

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. 13

Decided: July 25, 1997

By motion (not designated) filed July 21, 1997, the United Transportation Union (UTU) seeks to waive, with respect to itself only, the provision in the protective order restricting the production of highly confidential competitive information to outside counsel and outside consultants.<sup>1</sup> By petition (designated ARU-6) filed July 18, 1997, the Allied Rail Unions (ARU) seek a declaratory order to the effect that, on or about June 2, 1997, and in violation of 49 U.S.C. 11323, CSX and NS acquired control of Conrail without the prior approval and authorization of the Board.<sup>2</sup>

In Decision No. 12 (served July 23, 1997, and published that day in the *Federal Register* at 62 FR 39577), we ordered that "any reply to *any motion* filed with the Board itself in the first instance must be filed within 3 working days of the date of filing of the motion." *See* Decision No. 12, slip op. at 21, 62 FR at 39589 (emphasis added).

By letter (designated CSX/NS-29) filed July 23, 1997, applicants indicate: that they understand that the 3-day rule applies to motions that are procedural in nature; that they are, however, under the impression that the 3-day rule does not apply to motions that are not procedural in nature;<sup>3</sup> and that they believe that the UTU motion and the ARU petition are not procedural in nature.

We will treat the CSX/NS-29 letter as a request for clarification of Decision No. 12, and we hereby clarify that the 3-day rule should be accorded the literal reading provided in Decision No. 12: it is applicable to any reply to *any motion* filed with the Board itself in the first instance, whether that motion is or is not procedural in nature, and whether that motion is or is not styled as a "motion."<sup>4</sup> Given the expedited schedule that governs this proceeding, the more leisurely 20-day

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<sup>1</sup> The protective order applicable to this proceeding was adopted in Decision No. 1 (served April 16, 1997) and was modified in Decision No. 4 (served May 2, 1997).

<sup>2</sup> CSX Corporation (CSXC) and CSX Transportation, Inc. (CSXT), and their wholly owned subsidiaries, are referred to collectively as CSX. Norfolk Southern Corporation (NSC) and Norfolk Southern Railway Company (NSR), and their wholly owned subsidiaries, are referred to collectively as NS. Conrail Inc. (CRR) and Consolidated Rail Corporation (CRC), and their wholly owned subsidiaries, are referred to collectively as Conrail. CSX, NS, and Conrail are referred to collectively as applicants.

<sup>3</sup> As applicants correctly note, the wording of the 3-day rule in Decision No. 6 (served May 30, 1997, and published that day in the *Federal Register* at 62 FR 29387) was that "any reply to *any procedural motion* filed with the Board itself in the first instance must also be filed within 3 working days of the date the motion is filed." *See* Decision No. 6, slip op. at 7, 62 FR at 29390 (emphasis added).

<sup>4</sup> We also think it appropriate to clarify that, for purposes of the 3-day rule, a "working day" (continued...)

reply period that applicants would prefer, *see* CSX/NS-29 at 2 (first full paragraph), is simply unworkable. And, given the delays that would be occasioned if we were required to make motion-by-motion determinations as to whether any particular motion was or was not procedural in nature, the distinction sought by applicants is equally unworkable.<sup>5</sup>

Applicants argue, in essence, that they cannot reasonably be expected to file replies to such pleadings as the UTU motion and the ARU-6 petition within the 3 working days allowed by the 3-day rule. Our experience with prior railroad control proceedings indicates otherwise.

We do not mean to suggest, however, that the 3-day rule is utterly inflexible. We are prepared to consider, on a motion-by-motion basis, requests (such as the requests contained in CSX/NS-29 at 2) to extend the deadline for filing replies.

As respects the motion filed by the United Transportation Union, we cannot understand why applicants should require even 3 working days to reply to a pleading that contains less than 1 full page of text, that cites no cases, and that asks only that UTU's inside counsel have access to highly confidential information that the protective order restricts to outside counsel. Nevertheless, under the circumstances, we will require that applicants reply to this motion no later than July 28, 1997 (which is 3 working days after the service date of Decision No. 12).

As respects the ARU-6 petition filed by the Allied Rail Unions, we can understand why applicants might require more than 3 working days to reply to this pleading, but if 3 working days might not be sufficient, 6 working days (which, in this instance, amounts to 10 calendar days) should be more than sufficient. We will therefore require that applicants reply to the ARU-6 petition no later than July 28, 1997.

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

*It is ordered:*

1. As previously indicated in Decision No. 12, and as clarified in this decision: Except as otherwise provided by the Board with respect to any particular motion, any reply to *any motion* filed with the Board itself in the first instance must be filed within 3 working days of the date of filing of the motion.
2. Any reply to the motion filed July 21, 1997, by the United Transportation Union is due by July 28, 1997.
3. Any reply to the ARU-6 petition filed July 18, 1997, by the Allied Rail Unions is due by July 28, 1997.

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<sup>4</sup>(...continued)  
is any day that is not a Saturday, a Sunday, or a legal holiday in the District of Columbia.

<sup>5</sup> Applicants' implausible characterization of the UTU motion as not procedural in nature proves this point.

4. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams  
Secretary