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THOMAS F. MCFARLAND

October 26, 2007

220559

By UPS overnight mail
(Monday delivery)

Vernon A. Williams, Secretary
Surface Transportation Board
395 E Street, S.W., Suite 1149
Washington, DC 20024

Re Docket No. NOR-42103, *GF Wiedeman International, Inc -- Petition for
Declaratory Order -- Reasonableness of Demurrage Charges*

Dear Mr. Williams:

Enclosed please find an original and 10 copies of Petition for Declaratory Order and For Consolidation With Docket No 42102, for filing with the Board in the above referenced matter

Also enclosed is a check in the amount of \$1,000 for the filing fee

Very truly yours,

Tom McFarland

Thomas F. McFarland
Attorney for Petitioner

ENTERED
Office of Proceedings
OCT 29 2007
Part of
Public Record

TMcf kl enc wp8 011268-ltrstbl

FILED

OCT 29 2007

**SURFACE
TRANSPORTATION BOARD**

BEFORE THE
SURFACE TRANSPORTATION BOARD



G F. WIEDEMAN INTERNATIONAL,)
INC. -- PETITION FOR)
DECLARATORY ORDER --)
REASONABLENESS OF)
DEMURRAGE CHARGES)

DOCKET NO.
NOR-42103

220559

PETITION FOR DECLARATORY ORDER
AND FOR CONSOLIDATION WITH DOCKET NO. 42102

FILED

OCT 29 2007

FEE RECEIVED
OCT 29 2007
SURFACE
TRANSPORTATION BOARD

G.F. WIEDEMAN
INTERNATIONAL, INC.
626 Byers Avenue
Joplin, MO 64801

SURFACE
TRANSPORTATION BOARD

Petitioner

DANIEL D. WHITWORTH
WHITWORTH, MCPHERSON
& LONGNECKER, L.L.C.
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mcfarland@aol.com

ENTERED
Office of Proceedings

OCT 29 2007

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Attorneys for Petitioner

DATE FILED: October 29, 2007

BEFORE THE
SURFACE TRANSPORTATION BOARD

G.F. WIEDEMAN INTERNATIONAL,	)	
INC -- PETITION FOR	)	
DECLARATORY ORDER --	)	DOCKET NO.
REASONABLENESS OF	)	NOR-42103
DEMURRAGE CHARGES	)	
	)	

**PETITION FOR DECLARATORY ORDER
AND FOR CONSOLIDATION WITH DOCKET NO. 42102**

Pursuant to 5 U.S.C. § 554(c) and 49 U.S.C. § 721(a), G.F. WIEDEMAN INTERNATIONAL, INC. ("GFWI") hereby petitions (1) for an order declaring that collection of certain rail demurrage charges by Missouri & Northern Arkansas Railroad Company, Inc ("MNA") would be an unreasonable practice related to MNA's transportation and service in violation of 49 U.S.C § 10702(2).^{1/}; and (2) for consolidation of this proceeding with Docket No 42102, *Railroad Salvage & Restoration, Inc -- Petition for Declaratory Order -- Reasonableness of Demurrage Charges.*

Petition for Declaratory Order

In an order entered on October 24, 2007, in *Missouri & Northern Arkansas Railroad Company, Inc v G F. Wiedeman International, Inc* , Cir. Ct., Jasper County, MO, Case No

^{1/} 49 U.S.C. § 10702(2) provides as follows:

Authority for rail carriers to establish rates, classifications, rules, and practices A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part shall establish reasonable . . . (2) rules and practices on matters related to that transportation or service.

07AO-CC00112, Judge David C. Dally referred the following issues to this Board under the primary jurisdiction doctrine:

. . . whether collection of demurrage charges for the following is an unreasonable practice:

- (1) as to cars constructively placed, because Plaintiff failed to provide timely notices of such placement;
- (2) as to private cars held on private tracks, because such cars are excepted from demurrage charges;
- (3) as to all cars, because Plaintiff wrongly assessed demurrage charges:
 - (a) on cars held in Plaintiff's yard in anticipation of car orders not yet made by Defendant;
 - (b) on cars that Defendant was able to receive, but which were not delivered because of Plaintiff's own disability; and
 - (c) on cars for which Plaintiff does not have adequate proof of dates of actual or constructive placement and/or release.

A copy of Judge Dally's order is attached to this Petition as Appendix 1

Also appended to this Petition are copies of the following documents from the Court's file:

Appendix 2 - MNA's Petition in Court

Appendix 3 - GFWI's Answer to the Petition

Petition for Consolidation with Docket No. 42102

The issues in this proceeding are identical to the issues in Docket No. 42102, *Railroad*

Salvage & Restoration, Inc. -- Petition for Declaratory Order -- Reasonableness of Demurrage Charges The rail carrier seeking to collect demurrage charges is MNA in both dockets. The Petitioners in those dockets are commonly controlled corporations located at the same address. The rail facilities are identical in both dockets. The only differences in the two dockets are that the issues in Docket No. 42102 were referred to the Board by a Federal Court and the issues in this proceeding were referred to the Board by a State Court, and the demurrage charges in Docket No. 42102 were alleged to have accrued in January, 2005 through August, 2006, while the demurrage charges in this proceeding are alleged to have accrued in September, 2006 through January, 2007.

In view of the substantial similarity in issues, parties and rail facilities, consolidation of the proceeding in Docket No. 42102 and the current Docket No. 42103 is warranted. Petitioner so prays.

Procedural Schedule

Day 1	-	Proceeding instituted (as consolidated or otherwise)
Day 90	-	Discovery concluded
Day 120	-	GFWI's Opening Statement Due
Day 150	-	MNA's Statement Due
Day 165	-	GFWI's Reply Statement Due

WHEREFORE, the Board should institute a proceeding in response to this Petition, consolidate that proceeding with Docket No. 42102, and adopt the Procedural Schedule set out above

Respectfully submitted,

G.F. WIEDEMAN
INTERNATIONAL, INC.
626 Byers Avenue
Joplin, MO 64801

Petitioner

Thomas F McFarland

DANIEL D. WHITWORTH
WHITWORTH, MCPHERSON
& LONGNECKER, L.L.C.
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Attorneys for Petitioner

DATE FILED October 29, 2007

APPENDIX 1

**IN THE CIRCUIT COURT OF JASPER COUNTY, MISSOURI
AT JOPLIN**

**MISSOURI & NORTHERN ARKANSAS)
RAILROAD COMPANY, INC.,)**

Plaintiff,)

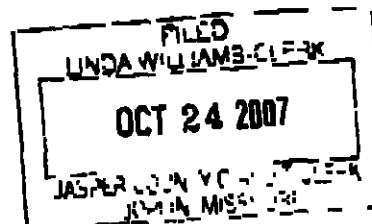
v.)

Case No. 07AO-CC00112

**G.F. WIEDEMAN)
INTERNATIONAL, INC.,)**

Defendants.)

ORDER



Before the Court is Defendant's Motion for Referral to Surface Transportation Board (the "STB") and for Stay of the Proceedings.

The doctrine of primary jurisdiction permits a court to refer to an agency for determination of an issue which would impact the uniformity of the regulated field and over which the agency has special expertise. DeBruce Grains, Inc. v. Union Pac. R.R., 149 F.3d 787 (8th Cir. 1998). While there is no fixed formula for the primary jurisdiction doctrine, the question courts must consider is whether the reason for the doctrine's existence, uniformity in statutory and regulatory construction, utilization of the agency's specialized knowledge, and the existence of policy considerations, are present. Atlantic Express, Inc. v. Standard Transp. Servs., Inc., 955 F.2d 529, 533 (8th Cir. 1992).

Defendant here asks the Court to refer to the STB the decision of whether collection of demurrage charges for the following is an unreasonable practice:

- (1) as to cars constructively placed, because Plaintiff failed to provide timely notices of such placement;
- (2) as to private cars held on private trucks, because such cars are expected from demurrage charges;
- (3) as to all cars, because Plaintiff wrongly assessed demurrage charges:
 - (a) on cars held in Plaintiff's yard in anticipation of car orders not yet made by Defendant;

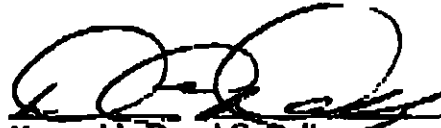
- (h) on cars that Defendant was able to receive, but which were not delivered because of Plaintiff's own disability; and
- (c) on cars for which Plaintiff does not have adequate proof of dates of actual or constructive placement and/or release.

Numerous other courts have referred resolution of similar demurrage issues to the STB. See The Springfield Terminal Railway Company v. Fore River Warehousing and Storage Co., Inc., 2007 U.S. Dist. LEXIS 60200 (D. Me. 2007) (collecting cases); Union Pac. R.R. v. FMC Corp., 2000 U.S. Dist. LEXIS 1019 (E.D. Pa. 200) ("The Court concludes that the issue of the reasonability of a railroad's practice falls squarely within the primary jurisdiction of the STB."); Illinois Central Railroad v. South TEC Development Warehouse v. R.R. Donnelley & Sons Corp., 1999 U.S. Dist LEXIS 11222 (N.D. Ill. 1999).

For the reasons stated in those cases and for the reasons of uniformity and of agency expertise, the STB is the best decision maker of the above listed issues. See DeBruce Grain, Inc., 149 F.3d. at 789.

The Court hereby GRANTS Defendant's Motion for Referral. This matter is stayed and referred to the Surface Transportation Board for consideration of the above listed issues.

Date: 10/24/07


Honorable David C. Dally
Judge of the Circuit Court

APPENDIX 2

COPY

IN THE CIRCUIT COURT OF JASPER COUNTY, MISSOURI
AT JOPLIN

MISSOURI & NORTHERN ARKANSAS
RAILROAD COMPANY, INC.,

Plaintiff,

vs.

G.F. WIEDEMAN INTERNATIONAL, INC.

Defendant.

No. 07 AO-CC 00112

PETITION

Comes now plaintiff Missouri & Northern Arkansas Railroad, by and through its attorneys, Blanchard, Robertson, Mitchell & Carter, P.C. and for its cause of action against defendant, G.F. Wiedeman International, Inc., states and alleges as follows:

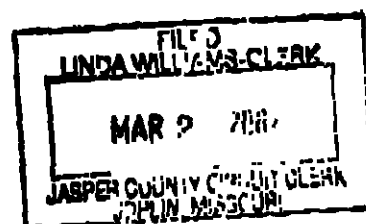
1. Missouri & Northern Arkansas Railroad Company, Inc., (hereinafter "MNA") is a Kansas Corporation authorized and in good standing to do business in the State of Missouri.

2. Defendant G. W. Wiedeman International, Inc. is a Missouri corporation in good standing and can be served through its registered agent Daniel D. Whitworth at 626 Byers Ave., Joplin, Missouri.

COUNT I
Defendant's Breach of its Obligations
Under Freight Tariff MNA 6000-B

3. Plaintiff hereby incorporates paragraphs one through two as though set forth fully therein.

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4. Defendant's obligations to plaintiff, from July 25, 2006, through current arose under Freight Tariff MNA 6001-B (hereinafter "MNA 6001-B"). "MNA 6001-B" is attached hereto and incorporated herein as "Exhibit 1".

5. Pursuant to "MNA 6001-B", Item 500(A):

"Demurrage is assessed at the rate of \$65.00 per car per day for all time in excess of 24 hours for loading or 48 hours for unloading from the first 0001 hours after tender until release." "Exhibit 1"

6. In September of 2006, defendant was assessed demurrage charges in the amount of \$1,755.00. Those charges include:

- a. Car Number SP365190 for 18 days at \$65.00 a day;
- b. Car Number MP641359 for 3 days at \$65.00 a day;
- c. Car Number MP650705 for 3 days at \$65.00 a day;
- d. Car Number MP651202 for 3 days at \$65.00 a day;

7. In October of 2006, defendant was assessed demurrage charges in the amount of \$3,315.00. Those charges include:

- a. Car Number CHTT360357 for 1 day at \$65.00 a day;
- b. Car Number MP651010 for 8 days at \$65.00 a day;
- c. Car Number MP651032 for 17 days at \$65.00 a day;
- d. Car Number SP337760 for 5 days at \$65.00 a day;
- e. Car Number HS10493 for 5 days at \$65.00 a day;
- f. Car Number MP650479 for 10 days at \$65.00 a day;
- g. Car Number SP365155 for 3 days at \$65.00 a day;
- h. Car Number MP651061 for 2 days at \$65.00 a day;
- i. Car Number SP365091 for 2 days at \$65.00 a day;

8. In November of 2006, defendant was assessed demurrage charges in the amount of \$1,495.00. Those charges include:

- a. Car Number MP641531 for 7 days at \$65.00 a day;
- b. Car Number SP338103 for 7 days at \$65.00 a day;
- c. Car Number MP642542 for 2 days at \$65.00 a day;
- d. Car Number MP650887 for 2 days at \$65.00 a day;
- e. Car Number CNW137129 for 3 days at \$65.00 a day;
- f. Car Number SP340512 for 2 days at \$65.00 a day.

9. In December of 2006, defendant was assessed demurrage charges in the amount of \$5,590.00. Those charges include:

- a. Car Number MP650274 for 10 days at \$65.00 a day;
- b. Car Number CNW128041 for 6 days at \$65.00 a day;
- c. Car Number MP651392 for 6 days at \$65.00 a day;
- d. Car Number SP365164 for 4 days at \$65.00 a day;
- e. Car Number SP365039 for 6 days at \$65.00 a day;
- f. Car Number CHTT287051 for 12 days at \$65.00 a day;
- g. Car Number MP651210 for 12 days at \$65.00 a day;
- h. Car Number CHTT360295 for 9 days at \$65.00 a day;
- i. Car Number CHTT360331 for 21 days at \$65.00 a day.

10. In January of 2007, defendant was assessed demurrage charges in the amount of \$2,210.00. Those charges include:

- a. Car Number CNW372031 for 4 days at \$65.00 a day;
- b. Car Number CHTT360251 for 12 days at \$65.00 a day;
- c. Car Number CHTT360293 for 7 days at \$65.00 a day;
- d. Car Number MP650110 for 11 days at \$65.00 a day.

11. "MNA 6001-B", Item 90 says when defendant fails to pay for assessed demurrage, MNA may assess an additional charge equal to the greater of an amount not to exceed two (2) percent per month of the unpaid charge or the highest rate allowed by law. "Exhibit 1".

12. Defendant has tendered \$1,625.00 toward the demurrage charges referred to in paragraph 10 above and \$845.00 toward the demurrage charges referred to in paragraph 9 above.

13. Defendant has not paid the remaining \$11,895.00 in demurrage charges as outlined in paragraphs 6 through 10 above, has breached its obligations under "MNA

6001-B" Item 500 and therefore plaintiff is entitled to interest as defined in "MNA 6001-B", Item 90.

14. As provided by "MNA-6001-B" Item 90, Defendant's unpaid demurrage charges have accrued interest, in the amount of \$731.90. Those interest charges include:

a)	September	\$175.50
b)	October	\$265.20
c)	November	\$ 89.70
d)	December	\$189.80
e.	January	\$ 11.70

Therefore, Plaintiff prays for judgment for the unpaid demurrage charges in the amount of \$11,895.00 for interest which has now accrued in the amount of \$731.90, for interest which continues to accrue at a rate of 2% per month, and for such other relief as the Court deems just and proper.

BLANCHARD, ROBERTSON, MITCHELL & CARTER, P.C.

By 

Karl W. Blanchard, Jr., Bar No. 23180
M. Lynn Stanley, Jr., Bar No. 51840
320 West 4th Street, P. O. Box 1626
Joplin, MO 64802
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ATTORNEYS FOR PLAINTIFF

APPENDIX 3

IN THE CIRCUIT COURT OF JASPER COUNTY, MISSOURI
AT JOPLIN

MISSOURI & NORTHERN ARKANSAS	)	
RAILROAD COMPANY, INC.,	)	
	)	
Plaintiff,	)	
v.	)	No. 07-A0-CC00112
	)	
G.F. WIEDEMAN INTERNATIONAL,	)	
INC.,	)	
	)	
Defendant.	)	

ANSWER

Comes now Defendant G.F. WIEDEMAN INTERNATIONAL, INC. (GFWI), by and through its attorneys, Whitworth, McPherson & Longnecker, L.L.C. and Thomas F. McFarland, and for its ANSWER to the Complaint states as follows:

1. *Missouri & Northern Arkansas Railroad Company, Inc., (hereinafter "MNA") is a Kansas Corporation authorized and in good standing to do business in the State of Missouri.*

Answer: Defendant admits all allegations of Paragraph 1.

2. *Defendant G.F. Wiedeman International, Inc. is a Missouri corporation in good standing and can be served through its registered agent Daniel D. Whitworth at 626 Byers Ave., Joplin, Missouri.*

Answer: Defendant admits all allegations of Paragraph 2.

COUNT I

3. *Plaintiff hereby incorporates paragraphs one through two as though set forth fully therein.*

Answer: Paragraph 3 does not require an additional answer.

4. Defendant's obligations to plaintiff, from July 25, 2006, through current arose under Freight Tariff MNA 6001-B (hereinafter "MNA 6001-B"). "MNA 6001-B" is attached hereto and incorporated herein as "Exhibit 1".

Answer: Defendant admits that Freight Tariff MNA 6001-B has been in effect between July 25, 2006 and the present. Defendant is without sufficient knowledge to admit or deny that Defendant is obligated to Plaintiff under that Tariff. Accordingly, Defendant demands strict proof thereof

5 Pursuant to "MNA 6001-B", Item 500(A):
"Demurrage is assessed at the rate of \$65.00 per car per day for all time in excess of 24 hours for loading or 48 hours for unloading from the first 0001 hours after tender until release." "Exhibit 1".

Answer: Defendant admits the allegations of Paragraph 5.

6. In September of 2006, defendant was assessed demurrage charges in the amount of \$1,755 00. These charges include:

- a. Car Number SP365190 for 18 days at \$65.00 a day,
- b. Car Number MP641359 for 3 days at \$65.00 a day;
- c. Car Number MP650705 for 3 days at \$65.00 a day;
- d. Car Number MP651202 for 3 days at \$65.00 a day

Answer: Defendant admits that the charges set out in Paragraph 6 were assessed by Plaintiff; however, Defendant is without sufficient knowledge to admit or deny that those assessed charges were properly applied to the identified cars. Accordingly, Defendant demands strict proof thereof.

7. In October of 2006, defendant was assessed demurrage charges in the amount of \$3,315.00. These charges include:

- a. Car Number CHIT360357 for 1 days at \$65.00 a day,
- b. Car Number MP651010 for 8 days at \$65.00 a day;
- c. Car Number MP651032 for 17 days at \$65.00 a day;
- d. Car Number SP337760 for 5 days at \$65 00 a day;
- e. Car Number HS10493 for 5 days at \$65.00 a day;

- f. Car Number MP650479 for 10 days at \$65.00 a day;
- g. Car Number SP365155 for 3 days at \$65.00 a day;
- h. Car Number MP651061 for 2 days at \$65.00 a day;
- i. Car Number SP365091 for 2 days at \$65.00 a day.

Answer: Defendant admits that the charges set out in Paragraph 7 were assessed by Plaintiff; however, Defendant is without sufficient knowledge to admit or deny that those assessed charges were properly applied to the identified cars. Accordingly, Defendant demands strict proof thereof.

8. In November of 2006, defendant was assessed demurrage charges in the amount of \$1,495.00. Those charges include.

- a. Car Number MP641531 for 7 days at \$65.00 a day;
- b. Car Number SP338103 for 7 days at \$65.00 a day;
- c. Car Number MP642542 for 2 days at \$65.00 a day;
- d. Car Number MP650887 for 2 days at \$65.00 a day;
- e. Car Number CNW137129 for 3 days at \$65.00 a day;
- f. Car Number SP340512 for 2 days at \$65.00 a day.

Answer: Defendant admits that the charges set out in Paragraph 8 were assessed by Plaintiff; however, Defendant is without sufficient knowledge to admit or deny that those assessed charges were properly applied to the identified cars. Accordingly, Defendant demands strict proof thereof.

9. In December of 2006, defendant was assessed demurrage charges in the amount of \$5,590.00. Those charges include:

- a. Car Number MP650274 for 10 days at \$65.00 a day;
- b. Car Number CNW128041 for 6 days at \$65.00 a day;
- c. Car Number MP651392 for 6 days at \$65.00 a day;
- d. Car Number SP365164 for 4 days at \$65.00 a day;
- e. Car Number SP365039 for 6 days at \$65.00 a day;
- f. Car Number CHTT287051 for 12 days at \$65.00 a day;
- g. Car Number MP651210 for 12 days at \$65.00 a day;
- h. Car Number CHTT360295 for 9 days at \$65.00 a day;
- i. Car Number CHTT360331 for 21 days at \$65.00 a day.

Answer: Defendant admits that the charges set out in Paragraph 9 were assessed by Plaintiff; however, Defendant is without sufficient knowledge to admit or deny that those assessed charges were properly applied to the identified cars. Accordingly, Defendant demands strict proof thereof.

10. In January of 2007, defendant was assessed demurrage charges in the amount of \$2,210.00. Those charges include:

- a. Car Number CNW372031 for 4 days at \$65.00 a day;*
- b. Car Number CHTT360251 for 12 days at \$65.00 a day;*
- c. Car Number CHTT360293 for 7 days at \$65.00 a day;*
- d. Car Number MP650110 for 11 days at \$65.00 a day.*

Answer: Defendant admits that the charges set out in Paragraph 10 were assessed by Plaintiff; however, Defendant is without sufficient knowledge to admit or deny that those assessed charges were properly applied to the identified cars. Accordingly, Defendant demands strict proof thereof.

11. "MNA 6001-B", Item 90 says when defendant fails to pay for assessed demurrage, MNA may assess an additional charge equal to the greater of an amount not to exceed two (2) percent per month of the unpaid charge or the highest rate allowed by law "Exhibit 1".

Answer: Defendant admits that Item 90 of Tariff MNA 6001-B states as alleged in Paragraph 11. However, Defendant denies that the additional charge in that Item is applicable to the demurrage charges involved in Count I.

12. Defendant has tendered \$1,625.00 toward the demurrage charges referred to in paragraph 10 above and \$845.00 toward the demurrage charges referred to in paragraph 9 above

Answer: Defendant admits the allegations of Paragraph 12.

13. Defendant has not paid the remaining \$11,895.00 in demurrage charges as outlined in paragraphs 6 through 10 above, has breached its obligations under "MNA 6001-B" Item 500 and therefore plaintiff is entitled to interest as defined in "MNA 6001-B", Item 90.

Answer: Defendant admits that it has not paid the amount identified in Paragraph 13 to Plaintiff. Defendant denies all other allegations in Paragraph 13.

14. As provided by "MNA-6001-B" Item 90, Defendant's unpaid demurrage charges have accrued interest, in the amount of \$731.90. Those interest charges include:

- | | | |
|----|-----------|----------|
| a) | September | \$175.50 |
| b) | October | \$265.20 |
| c) | November | \$89.70 |
| d) | December | \$189.80 |
| e) | January | \$11.70 |

Answer: Defendant denies the allegations of Paragraph 14.

Therefore, Plaintiff prays for judgment for the unpaid demurrage charges in the amount of \$11,895.00 for interest which has not accrued in the amount of \$731.90, for interest which continues to accrue at a rate of 2% per month, and for such other relief as the Court deems just and proper.

WHEREFORE, Defendant denies that it is liable to Plaintiff for the amounts sought in the Complaint or in any amount whatsoever.

AFFIRMATIVE DEFENSES

1. The Court does not have jurisdiction of the subject matter of the Complaint because the Surface Transportation Board, a federal administrative agency which has exclusive jurisdiction over rail transportation, has exempted rail transportation of iron and steel scrap from all provisions of Title 49 United States Code, Subtitle IV. ✓

2. Even if this Court had subject matter jurisdiction, demurrage charges are not collectible on cars held pursuant to constructive placement because Plaintiff failed to provide timely notices of constructive placement, as required by its tariff.

3. Even if the Court had subject matter jurisdiction, demurrage charges are not collectible on private cars held on private tracks because such cars are excepted from demurrage under Plaintiff's tariff.

4. Even if the Court had subject matter jurisdiction, collection of demurrage charges would be an unreasonable practice affecting rates for Plaintiff's services in violation of 49 U.S.C. § 10702(2) because of railroad error in the following respects:

A. Plaintiff wrongfully assessed demurrage charges on cars held in Plaintiff's yard awaiting car orders by Defendant; and

B. Plaintiff wrongfully assessed demurrage charges on cars that Defendant was able to receive, but which were not delivered to Defendant because of Plaintiff's own disability, i.e., Plaintiff's inability to operate its locomotive over a crossing on Plaintiff's tracks that Plaintiff failed to keep in good repair; and

C. Plaintiff wrongfully assessed demurrage charges on cars for which Plaintiff does not have adequate proof of dates of actual placement and/or release.

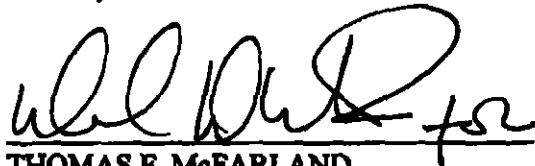
5. Even if the Court had subject matter jurisdiction, collection of demurrage charges would breach Plaintiff's agreement to refrain from attempting to collect demurrage charges in exchange for Defendant's commitment to continue to utilize Plaintiff's rail service.

WHEREFORE, this Court should determine that Defendant is not liable to Plaintiff for the amount sought in the Complaint, nor for any other amount. Accordingly, this Court should enter judgment in favor of Defendant on all Counts. In addition, this Court should order Plaintiff to pay Defendant's attorney's fees and Court costs, and grant such other and further relief as may be warranted.

Respectfully submitted,



DANIEL D. WHITWORTH
Whitworth, McPherson & Longnecker, L.L.C.
626 S. Byers Avenue
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(417) 206-8881



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Attorneys for Defendant

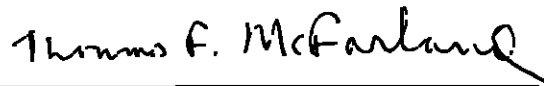
CERTIFICATE OF SERVICE

I hereby certify that on October 26, 2007, I served the foregoing document, Petition For Declaratory Order and For Consolidation With Docket No. 42102, by UPS overnight mail, on the following:

Hon. David C. Dally
Judge of the Circuit Court
Circuit Court of Jasper County, Missouri at Joplin
Jasper County Courthouse
601 South Pearl
Joplin, MO 64801

Karl W. Blanchard, Jr., Esq.
M. Lynn Stanley, Jr.
Blanchard, Robertson, Mitchell & Carter, P.C.
320 West 4th Street
P O. Box 1626
Joplin, MO 64802

Louis E. Gitomer, Esq.
The Adams Building
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Thomas F. McFarland