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SERVICE DATE – DECEMBER 28, 2015

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42134

NATIONAL RAILROAD PASSENGER CORPORATION—SECTION 213 INVESTIGATION
OF SUBSTANDARD PERFORMANCE ON RAIL LINES OF CANADIAN NATIONAL
RAILWAY COMPANY

Docket No. NOR 42141

NATIONAL RAILROAD PASSENGER CORPORATION—INVESTIGATION OF
SUBSTANDARD PERFORMANCE OF THE CAPITOL LIMITED

Decided: December 28, 2015

This decision holds the proceedings in Docket Nos. NOR 42134 and NOR 42141 in abeyance pending further Board order, in light of the rulemaking proceeding in On-Time Performance under Section 213 of the Passenger Rail Investment & Improvement Act of 2008, Docket No. EP 726, which addresses issues relevant to those raised in these proceedings.

On January 19, 2012, the National Railroad Passenger Corporation (Amtrak) filed a petition requesting that the Board initiate an investigation into service issues (including on-time performance) affecting Amtrak trains on rail lines owned by Canadian National Railway Company and its subsidiaries, Grand Trunk Western Railway Company and Illinois Central Railroad Company (collectively, CN), pursuant to Section 213 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), 49 U.S.C. § 24308(f). (Amtrak Compl., Nat'l R.R. Passenger Corp.—Section 213 Investigation of Substandard Performance on Rail Lines of Canadian Nat'l Ry., NOR 42134.) Amtrak's complaint was subsequently held in abeyance for the purposes of mediation; the mediation period expired on October 4, 2012. Later, the Board granted the parties' request that the case again be held in abeyance to permit them to continue discussions and potentially reach a settlement. This abeyance was extended several times; most recently, on August 19, 2013, the Board extended the abeyance period to July 31, 2014, which the parties argued was warranted by their ongoing discussions and to provide additional time that may be necessary for final resolution of the lawsuit challenging the constitutionality of Section 207(a) of PRIIA. Ultimately, however, the mediation and discussions were unsuccessful. On August 29, 2014, Amtrak filed a motion to amend its complaint against CN, seeking to narrow the focus of the complaint to the performance of Amtrak's Illini/Saluki service rather than all of the Amtrak services on lines owned by CN addressed in the original complaint. The Board granted that motion by decision served December 19, 2014.

By complaint filed on November 17, 2014, as amended on November 19, 2014, Amtrak requested that the Board initiate an investigation pursuant to 49 U.S.C. § 24308(f) of alleged substandard performance of Amtrak's Capitol Limited service between Chicago, Ill., and Washington, D.C. Amtrak alleges in its complaint that the on-time performance of the Capitol Limited service, which operates over tracks of CSX Transportation, Inc. (CSXT) and Norfolk Southern Railway Company (NSR), has averaged less than 80% for two consecutive calendar quarters. (Amtrak Compl., Nat'l R.R. Passenger Corp.—Investigation of Substandard Performance of the Capitol Ltd., NOR 42141.)

On May 15, 2015, in response to a petition filed by the Association of American Railroads, the Board instituted a rulemaking proceeding in Docket No. EP 726 to define "on-time performance" for purposes of Section 213 of PRIIA. See On-Time Performance Under Section 213 of the Passenger Rail Inv. & Improvement Act of 2008, EP 726 (STB served May 13, 2015). The Board issued a Notice of Proposed Rulemaking and solicited comments in EP 726 on December 28, 2015.

In light of the rulemaking and its relevance to the issues raised by the parties in both Docket No. NOR 42134 and Docket No. NOR 42141, the Board will hold these proceedings in abeyance pending further Board order.

It is ordered:

1. The proceedings in Docket Nos. NOR 42134 and NOR 42141 are held in abeyance pending further Board order.
2. This decision is effective on its service date.

By the Board, Julia Farr, Acting Director, Office of Proceedings.