

ENTERED
Office of Proceedings
August 3, 2020
Part of
Public Record

Before the
SURFACE TRANSPORTATION BOARD

Bell Oil Terminal, Inc.,	)	
	)	
<i>Complainant,</i>	)	
	)	
v.	)	Docket No. NOR 42169
	)	
BNSF Railway Company,	)	
	)	
<i>Defendant.</i>	)	
	)	

BNSF RAILWAY COMPANY'S ANSWER

Adam Weiskittel
Suzanne C. Wellen
BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, TX 76131

Anthony J. LaRocca
Sarah B. Nural
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20036
(202) 429-3000

Attorneys for BNSF Railway Company

Dated: August 3, 2020

Before the
SURFACE TRANSPORTATION BOARD

Bell Oil Terminal, Inc.,	)	
	)	
<i>Complainant,</i>	)	
	)	
v.	)	Docket No. NOR 42169
	)	
BNSF Railway Company,	)	
	)	
<i>Defendant.</i>	)	
	)	

BNSF RAILWAY COMPANY’S ANSWER

BNSF Railway Company (“BNSF”) hereby answers the Complaint filed by Bell Oil Terminal, Inc. (“Bell” or “Complainant”) in this proceeding. To the extent that BNSF does not specifically admit an allegation in the Complaint, that allegation is denied. BNSF responds to the allegations in each separately numbered paragraph of the Complaint as follows:

Unnumbered paragraph on page 1: BNSF admits that the Complaint purports to be filed by Bell against BNSF. The remainder of the sentence states legal conclusions to which no response is required.

I. BNSF denies the allegations contained in the first sentence of Paragraph I because it lacks knowledge or information sufficient to form a belief as to their truth. BNSF admits, on information and belief, the allegations contained in the second sentence of Paragraph I.

II. In response to the first sentence of Paragraph II, BNSF admits only the allegation that it is “a common carrier by rail in interstate commerce.” The remainder of the first sentence of Paragraph II states legal conclusions to which no response is required. Regarding the second sentence of Paragraph II, BNSF admits that its corporate office is located in Fort Worth, Texas.

III. BNSF denies the allegations contained in the first sentence of Paragraph III because it lacks knowledge or information sufficient to form a belief as to their truth. The allegations contained in the second sentence of Paragraph III are vague and ambiguous and BNSF therefore denies them. BNSF further states that BNSF provides rail transportation of liquid asphalt to Bell's terminal.

IV. With respect to the first sentence in Paragraph IV, BNSF admits only that, at some points in time prior to April 13, 2020, Bell received rail service at its terminal three days per week. BNSF denies the remaining allegations in the first sentence of Paragraph IV. With respect to the second sentence of Paragraph IV, BNSF only admits that it changed the frequency of service provided to Bell's terminal. BNSF denies the remaining allegations in the second sentence of Paragraph IV.

V. With respect to the allegations in Paragraph V, BNSF admits only that Mr. Aaron Matthews sent the email message quoted in Paragraph V to Messrs. Peter Wittich and Luis Padilla of Bell at 4:05 p.m. on April 10, 2020. BNSF denies the remaining allegations in Paragraph V.

VI. Paragraph VI states legal conclusions to which no response is required. To the extent that a response is required, BNSF denies the allegations in Paragraph VI.

VII. Paragraph VII states legal conclusions to which no response is required. To the extent that a response is required, BNSF denies the allegations in Paragraph VII.

VIII. With respect to the allegations in Paragraph VIII, BNSF admits only that, within the 12-month period prior to April 13, 2020, BNSF provided rail shipments of liquid asphalt to the Bell terminal. BNSF denies the remaining allegations in Paragraph VIII.

IX. Paragraph IX states legal conclusions to which no response is required. To the extent that a response is required, BNSF denies the allegations in Paragraph IX.

X. The allegations contained in Paragraph X are vague and ambiguous and BNSF therefore denies them.

XI. Paragraph XI states legal conclusions to which no response is required. To the extent that a response is required, BNSF denies the allegations in Paragraph XI.

XII. Paragraph XII states legal conclusions to which no response is required. To the extent that a response is required, BNSF denies the allegations in Paragraph XII.

XIII. Paragraph XIII states legal conclusions to which no response is required. To the extent that a response is required, BNSF denies the allegations in Paragraph XIII. BNSF further denies that Bell is entitled to any damages.

Conclusion and Requested Relief paragraph on page 5: BNSF denies that Bell is entitled to any relief.

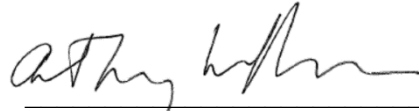
DEFENSES

1. The Complaint fails to state a claim that BNSF violated the notice requirement in 49 U.S.C. § 11101(c).

2. Bell's claims are barred, in whole or in part, by the doctrines of estoppel and waiver, on the grounds that BNSF has addressed Bell's concerns by adjusting the delivery days.

WHEREFORE, BNSF requests that the Complaint be dismissed with prejudice; that no relief of any kind be awarded to Bell; that BNSF be awarded its costs; and that the Board grant BNSF such other and further relief as may be appropriate.

Respectfully submitted,



Anthony J. LaRocca
Sarah B. Nural
Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20036
(202) 429-3000

Attorneys for BNSF Railway Company

Adam Weiskittel
Suzanne C. Wellen
BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, TX 76131

Dated: August 3, 2020

CERTIFICATE OF SERVICE

I certify that I have, on August 3, 2020, served copies of this Answer of BNSF Railway Company by email on all parties of record in this proceeding.



Sarah B. Nural
Attorney for BNSF Railway Company