



National Grain and Feed Association

Arbitration Decision

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November 15, 2001

Arbitration Case Number 2001

Plaintiff: Cenex Harvest States Cooperatives, Inner Grove Heights, Minn.

Defendant: Norfolk Southern Railway Co., Roanoke, Va.

Statement of the Case

This case involved shipments of flour transported by rail via Norfolk Southern Railway Co. (NS) in private rail cars from the Cenex Harvest States Cooperatives' (CHS) flour mill in Huron, Ohio.

CHS invoked arbitration under Section 2(b)(7) of the NGFA Rail Arbitration Rules, claiming that the fleet of CHS' private rail cars in Huron ("Huron fleet") was "mishandled." CHS claimed \$148,504 in damages from the NS as compensation in this case.

On June 1, 1999, NS officially began operating a portion of the former Conrail assets in the northeastern United States. Rail industry observers generally found that service disruptions subsequently ensued during the integration of the former Conrail lines into the NS system. The NS itself acknowledged processing some service claims during a period from June 1, 1999 to Dec. 31, 1999 in an Oct. 12, 2000 letter from the NS to CHS, in which the carrier denied the CHS claim for the period of Jan. 11, 2000 to June 11, 2000. The arbitrators were not furnished information concerning the scope or volume of claims resulting from the integration of the former Conrail lines into the NS.

Prior to Jan. 11, 2000, CHS said the Huron fleet totaled 119 cars, consisting of 79 private rail cars and an additional 40 rail cars supplied by the NS. In January 2000, CHS said it added, at its expense, another 44 private cars to the Huron fleet to compensate for what it said was lost rail car capacity apparently resulting from a slowdown in rail transit times between June 1, 1998 and Sept. 30, 2000, as documented in the table below:

Time Period	Average Transit Times (days)
June 1, 1998 – May 31, 1999	28.18
June 1, 1999 – Dec. 31, 1999	36.03
June 1, 1999 – Sept. 30, 2000	37.72

CHS claimed that, as a result of the "mishandling" of its private rail cars, the NS was liable for the expense incurred by CHS for the additional private cars.

The NS countered that many of the shipments occurring after May 31, 1999 involved destinations that had not received cars or had not received the same volume of cars prior to June 1, 1999. Therefore, the NS maintained, many of the measurements of traffic times were not relevant because those destinations either did not exist or the shipments involved lesser quantities than before June 1, 1999. The NS also argued that the Conrail transaction created new traffic patterns and introduced new traffic to the NS. Further, the NS claimed that CHS was able to negotiate rates with the NS for shipments in private cars that were "significantly lower" than rates for shipments in railroad-owned equipment. While CHS agreed that its private cars were subject to reduced rates, it argued that the lower rates failed to completely offset the total lease cost of the private cars.

The NS also argued that awarding damages to CHS based upon rail car costs and cycle times was impermissible under the NGFA Rail Arbitration Rules because it would increase the rate spread. The NS cited Section 2(b)(10)(B) of NGFA Rail Arbitration Rules, which specifically excludes "rate-spread" disputes from arbitration. CHS countered that its complaint did not concern rates or rate spreads, but rather the mishandling of private rail cars that it said created significant additional expense for the plaintiff.

The Decision

The arbitrators found that this dispute was subject to arbitration under Section 2(b)(7) of the NGFA Rail Arbitration Rules. In so doing, the arbitrators rejected the NS's contention that the case pertained to rates and/or rate spreads, which are outside the scope of NGFA rail arbitration.

As to the merits of the case, CHS contended that NS mishandled cars as a result of service delays, railroad operational congestion and handling empty private cars for the efficiency of NS at the expense of private-car utilization. NS maintained that mishandling referred to a failure to follow instructions as to where an empty car should be moved, not the time required to move the car.

After lengthy discussions, the arbitrators decided that while CHS's allegation of rail car mishandling was understandable, the plaintiff failed to present evidence that there was mishandling of private cars as the arbitrators interpreted that term. CHS did not present a definition of the term "mishandling." Nor did it offer sufficient evidence to demonstrate that NS failed to comply with the standard *Webster's Dictionary* definition of the term, which is "to handle wrongly or handle in an ignorant fashion." Although CHS presented evidence of increased cycle times for the cars in question (which NS disputed), the arbitrators were not offered any compelling evidence of cars handled "wrongly" or "in an ignorant fashion."

Equally important, the arbitrators also found that CHS and NS had a rate agreement in this case, but the agreement did not guarantee car cycle times. In addition, there was no evidence presented that NS was obligated to meet some standard of performance in addition to its contractual agreement.

The arbitration panel recognized the disappointing service delays caused by the NS/Conrail merger and the resultant costs to various industries, including the grain, feed and processing industry. However, the arbitration panel was not persuaded by the arguments and evidence that damages should be awarded in this case.

The Award

Therefore, it is ordered that the claim by CHS in the amount of \$148,504 is denied in its entirety.

Submitted with the unanimous approval and consent of the arbitrators, whose names are listed below:

Michael A. Haeg, *Chairman*

Vice President – Marketing and Business Development
StatesRail
Dallas, Texas

Roger A. Fray

Executive Vice President - Grain
West Central Cooperative
Ralston, Iowa

Michael K. Mohan

Vice President – Coal and U. S. Grain and Fertilizer
Canadian National Railway
Homewood, Ill.