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October 16, 2002



VIA HAND DELIVERY

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington DC 20423

Re: Docket No. NOR 42075—Engelhard Corporation—Petition for
Declaratory Order—Springfield Terminal Railway Co., Inc. and
Consolidated Rail Corporation

Dear Mr. Williams:

Please find enclosed for filing in the above captioned proceeding an original and ten copies of the reply of respondent Springfield Terminal Railway Company to the petition for declaratory order filed by Engelhard Corporation on September 26, 2002. One additional copy of the package is enclosed. I would appreciate your receipt-stamping that copy and returning it to our legal assistant.

Please call me with any questions regarding this matter. Thanks for your assistance.

Sincerely,

Eric L. Hirschhorn

Enclosure

cc: Vincent P. Szeligo, Esq. (w/ encl.)
David C. Ziccardi, Esq. (w/ encl.)

ENTERED
Office of Proceedings

OCT 16 2002

Part of
Public Record

206427

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET No. NOR 42075



**ENGELHARD CORPORATION—PETITION FOR
DECLARATORY ORDER—SPRINGFIELD TERMINAL
RAILWAY CO., INC. AND CONSOLIDATED RAIL CORPORATION**

**REPLY OF RESPONDENT
SPRINGFIELD TERMINAL RAILWAY COMPANY
TO ENGELHARD CORPORATION'S PETITION FOR
DECLARATORY ORDER**

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Robert B. Culliford
Law Department
Iron Horse Park
North Billerica MA 01862

*Attorneys for Respondent
Springfield Terminal Railway Company*

Dated: October 16, 2002

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SURFACE TRANSPORTATION BOARD**



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DECLARATORY ORDER**

Introduction

An order of the United States District Court for the District of Massachusetts (the "District Court") dated May 22, 2002 has referred "two legal issues" to this Board pursuant to the doctrine of primary jurisdiction:

1. "Does a cause of action involving a disputed failure to pay car mileage allowances under Tariff 6007 arise one month and ten days after the end of the month in which the obligation is incurred, or four months after the date on which a railroad refuses to pay or act on a claim, or on the occurrence of some other date or event?"

2. "Is a railroad obligated to pay compensation under Tariff 6007 only to the owner of a car's reporting mark, or does Item 180 of such tariff permit the owner of the mark to assign the right to payment to a lessee of a car?"

These issues have arisen in a civil action filed in the District Court by Engelhard Corporation ("Engelhard"), which is the petitioner before this Board, against Springfield Terminal Railway Company ("ST")¹ and Consolidated Rail Corporation ("Conrail"). Engelhard alleges that ST and Conrail, who are common carriers by rail subject to the jurisdiction of the Board, moved freight in rail cars owned by or leased to Engelhard over a 155-mile segment of rail line between Selkirk, New York, and Barber Station, Massachusetts (the "Rail Line"), but failed to pay the car mileage set by the applicable tariff, which is filed with the STB. Petition for Declaratory Order ("Petition"), Exh. 1 (Amended Complaint) ¶¶ 4, 8-10, 14. Engelhard claims to be owed \$568,155.13 as car mileage for the use on the Rail Line by ST, Conrail, or both, of cars owned by or leased to Engelhard. *Id.* ¶ 10.

The District Court has dismissed Engelhard's four state claims as preempted by the Interstate Commerce Act ("ICA" or "Act"), Petition, Exh. 2 (193 F. Supp. 2d at 390), and has ruled that Engelhard's federal claim under 49 U.S.C. § 11704(b) and Freight Tariff 6007 is subject to the two-year statute of limitations established by 49 U.S.C. § 11705(c), *id.* (193 F. Supp. 2d at 390-91). These rulings are not part of the referral to this Board, which is limited to the two questions quoted above.

As directed by the District Court, *see* Petition, Exh. 4 (order), ¶ 2, Engelhard filed a petition for declaratory order on September 26, 2002. Given that these are questions of law, ST believes that the modified procedures set out in part 1112 of the Board's rules should apply to this proceeding and—like the District Court, *see* Petition, Exh. 4 (Memorandum)—perceives no need for discovery.

¹ Springfield's correct name is "Springfield Terminal Railway Company." The identification of Springfield in the caption of Engelhard's petition as "Springfield Terminal Railway Co., Inc." accordingly is in error and should be corrected.

Conrail (which is filing a separate reply to the Petition) and ST propose the following schedule:

Engelhard opening statement	45 days after service of Board decision opening declaratory order proceeding
Conrail and ST replies	45 days after service of Engelhard opening statement
Engelhard rebuttal	30 days after service of Conrail and ST replies.

Respectfully submitted,



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Law Department
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*Attorneys for Respondent
Springfield Terminal Railway Co.*

Dated: October 16, 2002

CERTIFICATE OF SERVICE

I certify that I have this 16th day of October 2002 served copies of the foregoing upon counsel for all parties by overnight courier directed to their counsel.

A handwritten signature in black ink, appearing to read "Eric L. Hirschhorn", written over a horizontal line.

Eric L. Hirschhorn

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