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SERVICE DATE - SEPTEMBER 22, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB EX PARTE NO. 573

RAIL SERVICE IN THE WESTERN UNITED STATES

Decided: September 21, 1998

In a decision issued on July 31, 1998, we found that the rail service emergency affecting the Houston area had ended, and, accordingly, that we lacked authority to extend our emergency service order first issued on October 31, 1997, beyond its August 2, 1998, expiration date.¹ Given our ongoing concerns about rail service in the western United States, however, as part of this proceeding, we continued to require Union Pacific Railroad Company (UP) to file periodic informational reports tracking service levels, so that the Board will be in a position to monitor service and to provide remedial relief should it become necessary and appropriate.²

On August 14, 1998, the National Industrial Transportation League (NITL) filed comments in our general oversight proceeding for the "UP/SP merger"³ suggesting that the Board revise the reporting requirements prescribed in the July 31 Service Order No. 1518 (Sub-No. 1) decision. In its comments, NITL expresses concern that the required information, some of which was determined to be commercially sensitive and hence is not being made available to the general public, focuses principally on systemwide rather than corridor-specific data. NITL asks that we expand the reporting requirements by directing UP to file new corridor-specific information, and to make that

¹ Joint Petition for a Further Service Order, STB Service Order No. 1518 (Sub-No. 1), et al.

² Our order continued to require less extensive reports from Burlington Northern and Santa Fe Railway Company (BNSF).

³ Union Pacific Corp. -- Control and Merger -- Southern Pacific Rail Corp. (Oversight), STB Finance Docket No. 32760 (Sub-No. 21).

information available to the public.⁴ The U.S. Department of Transportation filed comments that, among other things, support NITL's request.⁵

UP responded in opposition to the NITL filing. UP states that its individual terminal processing reports and its Powder River Basin coal cycle data -- the only two of its report elements that are not made public -- were determined to be competitively sensitive and thus excepted from public dissemination since the inception of the reporting requirements. UP also states that expanding the specificity with which it is required to report makes no sense at a time when the carrier's service is improving, and would in fact impose huge burdens and divert resources from the important business of improving service.⁶

In supplemental comments filed on September 3, 1998, NITL states that the applicant railroads in the Conrail proceeding have agreed to publicize information akin to that which UP deems to be commercially sensitive here. Arguing that all railroads ought to be routinely providing performance information of this sort, NITL suggests that the agreement between the applicants and interested shipper groups in Conrail supports its position that we should require further publication of information here.

⁴ In particular, citing 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, STB Finance Docket No. 33388, Decision No. 89 (STB served July 23, 1998) (Conrail), NITL asks the Board to require UP to compile and make public data such as average weekly terminal volume and dwell time at key terminals; numbers of locomotives at various locations; and transit times associated with movements on key routes.

⁵ In addition to the NITL filing, in a petition filed on July 28, 1998, to which UP responded on August 7, 1998, Southern California Regional Rail Authority (SCRRA) asked the Board to address delays in commuter service operations in Southern California by augmenting UP's data filing requirements to include, for all lines that UP shares with SCRRA, the following information: blocked sidings; blocked main lines; and number of crews unable to complete scheduled operations due to expiration of permitted work periods. SCRRA also asked the Board to consider at some point requiring UP to undertake certain specified capital projects that it has concluded would increase the capacity of the lines UP shares with SCRRA.

⁶ UP notes that it already voluntarily provides information that is not prescribed concerning (a) Texas/Louisiana car inventory; (b) total trains held for power, crew, and staging and congestion; and (c) grain car velocity between Pacific Northwest and Gulf destinations.

DISCUSSION AND CONCLUSIONS

A. NITL's Suggestions. We do not believe that the revisions to our reporting requirements suggested by NITL are warranted. In our July 31 decision, we renewed our commitment to remain vigilant with respect to service in the West. Because informational filings will be helpful to us in continuing our monitoring of service levels in the West, and in taking action, if necessary and appropriate, to respond to future emergency situations, we decided to direct UP and, to a lesser extent, BNSF, to continue the reporting required under the emergency service order. However, recognizing that compiling and filing information can be burdensome, and can divert resources away from the railroads' immediate task, which is providing adequate service in the West, we reviewed our prior data requirements and reconfigured the reporting, retaining the informational categories that we concluded would be most helpful to us in assessing the state of UP's service.⁷

1. NITL's Request That Commercially Sensitive Data Be Made Public. NITL suggests that our reconfigured reporting is inadequate because some of the reports are not being made public. The types of commercially sensitive information at issue, however, have been kept confidential since the reporting requirements were first imposed. The fact that the applicant railroads in the Conrail proceeding may have agreed to compile and publish certain data that NITL deems to be comparable⁸ has no bearing on our ability to monitor the state of service, as we have full access to all of the required data and can review it, even though commercially sensitive data are not open to the public as a matter of course. We recognize that shippers want carriers to publicize performance data over all routes, but that is an industrywide concern that, if not resolved privately, ought to be subject to notice and comment. The reporting requirements of this proceeding are designed to permit us to monitor service, and NITL has provided no basis for making the commercially sensitive information of only one carrier public in the context of this proceeding.

⁷ In particular, we found (July 31 decision at 4) that “[t]hese data filing requirements are what is necessary to continue to give us a thorough picture of the service situation in the West, reflecting the need to protect commercially sensitive information.”

⁸ We note that our own order requiring reporting in Conrail addressed commercially sensitive information in a manner consistent with our actions in this proceeding. In any event, as we understand it, the data that the shippers and carriers have apparently agreed will be made public in Conrail -- a transaction that is just being implemented -- are less commercially sensitive than the information that NITL here asks us to require UP to make public. NITL wants us to publicize detailed information on UP's switching operations at its terminals, which appears to us to be far more commercially sensitive than the terminal information involved in Conrail showing only how many cars pass through a terminal. NITL also wants us to publicize UP's transit times over various corridors, but it does not appear that the Conrail applicants have agreed to make this type of information publicly available as part of the Conrail agreement. Finally, there is no provision in the Conrail agreement for numbers of locomotives at various locations that NITL seeks to have UP provide, nor do we see the value of such information given the constant movement of the locomotive fleet.

2. NITL's Request For New Data. NITL also appears to want us to require new information that we have not required before that would provide more details about service between particular points. As UP points out, however, preparation of this information would be burdensome at a time when the carrier needs to devote its resources to improving service, and would not tell a particular shipper anything about its service that the shipper does not already know. This proceeding is about monitoring overall service, and we believe that the existing level of data specificity permits us to monitor service and to pinpoint problem areas so that we can determine how to respond.⁹

3. The Information That We No Longer Require. Finally, NITL appears to be of the view that our revised reporting requirements have eliminated categories of data that were previously required. However, although we have scaled back some of the unnecessary detail that we required earlier, the only categories of information that were deleted from the reports involve limited areas that we believe are not critical to our operational monitoring, and, thus, would not materially assist us in reviewing the service situation in the West. We continue to be of the view that all information vital to our monitoring of the service situation is being included in the current reports.

4. Summary. Our July 31 order required UP to file several categories of reports: on-line rail car inventory; system car terminal dwell time; system train speed; system coal cycle days; sidings blocked; multiple mains blocked; total trains held, and by cause (power, crews); locomotive fleet size/productivity; grain car information; terminal processing reports; port terminal condition reports; interchange activity (Laredo); and Powder River Basin coal cycle days. These reports provide us with substantial information that we use to determine the status of UP's operations and the type and level of our involvement that may be needed on a systemwide or more localized basis. NITL recognizes that we are competent to review this information and act on it as appropriate, but it suggests that, as a matter of course, railroads ought to be providing more performance information to their shippers. If NITL wishes to initiate a proceeding to address that issue on an industrywide basis, it is free to do so.¹⁰ In this proceeding, however, it would be inappropriate to require UP to expand its reporting or publicize commercially sensitive information,

⁹ Probably more valuable to us in terms of obtaining a complete picture of the service situation in the West would be the imposition of comparable reporting requirements on other large western railroads such as BNSF and Kansas City Southern Railway Company/Texas Mexican Railway Company. However, as service improves, the appropriate government response in a service oversight proceeding such as this one ought to be to intervene less rather than more. Therefore, while we will consider broadening the coverage of the reporting requirement if circumstances warrant, at this time in this proceeding, we will limit reporting to UP and, to a much lesser extent, BNSF.

¹⁰ We are aware of, and encourage, recent discussions between railroads and shippers as to the disclosure of performance information on a routine basis. Those discussions, however, do not provide a basis on which we should require UP to publicize particular information in this proceeding.

when its principal competitors are not being required to do so. We will not here modify the existing reporting requirements at this time.

B. SCRRA. As UP notes in its response to SCRRA's petition, SCRRA does not need Board-mandated reporting to obtain information about UP's performance. Apart from the fact that SCRRA should already be aware of the operational conditions affecting the lines it shares with UP, SCRRA and UP are parties to a contractual relationship, which provides for the type of reporting that SCRRA asks us to impose. If SCRRA needs information, it can obtain it under the contract, and if it is concerned that UP is not living up to its contract, it can seek relief through the courts or through a contractually created private arbitration remedy, which it has not sought to exercise. Intervention on our part, through augmented reporting, is not necessary or appropriate.¹¹

Nor is it appropriate for us to require UP to make the capital improvements that SCRRA states will facilitate service improvements.¹² On several occasions in recent months, we have expressed our concern over rail infrastructure, and have urged carriers to invest in adequate facilities. We have not, however, micro-managed the industry by telling carriers which projects to undertake. SCRRA has not demonstrated that we should do so now.

It is ordered:

1. NITL's request that we amend the reporting requirements is denied.
2. SCRRA's request that we amend the reporting requirements and direct UP to make certain capital improvements is denied.
3. This decision is effective on September 22, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

¹¹ UP disputes SCRRA's claims concerning UP's performance. It also asserts that many of the delays are attributable to events outside of UP's control, such as vandalism, and that some are attributable to SCRRA's own operations. We need not and should not attempt to resolve these issues in the context of this proceeding.

¹² UP asserts that the projects suggested by SCRRA, which it states are designed to permit "reverse peak" service not contemplated by the parties when they entered into the agreement, are SCRRA's responsibility.