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SERVICE DATE - NOVEMBER 19, 1998

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. 101

Decided: December 18, 1998

On October 26, 1998, Providence and Worcester Railroad Company (P&W or petitioner) filed a petition (undesignated) to clarify the transaction we authorized in Decision No. 89, served July 23, 1998,¹ with respect to petitioner's interest in one of Conrail's terminal properties known as New Haven Station. According to P&W, under the terms of a 1982 order of the former Special Court,² it has the right to acquire New Haven Station if Conrail withdraws from, or abandons or discontinues, freight service at that location. P&W refers to a specific provision of the 1982 order, paragraph 21, to support its claim.

In Decision No. 89, we noted that it appeared to us that substituting CSX for Conrail would not be inconsistent with the Special Court's order. However, if it were deemed to be inconsistent, we found that applicants' continued ownership and use of New Haven Station was an integral and necessary part of the CSX/NS/Conrail transaction. We said that, although it seemed unlikely that

¹ In Decision No. 89, we approved, subject to conditions, the application 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.

² The Special Court was created pursuant to section 209 of the Regional Rail Reorganization Act of 1973 to handle judicial proceedings relating to properties conveyed to restructured railroads in the Northeast United States under the Final System Plan (FSP). The United States District Court for the District of Columbia now exercises the jurisdiction formerly exercised by the Special Court.

P&W's rights under the Special Court's 1982 order would be triggered by a sale to another carrier,³ any rights that P&W might otherwise have had in the property were preempted under 49 U.S.C. 11321(a). Subsequently, in Decision No. 92, served August 24, 1998, we denied P&W's petition to stay the transaction. In challenging our decision to preempt its rights, P&W indicates that it has commenced a proceeding before the Special Court⁴ and has also filed a petition for review in the Court of Appeals.

In its petition for clarification, P&W states that Conrail has taken the position in recent pleadings filed in the appellate proceedings that our override decision does not completely extinguish P&W's rights, but rather allows CSX to step into Conrail's shoes with respect to New Haven Station. Thus, should CSX subsequently abandon or discontinue freight service at that facility, it is Conrail's position, according to petitioner, that P&W's residual rights to acquire the property under the Special Court's order would be activated. P&W asks us to clarify the scope of our override ruling.

In reply (designated CSX-165), CSX states that, as a result of our override, it will step into Conrail's shoes relative to New Haven Station. CSX asserts that, although P&W will not presently be able to exercise its purchase right provided by the Special Court's order in connection with the transaction contemplated by the primary application, after the transaction is consummated CSX will be bound by the order as fully as Conrail was previously.

As appropriate under section 11321, we clarify that we only intended to override the 1982 order of the Special Court to the extent necessary to permit the CSX/NS/Conrail transaction to go forward. In other words, our preemption was only to the extent that the Special Court order could be read to block this transfer. When CSX obtains the New Haven facilities, it will stand in Conrail's shoes. CSX will continue to honor the Special Court order, as it has agreed in this proceeding to honor other obligations of Conrail. Thus, if CSX "withdraws, abandons, or discontinues" service at New Haven Station, P&W's rights under the 1982 order will be activated. Overriding the Special Court order altogether is unnecessary to permit the transaction to be carried out within the meaning of 49 U.S.C. 11321.

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

³ According to applicants' transaction agreement, CSX will acquire Conrail's rail facilities in New Haven and the nearby Cedar Hill Yard.

⁴ As noted, the functions of the Special Court have been assumed by the U.S. District Court for the District of Columbia.

It is ordered:

1. Our preemption under 49 U.S.C. 11321 of the Special Court's 1982 order as it relates to New Haven Station is clarified to the extent set forth in this decision.
2. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary