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May 8, 2006

ENTERED
Office of Proceedings

MAY 9 2006

FILED
Public Record



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

Re: Finance Docket No. ³⁴⁸⁷⁰34838, PYCO Industries, Inc. v. South Plains Switching, Ltd.
Co.

Dear Mr. Williams:

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

Very truly yours,

Tom McFarland

Thomas F. McFarland
Attorney for South Plains
Switching, Ltd. Co.

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BEFORE THE
SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC.,

Complainant,

v.

SOUTH PLAINS SWITCHING, LTD. CO.,

Defendant.

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FINANCE DOCKET
NO. ~~34838~~

34870

ENTERED
Office of Proceedings

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FILED
Per. Clerk

ANSWER TO COMPLAINT

SOUTH PLAINS SWITCHING, LTD. CO.
10917 East FM2150, East CR78
Slaton, TX 79364

Defendant

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Attorney for Defendant

DATE FILED: May 9, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC.,	)	
	)	
Complainant,	)	FINANCE DOCKET
v.	)	NO. 34838
	)	34870
SOUTH PLAINS SWITCHING, LTD. CO.,	)	
	)	
Defendant.	)	

ANSWER TO COMPLAINT

Pursuant to 49 C.F.R. § 1111.4(a), SOUTH PLAINS SWITCHING, LTD. CO. (SAW) hereby answers the allegations of the Complaint filed by PYCO Industries, Inc. (PYCO), on April 19, 2006, as follows:^{1/}

Complaint Section No.	Sentence	Answer
1a	1 st	Admitted
1b	1 st	Denied, further answering: the address of SAW's office is: 10917 East FM2150, East CR78, Slaton, TX 79364
2	1 st	Admitted
3a	1 st	Denied
	2 nd	Denied, further answering: there were more than 12 customers.
	3 rd	Admitted

^{1/} Typical of PYCO's ethics in prior litigation with SAW, PYCO has attached a confidential Asset Sale Agreement containing sensitive information about SAW as an exhibit to its Complaint for all the world to see. (See Section 27 of Asset Sale Agreement, "Confidentiality"). PYCO should be admonished for this breach of privacy.

Complaint Section No.	Sentence	Answer
	4 th	Denied, further answering: the Sale Agreement speaks for itself; see Page 1, #1, Description of Business Sold, paragraph a., (4), cont'd on page 2.
	5 th	Admitted
3b	1 st	Admitted
3c	1 st	Insufficient knowledge to plead -- require proof of allegations
	2 nd	Insufficient knowledge to plead -- require proof of allegations
	3 rd	Admitted as to mills in Lubbock, TX; insufficient knowledge to plead -- require proof of allegations as to remainder
	4 th	Insufficient knowledge to plead -- require proof of allegations
	5 th	Insufficient knowledge to plead -- require proof of allegations
	6 th	Insufficient knowledge to plead -- require proof of allegations
	7 th	Insufficient knowledge to plead -- require proof of allegations
3d	1 st	Admitted as to first clause; second clause is too vague to answer
	2 nd	Insufficient knowledge to plead -- require proof of allegations
3e	1 st	Insufficient knowledge to plead -- require proof of allegations
3f	1 st	Admitted
	2 nd	Admitted
	3 rd	Admitted, furthering answering: PYCO leased Track 9298 for a one-year term only, which expired by its terms. PYCO leased Track 9298 at SAW's suggestion to try to convince BNSF to remove the lock from the switch to Track 231.
3g	1 st	Insufficient knowledge to plead -- require proof of allegations
	2 nd	Admitted
	3 rd	Insufficient knowledge to plead -- require proof of allegations, further answering: the allegation is insufficiently vague as to time frame.
3h	1 st	Insufficient knowledge to plead -- require proof of allegations

Complaint Section No.	Sentence	Answer
	2 nd	Denied
	3 rd	Denied, further answering: PYCO had refused to put its service requests in writing and was making false allegations that SAW employees were not providing services.
	4 th	Denied, further answering: Mr. Wisener was attempting to determine exactly what PYCO's service needs were.
	5 th	Denied
	6 th	Denied, further answering: Sale Agreement (pages 21-22) states that seller shall make reasonable efforts to make freight cars available at buyer's request. Penny Newman Grain has "sole" responsibility for furnishing equipment needs for PYCO's cottonseed movement. Further, Penny Newman or PYCO cannot produce a request that SAW furnish this type of equipment.
	7 th	Denied, further answering: SAW has a right to refuse to permit PYCO to operate over SAW's tracks. Formal operating agreements are a standard practice for provision of rail service.
		Further answering: all allegations in Section 3(h) are insufficiently vague.
3i	1 st	Insufficient knowledge to plead -- require proof of allegations
	2 nd	Denied, except admitted that no complaint was filed
3j	1 st	Admitted
	2 nd	Admitted, except that denied that Mr. Wisener stated that he wanted to get out of the railroad business.
	3 rd	Admitted
	4 th	Admitted
	5 th	Denied, further answering: SAW's proposal was an offer to sell, not a demand.
	6 th	Denied, further answering: PYCO had received a complete sale proposal in May, 2005.

Complaint Section No.	Sentence	Answer
	7 th	Denied, further answering: BNSF had first right of refusal and SAW could not sign anything that would come back on SAW if PYCO did not get the trackage because of BNSF's first right of refusal.
3k	1 st	Denied, further answering: PYCO did not take a position. PYCO did not sign a letter of intent to forward to the BNSF.
	2 nd	Denied
	3 rd	Denied, further answering: PYCO refused to sign a letter of intent to commence the BNSF 60-day first right of refusal, as per the Sale Agreement.
	4 th	Admitted, further answering: that action was taken for valid safety reasons, independently of sale negotiation.
3l	1 st	Admitted that SAW placed a derail; insufficient knowledge to plead as to remainder.
	2 nd	Denied, further answering: the letter speaks for itself
	3 rd	Denied
	4 th	Denied as to the first clause; admitted as to the remainder
	5 th	Admitted as to the first clause, and that PYCO executives refused to meet with Mr. Wisener; denied as to the remainder.
	6 th	Admitted
3m	1 st	Admitted, further answering: PYCO had no legal right to operate a trackmobile over SAW's property in the absence of SAW's permission to do so.
	2 nd	Denied, further answering: PYCO's trackmobile had derailed on SAW's tracks on numerous occasions.
3n	1 st	Admitted
	2 nd	Denied, further answering: PYCO never requested SAW to provide more than one switch per day or to switch on weekends.

Complaint Section No.	Sentence	Answer
	3 rd	Denied, further answering: SAW could have switched more than 12 carloads per switch to PYCO Plant 1, but PYCO did not have sufficient private plant trackage to accommodate more than 12 cars per switch.
	4 th	Insufficient knowledge to plead -- require proof of allegations
3o	1 st	Insufficient knowledge to plead -- require proof of allegations
	2 nd	Admitted, further answering: operation onto PYCO's scale track was deemed by SAW to be unsafe. In the absence of a private sidetrack agreement, SAW had no legal duty to operate onto PYCO's scale track.
3p	1 st	Denied, further answering: SAW failed to provide scheduled rail service to Plant 2 on one day only, i.e., November 28, 2005, due to a locomotive failure. BNSF had cancelled an agreement to keep BNSF locomotives on aggregate trains. Therefore, SAW had three locomotives dedicated to aggregate movements with no way to return to SAW Yard. One engine was still in mothballs and SAW had one running and one broken down. This accounts for all of the engines SAW has in Lubbock.
	2 nd	Denied, see answer to first sentence
	3 rd	Denied, further answering: BNSF, not SAW, had the contractual and legal duty to provide boxcars to PYCO Plant 2. BNSF furnished numerous boxcars for PYCO Plant 2 during this period, and SAW delivered those boxcars to Plant 2.
3q	1 st	Admitted, further answering: the surcharge was not assessed on shipments for customers other than PYCO because the conditions giving rise to the surcharge, as specified in SAW's tariff, did not exist in regard to shipments for those customers. SAW had been granted permission to institute a surcharge up to \$60.00 on single cars and \$40.00 on unit cars by BNSF.
	2 nd	Denied, further answering: the surcharge was warranted by legitimate transportation facts and circumstances.

Complaint Section No.	Sentence	Answer
3r	1 st	Admitted, further answering: the conditions giving rise to assessment of the surcharge are specified in SAW's tariff. Those conditions have not existed in regard to the traffic of shippers other than PYCO, which explains why the surcharge has not been assessed in regard to the traffic of such other shippers.
	2 nd	Denied
	3 rd	Denied
	4 th	Admitted as to Mr. Wisener only
	5 th	Denied
	6 th	Denied, further answering: Mr. Wisener has never "demanded" a customer to construct anything.
	7 th	Denied, except admitted that PYCO has constructed additional private trackage at Plant 1
	8 th	Denied
	9 th	Denied
3s	1 st	Denied
3t	1 st	Admitted that PYCO filed the stated Petition, denied as to the remainder.
	2 nd	Admitted
	3 rd	Admitted
	4 th	Denied
	5 th	Denied
3u	1 st	Admitted
	2 nd	Denied
	3 rd	Denied, further answering: SAW has consistently denied these false allegations.
3v	1 st	Admitted that the stated lawsuit was filed at the time and for the purposes alleged, but denied that such lawsuit was retaliatory.

Complaint Section No.	Sentence	Answer
	2 nd	Denied
	3 rd	Denied, further answering: PYCO has no legal right to cross SAW's tracks at the single location at which PYCO's crossing is precluded.
	4 th	Admitted that two petitions to terminate alternative rail service were filed, denied as to remainder; further answering: a specific STB regulation authorized the filing of such petitions.
3w	1 st	Denied, further answering: the alleged damages have not been substantiated. PYCO filed the alternative service petition under false pretenses as SAW was not a party to any of the contracts that SAW has been accused of violating.
	2 nd	Denied
	3 rd	Denied
3x	1 st	Denied, further answering: this sentence is vague and unintelligible. PYCO has refused SAW's invitation that upper management of PYCO and SAW meet to attempt to resolve all disputes.
3y	1 st	Does not require an answer
4	1 st	Legal conclusion requires no answer. Statute speaks for itself.
	2 nd	Denied as to each and every allegation (a) through (i).
5	1 st	Denied that PYCO is entitled to relief as sought in (a) through (c)
6	1 st	Legal conclusion requires no answer; this statute speaks for itself.
	2 nd	Denied as to each and every allegation (a) through (j).
7	1 st	Denied that PYCO is entitled to relief as sought in Paragraph 5.
	2 nd	Denied that PYCO is entitled to relief as sought in (i) through (iii).
8	1 st	Legal conclusion requires no answer. Statute speaks for itself.
	2 nd	Admitted
	3 rd	Denied as insufficiently vague.

Complaint Section No.	Sentence	Answer
	4 th	Denied
	5 th	Denied, further answering: SAW has assessed all charges in accordance with its tariff in a nondiscriminatory manner, i.e., SAW has assessed charges as and when conditions specified in the tariff so warranted.
	6 th	Denied
	7 th	Denied
9	1 st	Denied that PYCO is entitled to relief as sought in (a) through (c).
10	1 st	Legal conclusion does not require an answer; the statute speaks for itself.
	2 nd	Denied
	3 rd	Denied
	4 th	Denied, further answering: PYCO's lease of Track 9298 expired by its terms.
	5 th	Admitted, except denied that the charge is discriminatory.
	6 th	Admitted as to the first clause, denied as to the second clause, further answering: SAW's yard is the most efficient and convenient location for storage of cars to be moved to or from PYCO Plant 1.
	7 th	Denied
11	1 st	Denied that PYCO is entitled to relief as sought in (a) through (d).
12	1 st	Legal conclusion does not require an answer; the statute speaks for itself.
	2 nd	Admitted
	3 rd	Denied
13	1 st	Denied that PYCO is entitled to the relief sought.
14	1 st	Legal conclusion requires no answer; the statute speaks for itself.

Complaint Section No.	Sentence	Answer
	2 nd	Denied, further answering: the amount referred to was an asking price for sale of rail facilities.
	3 rd	Denied
	4 th	Denied
15	1 st	Denied that PYCO is entitled to the relief sought.
16	1 st	Admitted
	2 nd	Denied that PYCO is entitled to the relief sought.

WHEREFORE, the Board should determine that SAW has not violated the specified statutes, as alleged, and, as a result, no cease and desist order should be issued, and the Board should find that SAW is not liable to PYCO for damages of any kind or amount. Consequently, PYCO's complaint should be dismissed.

Even if it were to be proven that SAW violated one or more of the specified statutes, as alleged, the Board should determine that PYCO has not sufficiently proven that it was damaged in any manner or amount as a result of such violations. Consequently, PYCO's complaint should be dismissed on that alternative basis.

SAW is concurrently filing a Motion to Dismiss the Complaint.

Respectfully submitted,

SOUTH PLAINS SWITCHING, LTD. CO.
10917 -- E. FM 250 & E. Co. Road 78
Slaton, TX 79364

Defendant

Thomas F. McFarland

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Attorney for Defendant

DATE FILED: May 9, 2006

CERTIFICATE OF SERVICE

I certify that on May 8, 2006, I served the foregoing document, Answer to Complaint , by
UPS overnight mail, on the following:

Charles H. Montange, Esq.
426 N.W. 162nd Street
Seattle, WA 98177

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Thomas F. McFarland

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