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SERVICE DATE – APRIL 4, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42134

NATIONAL RAILROAD PASSENGER CORPORATION–SECTION 213 INVESTIGATION  
OF SUBSTANDARD PERFORMANCE ON RAIL LINES OF CANADIAN NATIONAL  
RAILWAY COMPANY

Decided: April 3, 2012

On January 19, 2012, the National Railroad Passenger Corporation (Amtrak) filed a Petition for Relief by Amtrak Requiring the Initiation of an Investigation of Substandard Performance Under Section 213 of the Passenger Rail Investment And Improvement Act of 2008. Amtrak requests that the Board initiate an investigation pursuant to § 213 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), 49 U.S.C. § 24308(f), regarding the alleged “substandard performance of Amtrak passenger trains on rail lines owned by Canadian National Railway Company and its subsidiaries, Grand Trunk Western Railway Company and Illinois Central Railroad Company” (collectively, CN).

On March 9, 2012, CN filed an answer to Amtrak’s petition. Also on March 9, 2012, CN filed a motion requesting that the Board hold the proceeding in abeyance until after the United States District Court for the District of Columbia rules on the pending cross-motions for summary judgment in Association of American Railroads v. Department of Transportation, No. 11-cv-1499 (D.D.C. filed Aug. 19, 2011). In the March 9 motion, CN proposes that any abeyance period be utilized for Board-supervised mediation.

On March 27, 2012, Amtrak and CN filed a joint motion requesting Board supervised mediation. Amtrak and CN request specifically that (1) the Board appoint a mediator, (2) the proceeding be held in abeyance for 90 days while the mediation is pursued, subject to either party’s right at any time to reactivate normal agency procedures upon notice, and (3) if mediation does not lead to consensual resolution, the Board extend Amtrak’s time to respond to CN’s motion for abeyance until 20 calendar days from the date the Board serves notice that normal agency proceedings are reactivated.

The joint request for Board-supervised mediation will be granted. The Board’s regulations at 49 C.F.R. § 1109.1 allow for any proceeding to be held in abeyance for up to 90 days while alternative dispute resolution procedures are pursued. Therefore, this proceeding will be held in abeyance until July 3, 2012, subject to either party’s right at any time to reactivate normal agency procedures upon notice. Should mediation be unsuccessful, Amtrak’s response to CN’s motion for abeyance will be due the earlier of July 23, 2012, or 20 days after the Board serves notice that normal agency proceedings are reactivated.

The Chairman will appoint the mediator no later than five business days after service of this decision. Once appointed, the mediator will contact the parties to discuss ground rules and the time and location of any meetings. At least one principal of each party, who has authority to commit that party, shall participate in the mediation and be present at any session at which the mediator requests that the principal be present. The mediator is instructed to inform the Board when mediation has ended, with or without a resolution.

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

It is ordered:

1. This proceeding is held in abeyance until July 3, 2012, subject to either party's right at any time to reactivate normal agency procedures upon notice.
2. Should mediation be unsuccessful, Amtrak's response to CN's motion for abeyance is due on the earlier of July 23, 2012, or 20 days after the Board serves notice that normal agency proceedings are reactivated.
3. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.