

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CONSOLIDATED RAIL CORP.	:	CIVIL ACTION
	:	
v.	:	
	:	
CANADA MALTING CO., LTD.	:	
	:	NO. 98-5984

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

YOHN, J.

February 7, 2000

Consolidated Rail Corporation (“Conrail”) brought this action against Canada Malting Company, Ltd. (“Canada Malting”) to recover freight charges resulting from the transport of malt by interstate rail from Allentown, Pennsylvania to Chapman, Pennsylvania. Neither party disputes that Conrail shipped the malt for Canada Malting from Allentown to Chapman; the only contested issue is the applicable rate to be applied for such shipments.

Conrail contends that the applicable rate, as determined by the appropriate interstate rail tariff, is approximately \$1700 per rail car. On the other hand, Canada Malting argues that Conrail contracted with it to provide a price of \$350 per rail car. It is undisputed that Canada Malting paid Conrail \$350 per car for all shipments made from Allentown to Chapman for the relevant time period. The issue to be decided, therefore, is whether Canada Malting still owes Conrail the difference between the \$350 paid and the \$1700 that Conrail claims is owed to it for the services provided. After denying both parties’ cross-motions for summary judgment, the court conducted a bench trial to resolve this issue.

Having considered all of the testimony and exhibits offered at trial, I now, pursuant to

Fed. R. Civ. P. 52(a), make the following findings of fact and conclusions of law:

FINDINGS OF FACT

A. Background

1. Canada Malting is in the business of producing and supplying malt to breweries.
2. Conrail is an interstate rail carrier.
3. The Canadian Pacific Railway (“Canadian Pacific”), is also an interstate rail carrier.

B. Shipment of Malt Rail Cars from Allentown to Chapman

4. In January, 1997, Canada Malting was given the opportunity to enter into a long-term contract to supply malt to Stroh’s Brewery Company (“Stroh’s Brewery”) in Allentown, Pennsylvania. See Joint Findings of Fact and Conclusions of Law (“Joint Findings”) ¶¶ A-4, B-1.
5. The Stroh’s facility to which the malt was to be delivered was identified to Canada Malting by Stroh’s Brewery as its “Allentown brewery.” See Joint Findings ¶ B-2. In actuality, the “Allentown brewery” is not located in Allentown, Pennsylvania, but rather is located in Chapman, Pennsylvania, which is approximately eight miles from Allentown. See id. ¶¶ B-2, B-7.
6. Canada Malting determined that the best location from which to provide the malt to Stroh’s Brewery was from Canada Malting’s mill at Thunder Bay, Ontario. See Joint Findings ¶¶ A-5, B-3.
7. The contract between Canada Malting and Stroh’s Brewery was on a “delivered basis.” See Joint Findings ¶ A-9. This means that Canada Malting was responsible for transporting the malt to Stroh’s Brewery. See id.

8. Canadian Pacific provides rail service to Canada Malting's facility in Thunder Bay, Ontario. See Joint Findings ¶ B-4.
9. Brent Athill, Grain & Transportation Coordinator for Canada Malting, contacted Christine N. Semenchuk, the employee in charge of malt traffic for Canadian Pacific, to arrange for the transportation of the malt from Thunder Bay, Ontario to Stroh's Brewery in Allentown. See Joint Findings ¶ B-4.
10. At the time of this initial conversation, neither Athill nor Semenchuk realized that Stroh's Brewery is actually located in Chapman, Pennsylvania, which is approximately eight miles from Allentown. See Testimony of Brent Atthill ("Atthill Test."), Sept. 28, 1999; Deposition of Christine Semenchuk ("Semenchuk Dep.") at 18-21 (Trial Ex. 18).
11. Semenchuk quoted Athill a price of \$2,989.00 per rail car for direct delivery of malt by Canadian Pacific from Thunder Bay, Ontario to Stroh's Brewery in Allentown. See Joint Findings ¶ B-5; Atthill Test., Sept. 28, 1999.
12. This rate quotation by Canadian Pacific assumed that the malt would be transported "CPRS direct," which means that Canadian Pacific would handle the shipment the entire way from Thunder Bay to the Stroh's Brewery. See Joint Findings ¶ A-7; Trial Ex. P-23.
13. Based on this rate quotation by Canadian Pacific, on January 27, 1997, Canada Malting entered into a contract to supply malt to Stroh's Brewery through December 31, 1997. See Joint Findings ¶¶ A-8, B-6.
14. After Canada Malting had committed to the contract with Stroh's Brewery, Semenchuk informed Athill that Canadian Pacific could not provide direct service to the Stroh's Brewery. See Joint Findings ¶¶ A-10, B-7.

15. During this conversation, Semenchuk explained to Canada Malting that a local Conrail switch would be necessary to move the cars from the Canadian Pacific-Conrail interchange in Allentown to the Stroh's Brewery in Chapman. See Joint Findings ¶¶ A-12, B-7.
16. Atthill requested that Semenchuk contact Conrail to inquire as to the rate that would be charged by Conrail to move the rail cars from Allentown to Chapman.¹ See Semenchuk Dep. at 23. Atthill did not ask Semenchuk to inquire as to the rate to move a few "straggler" or misrouted cars. See Atthill Test., Sept. 28, 1999.
17. At no time in January or February, 1997, did Canada Malting have any "straggler" or misrouted rail cars. See Atthill Test., Sept. 28, 1999.
18. Malt is not a generic good. Thus, malt intended for one brewery can not be rerouted to another brewery because the malt would not meet another brewery's specifications. See Atthill Test., Sept. 28, 1999.
19. If Canada Malting did have malt straggler cars, it would be responsible for placing them with another brewery. See Atthill Test., Sept. 28, 1999. Canadian Pacific would not have had the responsibility for rerouting any straggler or misrouted malt cars.
20. Semenchuk telephoned Charles J. Ciotti in late January, 1997.² See Semenchuk Dep. at 23-24. At this time, Ciotti was employed by Conrail as a Business Development Analyst

¹In the railroad industry, when dealing with interline movements (i.e., movements involving two or more carriers), it is customary for the shipper to deal with the original carrier who obtains the rate and service information from all other connecting carriers and provides it to the shipper. See Atthill Test., Sept. 28, 1999; Ciotti Test., Sept. 27, 1999; Trial Ex. P-7 at ¶ 13.

²Ciotti was also referred to throughout testimony and in exhibits offered in evidence as Chad Ciotti.

in the Food and Agricultural Core Service Group. See Testimony of Charles J. Ciotti (“Ciotti Test.”), Sept. 27, 1999. Ciotti was relatively new to this position, having been promoted to this position in November, 1996. See id.

21. During this conversation, Ciotti told Semenchuk that Conrail would charge Canada Malting a rate of \$350 per rail car to transport the malt cars from the Canadian Pacific-Conrail interchange in Allentown to Stroh’s Brewery in Chapman. See Semenchuk Dep. at 26-27; Ciotti Test., Sept. 27, 1999; Trial Ex. P-28.³ Ciotti also told Semenchuk that the \$350 rate that he was quoting was provided for in Conrail’s general switching tariff. See Semenchuk Dep. at 26-27; Ciotti Test., Sept. 27, 1999; see also Trial Ex. P-6 (electronic message from Ciotti to Semenchuk in which Ciotti acknowledges that in his original conversation with Semenchuk about the Allentown-Chapman transportation rate he “referenced a switching rate from Allentown to Chapman” and he only “later [found] out” that, according to Conrail, this switching rate did not apply).
22. Because Ciotti represented that the rate was based on the switching tariff, it was unnecessary to discuss the length of time or number of cars to be transported because the switching tariff would apply to the transportation of all cars until the tariff was changed. See Atthill Test., Sept. 28, 1999.
23. The parties intended that the contract would last for a reasonable period of time.
24. A reasonable period of time would have included the time period from April, 1997, through December, 1997. This time period was reasonable because: (1) Canada Malting

³I do not find credible Ciotti’s testimony that Semenchuk requested a rate for “one or a few straggler cars.” I do find credible, however, Semenchuk’s testimony that she and Ciotti never discussed the duration of the contract or the number of cars to be transported.

had a contract with Stroh's Brewery through the end of 1997; (2) Ciotti indicated no time limitation on the contract; (3) Ciotti quoted a switching rate of \$350 from Conrail's tariff that could only be changed and only would end if Conrail modified its switching tariff; the misunderstanding concerning the precise location of Stroh's Brewery in Chapman, not Allentown, was a reasonable one; and (5) the subsequent rate of approximately \$1700 was unreasonable for a distance of 8 miles.

25. After her conversation with Ciotti, Semenchuk telephoned Atthill and reported to him her conversation with Ciotti. See Joint Findings ¶ B-9; Semenchuk Dep. at 33. She explained to Atthill that Conrail would charge \$350 per rail car to transport the cars from Allentown to Chapman. See Joint Findings ¶ B-9; Trial Ex. P.-28. Semenchuk further explained to Atthill that the Conrail rate would apply in addition to the rate of \$2,989.00 charged by Canadian Pacific. See id.
26. Because the Conrail rate was over and above the original rate quoted to Canada Malting by Canadian Pacific, and because Canada Malting had relied on this rate when negotiating its contract with Stroh's Brewery, Canadian Pacific agreed to provide a rebate of \$179 per rail car to Canada Malting to offset partially the additional cost. See Joint Findings ¶¶ A-13, B-10; Semenchuk Dep. at 37; Trial Ex. P-11; Trial Ex. P-12.
27. No one from Canada Malting directly contacted Ciotti, or any other Conrail employee, in January or February, 1997, to discuss the movement of rail cars from Allentown, Pennsylvania, to Chapman, Pennsylvania. See Joint Findings ¶ A-1.
28. Conrail was never told about the rebate negotiations, or the agreement reached, between Canadian Pacific and Canada Malting concerning the \$179.00 rebate. See Joint Findings

- ¶ A-15; Semenchuk Dep. at 37-38.
29. No Conrail employee participated in any of the conversations between Atthill and Semenchuk. See Joint Findings ¶ A-16. No employee at Conrail received a copy of any of the correspondence between Atthill and Semenchuk regarding the transportation of malt from Thunder Bay, Ontario to Chapman, Pennsylvania. See id.
 30. In April, 1997, the malt traffic began to move from Thunder Bay to Stroh's Brewery in Chapman. See Joint Findings ¶ B-11.
 31. From April, 1997, through July 11, 1997, Conrail transported 26 malt cars from the Canadian Pacific-Conrail interchange point in Allentown to the Stroh's Brewery in Chapman. See Joint Findings ¶ B-11; Trial Ex. P-9 (compiling invoices for shipments made between April and July, 1997).
 32. Conrail invoiced Canada Malting \$350 per car as its fee for transporting each of these cars. See Joint Findings ¶ B-11; Trial Ex. P-9. Canada Malting paid each of these invoices. See id. Conrail accepted the \$350 per car as payment in full for the services provided to Canada Malting through July 11, 1997. See id.
 33. Semenchuk did not speak with Ciotti, or any other Conrail employee or representative, again about the shipments at issue in this case between February, 1997, and July, 1997. See Joint Findings ¶ A-2.
 34. Conrail did not know, at any time before July, 1997, that Canadian Pacific had entered into a long-term contract with Canada Malting for Canadian Pacific to transport malt from Thunder Bay, Ontario to Allentown. See Joint Findings ¶ A-3.
 35. On Friday, July 11, 1997, Ciotti and Semenchuk spoke by telephone. See Joint Findings

¶¶ A-18, A-19, B-12; Semenchuk Dep. at 72, 76. During that conversation, Semenchuk informed Ciotti that Canada Malting had entered into a contract with Stroh's Brewery in which Canada Malting agreed to supply malt to Stroh's Brewery through December, 1997. See Joint Findings ¶ A-19. Semenchuk also told Ciotti that Canadian Pacific had agreed to transport Canada Malting's malt from Thunder Bay to Chapman on a "Rule 11" delivery basis. See id.

36. "Rule 11" means that each rail carrier sets its own rate and bills the shipper (i.e., Canada Malting) independently for the services each rail carrier performed. See Joint Findings ¶ A-32. In this case, Rule 11 means that Canadian Pacific would set its own rate and bill Canada Malting for the services it performed, while Conrail would likewise set its own rate and bill Canada Malting for the services it performed. See id.
37. During the phone conversation on July 11, 1997, Ciotti told Semenchuk that Conrail does not interchange malt rail traffic in Allentown, Pennsylvania. See Joint Findings ¶ A-20. Ciotti told Semenchuk that instead, all malt transported by rail from Canada to Chapman, Pennsylvania had to be interchanged with Conrail in either Buffalo, New York or Chicago, Illinois. See id.
38. Ciotti then informed Semenchuk that as of Monday, July 14, 1997, all rail cars containing malt to be transported to Stroh's Brewery that were transported by Conrail would be billed according to the published rates contained in Conrail's Malt Transportation Tariff CR-4195 ("Tariff 4195").⁴ See Joint Findings ¶ A-20.

⁴Tariff 4195 calculates the rate to be charged based on the weight of the shipment and the mileage to be shipped. See Joint Findings ¶ A-20; Ciotti Test., Sept. 27, 1999.

39. On July 16, 1997, Ciotti sent Semenchuk an electronic message. See Joint Findings ¶¶ A-21, B-13. In that message, Ciotti explained that in his earlier conversations with Semenchuk he had “referenced a Switch rate from Allentown to Chapman” that Ciotti later found out was not “applicable to this specific Malt Traffic.” See Trial Ex. P-6. Ciotti then stated in the message that the rates for malt moving from Allentown, Pennsylvania to Chapman, Pennsylvania would now be the “Line haul rates” that are published in Tariff 4195,⁵ and not the \$350 per car switch rate that he had previously quoted. See Joint Findings ¶¶ A-21, B-13; Trial Ex. P-6; Ciotti Test., Sept. 27, 1999; Semenchuk Dep. at 79-80.
40. Semenchuk then relayed this information to Atthill, telling him that as of July 14, 1997, Conrail would be no longer be charging \$350 per rail car, but instead, would be charging rates according to Tariff 4195. See Joint Findings ¶¶ A-25, B-12; Semenchuk Dep. at 79-80. According to Tariff 4195, Conrail would now be charging approximately \$1700 per rail car. See Ciotti Test., Sept. 27, 1999.
41. A rate of \$350 per rail car covers the cost of transporting a rail car from Allentown to Chapman. See Ciotti Test., Sept. 28, 1999. Thus, at the new rate of approximately \$1700 per rail car, Conrail would realize a profit of almost \$1400 per rail car for this service of

⁵The parties did enter into another contract, which was in effect from April 1, 1997, through December 25, 1997, for the transportation of malt from Buffalo to Chapman. See Ciotti Test., Sept. 27, 1999; Trial Ex. P-9. Pursuant to this contract, Conrail charged Canada Malting \$2240 to ship malt from Buffalo to Chapman. See id. Ciotti explained that he developed this rate amount by calculating the profit made by Conrail on a Chicago to Chapman run and adding that number to the cost of a Buffalo to Chapman shipment. See Ciotti Test., Sept. 27, 1999. The parties also entered into a similar contract for the time period from January 11, 1998, through December 31, 1998. See Ciotti Test., Sept. 27, 1999; Trial Ex. P-10.

- transporting the car eight miles from Allentown to Chapman. See id.
42. Typically, Conrail interchanges malt traffic in either Buffalo or Chicago. See Ciotti Test., Sept. 27, 1999.
 43. Atthill then telephoned Ciotti. See Joint Findings ¶ B-14; Testimony of Brent Atthill (“Atthill Test.”), Sept. 28, 1999. In that conversation, Ciotti confirmed that Conrail would be charging rates according to Tariff 4195, rather than the \$350 per rail car rate, beginning on July 14, 1997. See Atthill Test., Sept. 28, 1999. Atthill told Ciotti that Canada Malting was committed to a contract with Stroh’s Brewery that would not permit it to absorb the rate increase imposed by Conrail. See Joint Findings ¶ B-14.
 44. After speaking with Ciotti about the rate increase for the Allentown to Chapman shipments, Atthill then contacted Dick Raup, the Conrail marketing representative responsible for the Canada Malting account, and Judith Weiss, an Assistant Vice President at Conrail in charge of grain traffic. See Atthill Test., Sept. 28, 1999. Atthill explained that Canada Malting could not afford to pay the newly-quoted rate of over \$1700 per car. See id.
 45. July is the middle of the peak season for malt sales. See Atthill Test., Sept. 28, 1999.
 46. Canada Malting would have lost important business if it would have stopped shipping malt to Stroh’s Brewery in the middle of July, 1997. See Atthill Test., Sept. 28, 1999.
 47. Canada Malting continued to send rail cars to Stroh’s Brewery from July 14, 1997, through the end of December, 1997. See Joint Findings ¶¶ A-28, B-15. In this time period, approximately 70 rail cars were transported from Allentown to Chapman. See id. ¶ B-15.

48. From July 14, 1997, through the end of December, 1997, Conrail continued to transport Canada Malting's rail cars from Allentown to Stroh's Brewery in Chapman. See Joint Findings ¶¶ A-29, B-15.
49. From July 14, 1997, through the end of December, 1997, Conrail billed Canada Malting pursuant to Tariff 4195 for every shipment transported by Conrail from Allentown to Chapman. See Joint Findings ¶¶ A-29, B-15.
50. Canada Malting continued to pay \$350 per rail car to Conrail. See Joint Findings ¶¶ A-29, B-15.
51. Canada Malting paid Conrail \$350 for every rail car that Conrail transported from Allentown to Chapman from July 14, 1997, through the end of December, 1997. See Joint Findings ¶ B-15.
52. Conrail knew that Canada Malting intended to pay only \$350 per rail car for each invoice billed. See Trial Ex. D-14.
53. Conrail accepted these payments from Canada Malting and continued to transport the rail cars. See Joint Findings ¶¶ A-29, B-15.
54. At no time did Canadian Pacific attempt to bill Canada Malting for the services that Conrail provided in transporting the rail cars from Allentown to Chapman. See Joint Findings ¶ A-33.
55. Conrail's Tariff 4195 was published and available for public inspection. See Joint Findings ¶ A-34.
56. There was consideration for the private agreement entered into by Canada Malting and Conrail. Conrail agreed to provide transportation services to Canada Malting by

transporting Canada Malting's rail cars a distance of approximately eight miles from Allentown to Chapman. In exchange, Canada Malting agreed to remit payment of \$350 per rail car to Conrail.

57. At trial, the parties stipulated that:
- a. For services provided to Canada Malting by Conrail from July 16, 1997, through December 23, 1997, see Plaintiff's Trial Ex. 3 (compiling invoices for shipments made from Allentown to Chapman), the difference between the amount invoiced by Conrail and the amount paid by Canada Malting is \$94,284.42.
 - b. For services provided to Canada Malting by Conrail from August 7, 1997, through December 23, 1997, see Plaintiff's Trial Ex. 3 (compiling invoices for shipments made from Allentown to Chapman), the difference between the amount invoiced by Conrail and the amount paid by Canada Malting is \$81,588.64.

C. Shipment of Rail Cars from Buffalo to Utica

52. On the following five dates, Conrail shipped rail cars for Canada Malting from Buffalo, New York to Utica, New York: June 30, 1997; August 26, 1997; August 27, 1997; August 29, 1997; and October 6, 1997. See Joint Findings ¶ A-35; Ciotti Test., Sept. 27, 1999, and Sept. 28, 1999; Trial Ex. P-5.
53. On January 6, 1998, Conrail sent invoices to Canada Malting for all five shipments made from Buffalo to Utica. See Ciotti Test., Sept. 28, 1999; Trial Ex. P-5.
54. The invoices billed Canada Malting for the following amounts: \$2036.80 (June 30, 1997); \$2045.34 (August 26, 1997); \$2044.14 (August 27, 1997); \$2077.24 (August 29, 1997); and \$2056.99 (October 6, 1997). See Trial Ex. P-5.

55. Of this invoiced amount, Canada Malting paid approximately \$1650 for each shipment, but did not pay the remaining amount due on the invoice. See Ciotti Test., Sept. 28, 1999; Trial Ex. P-42.
56. The parties stipulated at trial that for services provided to Canada Malting by Conrail for shipments to Utica from June 30, 1997, through October 6, 1997, the difference between the amount invoiced by Conrail and the amount paid by Canada Malting is \$2,010.51.

CONCLUSIONS OF LAW

1. Conrail is an interstate rail carrier subject to the jurisdiction of the United States Surface Transportation Board (“STB”). See Joint Findings ¶ II.B.1.
2. A tariff rate refers to the rate that is established by the rail carrier and made available to the public for inspection. See 49 U.S.C. § 11101(b).
3. A rail carrier is not required to file its tariff rate with the Surface Transportation Board. See 49 U.S.C. § 11101(b).
4. Freight Tariff CR 4195-B is Conrail’s tariff listing rates for shipments of malt. See Trial Ex. P-1. Freight Tariff CR 4195-C is the supplement to Tariff CR 4195-B and reflects changes to the tariff that became effective on April 8, 1997. See Trial Ex. P-2. I will refer to Tariff CR 4195-B, and its amendments found in Tariff CR 4195-C, collectively as Tariff 4195.
5. Tariff 4195 is Conrail’s tariff for line-haul rates. See Trial Ex. P-2, Trial Ex. P-3; Ciotti Test., Sept. 27, 1999. The rates in Tariff 4195 are determined through a calculation based on weight and mileage. See Ciotti Test., Sept. 27, 1999. The plaintiff argued at trial that Tariff 4195 was applicable to the shipments at issue in this case. I disagree for the

following reasons:

- a. Tariff 4195 provides no rate applicable to shipments from Allentown to Chapman. See Trial Ex. P-2; Ciotti Test., Sept. 27, 1999.
 - b. Item 9200 of Tariff 4195 states that the “[r]ates published in this item apply only from and in points for which the basis numbers are found in Tariff(s) RPS 1009 or WTL 1002 series (and points shown as taking same basis in Tariff OPSL 6000 series).” See Trial Ex. P-2 at p. 10. The plaintiff did not present evidence at trial to demonstrate the point to and from which Tariff 4195 applies. Without this additional information, it is not possible to determine that Tariff 4195 applies to this rail movement.
6. Freight Tariff CR 8001-D (“Tariff 8001”) is Conrail’s tariff for switching and accessorial services. See Trial Ex. P-20.⁶ Tariff 8001 is referred to as Conrail’s “switch rate.” The defendant argued at trial that the switch rate was applicable to the movement of malt from Allentown to Chapman. I disagree for the following reasons:
- a. Item 3 of Tariff 8001 lists stations and provides “item numbers” for each station. See Trial Ex. P-20. This list includes Allentown, which is assigned item numbers 11750, 12000-12020, 12460. See id. The list also includes Chapman, which is

⁶Tariff 8001-D, which is found at Trial Ex. P-20, is a six-page document. The dates on each of these six pages are inconsistent. For example, the cover page and the fourth page are marked “original page” and indicate that they were issued on October 24, 1994, and became effective as of November 15, 1994. The first page of the tariff, however, is marked “3rd revised page” and indicates that it was issued August 18, 1997, and was effective August 19, 1997. Other inconsistencies as to the dates of the tariff pages included also exist. Because the parties did not raise this issue, the court will assume that the pages included by the plaintiff in Trial Exhibit P-20 contain the information for the dates relevant to this case.

assigned item numbers 11750, 12000-12020. See id.

- b. Of the possible item numbers listed, the only item number that could possibly apply to a movement of malt from Allentown to Chapman is Item 12010. Item 12010 provides that the “charge for an intra-terminal switch movement from one location within the switching limits of a station to another location within the switching limits of the same station” is \$350 per car for a privately-owned or leased car, and \$497 per car for a railroad car. See Trial Ex. P-20. Because Allentown and Chapman are both listed as separate switching stations, however, these two stations are not “within the switching limits of the same station.” See id.; see also Ciotti Test., Sept. 27-28, 1999. Item 12010 does not apply therefore to a movement from Allentown to Chapman. Thus, Tariff 8001 does not apply to these shipments.
7. Thus, I conclude that neither Tariff 4195, the line-haul tariff, nor Tariff 8001, the switching tariff, is applicable to the shipments of malt from Allentown to Chapman at issue here.
8. A rail carrier is permitted to enter into a private contractual agreement with a shipper. See 49 U.S.C. § 10709(a) (providing that “[o]ne or more rail carriers providing transportation subject to the jurisdiction of the Board under this part may enter into a contract with one or more purchasers of rail services to provide specified services under specified rates and conditions”); see also Dow Chem. Co. v. Union Pacific Corp., 8 F. Supp. 2d 940, 941 (S.D. Tex. 1998) (“It is clear that the purpose of § 10709 is to allow parties the ability to alter federal mandates, or to avoid federal control and oversight over

- rail contracts.”).
9. Moreover, the private agreement need not be filed with the Surface Transportation Board. See 49 U.S.C. § 10709(d)(1) (1997); see also Baltimore and Ohio Chicago Terminal R.R. Co. v. Wisconsin Central Ltd., 154 F.3d 404, 410 (7th Cir. 1998) (finding that the Interstate Commerce Act, which has since been repealed, required the filing of the entire agreement, while the “current law, with an immaterial exception, see 49 U.S.C. § 10709(d)(1), does not require that the agreement be filed” with the Board), cert. denied, 119 S. Ct. 1254 (1999).
 10. Section 10709(d) of Title 49 of the United States Code does require that a summary of each contract entered into for the transportation of agricultural products be filed with the Surface Transportation Board. See 49 U.S.C. § 10709(d). The statute does not, however, provide for any consequences if such a summary is not filed as required. Thus, even if a contract summary is not filed with the Board as statutorily required, the contract can be valid nonetheless.
 11. In general, both oral and written contracts are enforceable. See Crawford’s Auto Ctr. v. Commonwealth of Pennsylvania, 655 A.2d 1064, 1066 (Pa. Commw. Ct. 1995), alloc. denied, 666 A.2d 1059 (Pa. 1995).
 12. There is no statutory requirement that a rail transportation contract entered into pursuant to 49 U.S.C. § 10709 must be in writing. See Joint Findings ¶ II.B.2.
 13. Thus, if Canada Malting and Conrail entered into an oral agreement in which Conrail agreed to transport rail cars in exchange for payment from Canada Malting, that agreement would be enforceable.

14. Under Pennsylvania law, “the test for enforceability of an agreement is whether both parties have manifested an intention to be bound by its terms and whether the terms are sufficiently definite to be specifically enforced.” Atacs Corp. v. Trans World Communications, Inc., 155 F.3d 659, 665 (3d Cir. 1998) (citations omitted). “Consideration is, of course, a required element of contract formation.” Id. The main inquiry in determining whether two parties have entered into an enforceable contract is “the ‘manifestation of assent of the parties to the terms of the promise and to the consideration for it.’” See id. at 665-66 (citations omitted). Thus, the United States Court of Appeals for the Third Circuit has enunciated the following test to determine whether, under Pennsylvania law, an enforceable contract has been formed: “(1) whether both parties manifested an intention to be bound by the agreement; (2) whether the terms of the agreement are sufficiently definite to be enforced; and (3) whether there was consideration.” See id. at 666.
15. The agreement between Canada Malting and Conrail was supported by consideration.
16. The parties did intend to be bound by the agreement that Conrail would transport Canada Malting’s rail cars from Allentown to Chapman at a price of \$350 per car for an indefinite period of time.⁷
17. As a general rule, “the agreement of the parties must be sufficiently definite that their

⁷I base this conclusion my finding that Ciotti and Semenchuk did not discuss the length of time or the number of cars to be transported and never limited the agreement to one or a few “straggler” cars. This finding is supported by the fact that Canada Malting had no “straggler” malt rail cars in January or February, 1997. Moreover, even if Canada Malting did have a “straggler” or misrouted malt rail car, the car could not be rerouted to Stroh’s Brewery because malt destined for another brewery would not meet the specifications of Stroh’s Brewery. Ciotti also did not put in writing any limitation on time or number of cars.

- intention may be ascertained to a reasonable degree of certainty, although it is well settled that the terms of a contract need not be expressed with complete exactness.” In re Pennsylvania Footwear Corp. v. Midlantic Bank, N.A., 204 B.R. 165, 175 (Bankr. Ct. E.D. Pa. 1997) (citing Kirk v. Brentwood Manor Homes, Inc., 159 A.2d 48, 51 (Pa. Super. Ct. 1960)). Moreover, the “certainty of terms is important only as a ‘basis for determining the existence of a breach and for giving an appropriate remedy.’” Browne v. Maxfield, 663 F. Supp. 1193, 1198 (E.D. Pa. 1987) (citations omitted).
18. Courts generally disfavor the destruction of contracts because of uncertain terms. See In re Pennsylvania Footwear Corp., 204 B.R. at 175. Thus, “the courts will, if possible, so construe the contract as to carry into effect the reasonable intention of the parties if that can be ascertained.” See id. (citing Rossmassler v. Spielberger, 112 A.2d 876, 880 (Pa. 1921), quoting 6 Ruling Case Law 645 (1915)); see also Baronti v. Warman, 207 B.R. 106, 109 (Bankr. Ct. W.D. Pa. 1997) (observing that “courts will enforce contracts whose terms lack clarity or which contain missing terms, provided that an appropriate remedy can be fashioned”).
19. A contract that contains no definite term fixing its duration is not per se invalid, but terminates after a reasonable period of time. Cashdollar v. Mercy Hospital of Pittsburgh, 595 A.2d 70, 76 (Pa. Super. Ct. 1991); Scullion v. Emeco Indus., Inc., 580 A.2d 1356, 1359 (Pa. Super. Ct. 1990).
20. Conrail and Canada Malting entered into a contract in which Conrail agreed to transport Canada Malting’s rail cars for an indefinite period of time. Because this contract did not indicate an explicit period of time, it would terminate after a reasonable period of time.

21. A reasonable period of time included the time period from April, 1997, through December, 1997.
22. In July, 1997, Conrail did not terminate the contract but instead attempted to modify the existing contract.⁸
23. Under Pennsylvania law, additional consideration or reliance is required to support a contractual modification. See Barnhart v. Dollar Rent-A-Car Sys., Inc., 595 F.2d 914, 919 (3d Cir. 1979); Admark, Inc. v. RPS, Inc., No. 96-7287, 1998 WL 19481, at *4 (E.D. Pa. Jan. 20, 1998).
24. I conclude that no valid modification of the contract occurred in July, 1997, because Conrail provided no additional consideration to support the modification. Instead, Conrail attempted to impose unilaterally a significant rate increase while providing the identical services that were already being provided to Canada Malting under the existing contract. Accordingly, Conrail's attempt to modify the contract was invalid.

CONCLUSION

As to the shipments from Allentown to Chapman, I conclude that Conrail and Canada Malting entered into an enforceable private agreement in which Conrail agreed to transport malt rail cars in exchange for payment of \$350 per rail car by Canada Malting. This contract was to last for an indefinite period of time. Conrail's communication with Canada Malting in July,

⁸I find that Conrail did not express an intent to terminate the contract. Ciotti did not expressly state that the contract would end on July 14, 1997. In addition, Conrail continued to accept payments of \$350 from Canada Malting and continued to ship Canada Malting's rail cars without interruption through December, 1997. Based on all of these facts, I find that Conrail manifested an intent to modify the existing contract by unilaterally increasing the price charged for the shipment.

1997, was an invalid attempt to modify the existing agreement without additional consideration. Accordingly, the remittance of payments of \$350 per rail car by Canada Malting from July 14, 1997, through December, 1997, satisfied Canada Malting's obligations under the contract. Thus, Canada Malting owes no additional payments to Conrail for the shipments made from Allentown to Chapman, and I will enter judgment in favor of the defendant and against the plaintiff on this claim.

As to the shipments from Buffalo to Utica, I conclude that the plaintiff failed to meet its burden of showing that it is entitled to payment that it has not already received for these services. At trial, the only evidence presented by the plaintiff on this issue was Trial Exhibit P-5, Trial Exhibit P-42, and testimony by Ciotti.

Trial Exhibit P-5 is a compilation of five invoices sent by Conrail to Canada Malting on January 16, 1998, for rail services provided from Buffalo to Utica between June 30, 1997, and October 6, 1997. The invoices demand payment from Canada Malting in the amount of approximately \$2050. Trial Exhibit P-42 lists the payments made by Canada Malting and the amount outstanding on the account. According to Trial Exhibit P-42, and according to testimony by Ciotti, Canada Malting only paid approximately \$1650 on each invoice billed. Ciotti, however, did not testify as to how Conrail arrived at the amount billed on each invoice. He also was unable to testify as to why Canada Malting claimed that it would only pay the lesser amount of \$1650. Ciotti also testified that it was possible that Canada Malting had reached an agreement with some other Conrail employee that would have required Canada Malting to pay \$1650 for these services. This evidence, therefore, does not establish that Canada Malting owed Conrail

the amount listed on the invoices.⁹ Thus, I conclude that Conrail has not met its burden on this issue. Accordingly, I will enter judgment in favor of the defendant and against the plaintiff on the claim that the defendant owes the plaintiff \$2010.51 for shipments made from Buffalo to Utica.

An appropriate order follows.

⁹The plaintiff's theory was also not made clear in its complaint, which does not include a claim for unpaid balances for shipments made from Buffalo to Utica.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CONSOLIDATED RAIL CORP.	:	CIVIL ACTION
	:	
v.	:	
	:	
CANADA MALTING CO., LTD.	:	
	:	NO. 98-5984

ORDER

AND NOW, this day of February, 2000, upon consideration of the plaintiff's complaint, the defendant's answer, and after trial, and in accordance with the aforesaid findings of fact and conclusions of law, IT IS HEREBY ORDERED that judgment is entered in favor of defendant, Canada Malting Co. Ltd., and against plaintiff, Consolidated Rail Corporation.

William H. Yohn, Jr., J.