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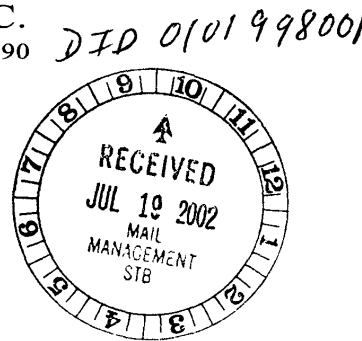
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Public Record

THOMAS F. MCFARLAND

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July 18, 2002

By UPS overnight mail

Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit, Suite 713
1925 K Street, N.W.
Washington, DC 20423-0001

205885

Re: STB Finance Docket No. 34236, *Bolen-Brunson-Bell Lumber Company, Inc. v. CSX Transportation, Inc.*

Dear Mr. Williams:

Enclosed please find an original and 10 copies of Formal Complaint, for filing with the Board in the above referenced matter.

Also enclosed is Bellwood Company's check #1430 in the amount of \$6,000.00 for the filing fee.

Kindly acknowledge receipt by date stamping the enclosed duplicate copy of this letter and return in the self-addressed stamped envelope.

Very truly yours,

Tom McFarland

Thomas F. McFarland
Attorney for Bolen-Brunson-Bell
Lumber Company

FEE RECEIVED

JUL 19 2002

SURFACE
TRANSPORTATION BOARD

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CONFIDENTIAL
1998

BEFORE THE
SURFACE TRANSPORTATION BOARD



BOLEN-BRUNSON-BELL LUMBER
COMPANY, INC.,

Complainant,

v.

CSX TRANSPORTATION, INC.,

Defendant.

FINANCE DOCKET
NO. 34236

FORMAL COMPLAINT

SURFACE
TRANSPORTATION BOARD

BOLEN-BRUNSON-BELL LUMBER COMPANY, INC.
3175 Johnson Avenue
P.O. Box 11205
Memphis, TN 38111

Complainant

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SURFACE
TRANSPORTATION BOARD

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street
Suite 1890
Chicago, IL 60604-1194
(312) 236-0204

Attorney for Complainant

DATE FILED: July 19, 2002

A circular postmark from the U.S. Postal Service. The outer ring contains numbers 1 through 12. The inner circle contains the text "RECEIVED" at the top, "JUL 19 2002" in the center, and "MAIL MANAGEMENT STB" at the bottom. An arrow points upwards from the center towards the number 12.

FINANCE DOCKET
NO. 34236

Pursuant to 49 U.S.C. § 11701(b) and 49 C.F.R. § 1111.1, *et seq.*, BOLEN-BRUNSON-BELL LUMBER COMPANY, INC. (BBB) hereby complains against CSX TRANSPORTATION, INC. (CSXT) as follows:

BBB is a corporation whose business address is 3175 Johnson Avenue, P.O. Box 11205, Memphis, TN 38111. Prior to March 1, 2001, BBB reloaded lumber and wood products from railcars to trucks at that location, which is commonly known as the Bellwood Reload.

CSXT is a corporation whose business address is 500 South Water Street, Jacksonville, FL 32202. CSXT is a rail carrier of freight in interstate commerce. As such, CSXT is subject to the provisions of Subtitle IV, Part A of 49 United States Code governing interstate transportation by rail, i.e., 49 U.S.C. § 10101, *et seq.*

-3-

Prior to March 1, 2001, CSXT transported lumber and wood products to the Bellwood Reload, which is located at Milepost No. 223.1 on a CSXT rail line known as its Memphis Terminal line. The Memphis Terminal line extends 13.34 miles from its point of connection with a main line at Aulon Switch (Milepost No. 224.0) in Memphis, TN to the end of the line at Cordova, TN (Milepost No. 210.66). BBB received 198 carloads at the Bellwood Reload in 2000 and 33 carloads in the first two months of 2001.

IV.

Effective March 1, 2001, CSXT embargoed its Memphis Terminal line, which had the effect of discontinuing rail service to the Bellwood Reload. As applied to that location, the ostensible reason for the embargo was the alleged unsafe condition of a 120-foot timber bridge over Cypress Creek at Milepost No. 223.3 (Bridge 223.3).

V.

For nearly six months following imposition of that embargo, CSXT neither took steps to repair Bridge 223.3 in order to restore rail service, nor sought Board authority or an exemption for abandonment or discontinuance of rail service to Bellwood Reload. On August 24, 2001, CSXT filed a petition with the Board for exemption of abandonment of the Memphis Terminal line. BBB partially opposed that petition as to the segment of that line between Aulon Switch and the Bellwood Reload (approximately nine-tenths of a mile). By decision served December 12, 2001, CSXT's petition was denied in its entirety. *CSX Transportation, Inc. -- Aband. Exempt. -- (betw. Memphis and Cordova) in Shelby County, TN*, 2001 STB LEXIS 943 (STB Docket No. AB-55 [Sub-No. 590X], decision served Dec. 12, 2001). CSXT did not seek review of that decision, which became effective on the date of its service.

VI.

For nearly seven additional months following issuance of that decision, CSXT neither took steps to repair Bridge 223.3 in order to restore rail service, nor sought Board authority or an exemption for abandonment or discontinuance of rail service to Bellwood Reload. On July 10, 2002, CSXT filed an application with the Board for authority to discontinue rail service over a 1.1-mile segment of the Memphis Terminal line between Aulon Switch (MP 224.0) and a point two-tenths of a mile beyond (east of) the Bellwood Reload (MP 222.9). *CSX Transportation, Inc. -- Discontinuance -- at Memphis, in Shelby County, TN*, STB Docket No. AB-55 (Sub-No. 618), filed July 10, 2002. BBB will oppose that application.

VII.

Rail service to Bellwood Reload continues to be embargoed as of the date of filing of this complaint.

VIII.

From inception of the embargo of rail service to Bellwood Reload to date, BBB has made numerous requests that CSXT provide rail service to Bellwood Reload, but CSXT has failed and refused to do so.

IX.

From its inception, the embargo of rail service to Bellwood Reload was not justified by the alleged unsafe condition of Bridge 223.3. At most, rail service to Bellwood Reload could have been restored safely in a matter of a few days after the embargo was declared by means of a minimal expenditure for minor repair of that Bridge.

X.

CSXT was and is physically and financially able to resume rail service to Bellwood Reload. Evidence submitted by CSXT itself in both the prior abandonment exemption proceeding and the pending discontinuance application proceeding shows that CSXT's annual net income from providing rail transportation to Bellwood Reload would be more than sufficient to fund the minimal cost of repairs that would permit rail service to be resumed on a short-term basis.

XI.

In imposing the embargo of rail service to Bellwood Reload and in keeping that embargo in effect for nearly 16 months to date under the circumstances described in this complaint, CSXT intended to discontinue rail service to Bellwood Reload permanently, rather than to suspend rail service to that location temporarily.

XII.

Under the circumstances described in this complaint, the embargo of rail service to Bellwood Reload was never a valid defense for CSXT's failure and refusal to provide transportation or service to Bellwood Reload on reasonable request. At most, that embargo became unreasonable, and thereby ceased to be such a valid defense, within a few days after such embargo was declared, at which time CSXT was physically and financially able to resume such service and such service could have been resumed at safe levels without substantial expenditures of time or money.

XIII.

By reason of the foregoing facts and circumstances, on and after March 1, 2001, or a few days thereafter, to date, and continuing during the pendency of this complaint, CSXT has failed and refused to provide transportation and service to BBB at Bellwood Reload on reasonable request in violation of 49 U.S.C. § 11101(a).

XIV.

By reason of such violation, BBB has been damaged in the amount of approximately \$132,000 to date. Damages will continue pending disposition of this complaint.

XV.

Before filing this complaint, BBB made extensive good faith efforts to negotiate a settlement of this complaint with CSXT, but such efforts were not successful. In light of those efforts, further negotiation would be unlikely to result in a settlement.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, the Board should find that on and after March 1, 2001, or a few days thereafter, CSXT has failed to provide transportation and service to BBB on reasonable request in violation of 49 U.S.C § 11101(a). Based on that finding, the Board should order (1) that

CSXT cease and desist from such violation; and (2) that CSXT pay to BBB damages in an amount to be determined plus interest to be calculated pursuant to 49 C.F.R. § 1141.1.

Respectfully submitted,

BOLEN-BRUNSON-BELL LUMBER COMPANY, INC.
3175 Johnson Avenue
P.O. Box 11205
Memphis, TN 38111

Complainant

Thomas F. McFarland

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street
Suite 1890
Chicago, IL 60604-1194
(312) 236-0204

Attorney for Complainant

DATE FILED: July 19, 2002

CERTIFICATE OF SERVICE

I hereby certify that on July 18, 2002, I served the foregoing document, Complaint, by UPS overnight mail on the Chief Legal Officer of CSXT, i.e., D.R. Maxwell, Vice President-Law and General Counsel, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202; on outside counsel for CSX Transportation, Inc., Louis E. Gitomer, Ball Janik LLP, 1455 F Street, N.W., Suite 225, Washington, DC 20005; and on Natalie S. Rosenberg, CSX Transportation, Inc., 500 Water Street, J150, Jacksonville, FL 32202.

Thomas F. McFarland

Thomas F. McFarland