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May 29, 2003

ENTERED
Office of Proceedings

MAY 29 2003

Part of
Public Record

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

Re: Docket No. 42079,
Ag Processing Inc v. Norfolk Southern Railway Company MAY 29 2003

EMERGENCY CONSIDERATION REQUESTED SURFACE
TRANSPORTATION BOARD

Dear Secretary Williams:

Enclosed for filing in the captioned docket are a signed original and 10 copies of (1) the Formal Complaint of Ag Processing Inc against Norfolk Southern Railway Company, and (2) a petition for emergency relief under 49 U.S.C. 721(b)(4), seeking an injunction against certain tariff matter of the defendant railroad that is scheduled to take effect on June 1, 2003. The law department of Norfolk Southern Railway Company has been apprised that this filing is being made today and is contemporaneously being served electronically with a copy of the filing. A hard copy of the same documents are being served by hand on Washington, DC counsel for Norfolk Southern, at its request.

We also enclose our check in the amount of \$6,000 as the filing fee for the Complaint. Please call the undersigned if there are any questions concerning this submission.

FILED

MAY 29 2003

**SURFACE
TRANSPORTATION BOARD**

Sincerely,

Andrew P. Goldstein

Andrew P. Goldstein
Attorney for
Ag Processing Inc

cc: Norfolk Southern Railway Company
Law Department

Richard A. Allen, Esq.



ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

207923

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Office of Proceeding

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DOCKET NO. 42079

FILED

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SURFACE
TRANSPORTATION BOARD

AG PROCESSING INC V. NORFOLK SOUTHERN RAILWAY COMPANY

FORMAL COMPLAINT

FEE RECEIVED

MAY 29 2003

SURFACE
TRANSPORTATION BOARD

Andrew P. Goldstein
McCarthy, Sweeney & Harkaway, P.C.
2175 K Street, N.W., Suite 600
Washington, DC 20037
(202) 775-5560

Attorney for
Ag Processing Inc

Dated: May 29, 2003

FORMAL COMPLAINT

1. Complainant, Ag Processing Inc ("Complainant" or "AGP") is a merchant of grain and a processor of grain products, including soybean meal.
2. Defendant, Norfolk Southern Railway Company ("Defendant" or "NS"), is a carrier by rail subject to the jurisdiction of the Board pursuant to the provisions of the Interstate Commerce Commission Termination Act ("ICCTA").
3. AGP makes shipments of soybean meal to customers located on the lines of NS. The shipments originate at AGP soybean crushing facilities located on the lines of western railroads and move to Chicago for interchange to NS.
4. NS has issued a document in the nature of a tariff entitled "NS Conditions of Carriage # 1-E" ("COC 1-E") to be effective June 1, 2003. COC 1-E replaces NS Conditions of Carriage # 1-D ("COC 1-D"), which took effect November 1, 2001. COC 1-E was received by AGP on approximately May 10, 2003 via the U.S. mail. It is also available on the NS website. A copy of the cover sheet of COC 1-E is attached as Appendix A.
5. Rule 560(2) of COC 1-E is a new provision that did not appear in COC 1-D. New Rule 560(2) states that "NS does not provide Order/Notify service" and that "[b]ills of lading or shipping instructions tendered to NS in the form of an Order/Notify bill of lading will be handled as straight bills of lading." It also provides that use of an Order/Notify bill of lading "shall have no effect and be void regardless of whether such instructions are contained in a straight or an Order/Notify bill of lading; and NS shall

have no liability for delivering a shipment to the consignee listed in the bill of lading in such circumstances." A copy of COC 1-E Rule 560 is attached as Appendix B.

6. The form and contents of order bills of lading and straight bills of lading allowing delivery restrictions have been prescribed by the Board and its predecessor agency for over 80 years and represent a lawful choice of freight billing instructions available to shippers.

7. AGP has made and currently makes regular use of order bills of lading to sell soybean meal shipments destined to AGP customers that are served exclusively by NS. AGP utilizes such order bills of lading when it determines that the purchaser of the soybean meal shipped by AGP should not be extended credit and should be required to make payment for the goods before being allowed to take possession of them. AGP will be injured if NS refuses to accept order bills of lading or similar delivery restrictions in straight bills of lading because AGP relies on such delivery restrictions to insure that payment for the goods shipped is made by the consignee.

8. Complainant alleges that the cancellation by NS on June 1, 2003 of a shipper's ability to utilize order bills of lading or restricted delivery straight bills of lading on shipments to NS points, insuring payment for the shipment before the goods are released to the consignee, is unlawful as an unreasonable practice in violation of 49 U.S.C. § 10702 and as a failure to provide transportation or service on reasonable request in violation of 49 U.S.C. § 11101(a).

9. AGP requests the Board to enter an order pursuant to 49 U.S.C. § 11701 requiring NS to cease and desist from refusing to accept or honor order bills of lading or straight bills of lading with provisions that restrict delivery until payment for the goods

shipped has been made, and to take such other action as may appear just and reasonable in the premises.

Respectfully submitted,



Andrew P. Goldstein
McCarthy, Sweeney & Harkaway, P.C.
2175 K Street, N.W., Suite 600
Washington, DC 20037
(202) 775-5560

Attorney for
Ag Processing Inc

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Complaint has been served, this 29th day of May 2003, on counsel for Norfolk Southern Railway Company by electronic transmission and by overnight mail.



Andrew P. Goldstein

NORFOLK SOUTHERN RAILWAY COMPANY

**VISION: BE THE SAFEST, MOST CUSTOMER-FOCUSED
AND SUCCESSFUL TRANSPORTATION COMPANY IN THE WORLD**

**NS CONDITIONS OF CARRIAGE #1-E
CANCELS
NS CONDITIONS OF CARRIAGE #1-D**

**- TERMS AND CONDITIONS -
FOR
RAIL TRANSPORTATION OF COMMODITIES
MOVING IN INTERSTATE AND INTRASTATE COMMERCE
VIA
NORFOLK SOUTHERN RAILWAY AND ITS AFFILIATED LINES SHOWN HEREIN**

EFFECTIVE JUNE 1, 2003

**Issued By
P. J. GLENNON, DIRECTOR
MARKETING SERVICES - NORFOLK SOUTHERN CORPORATION
110 Franklin Road, S.E.
Roanoke, VA 24042-0047**

SECTION 1
RULES

RULE 560 - NORMAL RAIL OPERATIONS-ORDER/NOTIFY SHIPMENTS

(1) All services provided pursuant to these Conditions of Carriage will be provided by NS in accordance with any applicable FRA and AAR guidelines and regulations and routine NS practice (including but not limited to switching, coupling and humping). Specialized rail handling such as "do not hump", speed restrictions and equipment size are special rail services and not routine rail services. Unless agreed to in writing by both NS and shipper, any restrictions on rail handling placed by shipper upon a particular car (including, but not limited to, "Do Not Hump" signs, notations as to speed or other restrictions on a bill of lading, EDI notations) shall have no effect and be void. Shippers desiring special handling must contact NS to arrange such special handling.

(2) NS does not provide Order/Notify service. Bills of lading or shipping instructions tendered to NS in the form of an order/notify bill of lading will be handled as straight bills of lading. Instructions to the effect of requiring NS to not complete delivery of a shipment until either securing authorization for delivery from the shipper or some other party, surrender of the bill of lading or notification by NS to the shipper or some other party shall have no effect and be void regardless of whether such instructions are contained in a straight or an order/notify bill of lading; and NS shall have no liability for delivering a shipment to the consignee listed in the bill of lading in such circumstances.