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SERVICE DATE - LATE RELEASE OCTOBER 4, 2001

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. 200

Decided: October 4, 2001

In Decision No. 198, served September 19, 2001, we determined that we would not order Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively NS) to keep open the Hollidaysburg Car Shops (HCS) located near Altoona, PA beyond October 1, 2001, but we imposed conditions, including enhanced labor protection for HCS employees, should NS proceed to close the shops. The Commonwealth of Pennsylvania and the rail labor interests<sup>1</sup> that were parties to the proceeding (collectively movants) jointly filed a motion on September 27, 2001, as amended on October 2, 2001, asking that we stay that decision pending judicial review.<sup>2</sup> NS has replied. We deny the motion.

BACKGROUND

In Decision No. 89, served July 23, 1998, we authorized the joint acquisition of control of Consolidated Rail Corporation (Conrail) by NS and CSX Corporation and CSX Transportation, Inc. (collectively CSX) and the division by CSX and NS of Conrail's assets. In authorizing that transaction, we imposed on NS and CSX, as we have imposed on rail carrier applicants in other major rail consolidations, a condition requiring the carriers to adhere to the representations they made during the course of the consolidation proceeding. Decision No. 89, at 176, ¶ 19.

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<sup>1</sup> The Transport Workers of America, National Council of Firemen and Oilers/SEIU, International Association of Machinists and Aerospace Workers, International Brotherhood of Boilermakers and Blacksmiths, International Brotherhood of Electrical Workers, Sheet Metal Workers' International Association, and the Transportation Communications International Union.

<sup>2</sup> A petition for review was filed on September 28, 2001, with the United States Court of Appeals for the Third Circuit in No. 01-3685, Pennsylvania v. STB.

By petition filed March 28, 2001, movants asserted that NS' announced shut-down of the HCS (initially announced for September 1, 2001, but later set to occur on or after October 1, 2001) would violate representations made by the carrier that it would continue operations at the HCS and invest and increase their utilization, and they requested that we order NS to keep the shops open after the announced closure date. We directed NS to show why we should not do so, in Decision No. 186 (served May 21, 2001).

After considering the record before us, we determined that NS had indeed made commitments to the Altoona/Hollidaysburg area and to HCS employees—which were relied upon by various local and statewide interests in determining how they would participate in the merger process—that NS would make the HCS and the nearby Juniata Locomotive Shop (JLS) important parts of its post-transaction operations. We also noted that NS kept that commitment for more than 2 years after it acquired the HCS (on June 1, 1999). Decision No. 198, at 6.

However, we further determined that NS did not represent that it would keep the HCS open indefinitely, without regard to business and economic conditions. We observed that NS' business prospects have worsened considerably, forcing the carrier to make numerous operational, personnel, and financial adjustments. Because, in the current business climate, there appeared little reason to believe that NS could operate at the capacity levels needed to make the shops viable, and because the car repair work at HCS could be absorbed (along with transferred HCS employees) at other NS facilities, we concluded that NS should not be required to continue operations at the HCS, particularly when requiring it to do so here might simply work to disfavor other NS car shops and employees, and, in turn, other local communities. Decision No. 198, at 6-7.

In view of NS' more general commitments to the HCS employees and the Altoona/Hollidaysburg area, however, we provided HCS employees with important added labor protection, should NS proceed to close the shops. Specifically, we required NS in that circumstance to (1) extend the automatic certification for New York Dock<sup>3</sup> economic benefits that it had agreed to provide to transferring HCS employees represented by certain unions to transferring employees represented by other unions; and (2) provide the HCS employees who are not afforded the opportunity to follow their work (or who cannot exercise their seniority to do so) immediate eligibility upon dismissal to New York Dock benefits. Decision No. 198, at 7-8. We also required NS, beginning on January 2, 2002, to report quarterly on its efforts to keep open the JLS and to work with the Altoona/Hollidaysburg area on alternative economic development projects. *Id.* at 8.

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<sup>3</sup> New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979), *aff'd* sub nom. New York Dock Ry. v. United States, 609 F.2d 83 (2d Cir. 1979).

## DISCUSSION AND CONCLUSIONS

To obtain a stay, movants must show: (1) that they are likely to prevail on judicial review; (2) that, without a stay, they will suffer irreparable injury; (3) that a stay would not harm other interested parties; and (4) that the public interest supports granting a stay. Washington Metropolitan Area Transit Comm'n v. Holiday Tours, 559 F.2d 841 (D.C. Cir. 1977); Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921 (D.C. Cir. 1958); Hilton v. Braunskill, 481 U.S. 770 (1987). We find that movants have not satisfied these criteria.

Most significantly, movants have not demonstrated that they are likely to prevail on the merits of their petition for judicial review. Movants argue that Decision No. 198 is “standardless.” Motion, at 3. But the sole issue before us was whether NS violated our condition that the carrier adhere to its representations, and we found no indication in the record of the Conrail proceeding, or elsewhere, that NS had represented that it would continue HCS operations irrespective of changing business conditions. As we pointed out, worsening economic circumstances led NS to implement a series of significant, system-wide adjustments that, along with its planned closure of the HCS and adjustments at other car shops and facilities, included a 25% reduction in its management workforce and a reduction of shareholder dividends for the first time in its history. Decision No. 198, at 2 & n.4. And as we further observed, NS’ plans to make the HCS viable (by increasing their utilization) depended on an anticipated increase in its own car fleet and on “insourcing” for repair the cars of other rail carriers—plans that, in the current business environment, are simply not likely to occur. Id. at 2-3, 6. Our determination that NS did not violate the “representations” condition here was thus reasonable and amply supported in the record.

Further, we clearly recognized and enforced NS’ more general representations to the community by providing affected HCS employees with important, enhanced labor protection for both transferring and dismissed employees, should NS proceed to close the shops. As we observed, certifying all transferring HCS employees for New York Dock benefits now relieves the employees from having to demonstrate that a subsequent dismissal or displacement to a lower-paying job has the requisite nexus to the Conrail transaction, thus immediately qualifying them for New York Dock benefits should such an event occur. Decision No. 198, at 3 n.5; see New York Dock, Article I, § 11(e), 360 I.C.C. at 88. Moreover, dismissed HCS employees, who by our decision will become immediately eligible to collect New York Dock benefits, may decline, without forfeiting their benefits, a subsequent recall to a work location that would require moving from their place of residence. Id. at 8; see New York Dock, Article I, § 6(d), 360 I.C.C. at 87. The New York Dock conditions entitle affected employees to up to 6 years of salary protection, as Congress directed in 49 U.S.C. 11326. The added protection for HCS employees that we have provided here makes more certain that the employees will receive these significant benefits.

Movants argue, however, that transferring employees will be irreparably injured by having “to move when they do not want to.” Motion, at 6. We are sensitive to these concerns but, as we observed, permitting rail carriers to transfer work and employees in carrying out a consolidation in exchange for providing income protection and other benefits has been a “basic part of the bargain embodied” in the New York Dock conditions, as well as its antecedents as far back as the Washington Job Protection Agreement of 1936. Decision No. 198, at 7 n.10, citing Decision No. 89 at 128. We also are sensitive to the potential economic impact in the Altoona/Hollidaysburg area should NS close the HCS, and to help ensure that NS will fulfill its general commitment to the economic well-being of the community, we also have required NS to report quarterly on its efforts to keep the JLS open and its ongoing work with the community on alternative economic development projects that will help to mitigate this loss.

Finally, contrary to movants’ arguments (Motion, at 5), we have broader public interest obligations that must be considered here. As we observed, given the size of the HCS and the degree of its unused capacity, ordering continued operations there, especially in light of the current business climate, could well mean idling other car repair facilities and shifting NS employees at those facilities to Hollidaysburg or elsewhere. Decision No. 198, at 7. Having determined that NS did not represent that it would operate the HCS indefinitely without regard to business conditions, it is clearly appropriate for us to weigh the impact of continuing HCS operations on the rest of the NS network and its employees and to decline to favor employees on one part of the NS system at the expense of employees on other parts.

For all of these reasons, we find that movants have not satisfied the prerequisites necessary to obtain a stay, and we deny their motion.

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

It is ordered:

1. The motion for stay pending judicial review is denied.
2. This decision is effective on the date of service.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams  
Secretary