

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:¹ This decision institutes a proceeding to establish reasonable terms and compensation for use by the National Railroad Passenger Corporation (Amtrak) of Grand Trunk Railway Company (GTW) and Illinois Central Railway Company (IC) facilities and services. This decision also requires GTW and IC to continue to provide Amtrak facilities and services on an interim basis under the terms of their existing contract.

Decided: August 9, 2013

BACKGROUND

On July 30, 2013, the National Railroad Passenger Corporation (Amtrak) filed an application under 49 U.S.C. § 24308(a)(2), seeking: (1) the institution of a proceeding and a procedural schedule to determine reasonable terms and compensation for Amtrak's use of Canadian National Railway Company (CN)² facilities (including rail lines) and services, making those new terms and compensation retroactively effective as of August 12, 2013, and (2) an interim service order, effective August 12, 2013, requiring CN to continue to make available to Amtrak the facilities and services necessary for Amtrak to continue to operate on CN rail lines under the same terms and compensation of the current Amtrak-CN contract.³

¹ 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. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² While Amtrak listed the Canadian National Railway Company as the respondent, the abbreviation "CN" in this decision and in Amtrak's pleadings shall collectively refer to Grand Trunk Western Railroad Company (GTW) and Illinois Central Railroad Company (IC), as the contract provides, according to Amtrak. (See Amtrak Application 1 n. 1, July 30, 2013; CN Letter 1 n. 1, Aug. 1, 2013; and Amtrak Letter 1, Aug. 2, 2013). The abbreviation of "CNR," as used in this decision, shall refer to the Canadian National Railway Company and shall not be meant to encompass CNR's subsidiary corporations GTW and IC.

³ Amtrak Application 1, July 30, 2013.

In its application, Amtrak states that the existing contract, which provides Amtrak access to CN's rail lines and other facilities and services, expires on August 11, 2013.⁴ Amtrak states that the parties have been negotiating a new contract for approximately eight months, but significant issues remain that will not be resolved prior to the expiration of the existing contract, which has been extended twice.⁵ Amtrak further states that it is willing to continue negotiations during the pendency of the requested proceeding.⁶

On August 1, 2013, CN filed a letter in response to Amtrak's application. CN states that it is not responsible for the impending disruption of service that is the basis of Amtrak's application.⁷ Rather, CN maintains, it has routinely agreed to requests of extensions of the contract in the past, but on this occasion Amtrak did not request an extension.⁸ CN, without waiving any of its legal rights or objections with respect to Amtrak's application, agrees to continue to make its facilities and services available to Amtrak pursuant to the terms of the existing contract, pending further order of the Board.⁹ CN states that it will otherwise reply to Amtrak's application within the 20-day reply period provided for by 49 C.F.R. § 1104.13(a).¹⁰

CN also states that CNR is not a party to the contract at issue and that the appropriate respondents to Amtrak's application are GTW and IC.¹¹ On August 2, 2013, Amtrak filed a letter in response stating that, while GTW and IC are subsidiaries of CNR, any reference in its application to CN refers to GTW and IC, the direct parties of the existing contract at issue in the application.¹²

Due to Amtrak's request for expedited action, the pending expiration of the contract between the parties, the parties' failure to agree on terms and compensation, and CN's agreement to continue to provide facilities and services to Amtrak after the expiration of the contract, the Board will issue this decision prior to CN's submission of a formal reply.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 24308(a), Amtrak may contract with railroads for the use of tracks and other facilities and the provision of services under terms on which the parties agree. In the event of a failure to agree, the Board is instructed to order the provision of services or the use of tracks

⁴ Id. at 2.

⁵ Id.

⁶ Id. at 3.

⁷ CN Letter 2, Aug. 1, 2013.

⁸ Id.

⁹ Id.

¹⁰ Id.

¹¹ Id. 1 n. 1.

¹² Amtrak Letter 1, Aug. 2, 2013.

or facilities of the railroad by Amtrak on “reasonable terms” if the Board finds that such an order is necessary to carry out the provisions of Part C, Subtitle V, Title 49 U.S. Code. 49 U.S.C. § 24308(a)(2)(A). Based upon the record, it appears that there have been ongoing negotiations, but the parties have failed to agree on terms for a new contract.

The Board finds that an order instituting a proceeding to determine reasonable terms and compensation for use of facilities and services and requiring the provision of those facilities and services on an interim basis is necessary in order to maintain the provision of passenger rail service. CN has agreed to continue to make its facilities and services available to Amtrak pursuant to the terms of the existing contract, pending further order of the Board.¹³ However, the parties have been unable to agree on terms and compensation, and Amtrak has requested that the Board make the new terms and compensation retroactive to August 12, 2013. Thus, the Board will order that the current arrangement between the parties, as provided in their contract, continue pending completion of a proceeding to determine reasonable terms and compensation for CN's provision of facilities and services. The Board's final decision will address Amtrak's request to make the new terms and compensation retroactive. Furthermore, if the parties reach an agreement on some or all of the issues involved in this proceeding, they shall promptly notify the Board.

Amtrak has also proposed a procedural schedule for the proceeding. We will establish a procedural schedule for the proceeding in a subsequent decision, after allowing CN an opportunity to respond to Amtrak's proposed schedule.

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

It is ordered:

1. After August 11, 2013, CN shall continue to provide facilities and services (including rail lines) to Amtrak on an interim basis under the terms and conditions of the existing contract in effect on August 11, 2013.
2. A proceeding is instituted to establish reasonable terms for the provision of facilities and services.
3. If, while this proceeding is pending, the parties reach an agreement on some or all of the issues involved in this proceeding, they shall promptly notify the Board.
4. This decision is effective on its date of service.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.

¹³ CN Letter 2, Aug. 1, 2013.