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SERVICE DATE - LATE RELEASE JUNE 11, 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. 87

Decided: June 11, 1998

By motion filed May 22, 1998 (designated CSX/NS-206), applicants¹ ask us to amend the protective order we approved and issued in Decision No. 1, served April 16, 1997. Applicants request that the protective order be modified to authorize CSX and NS personnel to gain access to information relating to transportation contracts presently in effect between Conrail and Conrail customers. Applicants indicate that the purpose of the request is to permit CSX and NS to begin the lengthy process of allocating the performance of those contracts between them as specified in the CSX/NS/CR transaction agreement.

APL Limited and Eastman Kodak Company (jointly respondents), in a pleading filed May 28, 1998 (designated APL-23/EKC-7), urge us to deny applicants' motion or, in the alternative, hold the motion in abeyance until after our June 8, 1998 public voting conference. In a pleading filed June 9, 1998 (designated APL-24), APL asks us to ensure that, in any decision on the CSX/NS-206 motion, the terms of its contract with Conrail be protected from disclosure to CSX's ocean carrier, water carrier, and intermodal affiliates. APL also asks that, prior to obtaining access to the information, applicants be required to agree with APL on disclosure protection.

Applicants' motion to amend the protective order will be granted. At our June 8, 1998 voting conference, we voted to approve the primary application, including applicants' proposal in section 2.2(c) of the transaction agreement relative to the allocation of Conrail's rail transportation contracts between CSX and NS. As for those contracts with antiassignment clauses, we voted to permit override of antiassignment clauses in what would otherwise be nonassignable shipper

¹ "Applicants" refers to CSX Corporation and CSX Transportation, Inc. (collectively CSX), Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively NS), and Conrail Inc., and Consolidated Rail Corporation (collectively Conrail). In this proceeding, applicants seek approval and authorization under 49 U.S.C. 11323-25 for: (1) the acquisition of control of Conrail by CSX and NS; and (2) the division of Conrail's assets by and between CSX and NS.

contracts for a 180-day period after Day 1² and to permit applicants to assume the terms of those contracts during that same time period. The modification is necessary to enable CSX and NS to work out the details of the transaction as early as possible, so as to ensure a smooth transition with respect to rail service. We will also grant APL's requests that the terms of its contract with Conrail be protected from disclosure to CSX's ocean carrier, water carrier, and intermodal affiliates, and that applicants agree with APL on the disclosure protection. We will hold APL to its commitment made in its June 9, 1998 pleading that it will act expeditiously to agree on this disclosure protection with CSX and NS.

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

It is ordered:

1. Applicants' motion is granted. The protective order is amended as indicated in the appendix. In all other respects, the protective order shall remain unchanged and in effect.

2. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

² Under the transaction agreement, Day 1 is the closing date on which the division of the operation and use of Conrail's assets will be effected by CSX and NS. See CSX/NS-18 at 11; CSX/NS-25, Volume 8B at 45.

APPENDIX

The Protective Order issued in Decision No. 1 in STB Finance Docket No. 33388, served April 16, 1997, is amended to add the following paragraphs:

19(a). On and after June 11, 1998, Conrail may provide to personnel of CSX and NS, and personnel of CSX and NS may receive, copies of or other information regarding transportation contracts to which Conrail is a party, their historic performance and cost of performance by Conrail, and related operations by Conrail. The authorization set forth in the preceding sentence is subject to the restrictions set forth in Paragraphs 19(b) and 19(c).

19(b). Until August 22, 1998: the contracts or other information mentioned in Paragraph 19(a) may be provided and received solely for the purposes of allocating performance of the contracts between NS and CSX pursuant to Section 2.2(c) of the Transaction Agreement dated as of June 10, 1997 among CSX, NS, and Conrail, placing information about such contracts in the information systems of CSX and NS, testing such systems, and planning and preparation of rail operations, but not for any other business, commercial, or competitive purpose; and the CSX and NS personnel allowed access to such contracts or information shall be limited to those requiring such access in order to carry out such permissible purposes.

19(c). For the protection and benefit of APL Limited and its subsidiaries (APL) , disclosure protection satisfactory to APL shall be provided by applicants so that neither contracts of Conrail with APL nor any confidential information contained in or touching or concerning such contracts shall be made available to CSX Intermodal, Inc., or Sea-Land Service, Inc., or any of their subsidiaries, officers or employees.