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October 23, 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
October 23, 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 Clarification.

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

Docket No. 42166

ALONZO BENTON v. CSX TRANSPORTATION, INC.

CSX TRANSPORTATION, INC.'S CLARIFICATION

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Attorneys for: CSX TRANSPORTATION,
INC.

Dated: October 23, 2019

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. 42166

ALONZO BENTON v. CSX TRANSPORTATION, INC.

CSX TRANSPORTATION, INC.'S CLARIFICATION

CSX Transportation, Inc. (“CSXT”) respectfully moves the Surface Transportation Board (the “Board”) to accept this brief clarification in response to the Plaintiff’s Answer to CSX Transportation, Inc.’s Motion to Dismiss Complaint (the “Answer”).¹

Mr. Benton’s Answer states that “CSXT now argues that under the Interstate Commerce Commission Act of 1995 (‘ICCTA’), Plaintiff cannot bring his claims in front of the Board.”

CSXT stated that Mr. Benton brought his cause of action under section 10101(8) of the Rail Transportation Policy (the “RTP”), that the RTP is a statement of policy that does not create a cause of action, and therefore since Mr. Benton did not state a proper cause of action or reasonable grounds for investigation and action, his complaint must be dismissed.

Mr. Benton also misconstrues CSXT’s position before the Court. CSXT did not argue that Mr. Benton should be filing state law tort claims with the Board. Instead, CSXT’s position before the Court is that Mr. Benton’s claims, as pled, are federally preempted by the ICCTA.

¹ CSXT was not served with the Answer until several days after the filing with the Board, which did not indicate service in compliance with the Board’s rules at 49 CFR 1104.12(a).

CSXT's respectfully requests that the Board accept this clarification.

Respectfully submitted,

/s/ *Louis E. Gitomer*

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Attorneys for: CSX TRANSPORTATION,
INC.

Dated: October 23, 2019

CERTIFICATE OF SERVICE

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

Alonzo Benton:

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Philadelphia, PA 19102

/s/ *Louis E. Gitomer*

Louis E. Gitomer
October 23, 2019