



PAN AM RAILWAYS
IRON HORSE PARK
NO. BILLERICA, MA 01862

LEGAL DEPARTMENT
(978) 663-1029



August 8, 2008

223189

VIA FED EX OVERNIGHT MAIL
ATTENTION: Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

ENTERED
Office of Proceedings
AUG 11 2008
Part of
Public Record

**RE: Springfield Terminal Railway Company v. Fore River Warehousing
and Storage Co., Inc.**

Docket No.: NOR 42108

Dear Sir or Madam:

Enclosed for filing is an original and 10 copies of Springfield Terminal Railways
Company's Reply to Motion of Respondent Fore River Warehousing and Storage Co.,
Inc. to Dismiss Claim for 2004 Demurrage

Thank you for your assistance

Sincerely,


Michael Q Geary

Enclosures

cc Keith Jacques, Esq
Daniel Rosenthal, Esq.

BEFORE THE SURFACE TRANSPORTATION BOARD

DOCKET NO.: NOR 42108

**SPRINGFIELD TERMINAL RAILWAY COMPANY - -
PETITION FOR DECLARATORY ORDER**

**REPLY TO MOTION OF RESPONDENT FORE RIVER WHAREHOUSING
AND STORAGE CO., INC. TO DISMISS CLAIM FOR 2004 DEMURRAGE**

**Michael Q. Geary, Esq.
Springfield Terminal Railway Company
1700 Iron Horse Park
North Billerica, Massachusetts 01862
(978) 663-1029 (telephone)
(978) 663-1213 (facsimile)**

BEFORE THE SURFACE TRANSPORTATION BOARD

DOCKET NO.: NOR 42108

**SPRINGFIELD TERMINAL RAILWAY COMPANY - -
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**REPLY TO MOTION OF RESPONDENT FORE RIVER WAREHOUSING
AND STORAGE CO., INC. TO DISMISS CLAIM FOR 2004 DEMURRAGE**

Pursuant to 49 C.F.R. section 1104.3(a) Springfield Terminal Railway Company ("STRC") replies and opposes Fore River Warehousing and Storage Co., Inc. ("Fore River") motion to dismiss claim for 2004 demurrage. The basis for the reply is that the applicable statute of limitations should be tolled because STRC filed a complaint in the United States District Court for the District of Maine on March 27, 2007 within the limitations period as outlined in 49 U.S.C. section 11705.

FACTUAL BACKGROUND

STRC filed a complaint against Fore River in the United States District Court for the District of Maine on March 27, 2007. The complaint sought approximately one-hundred and fifty thousand (\$150,000.00) dollars in demurrage charges assessed on Fore River in 2004 and 2006.

On September 6, 2007 the Maine District Court, upon motion of Fore River, stayed the case so that questions could be referred to the Surface Transportation Board. The Maine District Court allowed an extension of this stay until June 6, 2008. During

this time frame there were some limited attempts to resolve the matter between the parties which met with no results.

In early May of 2008 counsel for STRC abruptly left his firm and the matter was transferred to different counsel within that firm. This transfer did not go as smoothly as it should have resulting in miscommunications regarding the status of the case and the anticipated future course of the proceedings. New STRC counsel filed a motion to enlarge the stay. Said motion was opposed by Fore River who in addition sought to dismiss the matter for failure to comply with the rules of the Court.

On July 7, 2008 STRC filed its petition with the Surface Transportation Board. On July 16, 2008 the Maine District Court found "good cause to make its dismissal without prejudice to Plaintiff pursuing whatever remedies (if any) may still be available to it from the Surface Transportation Board." The matter was pending in the Maine District Court for a period of sixteen months. In addition the matter was still pending and had not been dismissed without prejudice during the time STRC filed its petition with the Surface Transportation Board.

ARGUMENT

As indicated in Fore River's Motion to Dismiss Claim for 2004 Demurrage a complaint was filed in the United States District Court for the District of Maine within the limitation period. This complaint remained active on the Maine District Court docket for a period of sixteen months. The complaint was still pending in the Maine District Court at the time STRC filed its petition before the Surface Transportation Board. The dismissal without prejudice arose as a result of a miscommunication and the desire of the Maine District Court to have certain questions answered by the Surface Transportation

Board The timing of STRC's petition to the Surface Transportation Board, though not within the time frame envisioned by the Maine District Court but certainly filed while the matter was still pending, in no manner prejudices the rights and abilities of Fore River to defend on the merits of this matter In fact Fore River has been well aware of these allegations for quite some time dating before the filing of the complaint in March of 2007. The decision of the Maine District Court was a dismissal without prejudice so that the parties could go before the Surface Transportation Board specifically to refer seven questions delineated by Fore River This action by the Maine District Court was clearly an attempt to get the matter before the Surface Transportation Board

CONCLUSION

Based upon the following:

- 1 The complaint was timely filed within the statute of limitations period in March of 2007;
2. The case was pending in the Maine District Court for sixteen months;
- 3 STRC filed its petition with the Surface Transportation Board while the case was still pending in the Maine District Court,
- 4 The case was dismissed without prejudice in order to get the parties before the Surface Transportation Board, and
- 5 Fore River would not be prejudiced by the STRC filing to the Surface Transportation Board on July 8, 2008.

The Motion to Dismiss Claim for 2004 Demurrage should not be allowed and the matter should move forward so that all of the claims are addressed on the merits

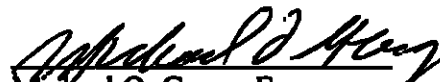
Dated August 8, 2008

Respectfully Submitted,



Michael Q. Geary, Esq
Springfield Terminal Railway Co
1700 Iron Horse Park
North Billerica, MA 01826
(978) 663-1029
Attorney for the Petitioner
Springfield Terminal Railway Co

I, Michael Q. Geary, declare under the penalty of perjury that I am qualified and authorized to file this pleading.


Michael Q. Geary, Esq.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been furnished to Daniel Rosenthal, Attorney for Fore River Warehousing and Storage Co., Inc., Verrill Dana, LLP, One Portland Square, Portland, Maine 04112-0586 by United States mail this 8th day of August 2008.

Dated: August 8, 2008


Michael Q. Geary, Esq.