

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

Digest:<sup>1</sup> This decision denies a joint motion filed by CSX Transportation, Inc., Norfolk Southern Railway Company, and the Alabama State Port Authority and its rail carrier division, the Terminal Railway Alabama State Docks, to order all parties, including the National Railroad Passenger Corporation to participate in Board-sponsored mediation.

Decided: April 1, 2022

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) 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. By decision served January 28, 2022, the Board, among other things, granted a request filed by the Alabama State Port Authority and its rail carrier division, the Terminal Railway Alabama State Docks (collectively, the Port) to intervene as a party in this proceeding. 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, slip op. at 3 (STB served Jan. 22, 2022). An evidentiary hearing on this matter is scheduled to begin on April 4, 2022.

On March 25, 2022, CSXT, NSR, and the Port filed a joint motion requesting that the Board order all parties to participate in Board-sponsored mediation, which would, of practical necessity, mean a postponement of the beginning of the evidentiary hearing scheduled for April 4. On March 28, 2022, Amtrak replied, arguing that the Board should deny the motion, or, in the alternative, refrain from deciding the motion until the conclusion of the evidentiary hearing. (Amtrak Reply 1, 4.)

The Board favors the resolution of disputes through mediation in lieu of formal Board proceedings whenever possible. See generally BNSF Ry.—Terminal Trackage Rts.—Kan. City

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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).

S. Ry., FD 32760 (Sub-No. 46) (STB served July 3, 2019); Nat'l R.R. Passenger Corp.—Investigation of Substandard Performance of the Capitol Ltd., NOR 42141 (STB served Apr. 7, 2015). The Board may order the parties to a proceeding to engage in Board-sponsored mediation at the written request of one or more parties, or by its own order. See 49 C.F.R. § 1109.2(a)(1)-(2). However, the Board may deny mediation where one or more parties to the underlying dispute do not consent to mediation. See 49 C.F.R. § 1109.2(b).

Here, it is unfortunate that the petitioning parties formally petitioned for mediation only after this matter had been pending for more than a year and on the eve of the evidentiary hearing. It is equally unfortunate that Amtrak has now, and in the past, rejected the idea of Board-sponsored mediation. Had all parties been willing to enter into mediation, the Board might have been inclined to more favorably consider the request, even at this late date, since this matter appears to be one that could have been resolved through mediation, had the railroads, Amtrak, and the Port been willing to moderate their positions. However, because the evidentiary hearing is scheduled to begin in a few days, on April 4, and because not all parties favor mediation at this time, the Board will deny the motion to avoid further delay. At the conclusion of the evidentiary hearing, if it appears that Board-sponsored mediation could be helpful in resolving any remaining issues in this matter, any party may request Board-ordered mediation at that time.

It is ordered:

1. The joint motion for Board-sponsored mediation filed by CSXT, NSR, and the Port is denied.
2. This decision is effective on its service date.

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