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June 30, 2003



VIA HAND DELIVERY

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington DC 20423

Re: **Docket No. NOR 42075—Engelhard Corporation—Petition for
Declaratory Order—Springfield Terminal Railway Co., Inc. and
Consolidated Rail Corporation**

Dear Mr. Williams:

Please find enclosed for filing in the above captioned proceeding an original and ten copies of the verified reply of respondent Springfield Terminal Railway Company to the opening statement of Engelhard Corporation. One additional copy of the document is enclosed. I would appreciate your receipt-stamping that copy and returning it to our legal assistant. Because this document is less than twenty pages long, no electronic version has been included. See 49 C.F.R. § 1104.3(b)(1).

Please call me with any questions regarding this matter. Thanks for your assistance.

Sincerely,

Eric L. Hirschhorn

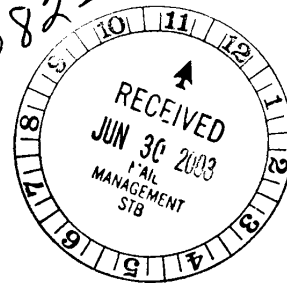
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Enclosure

cc: Vincent P. Szeligo, Esq. (w/ encl.)
David C. Ziccardi, Esq. (w/ encl.)

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. NOR 42075



**ENGELHARD CORPORATION—PETITION FOR
DECLARATORY ORDER—SPRINGFIELD TERMINAL
RAILWAY COMPANY AND CONSOLIDATED RAIL CORPORATION**

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Public Record

**VERIFIED REPLY OF RESPONDENT
SPRINGFIELD TERMINAL RAILWAY COMPANY
TO OPENING STATEMENT OF ENGELHARD CORPORATION**

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Kimberly S. Soen (law student)
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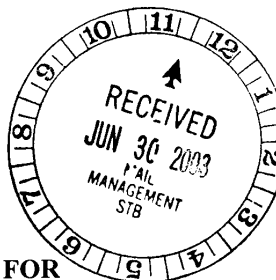
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Guilford Rail System
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*Attorneys for Respondent
Springfield Terminal Railway Company*

Dated: June 30, 2003

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. NOR 42075



**ENGELHARD CORPORATION—PETITION FOR
DECLARATORY ORDER—SPRINGFIELD TERMINAL
RAILWAY COMPANY AND CONSOLIDATED RAIL CORPORATION**

**VERIFIED REPLY OF RESPONDENT
SPRINGFIELD TERMINAL RAILWAY COMPANY
TO OPENING STATEMENT OF
ENGELHARD CORPORATION**

Statement of the Case

An order of the United States District Court for the District of Massachusetts dated May 22, 2002 has referred “two legal issues” to this Board pursuant to the doctrine of primary jurisdiction:

1. “Does a cause of action involving a disputed failure to pay car mileage allowances under Tariff 6007 arise one month and ten days after the end of the month in which the obligation is incurred, or four months after the date on which a railroad refuses to pay or act on a claim, or on the occurrence of some other date or event?”

2. “Is a railroad obligated to pay compensation under Tariff 6007 only to the owner of a car’s reporting mark, or does Item 180 of such tariff permit the owner of the mark to assign the right to payment to a lessee of a car?”

These issues have arisen in a civil action filed in the District Court by Engelhard Corporation (“Engelhard”), which is the petitioner before this Board, against Springfield Terminal Railway Company (“ST”) and Consolidated Rail Corporation (“Conrail”). Engelhard alleges that ST and Conrail, who are common carriers by rail subject to the jurisdiction of the Board, moved freight in rail cars owned by or leased to Engelhard over a 155-mile segment of rail line between Selkirk, New York, and Barber Station, Massachusetts (the “Rail Line”), but failed to pay the car mileage set by the applicable tariff, which is filed with the STB. Opening Statement of Engelhard Corporation (“Opening Statement”), Exh. 1 (Amended Complaint), ¶¶ 4, 8-10, 14. Engelhard claims to be owed \$568,155.13 as car mileage for the use on the Rail Line by ST, Conrail, or both, of cars owned by or leased to Engelhard. *Id.* ¶ 10.

The District Court has dismissed Engelhard’s four state claims as preempted by the Interstate Commerce Act (“ICA” or “Act”), Petition for Declaratory Order (“Petition”), Exh. 2 (193 F. Supp. 2d at 390), and has ruled that Engelhard’s federal claim under 49 U.S.C. § 11704(b) and Tariff 6007 is subject to the two-year statute of limitations established by 49 U.S.C. § 11705(c), *id.* (193 F. Supp. 2d at 390-91). These rulings are not part of the referral to this Board, which is limited to the two questions quoted above.

As directed by the District Court, *see* Petition, Exh. 4 (order), ¶ 2, Engelhard filed a petition for declaratory order on September 26, 2002 and this Board opened a declaratory order proceeding in a decision served April 1, 2003. Engelhard filed its opening statement in this proceeding on May 15, 2003.

Facts

To the extent they are material to the referral, the facts set out by Engelhard largely are accurate. *See* Opening Statement at 1-4. Indeed, to the extent the referral is viewed as ancillary

to the ST and Conrail motions to dismiss, the allegations of Engelhard's amended complaint must be taken as true. *Conley v. Gibson*, 355 U.S. 41 (1957). As the district court has observed, however, both issues referred to this Board are questions of law. See Reply of Respondent Consolidated Rail Corporation to Engelhard Corporation's Petition for Declaratory Order, Exh. D (Order on Parties' Submission Regarding Pre-Referral Schedule (Apr. 19, 2002)). These are: First, when does a car mileage claim accrue under the ICA? Second, does Tariff 6007 permit car mileage to be paid other than to the party to whom the car reporting marks are assigned?

Engelhard states accurately that under Tariff 6007, (1) car mileage is to be reported and paid within one month and ten days after the close of the month in which the car usage occurs, Opening Statement, Exh. 1, App. F, Item 180, ¶ 2, (2) a car owner's claim for nonpayment is to be presented to the carrier within twenty-four months after the end of the month the report was made, *id.* Item 182, ¶ 2.A., (3) the carrier is to determine such a claim within four months after presentation, *id.*, and (4) car mileage "will be paid only to the person or company . . . to whom the reporting marks are assigned," *id.* Item 180, ¶ 3. As demonstrated below, however, only the last provision is relevant to this proceeding.

Exhibits D and E to Engelhard's original complaint disclosed that these leased cars do not bear Engelhard's reporting car marks, but those of owners other than Engelhard who have leased their cars to Engelhard. Similarly, Exhibits B and C to the original complaint disclosed that Engelhard is seeking recovery of car mileage allowances earned under the reporting mark of "TIMX," which is owned by Trinity Leasing Industries Company. Engelhard offers photocopies of assignments from companies whose reporting marks appear on some of the cars in question. Opening Statement, Exh. 3. Engelhard also claims to have been the owner since 1983 of the cars

bearing the reporting mark of Trinity (the TIMX mark), though Engelhard concedes that those cars continued to bear the TIMX mark until late 1999. *Id.*

Argument

I. Claims under Freight Tariff 6007 accrue no later than one month and ten days following the month in which the car usage occurs.

A. Claims accrue when the loaded car is delivered to the consignee.

All the claims at issue in this proceeding arise from the carriage of loaded cars by ST and Conrail. Opening Statement, Exh. 1 (Amended Complaint), ¶ 15. The relatively short limitations periods set by the ICA reflect a policy favoring promptness in collection, *Midstate Horticultural Co. v. Pennsylvania R. Co.* 320 U.S. 356, 367 (1943), and a claim accrues under the Act as soon as “the right to sue has fully matured,” *Arkansas Oak Flooring Co. v. Louisiana & A. Ry. Co.*, 166 F.2d 98, 101 (5th Cir. 1948); accord *Bethlehem Steel Co. v. Consol. Rail Corp.*, 515 F. Supp. 472, 473 (E.D. Pa. 1981); *South Omaha Terminal Ry. Co. v. Armour & Co., Inc.*, 373 F. Supp. 641 (D. Neb. 1974).

The limitations periods for most actions under the rail provisions of the ICA are set out in 49 U.S.C. § 11705. The district court in this action has held correctly that the limitation applicable to this action is that of section 11705(c), namely “2 years after the claim accrues.” The district court has asked this Board to determine when Engelhard’s claims accrued.

Subsection (g) of section 11705 provides that “[a] claim *related to* a shipment of property accrues under this section on delivery or tender of delivery by the rail carrier.” 49 U.S.C. § 11705(g) (2000) (emphasis added). The Supreme Court has characterized the word relate/related/relating as broad and expansive, and has held that a state law relates to an object “‘if it has a *connection with, or reference to,*” that object. *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383-84 (1992) (emphasis added; citations omitted). “The word ‘relates’ is

highly general, and this Court has interpreted it broadly.” *Barnett Bank of Marion County, N.A. v. Nelson*, 517 U.S. 25, 38 (1996). Thus even from a purely textual standpoint, subsection (g) applies to Engelhard’s claims.

Moreover, a “shipment of property” refers not only to the contents of the cars but to the cars themselves. *Pennsylvania R. Co. v. Carolina Portland Cement Co.*, 16 F.2d 760 (4th Cir. 1927); *Atchison, T. & S. F. R. Co. v. Benchcraft, Inc.*, 381 F. Supp. 603 (W.D. Mo.), *aff’d*, 503 F.2d 560 (8th Cir. 1974). Thus, for example, demurrage charges are subject to section 11705(g). *Union Pac. R. Co. v. Coast Packing Co.*, No. CV-01-01326-GHK (Mcx), 2002 U.S. Dist. LEXIS 26329, *7 (C.D. Calif. Jan. 29, 2002); *South Omaha Terminal Ry.*, 373 F. Supp. 641 (applying predecessor of § 11705(g) to demurrage accrual on empty cars); *Benchcraft*, 381 F. Supp. at 604. Most assuredly, then, the claims at issue here “relate[] to a shipment of property” and accrue upon delivery of each loaded car to the consignee.

The *South Omaha* decision is instructive. There, demurrage charges were recorded daily but, by agreement between carrier and shipper, were not tallied until the end of each month. *South Omaha*, 373 F. Supp. at 643. The carrier contended that “since no final accounting of the demurrage was made until July 31, no cause of action for demurrage for any of the July days accrued until the end of that month.” *Id.* The court, citing the predecessor of section 11705(g), rejected this argument:

The indeterminateness prior to the last day of the month . . . was not a factual or substantive one but rather a computational one. The amount owed in our situation accrued and was perfectly determinable on a factual level at any given point in the month in question and indefiniteness resulted only from the agreement . . . to defer computation for any given day until the last day of the month.

* * *

[T]here is a crucial difference between an “indeterminable amount” and an “amount not determined,” the former being intrinsically factual while the latter is extrinsic to the facts and “not determined by agreement of the parties.”

* * *

Plaintiffs’ major error lies in its misconstruing of the terms “accrue” and “come due” at least for the purposes of [section 11705(g)]. The statute is explicit that accrual under [section 11705(g)] is not synonymous or mutually interchangeable with collectability or dueeness of the debt and that *the point of delivery overrides any conventional notion of when an action judicially matures*. Indeed if the statute had meant to adhere to the general standards of allowing the statute of limitations to run from the point when the action could have been brought then [section 11705(g)] would have been totally superfluous. It is therefore clear that Congress anticipated the multitude of variations in periods of limitations that would result if conventional standards of triggering the period were used and promulgated [section 11705(a) and (g)] in order to avoid such variation by creating a uniform time of accrual irrespective of when the action have generally been brought.

Id. at 643-44 (emphasis added); accord *Baker v. Chamberlain Mfg. Corp.*, 356 F. Supp. 1314 (N.D. Ill. 1973).

The instant case is remarkably similar to *South Omaha*. Although Tariff 6007 provides that computation and payment aren’t due until one month and ten days following the end of each month, the amount owed can be calculated at any given point. Hence there is no warrant for ignoring the clear congressional command of section 11705(g) that each claim for car mileage accrues on the day the car is delivered to the consignee.

Nor can Engelhard argue that the limitation period somehow has been waived, or that ST is estopped from asserting it. The limitations established by section 11705 are jurisdictional, barring not only the remedy but the right itself. *Midstate Horticultural*, 320 U.S. at 363-64; *Atlantic Coast Line R. Co. v. United States*, 213 F. Supp. 199, 204-05 (M.D. Fla. 1963), *aff’d*, 334 F.2d 46 (5th Cir. 1964), *rev’d on other grounds*, 383 U.S. 576 (1966); *Tractor & Equipment Co. v. Alabama G. S. R. Co.*, 298 I.C.C. 187, 188 (1956); *J.D. Pittman Tractor Co. v. Alabama*

G. S. R. Co., 286 I.C.C. 575, 576 (1952); *Saljoan Coal & Coke Corp. v. Reading Co.*, 284 I.C.C. 102, 104 (1952). Accordingly, they cannot be waived by such devices as a regulation or tariff, *see Chesapeake & O. R. Co. v. Wiener*, 58 N.W.2d 918 (Mich. 1953) (ICC regulation), an agreement (express or implied) among private parties,¹ *Midstate Horticultural*, 320 U.S. at 357-58; *Chicago, R. I. & P. R. Co. v. Black, Sivalls & Bryson, Inc.*, 147 P.2d 455 (Okla. 1944), or estoppel, *Wisconsin Bridge & Iron Co. v. Illinois Terminal Co.*, 88 F.2d 459 (7th Cir. 1937). Further, Congress, which is presumed to act with awareness of judicial interpretations of the ICA's limitations provisions, *see Cannon v. University of Chicago*, 441 U.S. 677, 696-99 (1979), enacted subsection (g) in 1995 without substantive change from its predecessors. ICC Termination Act of 1995, Pub. L. No. 104-88, § 102, 109 Stat. 803, 847.

Engelhard argues that in view of Tariff 6007's provision for lodging audit claims with carriers up to twenty-four months after the end of the month in which usage occurs, *see* Opening Statement, Exh. 1, App. F (Tariff 6007), Item 182,² it's illogical that the limitations period might have run during that time. Opening Statement at 7. In a closely related context, however, the court in *Benchcraft* observed that the predecessor of section 11705(g)—

is contrary to all judicial concepts of when a cause of action accrues. It is indeed strange to think that the statute of limitations for this action began to run before any demurrage charges were incurred. Strange as it may be, that is the law. It is based on sound congressional policy: "uniformity and equality of treatment, as between carrier and shipper." Congress simply has discarded traditional judicial concepts "in favor of the § [11705(g)] uniform statutory period of delivery as the start of the limitation period."

Benchcraft, 381 F. Supp. at 604-05 (citations omitted). That is the law here as well.

¹ In any event, the Conrail-ST interchange agreement ("Interchange Agreement") upon which Engelhard relies, *see* Opening Statement at 2-3 & Exh. 4, doesn't purport to vary the limitation period. Further, nothing in the conduct of ST or Conrail, each of which believes that if any carrier is liable to Engelhard, it's the other carrier, prevented Engelhard from bringing timely suits against either or both carriers within the time period established by section 11705(c) and (g). Finally, the district court expressly found that Engelhard had no rights under the Interchange Agreement. Petition, Exh. 2, 193 F. Supp. 2d at 390 n. 9.

Thus Engelhard's claims accrued on the date of delivery of each individual car, and the first question referred by the district must be answered accordingly.

B. If claims do not accrue upon delivery, they accrue when reporting of, and payment for, the use of cars are due, namely one month and ten days after the end of the month in which car usage occurs.

If for some reason section 11705(g) does not determine when Engelhard's claims accrued, application of common law—and common sense—leads inexorably to a conclusion that the accrual of each claim occurs when reporting and payment of the claim is due. That occurs one month and ten days following the month in which the car travels over the Rail Line (e.g., on July 10 for shipments traveling in May). Opening Statement, Exh. 1, App. F (Tariff 6007), Item 180, ¶ 2. Although the tariff provides an administrative mechanism for making claims to carriers, nothing in the tariff suggests that the filing of such a claim is a prerequisite to bringing suit.

When a statute does not explicitly require that administrative remedies or procedures be pursued before seeking judicial relief, the cause of action accrues at the time of the injury, which in this case would be, at the latest, when ST failed to pay within one month and ten days from the time of the movement. See *Trafalgar Capital Assocs., Inc. v. Cuomo*, 159 F.3d 21, 36-37 (1st Cir. 1998); *Inter-Coastal Xpress, Inc. v. United States*, 49 Fed. Cl. 531, 542 (2001). Neither accrual of the cause of action nor the running of the statute of limitations is delayed because a litigant chooses to pursue non-judicial, permissive, administrative proceedings or remedies. See *Mitsubishi Electronics America, Inc. v. United States*, 44 F.3d 973, 977-78 (Fed. Cir. 1994); *Lipp v. United States*, 157 Ct. Cl. 197, 200 (1962). Only where the exhaustion of administrative

² Item 182 also gives the carrier four months in which to decide the claim.

remedies is explicitly required as a mandatory prerequisite to suit does pursuit of an administrative remedy delay the accrual of the limitations period.

Engelhard further contends that the audit procedure provided for in Tariff 6007 was obligatory and that in any event, parties who attempt to settle their disputes pursuant to a non-judicial mechanism should not be prejudiced thereby. Opening Statement at 8. But the tariff does not require that the audit procedure be exhausted, or even employed, as a prerequisite to suit and the Board may not create such a requirement. *See Williams v. Chrysler Corp.*, 991 F. Supp. 383, 387-88 (D. Del. 1998) (where collective bargaining agreement required an employee to exhaust certain intra-union appeals prior to bringing a civil action, court will not read into agreement a requirement that employee pursue additional administrative proceedings; accordingly, pursuit of those additional proceedings did not toll running of statute of limitations).

Engelhard cites only two cases for its proposition that the claims do not accrue until an audit claim has been filed and rejected under Item 182 of Tariff 6007. Petition at 5-9. The first, *Blaisdell v. Amer. Ry. Equipment Co.*, 220 N.W. 634 (N.D. 1928), held that a lawsuit filed thirty days after the disputed delivery satisfied a requirement that any damage claim be filed within six months after delivery and any lawsuit within two years after the carrier disallows such a claim. If anything, this decision supports ST's position that the possibility of filing a claim with the carrier need not stand in the way of the injured party's right to go directly to court.

The second case cited by Engelhard, *Bethlehem Steel Co. v. Consol. Rail Corp.*, 515 F. Supp. 472 (E.D. Pa. 1981), is similarly unhelpful to its position. There the court held that the claim didn't accrue upon the initial delivery of the goods because the applicable rate depended upon whether the goods were further transported within a specified time and hence the amount of the claim wasn't yet fixed. *Id.* at 473. Applying the distinction drawn by the *South Omaha*

court, *Bethlehem Steel* was a case involving an “indeterminable amount” (i.e., an amount *incapable* of determination) whereas Engelhard’s case against ST and Conrail only involves an “amount not determined” (i.e., an amount capable of determination but not yet calculated). Only in the former instance might there be a viable contention that accrual didn’t occur upon delivery. The instant proceeding, however, falls into the latter category and hence *Bethlehem Steel* is not relevant.

Thus even should Engelhard’s claims not accrue upon delivery of each car to the consignee, *see supra* Point I.A., they accrue on the date that reporting and payment are due, namely one month and ten days following the end of the month in which the car usage occurs. The first referral question should be answered accordingly.

II. A carrier is not obligated to pay compensation, under Tariff 6007, to anyone other than the owner of a car’s reporting mark.

Engelhard seeks recovery of car mileage payments allegedly owed not only on cars owned by Engelhard but also on cars owned by third parties and *leased* to Engelhard. Opening Statement at 9-13 & Exh. 1, App. F (Amended Complaint), ¶ 9. Exhibits D and E to Engelhard’s original complaint disclosed that these leased cars do not bear Engelhard’s reporting car marks, but those of owners other than Engelhard who have leased their cars to Engelhard. Similarly, Exhibits B and C to the original complaint disclosed that Engelhard is seeking recovery of car mileage allowances earned under the reporting mark of “TIMX,” which is owned by Trinity Leasing Industries Company.

Engelhard alleges that the compensation due for the defendants’ use of private cars is as set forth in Freight Tariff 6007. Opening Statement, Exh. 1 (Amended Complaint), ¶ 14. That tariff provides that “[m]ileage allowances for the use of tank cars will be paid *only* to the person or company . . . to whom the reporting marks are assigned.” *Id.*, Exh. 1, App. F (Tariff 6007),

Item 180, ¶ 3 (emphasis added). This means that Engelhard is not entitled to payment on the leased car claims set out in Exhibits D and E, and that ST may not pay Engelhard for ST's use of cars bearing the reporting marks of other parties. See *General Amer. Tank Car Corp. v. El Dorado Terminal Co.*, 308 U.S. 422, 426 (1940).

The carriers maintain tariffs applicable to the allowances to be made to car owners for the use of tank cars The tariffs . . . embody rules which . . . stated that mileage payments would be made only to the party whose reporting marks appeared upon the cars The rules precluded payment of the mileage allowance to the [lessee of the cars] under the circumstances of this case, since the lease stipulated that all the leased cars should bear the reporting marks of the [owner/lessor].

Id.; see *id.* at 431 (“[T]he carrier was bound by its [tariff] rules to pay the allowance to the [party whose reporting marks the cars bore]”); *Nyad Motor Freight, Inc. v. W.T. Grant Co.*, 486 F.2d 1112, 1114 (2nd Cir. 1973) (strict construction of tariff terms); *Van Dusen Harrington Co. v. Northern Pac. Ry. Co.*, 32 F.2d 466, 470 (8th Cir. 1929) (same).

The 1986 ICC order under which Freight Tariff 6007 was filed expressly forbids departures from the requirements of the tariff except in two limited circumstances that do not obtain here—a private contract between a rail carrier and a shipper under former 49 U.S.C. § 10713 (now 49 U.S.C. § 10709) and a departure expressly approved by the STB. *Investigation of Tank Car Allowance System*, 3 I.C.C.2d 196, 198, 201, 1986 ICC LEXIS 137, at *8, *37-*41 (1986). There is no section 10713/10709 contract involved in this proceeding. As for the second exception, ST knows of no ICC or STB approval of a departure authorizing ST to pay Engelhard for the use of cars owned by, and bearing the marks of, parties other than Engelhard. Thus it would be a violation of the applicable tariff for ST to remit car mileage payments to Engelhard for cars bearing the reporting marks of other parties and merely leased to Engelhard.

Engelhard offers photocopies of assignments from companies whose reporting marks appear on some of the cars in question. Opening Statement, Exh. 3. Engelhard offers no authority, though, for its contention that this is sufficient to add a *third* circumstance in which departure from the express requirements of Tariff 6007 is permitted. A tariff, after all, prevails over an inconsistent private arrangement. *See In re Penn Central Transp. Corp.*, 477 F.2d 841, 844 (3rd Cir. 1973).

Moreover, Engelhard claims to have been the owner since 1983 of the cars bearing the reporting mark of Trinity (the TIMX mark), though Engelhard concedes that those cars continued to bear the TIMX mark until late 1999. Opening Statement, Exh. 3. Engelhard's status as the owner of those cars, it contends, entitles it to recover any car mileage owed for their use after 1983. *Id.* The problem with this argument is that Tariff 6007 requires payment not to the *owner* of the cars but "*only* to the person or company . . . to whom the reporting marks [on the cars] are assigned." Opening Statement, Exh. 1, App. F (Amended Complaint), Item 180, ¶ 3 (emphasis added). Hence even if the purported assignments from ACF Industries, General American Tank Car Corp., General Electric Rail Car Services Corp., and Union Tank Car Co. somehow avoid the requirements of the tariff, no assignment from Trinity even is claimed by Engelhard.

Accordingly, Engelhard lacks standing to claim car mileage on cars not bearing Engelhard's reporting marks, and the second question referred by the district court must be answered in the affirmative.

Conclusion

For the reasons set out above, the first question referred by the district court must be answered as follows: "A cause of action involving a disputed failure to pay Tariff 6007 car

mileage allowances accrues or arises at the time each car is delivered to the consignee. 49 U.S.C. § 10705(g) (2000). If delivery is not effected, the cause of action accrues or arises when delivery is tendered. *Id.*”

The second question referred by the district must be answered as follows: “Under Tariff 6007, a railroad is obligated to pay compensation only to the person or company . . . to whom the reporting marks are assigned, and is not obligated to pay any purported assignee of such person or company. *General Amer. Tank Car Corp. v. El Dorado Terminal Co.*, 308 U.S. 422 (1940).”

Respectfully submitted,



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978-663-1029

*Attorneys for Respondent
Springfield Terminal Railway Co.*

Dated: June 30, 2003

CERTIFICATE OF SERVICE

I certify that I have this 30th day of June 2003 served copies of the foregoing upon counsel for all parties (Engelhard Corporation and Consolidated Rail Corporation) by overnight courier directed to their counsel.


Mary Mooney

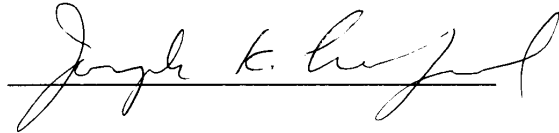
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VERIFICATION

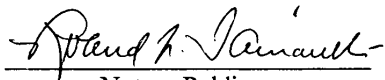
Commonwealth of Massachusetts
County of Middlesex

SS.:

Joseph K. Crawford, being duly sworn, deposes and says that he has read the foregoing statement, knows the facts asserted therein are true and that the same are true as stated.

A handwritten signature in cursive script, reading "Joseph K. Crawford", written over a horizontal line.

Subscribed and sworn to before me
this 25th day of June 2003

A handwritten signature in cursive script, reading "Roland L. Theriault", written over a horizontal line.

Notary Public
Commonwealth of Massachusetts

Roland L. Theriault
Notary Public
My Commission Expires
August 7, 2009

My commission expires _____