

20557

U.S. DEPARTMENT OF TRANSPORTATION  
SURFACE TRANSPORTATION BOARD



DHX, INC.,

Complainant,

v.

STB Docket No. wCC-105

MATSON NAVIGATION COMPANY  
and SL SERVICE, INC.  
f/k/a SEA-LAND SERVICE,  
INC.,

ENTERED  
Office of the Secretary

JUN 03 2002

Part of  
Public Record

Defendants.

MOTION FOR WAIVER OF RULE

COMES NOW, Complainant, DHX, Inc., by and through its counsel, and submits this motion for waiver of the time limits stated in Rule 1114.31(a). The Board, by Order served March 27, 2002 set a procedural schedule and admonished the parties to cooperate in discovery. Counsel for all parties have attempted to comply with that Order and have made every effort to mutually address discovery. However, defendant SL Service, Inc., f/k/a Sea-Land Service, Inc. forwarded (via e-mail) what defendant's counsel indicated were going to be defendant's responses to complainant's initial discovery. Since that date, complainant has been unable to obtain any final written responses to the involved discovery. On May 27, 2002, defendant was informed that proper responses were needed and that a motion to compel would have to be filed. (See Attachment B to motion to compel).

The Board, pursuant to Rule 1104.7(b), 49 CFR (2000 ed.) and Rule 1100.3. 49 CFR (2000 ed.) may waive or extend the date for filing a motion under Rule 1114.31(a). Complainant's counsel has awaited the discovery compliance represented by defendant.

2.

It is patently unjust for Complainant to be directed to work with and cooperate with defendants in the discovery process; to have a defendant "propose" responses; and then have Complainant subjected to a time limit which would preclude Complainant from obtaining the discovery sought. The instant case centers around a pattern of discriminatory and destructive business practices of the defendants. The documentation supporting Complainant's claims is almost wholly within the possession of defendants. This defendant, SL Service, Inc., f/k/a Sea-Land Service, Inc., should not be permitted to frustrate Complainant's case simply by refusing to comply with discovery.

Wherefore, the premises considered, it is hereby respectfully requested that the Board waive the 10 day time frame filing requirements for motions to compel discovery pursuant to Rule 1114.31(a). Further, that the Board summarily grant the involved motion and address the motion to compel on its merits.

Dated - 3 June 2002

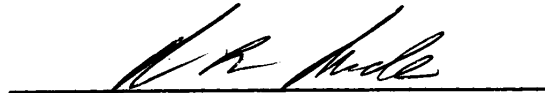
Respectfully submitted,

  
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Certificate Of Service

I hereby certify that a copy of this document has been served, by hand delivery of a copy of the same, upon the below listed counsel of record for defendants.

Dated this 3rd day of June 2002 at Falls Church, VA. 22046



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