

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. WB 20-23

REQUEST FOR WAYBILL DATA

OBJECTION OF THE
ASSOCIATION OF AMERICAN RAILROADS

300892

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In a letter dated May 28, 2020, the North Carolina Soybean Producers Association (NC Soybean) requested the release of unmasked waybills with Standard Transportation Commodity Codes beginning with 011 and 209 from the Board's 1990-2018 Unmasked Carload Waybill Samples. Notice of this request was served on June 3, 2020. The request sought access to this waybill data "[t]o accurately determine what grain basis in [North Carolina] should look like...for all trips terminating in Virginia, North Carolina and South Carolina." Letter from Owen Wagner, CEO, NC Soybean, to Dr. William Brennan, Director, Office of Economics, at 1 (May 28, 2020) (NC Soybean Letter). The letter did not identify the type of request, but it appeared to be an "other users" request pursuant to 49 C.F.R. § 1244.9 (c). The Association of American Railroads (AAR) filed an objection to this request on June 17, 2020, arguing that NC Soybean had not provided a reasonable explanation for the need for the information.

On June 24, 2020, the Director of the Office of Economics denied the request, finding the NC Soybean "appear[ed] to be seeking confidential information on the costs incurred by soybean growers who compete with [NC Soybean's] members so that [NC Soybean's] members will be able to use that information in setting their own prices or otherwise participating in the

commercial market...[and therefore the] potential for competitive harm to these other growers from the disclosure of their confidential business information to a group of competing North Carolina growers is significant.” Letter from Dr. William Brennan, Director, Office of Economics, to Owen Wagner, CEO, NC Soybean, at 1 (June 24, 2020) (Denial Letter). In a letter dated June 24, 2020, from NC Soybean to Dr. Brennan, NC Soybean requested that Dr. Brennan “reconsider [NC Soybean’s] request” arguing their intent was misunderstood, they cannot influence markets, and they are being held to a different standard than prior requestors. Letter from Owen Wagner, CEO, NC Soybean, to Dr. William Brennan, Director, Office of Economics, at 1 (June 24, 2020) (Appeal Letter).

Pursuant to 49 C.F.R § 1011.6(b), “[a]ppeals are not favored and will be granted only in exceptional circumstances to correct a clear error of judgment or to prevent manifest injustice.” NC Soybean has not demonstrated a clear error of judgment by the Director or manifest injustice flowing from the decision. The Board should therefore deny the appeal.

NC Soybean argues that its intent was misunderstood and “that availing North Carolina agricultural interests of data that is more firmly rooted in reality than the USDA AMS tariff rates, in no way jeopardizes the competitive position of shippers.” Appeal Letter at 1. NC Soybean further notes it should be apparent that it would be “content with high rail rates and high prices in competing regions...[and] would be against our interests to undermine our competitor’s prices.” Appeal Letter at 1. No support for these statements is offered, much less do they rise to the level of being a clear error of judgment or manifest injustice. Further, these statements ignore the reasoning for the denial – that there is a risk of competitive harm to competing growers by the disclosure of confidential business information of competitors.

Whether NC Soybean is content with a competing region having higher rail rates or prices misses the point, which is competitors do not have a right to know what their competing regions' rail rates or prices are, especially when those terms are contained in private contracts.¹ It does not solve the competitive harm concern to simply say that NC Soybean's members do not want to undermine their competitor's prices – a statement that in and of itself, defies logic. As Dr. Brennan notes “[c]onfidential contract rate information contained in the Waybill Sample is considered particularly competitively sensitive by shippers and railroads alike, as the Board's governing statute generally proscribes the release of contract, rate, and other information ‘that may be used to the detriment of the shipper...or may disclose improperly, to a competitor, the business transactions of the shipper.’ 49 U.S.C. § 11904(b).” Denial Letter at 1. Nothing in NC Soybean's appeal assuages that concern.

NC Soybean claims they are being held to a different set of standards than a prior waybill request from researchers at North Carolina State University (NC State). That unopposed request is distinguishable from the one presented here. Unlike these facts, the NC State's request was from researchers at a public university to conduct research into market dynamics, not to set bases.² Here, as noted in AAR's objection, NC Soybean is an association whose mission is “to maximize the profitability of North Carolina's soybean farmers in an economically and

¹ As noted in AAR's objection, Congress and the Board established the level of information regarding agricultural contracts that should be released to the public under 49 U.S.C. 10709(d)(1) and 49 C.F.R. Part 1313. Again, NC Soybean's appeal does nothing to explain why those public summaries do not satisfy their needs.

² See Letter from Heidi Schweizer, Assistant Professor and Extension Specialist in Grain Production and Logistics, Department of Agricultural and Resource Economics, North Carolina State University, to Director, Office of Economics, at 1 (June 20, 2019) (NC State Request) (“Our research seeks to understand the market dynamics of supplementary feed sources.”). NC Soybean seems to believe the STB's release of waybill information to NC State researchers was a release of information to the livestock sector to the detriment of the row crop farmers NC Soybean represents. Nothing in the NC State requests states that the research was for the benefit of livestock farmers, per se, nor that the confidential information would be released to livestock farmers. So, there does not appear to be any asymmetry between the two sectors.

environmentally sound manner.” NC Soybean, Our Mission, found at <https://ncsoy.org/about-us/>. Further, the purpose of NC Soybean’s request is not public university research, but to “accurately determine what grain basis in the state should look like.” NC Soybean Letter, at 1. Public university research into markets is quite distinct from the establishment of bases to maximize profits. Confidential, private contract information on revenues, especially those of competitors, should not be released to an entity whose purpose, regardless of their stated intent, is to maximize profits for its members. The Appeal Letter does nothing to prove Dr. Brennan’s denial was a manifest injustice or demonstrated a clear judgment of error.

CONCLUSION

For the foregoing reasons, the AAR objects to the release of confidential waybill data to NC Soybean. The Board should deny the appeal.

Respectfully submitted,



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