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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. 42060 (Sub. No. 1)



NORTH AMERICAN FREIGHT CAR ASSOCIATION

v.

THE BURLINGTON NORTHERN AND SANTA FE
RAILWAY COMPANY

BNSF'S ANSWER AND AFFIRMATIVE DEFENSE

Pursuant to Section 1111.4 of the STB's Rules of Practice, Defendant Burlington Northern Santa Fe Railway Corporation ("BNSF") hereby answers the numbered paragraphs of the Complaint, using Plaintiff's numbering system.

1. Paragraph 1 is an introductory statement and no response is required by BNSF.
2. BNSF admits the allegation in paragraph 2.
3. Insofar as paragraph 3 contains NAFC's legal arguments and assertions no response by BNSF is required. BNSF admits that it amended its tariffs that apply to private cars and railroad owned/controlled cars held on BNSF tracks.
4. BNSF denies the allegations in paragraph 4.
5. BNSF denies the allegations contained in the first, third, sixth, seventh, and eighth sentences of paragraph 5 of the Complaint. BNSF denies knowledge or information sufficient to form a belief as to the allegations contained in the second, fourth, and fifth sentences.
6. BNSF denies the allegations contained in paragraph 6.

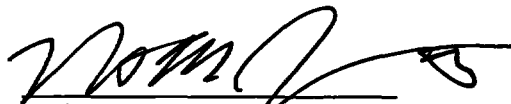
7. BNSF denies the allegations contained in the first and second sentences of paragraph 7 of the Complaint and admits the allegations contained in the third, fourth, fifth, sixth, and seventh sentences of paragraph 7 of the Complaint.
8. BNSF denies the allegations of paragraph 8 of the Complaint except admits that rules and charges applicable to covered hopper cars intended to transport grain or grain products are set forth in BNSF's Demurrage Book 6004-A.
9. BNSF denies the allegations in paragraph 9.
10. BNSF denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 10.
11. BNSF denies the allegations in paragraph 11.
12. BNSF denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 12.
13. BNSF denies the allegations contained in the fourth sentence of paragraph 13 of the Complaint. BNSF denies knowledge or information sufficient to form a belief as to the allegations contained in the first, second, third, and fifth sentence.
14. BNSF denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 14.
15. BNSF admits the allegations contained in the first sentence of paragraph 15 of the Complaint. BNSF denies the allegations contained in the second sentence of paragraph 15 of the Complaint.
16. BNSF denies the allegations contained in paragraph 16 of the Complaint.
17. BNSF denies the allegations contained in paragraph 17 of the Complaint.

18. BNSF repeats and realleges its responses to paragraphs 1 through 17 as if fully set forth herein in response to paragraph 18 of the Complaint.
19. Paragraph 19 states a legal conclusion which requires no response. BNSF otherwise denies the allegations in Count I.
20. BNSF repeats and realleges its responses to paragraphs 1 through 17 as if fully set forth herein in response to paragraph 20 of the Complaint.
21. Paragraph 21 states a legal conclusion which requires no response. BNSF otherwise denies the allegations in Count II.
22. BNSF repeats and realleges its responses to paragraphs 1 through 17 as if fully set forth herein in response to paragraph 22 of the Complaint.
23. Paragraph 23 states a legal conclusion which requires no response . BNSF otherwise denies the allegations in Count III.
24. BNSF denies that Plaintiff is entitled to the relief requested in paragraph 24 of the Complaint and intends to file a motion to dismiss the Complaint.

AFFIRMATIVE DEFENSE

1. The Complaint and each count alleged therein fails to state a claim upon which relief can be granted against Defendant.

Respectfully submitted,



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Dated: September 18, 2001

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the Answer and Affirmative Defense of The Burlington Northern and Santa Fe Railway Company has been served by hand delivery on counsel for Petitioners, Andrew P. Goldstein, and by first class mail on counsel for Intervenor, Henry M. Wick and Nicholas J. DiMichael, this 18th day of September 2001.

A handwritten signature in black ink, appearing to read 'R M Jenkins III', written over a horizontal line.

Robert M. Jenkins III