

(S E R V E D)
(NOVEMBER 25, 2011)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

DOCKET NO. 11- 21

MINTO EXPLORATIONS LTD.

v.

PACIFIC AND ARCTIC RAILWAY AND NAVIGATION COMPANY

NOTICE OF FILING OF COMPLAINT AND ASSIGNMENT

Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission) by Minto Explorations Ltd. (Minto), hereinafter “Complainant,” against Pacific and Arctic Railway and Navigation Company (“PARN”) or “Respondent”. Complainant asserts that it is a Canadian corporation which is a “wholly owned subsidiary of Capstone Mining Corp.” Complainant alleges that Respondent is an Alaska corporation which operates as a marine terminal operator.

Complainant alleges that Respondent’s “dockage tariff, under which the vessels used by Minto pay a higher per-foot dockage fee than other vessels” is unlawfully discriminatory. Complainant asserted this claim in the United States District Court for the District of Alaska, which court referred the claim to the Commission upon Respondent’s motion in that court “alleging that the dispute was within the Commission’s primary jurisdiction.” Thus Complainant alleges that Respondent has violated the Shipping Act of 1984 “by unreasonably prejudicing and disadvantaging Minto and unreasonably preferring and advantaging others in violation of 46 U.S.C. § 41106 (2), and by failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering

property, in violation of 46 U.S.C. § 41102 Complainant also presents its state law discrimination claim at the direction of the District Court.

Complainant requests that Respondent be ordered “after due hearing, to answer the charges herein, to cease and desist from the aforesaid violations of the Shipping Act, to establish and put in force such practices as the Commission determines to be lawful and reasonable, and to pay Minto reparations for PARN’s violations of the Act, including the amount of the actual injury, plus interest, costs and attorneys fees, and any other damages to be determined; and that the Commission order any such other relief as it determines proper.” The full text of the complaint can be found in the Commission’s Electronic Reading Room at www.fmc.gov.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 C.F.R. 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 C.F.R. 502.61, the initial decision of the presiding officer in this proceeding shall be issued by November 23, 2012 and the final decision of the Commission shall be issued by March 25, 2013.

Karen V. Gregory
Secretary