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SERVICE DATE - SEPTEMBER 22, 1999

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

STB Finance Docket No. 33388 (Sub-No. 69)

RESPONSIVE APPLICATION — STATE OF NEW YORK, BY AND THROUGH ITS
DEPARTMENT OF TRANSPORTATION, AND THE NEW YORK CITY ECONOMIC
DEVELOPMENT CORPORATION

Decision No. 132

Decided: September 21, 1999

This decision relates to certain of the conditions that the Board imposed in approving the “CSX/NS/Conrail” transaction in its Decision No. 89, served July 23, 1998.¹ The original proposal that the private parties negotiated among themselves divided Conrail’s assets in a way that enhanced competition in several respects. Further, in approving the transaction, the Board imposed conditions that mitigated potential competitive harm and provided other public benefits.

One of these conditions made possible new competitive service for many New York City shippers and receivers that could formerly receive rail service only from Conrail. To permit that new competitive service, the Board granted trackage rights to Canadian Pacific Railway Company and its affiliates (collectively, CP) over the lines of CSX from Albany, NY, to Oak Point Yard in Queens, NY. These Board-imposed trackage rights made competitive rail service available to these shippers for the first time since the creation of Conrail more than two decades ago.

Of course, in crafting conditions to permit this new competition, the Board was careful not to create an unsafe, inefficient, or operationally infeasible railroad operating environment in the congested New York City area. For that reason, the Board placed certain restrictions on the new operating rights granted to CP, most notably that shippers be accessed by CP only through a cost-based switching service performed by CSX into and out of Oak Point Yard, rather than having CP

¹ The parties to that transaction were CSX Corporation and CSX Transportation, Inc., and their wholly owned subsidiaries (collectively, CSX); Norfolk Southern Corporation and Norfolk Southern Railway Company, and their wholly owned subsidiaries (collectively, NS); and Conrail Inc. and Consolidated Rail Corporation, and their wholly owned subsidiaries (collectively, Conrail).

itself also operate trains throughout this area. The Board imposed these restrictions because of its concern that giving CP physical access to all of the tracks and facilities used by CSX in the affected area could produce congestion and compromise safety within New York City, where rail freight operations must share limited track and other facilities with heavy commuter and other rail passenger operations. Further, property values in the city preclude the construction of the additional facilities that the evidence presented in the case indicated would be necessary to accommodate a second major freight carrier providing service directly to all shippers.

THE ISSUES RAISED

In a petition filed on July 27, 1999, CP asked the Board to direct CSX to permit CP to exercise two rights that it states derive from the conditions that the Board imposed in approving the transaction. First, arguing that the Oak Point Yard switching operations using CSX are inefficient for certain movements, CP asks that the Board direct CSX to permit CP to handle traffic to or from Harlem River Yard directly. Second, CP asks that the cost-based switching service that CSX was required to provide for CP at Oak Point Yard be construed as including certain traffic that moves through a CSX transload facility located at Hunts Point Terminal.²

In its reply statement filed on August 16, 1999, CSX states that CP's petition is in substance one to expand the rights that the Board previously gave to CP, rather than one to enforce existing rights. CSX also argues that the new Harlem River Yard operations that CP seeks to conduct could produce operational problems, and that the Hunts Point Terminal operations in which CP wants to participate are not the type of operations that were contemplated by the conditions giving CP access to shippers located within Hunts Point Terminal.

RESOLUTION

The Board is prepared to decide this matter promptly if necessary. In letters dated September 17, 1999, and September 20, 1999, however, counsel indicated that CP and CSX are engaging in negotiations in an effort to resolve the issues privately, and asked that Board action be withheld until November 1, 1999, in order to facilitate negotiations. Because the Board generally supports private resolution of disputes, and because cooperation among carriers is particularly critical to any venture, such as this one, in which track and terminal facilities are shared, the request to withhold action will be granted.

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

² The State of New York and the New York City Economic Development Corporation filed a statement in support of CP's position. Congressmen James L. Oberstar and Jerrold Nadler submitted a supporting letter.

It is ordered:

1. Action on CP's petition will be withheld until at least November 1, 1999.
2. This decision will be effective immediately.

By the Board, Linda J. Morgan, Chairman.

Vernon A. Williams
Secretary