

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35743

APPLICATION OF THE NATIONAL RAILROAD PASSENGER CORPORATION UNDER  
49 U.S.C. § 24308(a)—CANADIAN NATIONAL RAILWAY COMPANY

Digest:<sup>1</sup> This decision adopts a procedural schedule for further submissions of evidence and argument.

Decided: March 2, 2022

On July 30, 2013, the National Railroad Passenger Corporation (Amtrak) filed an application under 49 U.S.C. § 24308(a)(2), asking the Board to establish reasonable terms and compensation for Amtrak's use of the facilities (including rail lines) and services of Illinois Central Railroad Company and Grand Trunk Western Railroad Company (collectively, Canadian National Railway Company (CN)). After initial discovery, the parties submitted briefs, evidentiary filings, and various motions over a period of several years. On August 9, 2019, the Board issued interim findings and guidance and initiated Board-sponsored mediation pursuant to 49 C.F.R. § 1109.2(a)(2) to facilitate further negotiation between the parties. Mediation was extended by decision served on November 14, 2019.

On January 22, 2020, a letter from the Board-appointed mediators was entered into the docket, stating that mediation had ended without a settlement.

On January 25, 2022, Amtrak and CN filed a joint motion to establish a procedural schedule. The parties state that, since the end of mediation, they have certified 20 of the 26 regularly scheduled daily Amtrak trains that operate over CN's lines in the United States as being aligned with the Federal Railroad Administration's (FRA) customer on-time performance metric. See Metrics & Minimum Standards for Intercity Passenger Rail Serv., 85 Fed. Reg. 72,971 (Nov. 16, 2020). They further state that CN has sought non-binding dispute resolution with respect to the remaining six Amtrak train schedules in accordance with the FRA's final decision, and CN and Amtrak are working to agree on that dispute resolution process. With respect to the Board's proceeding here, the parties request a procedural schedule in which opening submissions would be due by May 16, 2022, reply submissions would be due by August 1, 2022, and rebuttal submissions would be due by September 15, 2022.

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<sup>1</sup> 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).

The Board strives for the expeditious resolution of disputes before it, and the parties' joint request to reactivate this proceeding will finally enable resolution of their long-running dispute. In light of the extensive record already developed, and the Board's previous decision providing interim findings and guidance, the Board will shorten the time requested and adopt the following procedural schedule:

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| May 2, 2022    | Opening submissions due.<br>Each party's opening submission shall include a copy of the current operating agreement marked up to show the changes that party seeks. |
| July 1, 2022   | Reply submissions due.<br>Reply submissions may include, at the party's option, a revised markup of the current operating agreement.                                |
| August 1, 2022 | Rebuttal submissions due.   |

When these filings have been submitted, the Board will determine whether to require oral argument.

It is ordered:

1. The parties shall comply with the procedural schedule as set forth in this decision.
2. The decision is effective on its service date.

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