

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 31250 (Sub-No. 1)

NEW ENGLAND CENTRAL RAILROAD, INC—TRACKAGE RIGHTS TERMS AND
CONDITIONS—PAN AM SOUTHERN LLC

Digest:¹ The Board directs a railroad to reply to claims that it has placed conditions on a second railroad's use of its line that are unreasonable practices and/or violate the terms for such use established by the Interstate Commerce Commission, the Board's predecessor.

Decided: October 2, 2014

Pan Am Southern LLC (PAS), the holder of trackage rights over a rail line owned by New England Central Railroad, Inc. (NECR), alleges that NECR is violating the trackage rights terms and conditions set by the Interstate Commerce Commission (ICC) in 1990 by imposing improper conditions on PAS's operations that negatively impact the ability of PAS to serve its customers. The Board will institute a proceeding and direct NECR to respond to the merits of PAS's claims.

BACKGROUND

The subject rail line extends approximately 72.8 miles, from White River Junction, Vt., to East Northfield, Mass. In National Railroad Passenger Corp.—Conveyance of Boston & Maine Corp. Interests in Connecticut River Line in Vermont & New Hampshire (Amtrak I), 4 I.C.C. 2d 761 (1988), the ICC authorized the conveyance to Central Vermont Railway, Inc. (CV) of a 48.8-mile portion of the subject line from Windsor, Vt., to Brattleboro, Vt., and also authorized CV's conveyance of trackage rights over that portion of the line to the Boston and Maine Corporation (B&M). In National Railroad Passenger Corp.—Conveyance of Boston & Maine Corp. Interests in Connecticut River Line in Vermont & New Hampshire (Amtrak II), 6 I.C.C. 2d 539 (1990), the ICC imposed terms and conditions for the trackage rights of the subject line—the 48.8-mile portion at issue in Amtrak I and two adjoining CV-owned segments over which B&M previously had trackage rights. The rights associated with Amtrak I and

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).

Amtrak II have subsequently been acquired by other railroads; NECR has acquired CV's ownership rights, and PAS now holds the trackage rights originally assigned to B&M.²

On June 17, 2014, NECR filed a request to set new terms and conditions for the trackage rights over the subject line in Docket No. FD 35842. NECR notes that, under Amtrak II, either party may request that the Board modify the terms and conditions 20 years after the original conveyance and that this time has passed.³ NECR asks that the Board set new terms and conditions for service over the line.⁴

On June 27, 2014, PAS filed a motion to show cause, alleging that NECR has imposed unilateral operating restrictions in violation of the terms and conditions established in Amtrak II. Specifically, PAS claims that NECR has placed speed restrictions on PAS trains and required production of waybill information for all cars moving over the line. PAS further requests that the Board hold NECR's request to set new terms and conditions in abeyance until the Board resolves the issues raised by the motion to show cause.⁵ On July 22, 2014, Washington County Railroad Company and Green Mountain Railroad Corporation, collectively Vermont Rail System (VRS), filed a statement in support of PAS's motion, asking specifically that NECR be required to show cause why its speed restrictions and waybill information production requirement are reasonable and do not violate the terms and conditions established in Amtrak II. On September 22, 2014, Central Maine & Quebec Railway US Inc. (CMQR) filed a statement asking the Board to resolve this dispute as soon as possible.

On July 17, 2014, NECR filed a reply to PAS's motion to show cause arguing that the motion should be dismissed because (1) the Board's regulations do not provide for such a procedure; and (2) the matters raised by PAS are not germane to NECR's request for new terms and conditions. On July 23, 2014, PAS filed a letter in response, arguing that NECR's reply does not address the substance of the motion to show cause (though noting that it did not object to NECR's request to initiate a proceeding on the issue of setting new terms and conditions for the trackage rights).

DISCUSSION AND CONCLUSIONS

PAS argues that NECR is violating the terms and conditions established in Amtrak II by imposing improper conditions on PAS's operations that negatively impact the ability of PAS to serve its customers. Concerns about these alleged conditions have also been raised by two additional carriers. NECR has not responded to the merits of PAS's motion to show cause or explained why its imposition of speed restrictions on PAS's trains and waybill production requirements are reasonable and in accordance with the ICC's order in Amtrak II. Based on the record to date, the Board has concerns regarding NECR's alleged speed restrictions and waybill

² NECR Request to Set Trackage Rights Terms & Conditions (FD 35842).

³ Id. at 4-6.

⁴ Id. at 6.

⁵ PAS Motion to Show Cause 6.

requirements. We will therefore institute a new proceeding as a sub docket to the original proceeding in which Amtrak I and Amtrak II were decided. In this new sub docket, the Board will take notice of the arguments raised by PAS, VRS, and CMQR in Docket No. FD 35842. NECR is directed to provide a response to these arguments by October 9, 2014. Replies to NECR's response may be filed not later than October 16, 2014. The Board will address NECR's request to set new terms and conditions in a separate decision.

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

It is ordered:

1. A proceeding is instituted in Docket No. FD 31250 (Sub-No. 1).
2. NECR is directed to reply, by October 9, 2014, to PAS's claims that the actions NECR has taken are unreasonable practices and/or violate the terms and conditions established in Amtrak II.
3. Replies to NECR's pleading are due by October 16, 2014.
4. This decision is effective on the date of service.

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