

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42108

THE SPRINGFIELD TERMINAL RAILWAY COMPANY—PETITION FOR
DECLARATORY ORDER—REASONABLENESS OF DEMURRAGE CHARGES

Decided: March 25, 2009

On July 8, 2008, The Springfield Terminal Railway Company (ST) filed a petition for declaratory order seeking to have the Board resolve a dispute over demurrage charges that it assessed against Fore River Warehousing and Storage Co., Inc. (Fore River) in April, May, June, and October of 2004 (2004 charges) and in May, June, July, and August of 2006 (2006 charges). By decision served on February 10, 2009 (February 10 decision), the Board instituted a declaratory order proceeding and established a procedural schedule, in which the deadline for completion of discovery was April 13, 2009, Fore River's reply statement was due by May 13, 2009, and ST's rebuttal statement was due by June 2, 2009.¹

In a motion filed on March 20, 2009, the parties jointly request that the Board modify the procedural schedule. They propose a new schedule, in which the deadline for completion of discovery is July 1, 2009, Fore River's reply statement is due by September 1, 2009, and ST's rebuttal statement is due by September 25, 2009. The parties state that Fore River already has served document requests and interrogatories on ST, but agree that they need more time to locate, review, and produce documents, to schedule and conduct depositions, and to receive and review discovery. They also state that they have discussed the possibility of settlement.

¹ In the February 10 decision, slip op. at 3-4, the Board determined that it would address only the 2006 charges, unless ST obtains an order from the court that the 2004 charges are not time-barred by the 3-year statute of limitations. See 49 U.S.C. 11705(a).

The request is reasonable.² Accordingly, the deadline for completion of discovery will be extended to July 1, 2009, Fore River's reply statement will be extended to September 1, 2009, and ST's rebuttal statement will be extended to September 25, 2009.

It is ordered:

1. The joint motion for enlargement of scheduling deadlines is granted.
2. Discovery will be completed by July 1, 2009.
3. Fore River's reply statement is due by September 1, 2009.
4. ST's rebuttal statement is due by September 25, 2009.
5. This decision is effective on its date of service.

By the Board, Anne K. Quinlan, Acting Secretary.

Anne K. Quinlan
Acting Secretary

² In the February 10 decision, slip op. at 4,n.7, the Board indicated that the parties should not presume that the institution of this declaratory order proceeding tolls any statute of limitations applicable to the 2006 charges and that any arguments as to tolling would have to be made in court. Based on the proposed procedural schedule, it appears that the 2006 charges will be outside the 3-year statute of limitations under 49 U.S.C. 11705(a).