

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

SANIMAX USA LLC, v. UNION PACIFIC RAILROAD COMPANY	304617 ENTERED Office of Proceedings May 24, 2022 STB Docket No. NOR 42171 Part of Public Record
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**UNION PACIFIC RAILROAD COMPANY'S
MOTION TO DISMISS**

Sanimax USA LLC's ("Sanimax's") Opening and Rebuttal Evidence present a single request for relief: that the Board order Union Pacific Railroad Company ("Union Pacific") to provide five-days-per-week service at Sanimax's South St. Paul facility.¹ {

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complaint no longer presents a live case or controversy for the Board to resolve. Accordingly, this case should now be dismissed as moot.

¹ See Sanimax USA LLC's Opening Statement, *Sanimax USA LLC v. Union Pac. R.R. Co.*, Docket No. NOR 42171, at 18 (filed Mar. 2, 2022) ("Sanimax Opening Statement") ("the Board should order UP to schedule five days of rail service each week at the South St. Paul facility"); Sanimax USA LLC's Rebuttal Statement, *Sanimax USA LLC v. Union Pac. R.R. Co.*, Docket No. NOR 42171, at 13 (filed Apr. 18, 2022) ("Sanimax Rebuttal Statement") ("the Board should order UP to return to the scheduled five days of rail service each week at the South St. Paul facility").

I. BACKGROUND.

Sanimax initiated this litigation on November 6, 2020 by filing a Complaint that sought both prospective injunctive relief and retrospective damages stemming from Union Pacific's August 2020 change to Sanimax's service schedule.² Union Pacific filed a motion to dismiss, pointing out that all of the commodities it moved for Sanimax's South St. Paul facility were exempt from Board regulation.³ Sanimax subsequently sought revocation of the applicable exemptions. The Board granted partial revocation on November 2, 2021 but clarified that the revocation was only prospective such that Sanimax could not seek relief for Union Pacific actions that occurred prior to November 2, 2021.⁴ In the wake of this decision, Sanimax's Opening and Rebuttal Evidence did not pursue its damages claims against Union Pacific.⁵ Instead, Sanimax's only remaining demand for relief was that the Board would order Union Pacific to provide "scheduled five days of rail service each week."⁶

² Verified Complaint, *Sanimax USA LLC v. Union Pac. R.R. Co.*, Docket No. NOR 42171, at 11 (filed Nov. 6, 2020) ("Compl.") (seeking order "requir[ing] UP to restore scheduled service to Sanimax to five days per week[] and award[ing] damages to Sanimax for such violations as may be proven").

³ See Union Pacific Railroad Company's Motion to Dismiss, *Sanimax USA LLC v. Union Pac. R.R. Co.*, Docket No. NOR 42171 (filed Nov. 30, 2020).

⁴ See Decision, *Sanimax USA LLC v. Union Pac. R.R. Co.*, Docket No. NOR 42171 (STB served Nov. 2, 2021); Decision, *Sanimax USA LLC v. Union Pac. R.R. Co.*, Docket No. NOR 42171 (STB served Feb. 25, 2022).

⁵ Sanimax conceded that it could not seek any damages relating to conduct before November 2, 2021 and stated that it was "holding its damages claim in abeyance at this time." Sanimax Opening Statement at 17 n.14. While Sanimax asked the Board to allow it "to submit evidence as to damages at an appropriate future time," *id.*, Sanimax presented no evidence as to damages after November 2, 2021. Sanimax's Rebuttal Evidence did not even mention damages and focused entirely on Sanimax's request for five scheduled service days per week. See Sanimax Rebuttal Statement.

⁶ Sanimax Rebuttal Statement at 13; see also Sanimax Opening Statement at 18.

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II. UNDER BOARD PRECEDENT, SANIMAX'S COMPLAINT IS MOOT.

Where “the challenged conduct ‘is no longer occurring,’” a “complaint no longer presents a case or controversy for the Board to resolve.” *Am. Fuel & Petrochemical Mfrs. v. BNSF Ry. Co.*, Docket No. NOR 42146, slip op. at 1, 2 (STB served July 17, 2018) (“*AFPM v. BNSF*”); accord *CF Industries, Inc. v. Indiana & Ohio Railway, Point Comfort and Northern Railway, and the Michigan Shore Railroad—Petition for Declaratory Order*, Docket No. FD 35517, slip op. at 3–4 (STB served June 21, 2013) (dismissing petition for declaratory order and related complaint in Docket No. NOR 42129 as moot when complained-of tariff provisions were withdrawn, leaving no “active case or controversy for the Board to resolve”). That is the case here.

} Because Sanimax has “received the ... [remedy] it sought,” its Complaint is “moot.” *Application of the National Passenger Railroad Corporation Under 49 U.S.C. § 24308(E)—CSX Transportation, Inc. and Norfolk Southern Railway Company*, Docket No. FD 36496, slip op. at 11 (STB

served Aug. 6, 2021). In other words, with “the challenged conduct ‘... no longer occurring,’” there is no live “case or controversy for the Board to resolve.” *AFPM v. BNSF* at 1, 2.

Sanimax’s attempt in a footnote of its Opening Statement to hold its damages claim “in abeyance,” Sanimax Opening Statement at 17 n.14, does not change this analysis. The Board established a standard procedural schedule that accorded with the parties’ recommendation and required Sanimax to file a written opening statement and rebuttal statement.⁷ The Board’s schedule did not contemplate the bifurcation of damages evidence or the ability of either party to hold part of its arguments “in abeyance” until some later time. In accordance with that procedural schedule, Sanimax was obligated to present its case in chief in that opening evidence.⁸ It did so, but intentionally focused its entire case in chief on its request for five-days-per-week service.

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thus nothing left for the Board to decide, except to recognize that this case is now moot.

⁷ See Decision, *Sanimax USA LLC v. Union Pac. R.R. Co.*, Docket No. NOR 42171, slip op. at 7 (STB filed Nov. 2, 2021); Joint Status Report and Jointly Proposed Procedural Schedule, *Sanimax USA LLC v. Union Pac. R.R. Co.*, Docket No. NOR 42171 (filed Feb. 16, 2021) (recommending procedural schedule).

⁸ See, e.g., *M&G Polymers USA, LLC v. CSX Transp. Inc.*, NOR 42123, slip op. at 9 (STB served Sept. 27, 2012) (“Board rules clearly direct complainants to put forth their best and most complete case on opening.”); *Duke Energy Corp. v. Norfolk S. Ry. Co.*, 7 S.T.B. 89, 100 (2003) (complainant “must present its full case-in-chief in its opening evidence”).

III. CONCLUSION

For the foregoing reasons, there no longer exists any live case or controversy for the Board to resolve, and the Board should accordingly dismiss Sanimax's Complaint as moot.

Respectfully submitted,

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May 24, 2022

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of May 2022, I served a copy of Union Pacific Railroad Company's Motion to Dismiss by first class mail and email on the following parties of record:

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/s/ Morgan B. Lindsay
Morgan B. Lindsay

VERIFIED STATEMENT
OF
JASON HESS

My name is Jason Hess. I am Vice President Marketing & Sales Bulk for Union Pacific Railroad Company (“Union Pacific”). In this role, I have primary responsibility for managing our relationship with Sanimax USA LLC (“Sanimax”). I am submitting this statement in support of Union Pacific’s motion to dismiss the complaint Sanimax filed in this proceeding.

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VERIFICATION

I declare under penalty of perjury that the foregoing statement is true and correct to the best of my knowledge, belief, and information. Further, I certify that I am qualified and authorized to file this statement.

Executed on May 24, 2022.

A handwritten signature in cursive script, appearing to read "Jason Hess", written in black ink.

Jason Hess