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SERVICE DATE - AUGUST 24, 1998

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC.,
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
—CONTROL AND OPERATING LEASES/AGREEMENTS—
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

Decision No. 92

Decided: August 21, 1998

On August 12, 1998, Providence and Worcester Railroad Company (P&W) filed a petition to stay¹ the implementation of the transaction we authorized in Decision No. 89, served July 23, 1998,² pending judicial review of that decision. P&W states that it is seeking a limited stay only with respect to applicants' proposed disposition of one of Conrail's terminal properties known as New Haven Station. According to P&W, it has the right to acquire New Haven Station if Conrail withdraws from, or abandons or discontinues, freight service at that location under the terms of a 1982 order of the former Special Court.³ P&W argues that a stay is appropriate because our decision preempting any rights it may have to New Haven Station allegedly violates the exclusive

¹ P&W's stay petition is late-filed. Pursuant to 49 CFR 1115.3(f), a petition to stay was due within 10 days of service of Decision No. 89, or by August 3, 1998. Despite this deficiency, we will consider P&W's request.

² In Decision No. 89, we approved, subject to conditions, the applications by CSX Corporation and CSX Transportation, Inc. (collectively CSX), and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively NS) under 49 U.S.C. 11321-26 for: (1) the acquisition of control of Conrail Inc., and Consolidated Rail Corporation (collectively Conrail); and (2) the division of Conrail's assets by and between CSX and NS.

³ The Special Court was created pursuant to section 209 of the Regional Rail Reorganization Act of 1973 to handle judicial proceedings relating to properties conveyed to restructured railroads in the Northeast United States under the Final System Plan (FSP). The United States District Court for the District of Columbia now exercises the jurisdiction formerly exercised by the defunct Special Court.

jurisdiction of the Special Court in such matters and because a stay will preserve its successor rights to the station. CSX filed a reply (designated as CSX-161) in opposition to the stay request.⁴

To justify a stay, petitioner P&W must demonstrate: (1) it has a strong likelihood of prevailing on the merits; (2) it will be irreparably harmed in the absence of a stay; (3) other interested parties will not be substantially harmed by the stay; and (4) the public interest supports granting the stay. Virginia Petroleum Jobbers Assoc. v. FPC, 259 F.2d 921 (D.C. Cir. 1958); Washington Metropolitan Area Transit Comm. v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977). For the reasons discussed below, we find that P&W has failed to meet these requirements.

Likelihood of prevailing on the merits. P&W contends that our preemption of its rights to New Haven Station is in direct conflict with the exclusive jurisdiction of the Special Court to review, approve, and implement supplemental transactions under the Northeast Rail Service Act of 1981 (NERSA). P&W argues that, even if the Board has authority under 49 U.S.C. 11321(a) to preempt an order of the Special Court, our finding that New Haven Station is an integral and necessary part of the CSX/NS/CR transaction is contrary to the facts and not supported by the record. According to P&W, the station is an isolated and marginal appendage to the Conrail system, and the facility or P&W's rights under the Special Court's order were not mentioned in the application.

Even if we assume for the sake of argument that a mere transfer of this station to CSX could be construed to be an abandonment or discontinuance of use of that station, which seems doubtful,⁵ P&W has failed to show that it will likely prevail on the merits of its case. Notwithstanding what we said in passing with regard to this issue in Decision No. 89 at 106, we now believe that we are not barred from taking actions that affect orders of the Special Court. In a 1982 decision in Consolidated Rail Corp. v. Delaware & Hudson Ry., 543 F. Supp. 1079 (Sp. Ct. RRA 1982), the Special Court rejected a similar claim that a matter pertaining to rights conveyed under the FSP was within that court's exclusive jurisdiction and found the proceeding to be properly before the Interstate Commerce Commission (ICC). The Special Court held that there was no blanket requirement that railroads seeking to alter property relationships established under the FSP obtain a supplemental transaction order from that court. Instead, the court ruled that the

⁴ In its reply, CSX maintains that, according to the Special Court, the term "New Haven Station" refers to all of the rail properties of Conrail within the corporate limits of New Haven plus a portion of nearby Cedar Hill Yard. CSX refers to these properties as the "New Haven Properties."

⁵ See Illinois v. United States, 604 F.2d 519 (7th Cir. 1979), cert. denied, 445 U.S. 951 (1980) (sale of line for continued rail service not an abandonment).

movant carrier could present a reciprocal switching request⁶ before our predecessor, the ICC, which, like the Board, had plenary authority over properties used to provide rail service in interstate commerce. Id. at 1085.

In any event, our preemption of any rights P&W may have in New Haven Station was an appropriate precaution because CSX has shown that the facility is an integral and necessary part of the CSX/NS/CR transaction. The override was necessary to ensure that nothing would interfere with the goal of dividing Conrail's assets and operations among CSX, NS, and the continuing Conrail, to carry out the transaction we approved in the public interest. According to CSX, Conrail's facilities in New Haven and the nearby Cedar Hill Yard are an integral part of Conrail's New York City to New Haven operations, and an override was necessary to transfer and vest Conrail's operating rights in the line. CSX also states that New Haven Station is necessary for continued freight service to local New Haven industries from the north and west, on the Albany-Boston Line via a connection with Connecticut Southern Railroad. Thus, we find that it is unlikely that P&W will prevail on the merits of its case.

Irreparable injury. P&W argues that, unless a stay is granted, there is a substantial risk that its interests will be harmed once CSX assumes control of the station and that it will have insufficient time to seek judicial review of its contentions. Although applicants have not announced when they will implement the division of Conrail's operations and begin their respective operations, i.e., Day One, it is apparent that this will not occur for some time. CSX states that P&W's fears that it will be irreparably harmed are pure speculation and that there is nothing in CSX's operating plans to indicate that its operation of the facility would be significantly different from Conrail's current operations. In these circumstances, P&W has not shown that it will be irreparably harmed by a lack of a stay.

Harm to other parties. P&W maintains that a stay to prevent a transfer of New Haven Station to CSX would not substantially harm CSX and would have no appreciable impact on the successful implementation of the overall transaction. However, applicants have expressed the commitment to making every effort to ensure that the division of Conrail's operations are effected smoothly. Because New Haven Station is an integral and necessary part of the CSX/NS/CR transaction, delaying its integration into CSX would adversely affect the transaction as a whole. We therefore conclude that P&W has failed to show that a stay would not harm applicants.

Public interest. The public interest does not support a stay. P&W contends that the public interest would be served by staying that portion of Decision No. 89 relating to New Haven Station until a court can resolve the apparent conflict with the exclusive jurisdiction of the Special Court over such matters. As indicated above, however, the Special Court itself has ruled that its

⁶ Our authority to adjudicate the conditions and compensation in reciprocal switching agreements is set forth at 49 U.S.C. 11102(c).

jurisdiction is not exclusive of ICC action taken under appropriate statutory authority. Staying the transaction pending resolution of P&W's private dispute has not been shown to be in the public interest. Accordingly, the petition will be denied.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The stay petition filed by the Providence and Worcester Railroad Company is denied.
2. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary