

LAW OFFICES OF
LOUIS E. GITOMER, LLC

LOUIS E. GITOMER
Lou@lgraillaw.com

MELANIE B. YASBIN
Melanie@lgraillaw.com
410-296-2205

600 BALTIMORE AVENUE,
SUITE 301
TOWSON, MARYLAND 21204-4022
(410) 296-2250 * (202) 466-6532
FAX (410) 332-0885

248461

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 efileing CSX Transportation, Inc.'s Motion to Dismiss 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 MOTION TO DISMISS COMPLAINT

Steven C. Armbrust, Esq.
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202
(904) 359-1229

Louis E. Gitomer, Esq.
Melanie B. Yasbin, Esq.
Law Offices of Louis E. Gitomer, LLC
600 Baltimore Avenue, Suite 301
Towson, MD 21204
(410) 296-2250
Lou@lgraillaw.com

Attorneys for: CSX TRANSPORTATION,
INC.

Dated: September 11, 2019

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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Docket No. NOR 42166

CSX TRANSPORTATION, INC.’S MOTION TO DISMISS COMPLAINT

CSX Transportation, Inc. (“CSXT”) respectfully moves the Surface Transportation Board (the “Board”) to dismiss this proceeding because it does not state a cause of action under the Interstate Commerce Commission Act of 1995, as amended (the “ICCTA”), from which relief can be granted.

Alonzo Benton (“Mr. Benton”) filed a formal complaint with the Board on August 22, 2019, against CSXT asserting a personal injury/tort case.¹ This matter is currently pending in the Federal Court for the Eastern District of Pennsylvania.²

BACKGROUND

Mr. Benton asserts that on a rainy day, August 29, 2017, he was walking across the CSXT tracks at the intersection of 58th Street and Woodland Avenue in Philadelphia, PA, when he slipped and fell. Mr. Benton alleges that he fell because metal edges on concrete panels were more slippery than the concrete portion of the panels between the rails. Before the Board, Mr.

¹ Mr. Benton asserts that this proceeding was filed to preserve a federal claim if the court found the claim preempted.

² Alonzo Benton v. CSX Transportation, Inc. No.: 19-0109.

Benton alleges that CSXT breached its duty to him by negligently failing to maintain, inspect, care for, repair, and remediate the concrete panels and metal edges. He seeks to recover compensatory damages for his injuries, incidental damages, interest and attorney's fees and costs.

ARGUMENT

Mr. Benton has not alleged a statutory violation under ICCTA for his injuries. He is seeking relieve under the Rail Transportation Policy ("RTP") at 49 U.S.C. §10101(8), which states "In regulating the railroad industry, it is the policy of the United States Government – (8) to operate transportation facilities and equipment without detriment to the public health and safety." However, the RTP does not create a cause of action. The RTP is "a statement of policy intended to provide guidance to the Board regarding its implementation of the rest of the Act." *PCI Transportation, Inc. v. Fort Worth & Western Railroad Company*, STB Docket No. 42094 (Sub-No. 1), STB served April 24, 2008, slip op. at 5. Because the RTP does not create a cause of action, see *DHX, Inc. v. Surface Transportation Board*, 501 3d 1080, 1087-88 (9th Cir. 2007), Mr. Benton's complaint must be dismissed.

Under 49 U.S.C. §11701(b) a person may file a "complaint about a violation of this part by a rail carrier providing transportation or service subject to the jurisdiction of the Board under this part." "A violation of this part" has been interpreted by the Eight Circuit to mean a violation of ICCTA's substantive provisions or accompanying regulations. *Griffioen v. Cedar Rapids and Iowa City Ry. Co.* 785 F.3d 1182, 1191. Mr. Benton has not pointed to a substantive provision of ICCTA or any Board regulation as a basis for this action before the Board. The Board may dismiss a complaint that "does not state reasonable grounds for investigation and action."

Because Mr. Benton has not asserted a claim under ICCTA or its related regulations, the Board should dismiss his complaint.

Mr. Benton's negligence/tort claim against CSXT does not qualify as an actionable claim under 49 U.S.C. §11704(b), which provides for rights and remedies of persons injured by rail carriers. Section 11704(b) provides an "administrative cause of action" for persons who sustain damages "as a result of an act or omission of that carrier **in violation of this part**" (emphasis added). "Under 49 U.S.C. 11701(b), the Board may dismiss a complaint if it 'does not state reasonable grounds for investigation and action.'" *Dairyland Power Cooperative v. Union Pacific Railroad Company*, Docket No. 42105, slip op. at 5 (served July 29, 2008). Mr. Benton does not provide a specific actionable statutory or regulatory reference under which his negligence/tort claim would fall. Mr. Benton does not cite a specific provision of the ICCTA or the Board's regulations that CSXT has violated with respect to his claimed injury. Because Mr. Benton has failed to state a claim upon which relieve can be granted, CSXT respectfully requests that the Board dismiss this proceeding.

PRAYER

For the foregoing reasons, CSXT requests the Board to (1) conclude that CSXT has not violated 49 U.S.C. Subtitle IV; (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*

Steven C. Armbrust, Esq.
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202
(904) 359-1229

Louis E. Gitomer, Esq.
Melanie B. Yasbin, Esq.
Law Offices of Louis E. Gitomer, LLC
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(410) 296-2250
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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