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SERVICE DATE – NOVEMBER 29, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36496

APPLICATION OF THE NATIONAL RAILROAD PASSENGER CORPORATION UNDER
49 U.S.C. § 24308(e)—CSX TRANSPORTATION, INC., AND NORFOLK SOUTHERN
RAILWAY COMPANY

Decided: November 29, 2021

On March 16, 2021, the National Railroad Passenger Corporation (Amtrak) filed an application with the Board, pursuant to 49 U.S.C. § 24308(e), seeking an order requiring CSX Transportation, Inc. (CSXT), and Norfolk Southern Railway Company (NSR)¹ to allow Amtrak to operate additional intercity passenger trains, consisting of two round-trips per day, over the rail lines of CSXT and NSR between New Orleans, La., and Mobile, Ala., beginning on or about January 1, 2022. Amtrak also requested that the Board issue an interim order requiring CSXT and NSR to provide Amtrak with access to their rail lines between New Orleans and Mobile in order to perform all necessary preparations for Gulf Coast Service to commence.

By decision served August 6, 2021, the Board, among other things, denied CSXT and NSR's motion to dismiss the application, adopted a procedural schedule, and appointed Administrative Law Judge Thomas McCarthy to handle all discovery matters and resolve initially all discovery disputes. See Appl. of the Nat'l R.R. Passenger Corp. Under 49 U.S.C. § 24308(e)—CSX Transp., Inc. & Norfolk S. Ry., FD 36496 (STB served Aug. 6, 2021). The Board also denied as moot Amtrak's request for interim access to CSXT's and NSR's rail lines between New Orleans and Mobile because it appeared Amtrak had received from CSXT and NSR the limited, non-interfering access it sought. See id. at 11.

On October 20, 2021, Amtrak filed a renewed request for an interim order, asserting that "CSX[T] has been unwilling to resolve a particular access issue"—specifically, Amtrak's request for access to conduct an engineering survey of CSXT's Choctaw Yard as a site for temporary layover track for the Gulf Coast Service. (Amtrak Request for Interim Ord. 2, Oct. 20, 2021.) Amtrak states that the Gulf Coast Working Group Report identified the need for a layover track in Mobile for Amtrak trains and proposed a track on the west side of the existing Mobile station platform. (Id. at 4.) According to Amtrak, however, work at the existing Mobile station has not advanced sufficiently to allow the planned layover track to be used for the restart of the Gulf Coast Service in early 2022. (Id.) Amtrak states that it previously used a section of track, known as the "West Stub Track" or the "Amtrak Track," to store trains in the Choctaw Yard,

¹ Although Amtrak names Norfolk Southern Corporation in its application, it appears that NSR is the proper party. (See Mot. to Dismiss 1 n.1.)

which Amtrak claims CSXT removed in 2019. (*Id.* at 4-5.) Accordingly, Amtrak states that from June through August 2021, it sought CSXT's permission to survey the Choctaw Yard to ascertain whether it would be feasible to rebuild the Amtrak Track or have CSXT designate another existing track that could be used for temporary layover of Amtrak trains. (*Id.* at 5.)

On November 9, 2021, CSXT replied to Amtrak's request for an interim order, arguing that Amtrak's request for an order permitting it to survey the Choctaw Yard is an untimely request to compel additional discovery, which closed on October 4, 2021. (CSXT Reply 5-6, Nov. 9, 2021.) CSXT characterizes Amtrak's request as a request for entry upon land for inspection and other purposes under 49 C.F.R. § 1114.30(a)(2) that should have been made during the discovery period. (CSXT Reply 5.) CSXT further argues that, if Amtrak is seeking access to construct layover track at the Choctaw Yard, that request is unreasonable, unsafe, and premature. (*Id.* at 7-15.) CSXT also notes that it has honored its previous commitments to Amtrak and that it is not responsible for Amtrak's inability to commence the Gulf Coast Service in January 2022. (*Id.* at 15-24.)

NSR also replied to Amtrak's request on November 9, 2021, arguing that it should be dismissed from Amtrak's request and excluded from any interim order the Board may grant, since NSR has not revoked nor altered Amtrak's access to the involved NSR lines. (NSR Reply 1-2.) NSR's request will be granted.

It is unclear whether Amtrak is requesting access to conduct an engineering survey of the Choctaw Yard merely to perform preparations for the potential restoration of the Gulf Coast Service, or whether Amtrak intends to use the results of the survey as part of its reply evidence, which is due on December 3, 2021.² Although Amtrak's request for access to conduct an engineering survey of the Choctaw Yard is untimely, it is reasonable, and, in the interest of developing a complete record, the request will be granted.³ If necessary, Amtrak may file a supplement to its reply evidence by December 10, 2021, with any arguments related to the results of the survey.

It is ordered:

1. Amtrak's renewed request for interim access is granted, to the extent discussed in this decision.
2. NSR is dismissed from Amtrak's request.
3. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

² CSXT's and NSR's opening evidence, filed on November 3, 2021, includes arguments related to the storage of Amtrak passenger trains in the Choctaw Yard.

³ This decision only authorizes Amtrak to access the Choctaw Yard to conduct an engineering survey. It does not authorize Amtrak to begin construction activity there.