

SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
September 29, 2021
Part of
Public Record

Docket No. NOR 42172

A.F. GELHAR COMPANY, INC., AND GREDE HOLDINGS, LLC v. C&NC RAILROAD COMPANY

**REPORT OF COMPLAINANTS A.F. GELHAR COMPANY, INC. AND GREDE HOLDINGS, LLC IN
RESPONSE TO DECISION SERVED HEREIN ON SEPTEMBER 24, 2021, AND
MOTION FOR VOLUNTARY DISMISSAL WITHOUT PREJUDICE**

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September 29, 2021

 GRANTED Office of Proceedings	DECISION ID NO.: <u>50986</u>
	DECIDED DATE: <u>10/25/2021</u>
	SERVED DATE: <u>10/25/2021</u>
	APPROVED:  Acting Director
☒ dismissed without prejudice	

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A.F. GELHAR COMPANY, INC., AND GREDE HOLDINGS, LLC v. C&NC RAILROAD COMPANY

**REPORT OF COMPLAINANTS A.F. GELHAR COMPANY, INC. AND GREDE HOLDINGS, LLC IN
RESPONSE TO DECISION SERVED HEREIN ON SEPTEMBER 24, 2021, AND
MOTION FOR VOLUNTARY DISMISSAL WITHOUT PREJUDICE**

In response to the Board's Decision served herein on September 24, 2021, Complainants A.F. Gelhar Company, Inc. ("Gelhar") and Grede Holdings, LLC ("Grede") hereby state as follows:

- (1) The parties have discussed settlement of the matters set forth in the Amended Complaint filed herein on July 30, 2021 ("Amended Complaint"), but have not been able to resolve those matters themselves, nor does there appear any significant likelihood that they could do so;
- (2) Gelhar and Grede do not that believe that use of the Board's voluntary, non-binding mediation process would lead to an amicable resolution with Defendant C&NC Railroad Company ("C&NC") of the matters set forth in the Amended Complaint; and
- (3) That, in light of the Answer filed herein on August 13, 2021 by Defendant C&NC (apparently also known as C&NC Railroad, LLC), including its contention that the transportation at issue may have been under contract (a contention Gelhar and Grede dispute), see Answer at 10, Second Affirmative Defense ("The Board lacks jurisdiction over Complainants' claims to the extent the claims involve movements pursuant to contracts."), a defense that would not lie

before another forum,¹ further litigation or arbitration under the Board's processes of the matters in dispute would not be cost-effective or efficient, especially in light of the amounts in dispute.

Conclusion

Accordingly, Complainants A.F. Gelhar, Inc. and Grede Holdings, LLC hereby respond to the Board's Decision, served herein on September 24, 2021 as set forth above, and hereby move for voluntary dismissal of the Amended Complaint filed herein on July 30, 2021 without prejudice.

Respectfully submitted,

/s/ Jennifer M. Dudley



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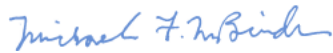
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¹ The Board lacks jurisdiction over transportation under contract. 49 U.S.C. § 10709 (c). While Gelhar and Grede dispute that the transportation at issue is under contract, litigation over that issue before the Board would simply consume the parties' resources, which would not be productive in light of the amounts at issue.

CERTIFICATE OF SERVICE

I hereby certify that I have served, this 29th day of September, 2021, the foregoing Report of Complainants A.F. Gelhar Company, Inc. and Grede Holdings, LLC in Response to Decision and Order served herein on September 24, 2021, and Motion for Voluntary Dismissal Without Prejudice Dismissal Without Prejudice, by email, on William H. Stewart III and Dennis J. Kusturiss, Vuono & Gray, attorneys for Defendant C & NC Railroad Company, at wstewart@vuonogray.com and dkusturiss@vuonogray.com.



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