

BALL JANIK LLP

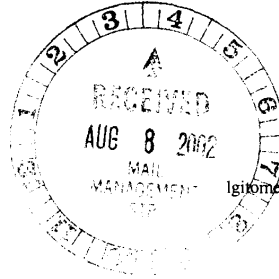
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August 8, 2002

206002

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Room 700
Washington, D. C. 20423

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

Dear Secretary Williams:

Enclosed are the original and 10 copies of the Answer and three diskettes. Please time and date stamp the additional copy of this letter and return it with our messenger. Thank you for your assistance.

If you have any questions, call or email me.

Sincerely yours,

Louis E. Gitomer
Attorney for CSX Transportation, Inc.

Enclosures

ENTERED
Office of Proceedings

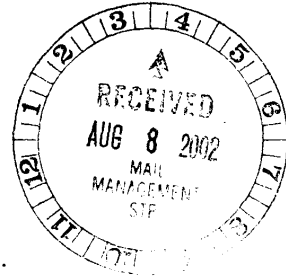
AUG 8 2002

Part of
Public Record

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34236



BOLEN-BRUNSON-BELL LUMBER COMPANY, INC.

v.

CSX TRANSPORTATION, INC.

ANSWER OF CSX TRANSPORTATION, INC.
TO COMPLAINT OF BOLEN-BRUNSON-BELL LUMBER COMPANY, INC.

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Attorneys for: CSX TRANSPORTATION,
INC.

Dated: August 8, 2002

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BEFORE THE
SURFACE TRANSPORTATION BOARD

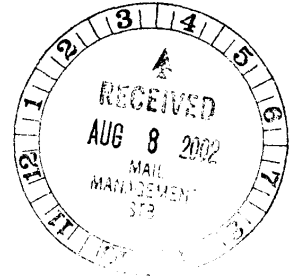
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Finance Docket No. 34236

BOLEN-BRUNSON-BELL LUMBER COMPANY, INC.
v.
CSX TRANSPORTATION, INC.



ANSWER OF CSX TRANSPORTATION, INC.
TO COMPLAINT OF BOLEN-BRUNSON-BELL LUMBER COMPANY, INC.

Pursuant to 49 C.F.R. §§ 1111.4 CSX Transportation, Inc. ("CSXT") answers the formal complaint filed by Bolen-Brunson-Bell Lumber Company, Inc. ("Complainant") in this proceeding on July 19, 2002. CSXT denies all averments made by Complainant that CSXT has violated 49 U.S.C. § 11101(a) and related sections and Surface Transportation Board (the "Board") regulations regarding CSXT's 1.1-mile rail line portion of its Midwest Region, Nashville Division, Memphis Terminal between milepost ONI 224.0, at Memphis, TN and milepost ONI 222.9 east of Memphis, TN (the "Line"), all in Shelby County, TN.¹

CSXT imposed an embargo on the Line on March 1, 2001 because of the condition of the Cypress Creek Bridge (the "Bridge") located at milepost ONI 223.3. CSXT believes the embargo of the Line at all times since March 1, 2001 has been lawful and appropriate.

To the extent that CSXT does not specifically admit an averment made in the complaint, that averment is denied.

¹ CSXT identifies the mileposts on the Line with the prefix ONI. CSXT believes that Complainant has inadvertently omitted this prefix in the Complaint.

I.

CSXT is without sufficient information to admit or deny the information provided by Complainant in Section I of the complaint.

II.

CSXT admits the averments in Section II of the complaint.

III.

Section III of the complaint contains three unnumbered sentences.

With respect to the first sentence, CSXT admits that prior to March 1, 2001 it transported in line haul and switch service lumber and wood products to a facility located at milepost ONI 223.1 on the Line. However, CSXT does not identify the Line, or the railroad line between milepost ONI 224.0 and milepost ONI 210.66, as the Memphis Terminal line.

With respect to the second sentence, CSXT admits that it owns the line of railroad between Memphis, TN, milepost ONI 224.0, and Cordova, TN, milepost ONI 210.66 (the "Memphis-Cordova Line"), and that the Memphis-Cordova Line is 13.34 miles in length, but denies that CSXT identifies such line as the Memphis Terminal line.

With respect to the third sentence, CSXT admits that it delivered to Complainant 198 carloads in 2000 and 33 carloads in the first two months of 2001. Of the 198 carloads, only 54 were terminating traffic and 144 were delivered by CSXT as a switch carrier. Of the 33 carloads in 2001, six carloads were terminated and the rest were delivered by CSXT as a switch carrier.

IV.

CSXT admits that on March 1, 2001, it embargoed direct rail service over the Memphis-Cordova Line, and that the embargo was imposed not only due to the deteriorated and unsafe condition of the Bridge, but due to the unsafe condition of the other bridges on the Memphis-Cordova Line. In all other respects, CSXT denies the averments made in Section IV.

V.

Section V consists of five unnumbered sentences.

With respect to the first sentence, CSXT denies that it took no steps to seek Board authority to abandon service on the Line. As required by Board regulations, CSXT began the preparation of the Environmental and Historic Reports for the Memphis-Cordova Line. CSXT also sent letters on April 9, 2001 requesting input into those reports. CSXT at that time was also notifying its customers on the Memphis-Cordova Line of the embargo and its abandonment plans. Since CSXT had decided to prosecute the abandonment of the Memphis-Cordova Line, was actively advancing the abandonment, was attempting to make arrangements for alternate service for Complainant, and concluded that it would not earn the necessary return on its investment to repair and or replace the Bridge because Complainant provided insufficient traffic, CSXT decided not to expend the funds necessary to repair the Bridge or any other bridges on the Memphis-Cordova Line.

With respect to the second sentence, CSXT admits the averment.

With respect to the third sentence, CSXT is without sufficient information to admit or deny the information provided by Complainant.

With respect to the fourth and fifth sentences, CSXT admits the averments.

VI.

Section VI consists of four unnumbered sentences.

With respect to the first sentence, CSXT denies that it took no steps to restore service to Complainant. CSXT investigated substituting a short line railroad on the Line, explored numerous options with Complainant for reinstituting service or providing a substituted service at another location.

CSXT further denies that it took no action to seek Board approval or exemption to abandon or discontinue service over the Memphis-Cordova Line. CSXT decided to seek an exemption from the Board to discontinue service over the easternmost 12.24 miles of the Memphis-Cordova Line between milepost ONI 222.9 and ONI 210.66. After complying with the regulatory notice requirements, CSXT filed a petition for exemption in STB Docket No. AB-55 (Sub-No. 615X), *CSX Transportation, Inc.—Discontinuance Exemption—(Between East of Memphis and Cordova) in Shelby County, TN* on March 29, 2002. By decision served July 17, 2002, the Board granted the petition. With regard to the Line, CSXT expended a great deal of time and effort when it sought to interest a short line railroad in operating the Line, discussed the potential to increase traffic on the Line with Complainant, and sought other options to provide Complainant with rail service. While negotiating with Complainant, CSXT was following the regulatory requirements to prepare and file an application to discontinue service over the Line. Upon the termination of settlement negotiations by Complainant, CSXT filed the discontinuance application in STB Docket No. AB-55 (Sub-No. 618), *CSX Transportation, Inc.—*

Discontinuance—at Memphis, In Shelby County, TN on July 10, 2002. The Board served notice of the filing of the application on July 30, 2002.

Since CSXT had decided to prosecute the discontinuance of the Line, was actively advancing the discontinuance, was attempting to make arrangements for alternate service for Complainant, and concluded that it would not earn the necessary return on its investment to repair and or replace the Bridge because Complainant provided insufficient traffic, CSXT decided not to expend the funds necessary to repair the Bridge on the Line.

With respect to the second sentence, CSXT admits the averment.

With respect to the third sentence, CSXT admits the averment.

With respect to the fourth sentence, CSXT is without sufficient information to admit or deny the information provided by Complainant.

VII.

CSXT admits that as of July 19, 2002 the embargo imposed on the Line on March 1, 2002 continued.

VIII.

CSXT is without sufficient information to admit or deny the information provided by Complainant in Section VIII of the complaint. Complainant is not an originator of traffic; it merely receives traffic as termination. Complainant is not the party that arranges for rail service, that function is performed by the consignor (who also pays for the rail service). Complainant does not route the traffic, nor does it pay the railroad for the transportation of the commodities consigned to it. CSXT has acted as the switching carrier for the majority of traffic consigned to

Complainant, and as the terminating line haul carrier for the rest of the traffic. CSXT has continued to provide rail service to Complainant at Leewood Yard, about one mile from the facility referred to by Complainant as Bellwood Reload, where Complainant unloads rail cars.

IX.

CSXT denies the averments made in Section IX.

X.

CSXT denies the averments made in Section X. The size of CSXT is not the determinative factor in whether CSXT can and should make an investment in infrastructure. Such investment must be economical and result in a return in investment at least equivalent to CSXT's cost of capital. CSXT denies that the cost to repair the Bridge is minimal. Complainant has not, in this proceeding or in the abandonment proceeding, submitted to CSXT or the Board its estimate of the cost of repair or the time necessary to make those repairs. Therefore, there is no evidence to support Complainant's averment that the cost to repair the Bridge is minimal or that such repairs can be quickly accomplished.

XI.

CSXT denies the averments made in Section XI.

XII.

CSXT denies the averments made in Section XII.

XIII.

CSXT denies the averments made in Section XIII.

XIV.

CSXT denies the averments made in Section XIV.

XV.

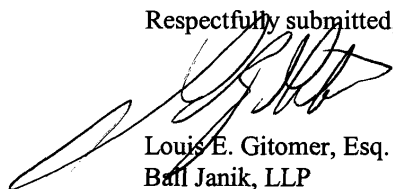
CSXT admits that it conducted good faith negotiations with Complainant. CSXT believed that it had negotiated a settlement with Complainant until Complainant made additional demands. CSXT is not willing to admit that further negotiations would not result in a settlement. CSXT is without sufficient information to admit or deny that Complainant negotiated in good faith.

PRAYER

For the foregoing reasons, CSXT requests the Board to (1) conclude that CSXT has not violated any provision of 49 U.S.C. Subtitle IV with respect to the Line; (2) dismiss the complaint; (3) discontinue this proceeding; and (4) award CSXT such other relief to which it is entitled.

Respectfully submitted,

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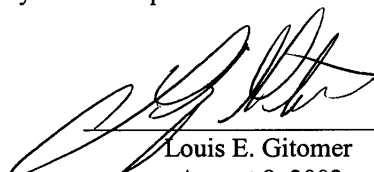
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Attorneys for: CSX TRANSPORTATION,
INC.

Dated: August 8, 2002

CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing document to be served upon counsel for
Bolen-Brunson-Bell Lumber Company, Inc., by fax and express mail.



Louis E. Gitomer
August 8, 2002