

## **Court Substantially Upholds Surface Transportation Board Decision Resolving Several Disputed Issues Between Arkansas Midland Railroad and Shippers on the Line**

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the United States Court of Appeals for the Eighth Circuit has substantially upheld the Board's decision resolving several disputed issues relating to a short railroad line in Arkansas that was temporarily embargoed (put out of service) because of storm damage for four months in 1993 and 1994. The Board's decision had been challenged in court by both sides to the proceeding before the agency.

The Board's decision resolved three interrelated proceedings involving the Norman Branch, a 52-mile railroad line owned by the Arkansas Midland Railroad Company (AMR). In late 1993, the line was damaged by storm-related flooding, and so AMR embargoed parts of it. Several of the shippers on the line wanted AMR to fix the damage and resume service, but after considering its options, AMR ultimately decided instead to abandon the portion of the line on which these shippers were located. At that point, a new railroad affiliated with the shippers [the Caddo Antoine & Little Missouri Railroad Company (CALM)] asked the Board's predecessor, the Interstate Commerce Commission (ICC), to force AMR to sell the Norman Branch to it under the "feeder line" provisions of the statute [now section 10907 of Title 49 United States Code (49 U.S.C. 10907)]. CALM also asked the ICC to permit it to begin immediate operations over the line (a request that the ICC immediately granted). Finally, the shippers filed a complaint seeking damages from AMR, alleging that AMR had failed to provide service on reasonable request in violation of 49 U.S.C. 11101(a).

After much litigation at the agency and in the courts over the terms of the line sale and the level of the damages due, if any--see, e.g., *Caddo Antoine and Little Missouri Railroad Company v. United States*, 95 F.3d 740 (8th Cir. 1996); *GS Roofing Products Company v. STB*, 143 F.3d 387 (8th Cir. 1998)--the Board issued a decision in May 2000 resolving all of the remaining issues. In that decision, the Board set a purchase price for the forced sale of the Norman Branch to the shippers, and it awarded compensation to AMR for operations conducted by CALM over a portion of the Norman Branch that AMR had retained. The Board also awarded the shippers approximately \$200,000 in damages for losses suffered while the line was improperly embargoed, but denied the shippers' request for substantially higher damages.

AMR then sued the Board in court on the ground that the price the Board prescribed when it required AMR to sell the Norman Branch was too low. CALM and its affiliated shippers sued the Board on the ground that the "trackage rights" fees that CALM had to pay AMR for operating over some of AMR's tracks were too high. The shippers sued the Board on the ground that the damages it awarded were too low.

The court affirmed the Board in nearly all respects. It found that the Board acted properly when setting the purchase price for the line, agreeing with the Board that AMR's evidence supporting a higher price was "insufficient to establish an accurate figure." In the compensation case, the court determined that the Board properly used average data for AMR's entire system, rather than the generally preferred, line-specific figures, because reliable line-specific data were unavailable. Finally, the court upheld the Board's denial of attorney's fees and miscellaneous expenses to CALM and the shippers, and its denial of damages for lost profits under a contract to supply colored stone dust to a Fontana, California facility.

The only point on which the court concluded that the Board erred was by failing to award one of the shippers lost profits (claimed to be about \$241,000) for an alleged fixed price contract to ship granules to Houston, Texas. Although the court recognized that damages in the form of lost profits are difficult to establish, it found that the shipper had shown with enough certainty that it had been sufficiently hurt by AMR's service lapse to warrant damages. The court sent this issue back to the Board for resolution.

The court's decision was issued on August 20, 2001, in *GS Roofing Company, et al. v. Surface Transportation Board and United States of America* (8th Cir., Nos. 99-3218, et al), and is available on the court's web site at <http://www.ca8.uscourts.gov>. The Board's decision was issued on May 5, 2000 in *Caddo Antoine & Little Missouri R.R.--Feeder Line Acquisition-- Arkansas Midland R.R. Line Between Gurdon and Birds Mill, AR*, STB Finance Docket No. 32479, et al. A printed copy of the Board's decision is available for a fee by contacting Da-To-Da Legal, Room 405, 1925 K Street, NW, Washington, DC 20006, telephone (202) 293-7776, or via [Da\\_To\\_Da@Hotmail.com](mailto:Da_To_Da@Hotmail.com). The decision also is available for viewing and downloading via the Board's website at <http://www.stb.gov>.

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