29506 SERVICE DATE - AUGUST 7, 1998
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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. 90

Decided: August 6, 1998

This decision addresses the motion by APL Limited (APL) (designated as APL-25) filed on July 29, 1998, requesting a 20-day extension of time, until September 1, 1998, to file a petition for clarification and/or a petition for reconsideration with respect to our Decision No. 89, served July 23, 1998.[1] In support of its motion, APL states that it is analyzing Decision No. 89 in an attempt to determine its effect on APL's future relationship with CSX and NS. APL is particularly concerned over our provision for a limited override of antiassignment clauses in transportation contracts and avers that, at a minimum, it may find it necessary to ask us to clarify this condition. APL indicates that it has sought the opinions of both CSX and NS regarding the contract override condition, but that neither applicant has provided it with a definitive response. APL contends that an extension would not prejudice any party because it does not seek to postpone the control date for the transaction.

CSX replied in opposition to the motion. CSX asserts that APL's motion is vague and not based on a particular position. CSX maintains that, although it received inquiries from APL regarding contractual terms and termination rights under APL's existing contracts with Conrail, the matters raised by APL are not discussed or mentioned in its motion and, because they are essentially contract interpretation issues, they are not within the purview of the Board. According to CSX, there is no ambiguity in the contract override condition inasmuch as Ordering Paragraph 10 of Decision No. 89 provides a very precise statement of the provision.

APL's extension request will be denied. Contrary to APL's claim, we do not find any ambiguity or inconsistency in our provision for a limited override of antiassignment clauses. While we discuss the condition at various places in our decision, there is nothing in the language in those

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[1] In Decision No. 89, we approved, subject to conditions, the applications by CSX Corporation and CSX Transportation, Inc. (collectively CSX), and Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively NS) under 49 U.S.C. 11321-26 for: (1) the acquisition of control of Conrail Inc., and Consolidated Rail Corporation (collectively Conrail); and (2) the division of Conrail's assets by and between CSX and NS.

pages that alters the terms of, or is contrary to, the override condition we formally imposed in this proceeding. See Ordering Paragraph 10, Decision No. 89, slip op. at 175. Although not mentioned in its motion here, it is apparent that APL's underlying position is continued opposition to our resolution of this contract override issue. See Petition to Stay of APL Limited (APL-26) filed July 31, 1998. APL has already made its position clear and it has not demonstrated that it needs an extension of time to further study the impact of our decision.

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

It is ordered:

1. The extension request in APL-25 is denied.

2. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary