23. Paragraph 23 states a legal conclusion to which no response is required. To the extent a response is required, CSXT denies the allegations in Paragraph 23.

24. Paragraph 24 states a legal conclusion to which no response is required. To the extent a response is required, CSXT denies the allegations in Paragraph 24.

25. Paragraph 25 states a legal conclusion to which no response is required. To the extent a response is required, CSXT denies the allegations in Paragraph 25.

26. In response to Paragraph 26, CSXT hereby incorporates its responses to Paragraphs 1 through 25 above.

27. Paragraph 27 states a legal conclusion to which no response is required. To the extent a response is required, CSXT denies the allegations in Paragraph 27.

28. Paragraph 28 states a legal conclusion to which no response is required. To the extent a response is required, CSXT denies the allegations in Paragraph 28.

29. Paragraph 29 states a legal conclusion to which no response is required. To the extent a response is required, CSXT denies the allegations in Paragraph 29.

30. Paragraph 30 states a legal conclusion to which no response is required. To the extent a response is required, CSXT denies the allegations in Paragraph 30.

(a) States a legal conclusion to which no response is required. To the extent a response is required, CSXT denies the allegations in Paragraph 30(a).

(b) States a legal conclusion to which no response is required. To the extent a response is required, CSXT denies the allegations in Paragraph 30(b).

(c) States a legal conclusion to which no response is required. To the extent a response is required, CSXT denies the allegations in Paragraph 30(c).

(d) States a legal conclusion to which no response is required. To the extent a response is required, CSXT denies the allegations in Paragraph 30(d).

(e) States a legal conclusion to which no response is required. To the extent a response is required, CSXT denies the allegations in Paragraph 30(e).

(f) States a legal conclusion to which no response is required. To the extent a response is required, CSXT denies the allegations in Paragraph 30(f).

(g) States a legal conclusion to which no response is required. To the extent a response is required, CSXT denies the allegations in Paragraph 30(g).

(h) States a legal conclusion to which no response is required. To the extent a response is required, CSXT denies the allegations in Paragraph 30(h).

(i) States a legal conclusion to which no response is required. To the extent a response is required, CSXT denies the allegations in Paragraph 30(i).

(j) States a legal conclusion to which no response is required. To the extent a response is required, CSXT denies the allegations in Paragraph 30(j).

(k) States a legal conclusion to which no response is required. To the extent a response is required, CSXT denies the allegations in Paragraph 30(k).

(l) States a legal conclusion to which no response is required. To the extent a response is required, CSXT denies the allegations in Paragraph 30(l).

(m) States a legal conclusion to which no response is required. To the extent a response is required, CSXT denies the allegations in Paragraph 30(m).

(n) States a legal conclusion to which no response is required. To the extent a response is required, CSXT denies the allegations in Paragraph 30(n).

(o) States a legal conclusion to which no response is required. To the extent a response is required, CSXT denies the allegations in Paragraph 30(o).

31. Paragraph 31 states a legal conclusion to which no response is required. To the extent a response is required, CSXT denies the allegations in Paragraph 31.

32. Paragraph 32 states a legal conclusion to which no response is required. To the extent a response is required, CSXT denies the allegations in Paragraph 32.

33. Paragraph 33 states a legal conclusion to which no response is required. To the extent a response is required, CSXT denies the allegations in Paragraph 33.

34. CSXT is without sufficient information to admit or deny the information provided by Complainant in Paragraph 34.

35. Paragraph 35 states a legal conclusion to which no response is required. To the extent a response is required, CSXT denies the allegations in Paragraph 35.

PRAYER

For the foregoing reasons, CSXT requests the Board to (1) conclude that CSXT has not violated any provision of 49 U.S.C. Subtitle IV with respect to the Line; (2) dismiss the complaint; (3) discontinue this proceeding; and (4) award CSXT such other relief to which it is entitled.

Respectfully submitted,

/s/ *Louis E. Gitomer*

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Attorneys for: CSX TRANSPORTATION,
INC.

Dated: September 11, 2019

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing document to be served upon counsel for

Alonzo Benton:

John Leonard, Esq.
Two Penn Center, Suite 1910
1500 JFK Boulevard
Philadelphia, PA 19102

/s/ *Louis E. Gitomer*

Louis E. Gitomer
September 11, 2019