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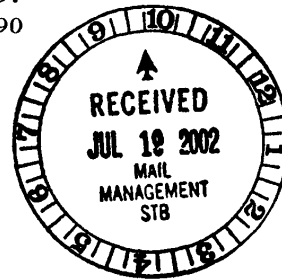
JUL 19 2002

SURFACE
TRANSPORTATION BOARD

THOMAS F. McFARLAND

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ORIGINAL



July 18, 2002

By UPS overnight mail

Vernon A. Williams, Secretary
Surface Transportation Board
Case Control Unit, Suite 713
1925 K Street, N.W.
Washington, DC 20423-0001

205888

Re: STB Ex Parte No. 346 (Sub-No. 25), *Rail General Exemption Authority -- Lumber or Wood Products*

Dear Mr. Williams:

Enclosed please find an original and 10 copies of Petition For Partial Revocation Of Exemption, for filing with the Board in the above referenced matter.

Also enclosed is Bellwood Company's check #1431 in the amount of \$150.00 for the filing fee.

Kindly acknowledge receipt by date stamping the enclosed duplicate copy of this letter and return in the self-addressed stamped envelope.

Very truly yours,

Tom McFarland

Thomas F. McFarland
Attorney for Bolen-Brunson-Bell
Lumber Company

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Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

RAIL GENERAL EXEMPTION) EX PARTE NO. 346
AUTHORITY - LUMBER OR WOOD) (SUB-NO. 25)
PRODUCTS)



**PETITION FOR PARTIAL
REVOCATION OF EXEMPTION**

FILED
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BOLEN-BRUNSON-BELL LUMBER COMPANY, INC.
3175 Johnson Avenue
P.O. Box 11205
Memphis, TN 38111

Petitioner

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SURFACE
TRANSPORTATION BOARD

THOMAS F. McFARLAND
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Attorney for Petitioner

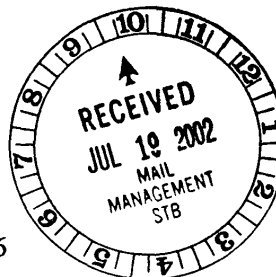
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TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD



RAIL GENERAL EXEMPTION) EX PARTE NO. 346
AUTHORITY - LUMBER OR WOOD) (SUB-NO. 25)
PRODUCTS)

**PETITION FOR PARTIAL
REVOCATION OF EXEMPTION**

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Pursuant to 49 U.S.C. § 10502(d) and 49 C.F.R. § 1121.4(f),^{1/} BOLEN-BRUNSON-

BELL LUMBER COMPANY, INC. (BBB) hereby petitions for partial revocation of an exemption from Title 49, Subtitle IV, Part A, for rail shipments of lumber or wood products in order to allow for Board consideration of a contemporaneously-filed formal complaint by BBB against CSX Transportation, Inc. (CSXT) for failure to provide transportation and service on reasonable request in violation of 49 U.S.C. § 11101(a). (Finance Docket No. 34236).

An exemption from regulation for rail shipments of lumber or wood products (STCC 24) was adopted in *Rail Exemption - Lumber or Wood Products*, 7 I.C.C.2d 673 (1991); see 49 C.F.R. § 1039.11.

Until March 1, 2001, CSXT delivered shipments of lumber and wood products by rail to BBB's place of business at Bellwood Reload on CSXT's Memphis Terminal rail line that extends between Memphis, TN (Aulon Switch) and Cordova, TN. Effective March 1, 2001, CSXT embargoed its Memphis Terminal line. That embargo had the effect of discontinuing rail service to Bellwood Reload. That embargo remains in effect as of the filing of this Petition.

^{1/} BBB is not seeking discovery. See 49 C.F.R. § 1121.2.

Simultaneously with the filing of this Petition, BBB is filing a formal complaint against CSXT, alleging that between March 1, 2001 and the present (and continuing), CSXT has failed to provide transportation and service to BBB on reasonable request in violation of 49 U.S.C. § 11101(a). (Finance Docket No. 34236, *Bolen-Brunson-Bell Lumber Company, Inc. v. CSX Transportation, Inc.*, filed July 19, 2002).

In order to have that formal complaint considered by the Board, BBB must first petition the Board for partial revocation of the exemption for rail shipments of lumber or wood products. *See Consolidated Rail Corp. -- Declaratory Order -- Exemption*, 1 I.C.C.2d 895, 900 (1986); and *Consolidated Rail Corp. -- Abandonment Exemption -- in Erie County, NY*, 1998 STB LEXIS 777 (STB Docket No. AB-167 [Sub-No. 1164X], decision served Oct. 7, 1998) at 9. In adopting the exemption in *Rail Exemption - Lumber or Wood Products, supra*, it was anticipated that shippers would seek partial revocation of the exemption in appropriate circumstances, viz. (7 I.C.C.2d at 678):

If instances arise where a shipper believes that a railroad is abusing its market power, (the Board) retains jurisdiction to revoke the exemption in whole or in part. This is the approach which Congress envisioned in enacting the Staggers Act . . .

Partial revocation of the exemption for rail shipments of lumber or wood products is warranted under 49 U.S.C. § 10502(d) because application of 49 U.S.C. § 11101(a) to CSXT's failure and refusal to transport shipments by rail to Bellwood Reload since March 1, 2001 is necessary to carry out the national rail policy of 49 U.S.C. § 10101(4) in favor of continuation of a sound rail transportation system to meet the needs of the public and the national defense.

BBB's complaint warrants Board consideration under 49 U.S.C. § 11101(a). From its inception, the embargo of rail service to Bellwood Reload was not justified by an alleged unsafe condition of a bridge at Milepost No. 223.3 (Bridge 223.3). At most, rail service to BBB could have been restored in a matter of a few days after the embargo was declared by means of a minimal expenditure for minor repair of that Bridge. CSXT was and is physically and financially able to resume rail service to Bellwood Reload. CSXT's own evidence in related proceedings shows that the traffic that it transports to Bellwood Reload produces annual net income that would be more than sufficient to fund the minimal cost of repairs to Bridge 223.3 that would permit rail service to be resumed on a short-term basis. Despite those circumstances, for nearly six months following imposition of the embargo, CSXT neither took steps to resume service nor sought authority or an exemption for abandonment or discontinuance of its rail service. For nearly seven additional months following denial of its petition for exemption of abandonment of the rail line, CSXT neither took steps to resume service nor sought authority for abandonment or discontinuance. The inference from the foregoing is inescapable that in embargoing rail service to Bellwood Reload, CSXT intended to discontinue such service permanently rather than suspend such service temporarily. The national rail policy embodied in 49 U.S.C. § 10101(4) and 49 U.S.C. § 11101(a) reflects Congressional intent to prevent wrongful terminations of rail service of that nature.

CONCLUSION AND REQUESTED RELIEF

WHEREFORE, the Board should partially revoke the exemption for rail shipments of lumber or wood products to provide for Board consideration of BBB's complaint against CSXT for violation of 49 U.S.C. § 11101(a).

Respectfully submitted,

BOLEN-BRUNSON-BELL LUMBER COMPANY, INC.
3175 Johnson Avenue
P.O. Box 11205
Memphis, TN 38111

Petitioner

Thomas F. McFarland

THOMAS F. McFARLAND
THOMAS F. McFARLAND, P.C.
208 South LaSalle Street
Suite 1890
Chicago, IL 60604-1194
(312) 236-0204

Attorney for Petitioner

DATE FILED: July 19, 2002

CERTIFICATE OF SERVICE

I hereby certify that on July 18, 2002, I served the foregoing document, Petition For Partial Revocation of Exemption, by UPS overnight mail on the Chief Legal Officer of CSXT, i.e., D.R. Maxwell, Vice President-Law and General Counsel, CSX Transportation, Inc., 500 Water Street, Jacksonville, IL 32202; on outside counsel for CSX Transportation, Inc., Louis E. Gitomer, Ball Janik LLP, 1455 F Street, N.W., Suite 225, Washington, DC 20005; and on Natalie S. Rosenberg, CSX Transportation, Inc., 500 Water Street, J150, Jacksonville, FL 32202.

Thomas F. McFarland

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