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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
July 29, 2019
Part of
Public Record

_____	)	
OLIN CORPORATION,	)	
	)	
Complainant,	)	
	)	
v.	)	STB Docket No. NOR 42164
	)	
UNION PACIFIC RAILROAD COMPANY,	)	
	)	
Defendant.	)	
_____	)	

UNION PACIFIC'S ANSWER

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July 29, 2019

		)	
COLIN CORPORATION,		)	
		)	
Complainant,		)	
		)	
v.		)	STB Docket No. NOR 42164
		)	
UNION PACIFIC RAILROAD COMPANY,		)	
		)	
Defendant.		)	
		)	

Union Pacific Railroad Company hereby answers the Complaint of Olin Corporation filed July 8, 2019.¹ To the extent that Union Pacific does not specifically admit an allegation in the Complaint, that allegation is denied.

Union Pacific responds to the allegations in each separately numbered paragraph of the Complaint as follows:

1. Union Pacific lacks sufficient information to form a belief about the truth of the allegations in Paragraph 1, except that Union Pacific admits that it does not hold itself out to furnish tank cars to customers.

¹ Union Pacific is filing its Answer at this time out of an abundance of caution. Olin has not yet properly served its Complaint because it has not yet sent a copy of its complaint “to the chief legal officer of each defendant either by confirmed facsimile and first-class mail or express overnight courier.” 49 C.F.R. § 1111.4. Instead, Olin sent a copy of its Complaint to Union Pacific’s chief legal officer by first-class mail (but not by confirmed facsimile), as shown in Olin’s Certificate of Service.

Accordingly, Union Pacific is filing this Answer without waiving arguments that Olin's service was defective and failed to toll the statute of limitations.

2. Union Pacific lacks sufficient information to form a belief about the truth of the allegations in Paragraph 2.

3. Union Pacific admits that it is a common carrier by rail engaged in the transportation of freight in interstate commerce; that it is generally subject to the Interstate Commerce Commission Termination Act of 1995 and to the jurisdiction of the Surface Transportation Board; and that it regularly provides rail transportation in tank cars it does not own. Union Pacific denies that it requires shippers or receivers to enter into any particular ownership or lease arrangements with regard to the tank cars used to transport their products.

4. Union Pacific admits that complaints in STB Docket No. NOR 42144 *et al.*, are pending before the Board and asserts that those complaints speak for themselves. Union Pacific admits that Olin is a member of the Chlorine Institute and the American Chemistry Counsel and that those trade associations are among the complainants in NOR 42144. The last sentence in Paragraph 4 contains allegations purporting to describe the relief Olin seeks, to which no response is required.

5. Union Pacific admits that it does not hold itself out to furnish tank cars to customers, consistent with the Interstate Commerce Commission's recognition that "[a]s a rule carriers have never furnished these cars, and it has come to be mutually understood that they should not do so." *In the Matter of Private Cars*, 50 I.C.C. 652 (1918). Union Pacific denies the remaining allegations in Paragraph 5, including any allegation that it is obligated to furnish tank cars to customers.

6. Paragraph 6 states legal conclusions to which no response is necessary.

7. Union Pacific admits that the Interstate Commerce Commission issued a decision in a proceeding that was docketed as Ex Parte No. 328, in *Investigation of Tank Car Allowance*

System, 3 I.C.C.2d 196 (1986). Union Pacific asserts that the decision speaks for itself. Union Pacific denies the remaining allegations in Paragraph 7, including any allegation that it is obligated to pay mileage allowances to the owners of private tank cars or to shippers that furnish leased tank cars when it provides transportation under rates commonly referred to as zero-mileage rates or zero-allowance rates.

8. Union Pacific admits that most movements of tank cars pursuant to Union Pacific contracts or tariffs are made in private tank cars under zero-mileage rates and that it does not pay mileage allowances when it provides transportation under zero-mileage rates. Union Pacific denies the remaining allegations in Paragraph 8, including any allegation that it is obligated to pay mileage allowances to the owners of private tank cars or to shippers that furnish leased tank cars when it provides transportation under zero-mileage rates.

9. Union Pacific admits that it does not hold itself out to furnish tank cars to customers; that most movements of tank cars pursuant to Union Pacific contracts or tariffs are made in private tank cars under zero-mileage rates; and that it does not pay mileage allowances when it provides transportation under zero-mileage rates. Union Pacific denies the remaining allegations in Paragraph 9, including any allegation that it is obligated to furnish tank cars to its customers or that it is obligated to pay mileage allowances to the owners of private tank cars or to shippers that furnish leased tank cars when it provides transportation under zero-mileage rates.

10. Union Pacific admits that Tariff UP 6004-C, Item 55-C provides for mileage-based charges on empty movements of tank cars to and from repair facilities, except when the empty movement is immediately preceded by a loaded line-haul revenue movement on Union Pacific and under certain other specified circumstances. Union Pacific denies the remaining allegations in Paragraph 10, including any allegation that it is obligated to ensure that parties

furnishing tank cars are compensated for any additional expense associated with its adoption of Tariff UP 6004-C, Item 55-C.

11. Paragraph 11 states legal conclusions to which no response is necessary.
12. Paragraph 12 states legal conclusions to which no response is necessary.
13. Paragraph 13 states legal conclusions to which no response is necessary.
14. Paragraph 14 states legal conclusions to which no response is necessary.
15. Paragraph 15 contains allegations purporting to describe Olin's legal strategy, to which no response is required.
16. Union Pacific admits that it adopted Tariff UP 6004-C, Item 55-C, effective January 1, 2015. Union Pacific asserts that Item 55-C speaks for itself.
17. Union Pacific admits that UP Tariff 6004-C, Item 55-C refers to line-haul charges provided in UPRR 4703-Series. Union Pacific asserts that UPRR 4703-Series speaks for itself. Union Pacific denies that the minimum round trip charge under Item 55-C for a movement to and from a repair facility is \$3,312 for a one mile movement.
18. Union Pacific admits that prior to January 1, 2015, Union Pacific did not charge shippers line-haul rates for the services now subject to the empty repair move charges adopted in Item 55-C.
19. Union Pacific denies the allegations in Paragraph 19.
20. Union Pacific denies the allegations in Paragraph 20, including any allegation that it is obligated to ensure that tank car owners are compensated for any additional expense associated with its adoption of Tariff UP 6004-C, Item 55-C.
21. Union Pacific denies the allegations in Paragraph 21.

RESPONSE TO OLIN'S REQUEST FOR RELIEF

Union Pacific denies that Olin is entitled to any relief.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim for Relief)

1. Olin fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

(Jurisdiction)

2. The Board lacks jurisdiction over Olin's claims to the extent the claims involve movements pursuant to contracts.

THIRD AFFIRMATIVE DEFENSE

(Standing)

3. Olin lacks standing to assert the claims for reparations and damages it alleges.

FOURTH AFFIRMATIVE DEFENSE

(Estoppel, Waiver)

4. Olin's claims are barred, in whole or in part, by the doctrines of estoppel and waiver.

FIFTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

5. Olin's claims are barred in whole or in part by the applicable statute of limitations.

SIXTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

6. Olin is barred from recovery by reason of its failure to mitigate, minimize, or avoid the damages alleged in the Complaint.

SEVENTH AFFIRMATIVE DEFENSE

(Set-Off)

7. To the extent Olin has suffered any damages, such damages should be set off by amounts that would be owed to Union Pacific for empty miles that Union Pacific excluded from mileage equalization accounting under Freight Tariff RIC 6007-Series because it adopted Item 55-C.

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

Respectfully submitted,

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July 29, 2019

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of July, 2019, I caused a copy of the foregoing document to be served by e-mail on counsel for all parties of record in NOR 42164.

/s/ Michael L. Rosenthal
Michael L. Rosenthal