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July 28, 2003

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

RE: Docket No. AB-55 (Sub-No. 631X), *CSX Transportation, Inc.—Abandonment Exemption—in Summit County, OH*

Dear Secretary Williams:

Enclosed are the original and 10 copies CSX Transportation, Inc.'s Response to the Petition to Revoke in the above-entitled proceeding. Also enclosed are three diskettes containing the Response and verified statement.

Please time and date stamp the additional copy of this letter and the Response, and return it to 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

Office of George

JUL 29 2003

Surface Transportation Board

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-55 (Sub-No. 631X)

CSX TRANSPORTATION, INC.-ABANDONMENT EXEMPTION-
IN SUMMIT COUNTY, OHIO

RESPONSE TO PETITION TO REVOKE

Natalie S. Rosenberg, Esq.
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202
(904) 359-1253

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1455 F Street, NW, Suite 225
Washington, DC 20005
(202) 638-3307

Attorneys for: CSX TRANSPORTATION,
INC.

Dated: July 28, 2003

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-55 (Sub-No. 631X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—
IN SUMMIT COUNTY, OHIO

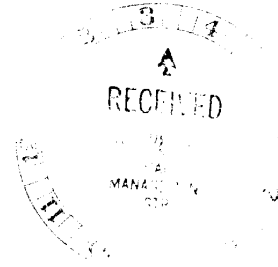
RESPONSE TO PETITION TO REVOKE

CSX Transportation, Inc. (“CSXT”) files this Response with the Surface Transportation Board (the “Board”) to the Petition to Revoke filed on July 8, 2003 (the “Petition”) by Terminal Warehouse, Inc. (“Terminal”). The Petition does not justify either the rejection or the revocation of CSXT’s Notice of Exemption and therefore, CSXT respectfully urges the Board to deny the Petition.

BACKGROUND

CSXT filed a Notice of Exemption under 49 C.F.R. 1152 Subpart F on March 26, 2003 (the “Notice”) in order to abandon a 0.07-mile line of railroad known as the Lumber Lead between former Conrail mileposts 11.49 and 11.56, in Summit County, OH (the “Line”).

CSXT sought to abandon the Line because the bridge on the Line over Eastwood Avenue (the “Eastwood Avenue Bridge”) that connected the Line to the remainder of CSXT’s system was damaged beyond repair by a third party contractor installing fiber optic cable on or about February 11, 2002. The damage caused the Eastwood Avenue Bridge to become structurally



unsound, thus necessitating the closure of Eastwood Avenue by the City of Akron.¹ As a courtesy to Terminal, Mr. Jim Scott, CSXT's yardmaster in Akron, notified Terminal of the Eastwood Avenue Bridge damage and suggested Terminal contact CSXT marketing personnel if it wanted to retain rail service to that particular facility. Mr. Scott also had the same discussion with Ms. Bonnie Myers.² Verified Statement of Heidi Van Horn-Bash ("Bash VS") at 2.

During the first two weeks of June 2002 the Eastwood Avenue Bridge was taken down by a contractor so that Eastwood Avenue could be reopened to vehicular traffic.³ The City of Akron then widened Eastwood Avenue. Bash VS at 2. Prior to the time that the track on the Eastwood Avenue Bridge was removed, Mr. Scott again verbally notified Terminal and had a conversation with Ms. Myers. After the Eastwood Avenue Bridge was removed, CSXT issued embargo number 4-02 on August 2, 2002, in compliance with the Association of American Railroad's embargo rules, even though there had been no request for service in over one and one-half years.

The last shipment over the Line occurred on January 20, 2001. CSXT received no request for service over the Line after the last shipment moved. Bash VS at 1.

Prior to filing the Notice, Ms. Bash had discussions with B&F and notified B&F of the impending abandonment in writing. Terminal became aware of the impending abandonment through the letter to B&F. Bash VS at 2.

¹ The Eastwood Avenue Bridge was about 100 years old when it collapsed. Eastwood Avenue was one eight-foot wide lane under Eastwood Avenue Bridge.

² Ms. Myers is the President of B & F Polymers, Inc. ("B&F"). B&F located two rail cars at Terminal's facility several years ago. Mr. Scott also suggested that if B&F wanted the two cars removed from Terminal at that time, then CSXT might be able to accommodate B&F. B&F did not request CSXT to move the cars. It should be noted that B&F is not a party to the Petition or this proceeding, and any discussion regarding B&F is for information purposes only.

³ The damage to the Eastwood Avenue Bridge was such that it could not be properly stabilized in order to protect the vehicular traffic beneath the structure. As a result, removal was the only means readily available to allow for the reopening of Eastwood Avenue.

In preparing to file the Notice, CSXT published a notice in The Akron Beacon Journal on March 14, 2003 pursuant to 49 C.F.R. § 1105.12. After the Notice was filed, the Board notified the public that CSXT had filed the Notice and that the Notice would become effective on May 15, 2003. *CSX Transportation, Inc.—Abandonment Exemption—in Summit County, OH*, STB Docket No. AB-55 (Sub-No. 631X) (STB served April 15, 2003) and 68 Fed. Reg. 18327-18328 (April 15, 2003). No pleadings in response to the newspaper notice or the Board’s notice were received by CSXT or filed with the Board.

Accordingly, the Notice became effective on May 15, 2003, and CSXT consummated the abandonment of the Line on May 23, 2003. A letter confirming CSXT’s consummation of the abandonment was filed with the Board on May 27, 2003.

ARGUMENT

CSXT respectfully requests that the Board deny Terminal’s requests to either reject the Notice as void *ab initio* or revoke the Notice. Furthermore, CSXT has consummated the abandonment, limiting the Board’s jurisdiction to reject or revoke the exemption.

1. The Notice is not void *ab initio*.

Contrary to Terminal’s argument, the notice and filing procedures for an out of service notice of exemption are different from those for an abandonment application. CSXT complied with all of the requirements of 49 C.F.R. § 1152.50.

The Interstate Commerce Commission (the “ICC”), the Board’s predecessor, adopted procedures to expedite the abandonment of railroad lines that had not been used for local traffic for over two years. *Exemption of Out of Service Rail Lines*, 366 I.C.C. 885 (1983) (“*Out of Service Exemption*”), remanded in *Illinois Commerce Commission, et al. v. ICC*, 787 F2d 616 (D.C. Cir. 1986), reaffirmed in *Exemption of Out of Service Rail Lines*, 2 I.C.C.2d 146 (1986).

The process requires the certification that there has been no local traffic over the line for at least two years and that any overhead traffic can be rerouted. 49 C.F.R. § 1152.50(b).

CSXT filed the Notice on March 26, 2003 and made the required certification on page 8. Terminal admits that “[t]he last shipment on the Line was January 20, 2001” and that “it is *technically* true that no traffic moved over the Line for two years prior to the filing of the notice” Petition at 7. That admission should end Terminal’s request to reject the Notice. But, Terminal persists with an argument that the ICC put to rest in *Out of Service Exemption*.

Having admitted that CSXT has met the technical requirements for an out of service abandonment, Terminal argues that CSXT’s August 2, 2002 embargo of the Line prevented any shipper from using the Line and assured that there would be no local traffic moving over the Line during the last five months of the two year period. The issue of the effect of an embargo was fully addressed by the ICC in *Out of Service Exemption*, at 887-888.

The greatest concern voiced in the comments is that railroads may abuse the use of embargoes ... to enable them to use this exemption for lines where there is a continuing transportation interest. Some fear that a carrier may embargo a line, make repairs so slowly that 2 years pass without service, and then seek to abandon the line under this exemption.

... Embargoes are not, however, to be used as a permanent measure to route or control traffic. A rail carrier using the embargo procedure in an improper fashion is subject to the Commission’s complaint procedures. ...

... this class exemption may not be used if a formal complaint ..., is either pending with the Commission or has been decided in favor of the complainant within the 2-year period that a line has been out of service. The complaint must allege that the carrier imposed an illegal embargo or impediment to service on that line. We will require all carriers seeking to avail themselves of the exemption to certify in their notice that no complaint filed by a shipper during the 2-year out of service period is either still pending or was decided in the shipper’s favor.

Neither Terminal nor any other person filed a complaint with the Board or a court of competent jurisdiction alleging that CSXT engaged in an illegal embargo, nor was any such complaint

decided in the shipper's favor.⁴ After the Eastwood Avenue Bridge was damaged on February 11, 2002, and despite verbal and indirect written contact with CSXT advising that the Line had been damaged and was a likely abandonment candidate, local newspaper publication, and Federal Register publication, Terminal sat on its rights until the filing of the Petition. Terminal tries to promote the lack of personal written notice from CSXT to the keystone issue in this proceeding. Terminal is wrong. Terminal's lack of notice claim is a red herring since (1) the regulations do not in any way require the type of written notice sought by Terminal, and (2) more importantly, Terminal was given notice from various conversations with CSXT representatives.

Not only has CSXT certified that there was no local traffic on the Line, but in compliance with 49 C.F.R. § 1152.50(b) CSXT has certified that there had been no overhead traffic⁵ and that no complaint had been filed or decided in the shipper's favor during the two year period. Notice at 8.⁶

The Board has concluded that:

⁴ It should be noted that Terminal is apparently familiar with the process to file a complaint against an illegal embargo. Petition at 8. A Petition to Revoke after the abandonment has been consummated is not the proper forum to allege an illegal embargo. Terminal should have raised this allegation at any time after the Eastwood Avenue Bridge was damaged but before the abandonment could be consummated.

⁵ CSXT deems the transportation to Terminal to be local traffic, not overhead. The only way for CSXT to serve Terminal was over the Line. Hence the traffic could not have been rerouted. Nonetheless, there was no traffic –local or overhead – on the Line for the relevant two year period.

⁶ CSXT has also not been contacted to provide any service over the Line. Terminal cites two instances where it was requested to make a quote for the delivery of goods by rail and refused to do so because of the embargo. Petition, Affidavit of William K. Hanlon, paragraphs 29 and 30. However, CSXT is well aware that there is a huge chasm between being asked to bid on business, as Terminal was, and being tendered the business. CSXT contends that the Board should give no weight to Terminal's claim that it lost business that it was only asked to bid on, especially since CSXT has received no request for service over the Line since January 2001, most recently.

Pursuant to 49 U.S.C. 10502, we have exempted "out-of-service" rail lines from the regular procedures for obtaining permission for abandonment of a rail line under 49 U.S.C. 10903. In their place we have adopted the abbreviated procedures set forth in 49 CFR 1152.50 for abandonment of a rail line where the carrier certifies that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on its behalf) regarding cessation of service over the line either is pending with the Board or any U.S. District Court or has been decided in favor of the complainant within the 2-year period. If the carrier's notice of exemption contains false or misleading information as to these factors, however, the carrier's attempt to use the class exemption is void *ab initio* and the Board will reject the notice. 49 CFR 1152.50(d)(3).

... Rejection is appropriate only if the exemption request contains false or misleading information.

Consolidated Rail Corporation—Abandonment Exemption—in Vermilion and Champaign

Counties, IL, STB Docket No. AB-167 (Sub-No. 1161X) (STB served May 19, 2000), at 2. As

has been demonstrated, the Notice does not contain any false or misleading information and should not be rejected.

2. There is no basis to revoke the exemption.

"The Board may revoke an exemption, to the extent it specifies, when it finds that application in whole or in part of a provision of this part to the person, class, or transportation is necessary to carry out the transportation policy of section 10101 of this title." 49 U.S.C. § 10502(d).

Under 49 U.S.C. 10502(d), an exemption may be revoked, in whole or in part, if the Board finds that: (1) it contains false and/or misleading information, *see, e.g., Save the Rock Island Committee, Inc. v. St. Louis Southwestern Railway Co.*, Docket No. AB-39 (Sub-No. 18X) (ICC served Apr. 1, 1994); (2) regulation is necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. 10101, *see, e.g., Indiana Hi-Rail Corporation--Lease and Operation Exemption--Norfolk and Western Railway Company Line Between Rochester and Argos, IN, and Exemption from 49 U.S.C. 10761, 10762, and 11141*, Finance Docket No. 32162 *et al.* (STB served Jan. 30, 1998) (Hi-Rail); or (3) revocation is necessary to ensure the integrity of the Board's processes, *see, e.g., Minnesota Comm. Ry., Inc.-*

-Trackage Exempt.--BN RR. Co., 8 I.C.C.2d 31 (1991) (Minnesota).

When, as here, an exemption has become effective, a revocation request is treated as a petition to reopen and revoke and, under 49 CFR 1115.3(b), the petitioner must specify whether revocation is supported by material error, new evidence, or substantially changed circumstances. The petitioner has the burden of proof and must articulate reasonable, specific concerns to satisfy the revocation criteria. *See Wisconsin Central Ltd.--Exemption Acquisition and Operation--Certain Lines of Soo Line Railroad Company*, Finance Docket No. 31102 (ICC served July 28, 1988); *Minnesota*, 8 I.C.C.2d at 35; and *I&M Rail Link LLC--Acquisition and Operation Exemption--Certain Lines of Soo Line Railroad Company d/b/a Canadian Pacific Railway*, STB Finance Docket No. 33326 et al. (STB served Apr. 2, 1997), *aff'd sub nom. City of Ottumwa v. STB*, 153 F.3d 879 (8th Cir. 1998).

Track Tech, Inc.--Abandonment Exemption—in Adair and Union Counties, IA, STB Docket No. AB-493 (Sub-No. 7X) (STB served November 1, 1999).

The only basis cited by Terminal for revoking the exemption is the argument that the Notice contains false and misleading information, which CSXT has already rebutted. Terminal does not address material error, changed circumstances or new evidence. Nor does Terminal argue that any of the elements of the Rail Transportation Policy of 49 U.S.C. § 10101 requires regulation of the abandonment of the Line.

Terminal has not presented grounds to revoke the exemption. CSXT respectfully requests the Board to deny Terminal's request to revoke the exemption of the abandonment of the Line.

3. CSXT has consummated the abandonment of the Line curtailing the Board's jurisdiction.

CSXT consummated the abandonment of the Line on May 23, 2003, and the Board received CSXT's notice of consummation on May 27, 2003. When abandonment is consummated before a petition to vacate the abandonment is filed, the Board has found:

“Accordingly, our jurisdiction over a rail line is generally considered to end when abandonment authority is granted and that authority is fully exercised. *Hayfield N. R. R. v. Chicago & N. W.*

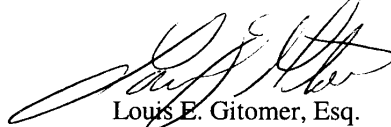
Transp. Co., 467 U.S. 622, 633 (1984); *Preseault v. ICC*, 494 U.S. 1, 5 n.3 (1990). ... There are rare cases, such as instances of fraud, where we may assert jurisdiction over property after abandonment authority has been exercised.” *CSX Transportation, Inc.—Abandonment—Between Bloomingdale and Montezuma, in Parke County, IN*, STB Docket No. AB-55 (Sub-No. 486) (STB served September 13, 2002).

CSXT did not commit fraud in filing the Notice. CSXT fully complied with the regulations at 49 C.F.R. § 1152.50. CSXT did not mislead anyone as to its intentions. Indeed, Mr. Scott went beyond the requirements of the regulations when he contacted Terminal and informed B&F in advance of the embargo and abandonment filing.

CONCLUSION

Terminal has not demonstrated that the Board should either reject or revoke the Notice. CSXT respectfully requests that the Petition be denied.

Respectfully submitted,



Louis E. Gitomer, Esq.
Ball Janik, LLP
1455 F Street, NW, Suite 225
Washington, DC 20005
(202) 638-3307

Natalie S. Rosenberg, Esq.
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202
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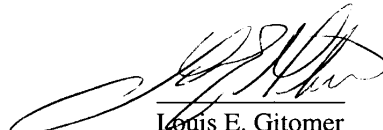
Attorneys for: CSX TRANSPORTATION,
INC.

Dated: July 28, 2003

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this Response in Docket No. AB-55 (Sub-No. 631X), *CSX Transportation, Inc.—Abandonment Exemption--in Summit County, OH* was sent via overnight delivery to:

Frank J. Reed, Jr., Esq.
88 East Broad Street, Suite 900
Columbus, OH 43215



Louis E. Gitomer
July 28, 2003

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-55 (Sub-No. 631X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—
IN SUMMIT COUNTY, OHIO

VERIFIED STATEMENT OF HEIDI VAN HORN-BASH

I am Heidi Van Horn-Bash, Director-Asset Management for CSX Transportation, Inc. (“CSXT”). One of my responsibilities is the plant rationalization and abandonment of railroad lines. I have primary responsibility for the abandonment program in the Akron, OH area and am familiar with the events leading up to the abandonment of the a 0.07-mile line of railroad known as the Lumber Lead between former Conrail mileposts 11.49 and 11.56, in Summit County, OH (the “Line”). I have reviewed the Petition filed by Terminal Warehouse, Inc. (“Terminal”).

The last shipment moved over the Line on January 20, 2001. No shipments were made over the Line between January 21, 2001 and February 11, 2002, when the bridge on the Line over Eastwood Avenue (the “Bridge”) was damaged. Indeed, no requests for service over the Line have been received by CSXT since January 2001. Although Terminal claims that there are “other shippers” on the Line, it is my understanding that there are no other shippers on the Line that are able to be served by rail. In reality, Terminal is not even located on the Line, but at a point north of the Line that CSXT is authorized to serve over another railroad’s line. Although the Line was used to reach the Terminal facility, the facility is not located adjacent to the Line.

I made the certification in compliance with 49 C.F.R. § 1152.50(b) in the Notice of Exemption that was filed on March 26, 2003. Before making the certification, I diligently reviewed CSXT’s records to determine that there had been no local or overhead traffic on the

Line for at least two years and that no complaint against CSXT had been filed or was decided in the shipper's favor. Because I had arranged for the Line to be embargoed on August 2, 2002, I took great care in reviewing CSXT's records for my certification.

Embargo number 4-02 was issued after a third party contractor had damaged the Bridge while installing fiber optic cable and the Bridge had been taken down to allow reopening of Eastwood Avenue. Since removal of the Bridge, Eastwood Road has been reopened and widened where once an eight-foot wide one lane road previously passed under the Bridge. CSXT's records indicate that the Bridge was damaged on or about February 11, 2002, not in 2001 as Terminal has indicated in its Petition.

I reviewed CSXT's records and spoke with Mr. Jim Scott, CSXT's yardmaster in Akron. CSXT, through Mr. Scott contacted Terminal immediately after the Bridge was damaged and advised them to contact marketing personnel at CSXT if they needed continued rail service. Mr. Scott relayed a similar message to Ms. Bonnie Myers of B&F Polymers, Inc. ("B&F") when she contacted him. Mr. Scott again spoke with Terminal and Ms. Myers prior to removal of the Bridge.

I have attached correspondence between B&F, Terminal and myself, as well as my notes of a conversation with Ms. Myers. As can be seen, CSXT did attempt to keep both B&F and Terminal apprised of the situation verbally. By letter dated February 11, 2003, I did tell B&F, in writing that CSXT was going to seek permission to abandon the line. It is clear from Terminal's February 14, 2003 letter that it had reviewed my letter to B&F and was aware of CSXT's abandonment plans.

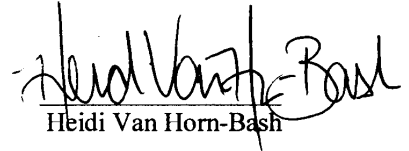
Ms. Myers has been advised that the rail cars that have been used for storage at Terminal for several years could be moved by truck. Rail service could be restored to the Terminal facility

if there is sufficient demand to construct a switch track between a parallel CSXT line and the line serving Terminal.

VERIFICATION

I, Heidi Van Horn-Bash, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed July 17, 2003.



Heidi Van Horn-Bash

AKRON FULTON INTERNATIONAL AIRPORT
ENGINEERING SERVICES DIVISION
HIGHWAY MAINTENANCE DIVISION
PARKS MAINTENANCE DIVISION
SANITATION SERVICES DIVISION
STREET CLEANING DIVISION

PAUL E. BARNETT, P.E.
Manager



DONALD L. PLUSQUELLIC
Mayor

JOSEPH P. KIDDER, Service Director

LUNZY O. ARMSTRONG, Deputy Director

JEFF FUSCO, Deputy Director

BUREAU OF PUBLIC WORKS
1436 Triplett Blvd., Akron, Ohio 44306
Telephone: (330) 375-2834
Telecopier: (330) 375-2822

FACSIMILE TRANSMISSION

TO: **Bill Loar, Regional Bridge Engineer**
CSX Transportation, Inc.
FAX NUMBER: 419 933-5653

FROM: **Stephen A. Dubetz, P.E., P.S., Manager**
Public Works Engineering Services
DubetSt@ci.Akron.OH.US
Phone 330 375-2831

FAX 330 375-2815

DATE: February 28, 2002

RE: Bridge over Eastwood Avenue at Station 622 + 86 (approximate)

NUMBER OF PAGES (including this page): 13

COMMENTS: Per our conversation, following is the 1990 sales agreement granting ownership of the above referenced bridge to CSX Transportation, Inc.

Please have it reviewed, and if your company sold the bridge after this agreement, send me the supporting documentation.

As you are aware, an AT&T fiber optic contractor damaged the subject bridge on February 11, 2002. The roadway below and the railroad track that crosses the bridge have been closed to traffic since then.

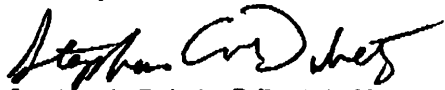
If your company is the current owner, please have a repair estimate prepared. I have requested AT&T to do likewise, in the interest of re-opening the roadway to traffic as soon as feasible. A copy of AT&T business cards follows the agreement. Please also contact AT&T and arrange a meeting of them, your company, and City representatives to discuss options to get the roadway opened to traffic. I suggest we meet in our (Akron Public Work's) conference room, which is not far from the bridge.

Bill Loar
Page 2
February 28, 2002

The City of Akron would like to see this bridge demolished, instead of repairing it. The last page of this fax is a proposed drawing for a switch relocation that would make the bridge unnecessary.

Please contact me after you have had a chance to review this information.

Sincerely,



Stephen A. Dubetz, P.E., P.S., Manager
Public Works Engineering Services

c: Paul Barnett, Akron Public Works Manager
Bradley Faidley, Akron Engineering Technician II
Bob Frohwerk, CSX Bridge Supervisor

Van Horn-Bash, Heidi

From: Butler, Dewayne
Sent: Friday, August 02, 2002 4:53 PM
To: Nye, Jack; Turner, Ron; WRREGMGR; Lancaster, Al
Cc: Downey, Margaret; Van Horn-Bash, Heidi
Subject: Akron-Lumber Lead (OH)
As information.

FDB 08/02

-----Original Message-----

From: Railinc@shed1.steelroads.com [mailto:Railinc@shed1.steelroads.com]
Sent: Friday, August 02, 2002 3:37 PM
To: Butler, Dewayne
Subject: Embargo Effective

Association of American Railroads

Consecutive Sheet Number:

083

Embargo Notice for:

02-AUG-02

Road Mark: CSXT
Railroad: CSX TRANSPORTATION
Embargo Number: 4-02
Amendment Number:
Status: Effective
Embargo Effective Date: 02-AUG-02
Commodity: All Traffic
Destination Gateway or Territory:
To or from the following customer at Akron Junction, OH (FSAC 71428)
Consigned or Reconsigned To or Intended For:
Terminal Warehouse
Cause:
Bridge damaged by fiber optics contractor
Amended:

Exception:

None

Note:

6/13/03

Week of January 13, 2003

I spoke with Bonnie Meyers at B.F. Polymers in Akron. They store two rail cars at Terminal Warehouse on Home Road in Akron. With the bridge being taken out, the cars are now isolated within the facility and unable to be moved. She said that the owner of Terminal Warehouse was pressuring her to do something about the cars. The owner felt that the cars being would hinder any future sale of the property. She wanted to know how she would be compensated for removing the cars since the rail was no longer available. She also felt that we were damaging her business since she could not get rail rates. However, she had no response to the fact that they have not used rail for over two years even when it was available. She said that she would write a letter stating her position. I told her that I would keep her updated on the situation. Her contact information is:

Bonnie Myers
B.F. Polymers
P.O. Box 13080
Akron, Ohio 44334

330-836-8517 Office
330-283-8678 Cell Phone

HDB
1/22/03



B & F POLYMERS, INC.

P.O. Box 13080
Akron, Ohio 44334Distributor Formulated Polymers
Plastics / RubberPhone (330) 836-8517
FAX (330) 836-6881

February 3, 2003

Ms. Heidi Bash
CSX Railroad
500 Water Street, J-200
Jacksonville, Florida 32202

Re: B & F Polymers Railcars

Dear Ms. Bash:

Confirming our phone conversation of 1/17/03, B & F Polymers, Inc. currently has two railcars located on the CSX track at Terminal Warehouse on Home Avenue in Akron, Ohio.

Due to the removal of the trestle on Eastwood Avenue, which was ordered by CSX, these two railcars are currently stranded at Terminal Warehouse.

B & F Polymers was never given the opportunity to move these cars before the trestle was removed.

Please advise what CSX intends to do regarding the reinstallation of the trestle and activation of the existing track.

Permanent loss of use of this track will result in the following problems for our company:

- 1) Loss of the ability to obtain competitive storage rates for these cars since they will have to remain at Terminal Warehouse.
- 2) Loss of the ability to bring in other railcars for storage/transloading into the existing cars.
- 3) Inability to sell these cars, since they cannot be moved.

If at some point Terminal decides they no longer want the cars stored at their warehouse, B & F Polymers will have to scrap the cars resulting in the following costs:

- 1) Loss of the value of the cars.
- 2) Loss of use of the cars.
- 3) The cost of demolition and removal of cars.

Therefore, the loss of ingress and egress on the existing tracks will result in a major financial hardship for B & F Polymers.

Sincerely,


Bonnie Myers
President



Asset Management
500 Water Street, J200
Jacksonville, Florida 32202
(904) 359-2409
Fax (904) 359-1111
e-mail: Heidi_VanHorn-Bash@csx.com

February 11, 2003

via U.S.P.S. Certified Mail

Ms. Bonnie Myers
President
B&F Polymers, Inc.
P.O. Box 13080
Akron, Ohio 44334

Dear Ms. Myers:

I am in receipt of your letter dated February 3, 2003. As you know, the trestle on Eastwood Avenue was damaged by a third party. The damage was so severe that CSX Transportation ("CSXT") had no choice but to remove the trestle and embargo the rail line.

CSXT takes great exception to your claim that B&F Polymer was not given the opportunity to move its two railcars by rail prior to the removal of the trestle. It is our understanding that before the trestle was removed Yardmaster, Jim Scott, spoke with you concerning the condition of the trestle and your need to notify the Trainmaster or customer service if you wanted the cars moved before the trestle was torn down. We also understand that you did not notify the Trainmaster or customer service that you needed the two cars moved before the trestle was removed. CSXT also filed a public notice of embargo on the line on August 2, 2002.

Since the traffic on the line does not justify the rehabilitation of the trestle, CSXT intends to seek permission from the Surface Transportation Board to abandon the line. While we note your concern about lack of rail service, the law does not favor requiring carriers to leave rail assets on the ground to serve facilities that no longer utilize rail service.

We also understand your concern regarding the potential removal of the rail cars, which we understand are currently being utilized for storage purposes. In the event that you desire to remove the cars from the warehouse facility at some point in the future, there are other options available to you besides scrapping the cars. Several outside companies have the ability to move the cars to another location.

Please feel free to contact me if you have any further questions or comments.

Sincerely,

A handwritten signature in dark ink, appearing to read "Heidi Bash", written over a horizontal line.

Heidi Bash
Director - Asset Management

cc: Bill Hanlen, Terminal Warehouse
Natalie Rosenberg, CSXT



February 14, 2003

CSX Transportation
Asset Management
Ms. Heidi Bash, Director Asset Management
500 Water Street
Jacksonville, FL 32202

Dear Ms. Bash:

I have reviewed your letter of February 11 to Bonnie Meyers. Several facts in your response are incorrect.

First, I do not believe that the Yardmaster, Jim Scott spoke with Ms. Meyers on the damaged trestle. Mr. Scott did notify Terminal Warehouse, well after the fact, that the trestle was damaged. He also indicated at that time that CSX would probably make temporary repairs to the track in the event we wished the cars to be moved. There was no indication this was a permanent situation.

Second, at no time was Terminal Warehouse notified that the trestle would be removed. In fact I only found out the trestle was removed by driving by the site. At that point I initiated a call to Mr. Scott to find out what happened. He indicated that the City of Akron removed the trestle and CSX was not a party to the demolition. I find it hard to believe that Mr. Scott could have notified us of the removal if he did not even know who was removed the bridge.

Lastly, I find it hard to believe that the only notification to Terminal Warehouse or Ms. Meyers is a phone call. At minimum I would expect the elimination of rail service to be in writing. I am no expert on rail law, so maybe the notice of embargo is all that CSX is legally required to file. But in terms of customer service and common practice this is a major oversight on the part of CSX.

I can appreciate the position of CSX, but I do not believe there was ever any proper notice communicated. In my opinion, CSX should consider resolution alternatives to Ms. Meyers.

Sincerely,

Bill Hanlon
President

Cc: Bonnie Meyers