

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36609

FOSTER POULTRY FARMS—
EX PARTE PETITION FOR EMERGENCY SERVICE ORDER

Digest:¹ Union Pacific Railroad Company is being directed to deliver certain trains of corn to Foster Poultry Farms' facilities in Traver and Turlock, Cal.

Decided: June 17, 2022

On June 15, 2022, Foster Poultry Farms (Foster Farms), a chicken grower and processor, filed an ex parte petition for an emergency service order under 49 U.S.C. § 11123. The petition requests that the Board immediately direct Union Pacific Railroad Company (UP) to give preference and priority to the movement of unit trains of corn tendered to UP by or on behalf of Foster Farms from origins in the midwestern United States to Foster Farms' facilities in Traver and Turlock, Cal.

According to the petition, UP delivers corn to Foster Farms' facilities in 100-car unit trains, where it is processed into corn meal for animal feed. (Pet. 3.) The petition alleges that service failures began in February 2022 and that Foster Farms has engaged the Board's Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC) to resolve the situation. (Pet. 5.) According to Foster Farms, an emergency service order is necessary to alleviate the harm to its business and the poultry, dairy, and feed yard livestock that depend on the distribution of corn meal supplied by Foster Farms. (Pet. 3.) Foster Farms further states that the corn delivered by UP is corn exclusively used to feed hundreds of thousands of cattle and millions of chickens that provide food supplies and that UP's service failures impact Foster Farms' ability to serve the public.

The petition specifically requests that, for a period of at least 30 days, the Board direct UP to do the following: (1) prioritize the assignment of crews to Foster Farms' unit trains at loading origins; (2) prioritize the transportation of Foster Farms' unit trains on UP's system with the goal of minimizing the extent to which the crews on such trains "time out" under the Hours of Service rules, thereby enabling the train to complete its movement from origin to destination without stopping, the crew departing, and then waiting for a new crew; (3) assign and retain sufficient locomotives to Foster Farms' trains at loading origins to ensure that once a Foster

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

Farms train is loaded there is sufficient locomotive power for the unit train to immediately begin its trip to Foster Farms' Traver and Turlock facilities; (4) provide the Board with daily status reports over the 30-day period regarding the delivery of Foster Farms' trains, to include the number of trains and cars billed to Foster Farms' Traver and Turlock facilities, and actual performance versus trip plan data for these shipments. (Pet. 8.)

On June 16, 2022, UP filed a reply acknowledging that it has not provided adequate service to Foster Farms and that it is committed to improving. UP states that it will improve service by moving an additional train set into service; prioritizing, over other network requirements, the following: (1) the additional trains/cars; (2) crews needed for Foster Farms service; (3) locomotives to be used for Foster Farms service; (4) providing the Board with daily data specific to Foster Farms service until the volume requirements are fulfilled; and (5) participating in weekly technical conferences between the parties and OPAGAC until the volume requirements are fulfilled.

UP's reply includes a verified statement by Bradley S. Moore, Vice President of Customer Care and Support for UP. According to Moore, the trains intended to serve the Turlock facilities, GSTUHH 10 (FR11) and GSTUSO 15 (FR12), are empty; FR11 is destined for loading in Hope, Minn., is called at Boone, Iowa, and has an estimated time of arrival (ETA) of 8:30 a.m. PST on June 17, 2022; and FR12 is destined for loading in Sloan, Iowa, is called at Elko, Nev., and has an ETA of 4:30 a.m. PST on June 19, 2022. (UP Reply, V.S. Moore.) Moore states the trains intended to serve the Traver facilities, GSCTTR 12 (FR14) and GSVLTR 16 (FR15), are loaded; FR14 departed Timpie, Utah, at 1:27 p.m. PST on June 16, 2022, and has an ETA of 3:00 a.m. PST on June 18, 2022; and FR15 is called at Savage, Minn., as of 8:30 p.m. PST on June 16, 2022, and has an ETA of 10:00 p.m. PST on June 21, 2022. (Id.)

On June 17, 2022, Board staff convened with counsel and personnel from Foster Farms and were advised that delivery of these trains would provide meaningful temporary relief.

The Board may issue an order under 49 U.S.C. § 11123 when it determines that circumstances, such as the unauthorized cessation of operations or other failure of traffic movement exists that creates "an emergency situation of such magnitude as to have substantial adverse effects on shippers, or on rail service in a region of the United States or that a rail carrier providing transportation subject to the jurisdiction of the Board . . . cannot transport the traffic offered to it in a manner that properly serves the public."

The Board finds that an order under § 11123 is warranted. UP is ordered to perform on its specific commitments of service as to FR11, FR12, FR14, and FR15 destined for the Turlock and Traver facilities, as explained in the verified statement of Moore, to the greatest extent possible.² Should UP need to deviate from its proposed schedule for those trains, UP should advise the Board and Foster Farms in writing as soon as it is able. The Board's directive is intended to alleviate Foster Farms' immediate service problem while the Board considers the

² The Board has been advised that, since the filing of UP's reply, a derailment has hampered UP's ability to deliver FR11 by the time promised in Moore's verified statement.

remainder of Foster Farms' petition. In furtherance of resolving the remaining issues, Foster Farms will be directed to respond to UP's reply no later than Wednesday, June 22, 2022.

Nothing in this order relieves UP of its common carrier obligation with respect to the rest of its network. The Board will closely monitor UP's rail service and OPAGAC, although it is also advising the Board, will continue to be available to the parties should they need additional assistance. The Board encourages the parties to utilize OPAGAC staff to reach an informal resolution of these issues.

It is ordered:

1. UP is directed to provide service to Foster Farms, as described above.
2. Foster Farms is directed to respond to UP's reply no later than June 22, 2022.
3. This decision is effective on its date of service.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.