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SERVICE DATE - NOVEMBER 24, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB SERVICE ORDER NO. 1523

PETITION FOR EMERGENCY SERVICE ORDER

Decided: November 23, 1999

In a petition filed on Friday, October 29, 1999, Acme Steel Company (Acme) asks the Board to issue an emergency service order under 49 U.S.C. 11123. Acme requests an order directing that Norfolk Southern Railway Company (NS), CSX Transportation, Inc. (CSXT), and Indiana Harbor Belt Railroad Company (IHB) cooperate with each other and coordinate in providing rail transportation to Acme's facilities in the Chicago, IL area.<sup>1</sup> Responses to Acme's petition were filed separately by NS, CSXT, and IHB. In the responses, the carriers indicate that efforts are already underway to provide improved service to Acme and to other shippers.

#### THE PETITION AND THE RESPONSES

Acme states that it filed the petition for emergency service relief to address the service problems that have arisen during the transitional period since the operations of the Consolidated Rail Corporation (Conrail) were taken over by CSXT and NS. Acme is a producer of iron and steel located in Riverdale, IL, that was formerly served by Conrail. According to Acme, since the transfer of Conrail's operations to CSXT and NS on June 1, 1999, Acme's rail service, which is now provided by NS, has deteriorated. Acme states that its service problems are attributable to the way the carriers interact in providing service throughout the Chicago Terminal area, and that it has met with all three of the involved railroads—sometimes separately, and sometimes together—but that its service remains deficient. Acme points out (petition at 6) that “[t]he overlapping interrelationship between the rail carriers that operate in the Chicago area obviously requires a high emphasis on cooperation and coordination in order to ensure smooth and efficient operations.” Acme states (*id.*) “that such cooperation and coordination is greatly lacking in the Chicago area,” and as proof it argues that its service has become slower during October than it was earlier. Acme asks the Board

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<sup>1</sup> With its petition, Acme also filed a motion for protective order under 49 CFR 1104.14. Acme states that its petition and the accompanying verified statement refer to, and quote, a confidential contract between Acme and NS. Acme is therefore requesting a protective order to preserve the confidentiality of the contract. Acme has provided redacted versions of the petition and verified statement for inclusion in the public docket. The motion for a protective order will be granted and the confidential material will be kept under seal.

to issue an emergency service order directing the carriers to cooperate so that service to Acme will be provided no less quickly than was historically provided by Conrail.<sup>2</sup>

NS and CSXT each responded to Acme's petition on November 8, 1999. IHB responded on November 9, 1999. In their responses, each railroad points out that it has been working diligently to manage its operations within the busy Chicago rail network in order to improve service to Acme and to other shippers as well.

#### DISCUSSION AND CONCLUSIONS

In support of its request for emergency relief, Acme analogizes its situation to that of shippers during what the Board found was a transportation emergency in the western United States. See Joint Petition for Service Order, STB Service Order No. 1518 (STB served Oct. 31, 1997). Acme recognizes, as it must, that the current situation is not similar to that which compelled the Board to declare an emergency in the West, but it nevertheless seeks (petition at 9) an emergency order. Oddly, however, Acme does not seek the sort of relief provided for in the emergency service provisions of the law, and the relief that it does seek—an order “direct[ing] NS, CSXT and IHB . . . to immediately begin cooperating in coordinating their facilities to allow the prompt movement of hot metal between South Chicago and Riverdale”—is not necessary.<sup>3</sup>

The provisions of 49 U.S.C. 11123 authorize us to issue temporary emergency service orders when we determine that any “failure of traffic movement exists which creates an emergency situation of such magnitude as to have substantial adverse effects on shippers, or on rail service in a region of the United States.” Under the emergency service order provisions of section 11123, if we find that there is an emergency situation, we may (1) “direct the handling, routing, and movement of the traffic of a rail carrier and its distribution over its own or other railroad lines; (2) require joint or common use of railroad facilities; (3) prescribe temporary through routes; or (4) give directions for preference or priority in transportation, embargoes, or movement of traffic under permits.”

Clearly, shippers have faced service issues since the transfer of Conrail's operations to CSXT and NS on June 1, 1999. The Board continues to actively monitor the operational aspects of

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<sup>2</sup> A reply in support of Acme's petition was filed by Joseph C. Szabo, who is the Illinois Legislative Director of the United Transportation Union, and who is also the Mayor of the Village of Riverdale.

<sup>3</sup> Citing two other proceedings under section 11123 in which the Board directed service by a new carrier to serve a small number of shippers that were not being served by the incumbent, Acme states (petition at 8) that “it is . . . clear that the Board need not wait until service emergencies are widespread for it to exercise its power under Section 11123.” The directed service decisions that Acme cites, however, are not on point here, Acme is being served, and thus is not seeking directed service by an alternative carrier. Nor is it seeking an order under the procedures established by the Board in Ex Parte 628 served last December 21.

the transaction through regular service data reporting, and through daily contacts with railroads, shippers, and railroad employees, and has developed an informal process to address specific service complaints. The Board's Office of Compliance and Enforcement (OCE) has established an open line of communication with senior railroad officials, and OCE immediately forwards service complaints brought to it informally by shippers seeking assistance. OCE follows up on each complaint to ensure that it is being addressed appropriately. In some cases, OCE staff may review the steps that the carrier is taking, and may recommend alternatives. Handling shippers' individual service issues informally in this manner, we have found, provides an effective way for the Board to facilitate real solutions to shippers' service concerns without overreaching governmental action.

Acme has not made OCE aware of any service problems or asked OCE to work informally on its behalf, and indeed in its formal petition for emergency relief it does not ask the Board to take specific actions directed at the three involved carriers that would address specific operational problems, or, as noted, to exercise any of the powers enumerated in section 11123. Rather, it simply wants us to declare an emergency so that we can then issue an order on Acme's behalf directing the carriers to cooperate. We do not see the need to issue such an intrusive order here: the carriers indicate that substantial effort is being made to cooperate and coordinate, and Acme's own petition indicates that, on more than one occasion, it has held meetings that were attended by representatives of all three carriers. Thus, such unnecessary government involvement in private business would be inappropriate. An order formally directing the carriers to do what they are already doing would serve no useful purpose.

While we do not believe that this situation warrants formal action by the Board, we will continue to monitor the overall situation, and also hold CSXT, NS, and IHB to their representations that they are cooperating and coordinating their operations so that they can improve their services to Acme and to other shippers and railroads utilizing the complex Chicago Terminal. The Board will not, however, issue an emergency service order under the circumstances presented in Acme's petition.

It is ordered:

1. The motion for protective order is granted and all confidential material submitted in STB Service Order No. 1523 will be kept under seal and not placed in the public docket or otherwise disclosed to the public.
2. The petition for an emergency service order is denied.
3. The carriers are held to their representations that they will continue to make every reasonable effort to cooperate with one another, and to coordinate their operations.
4. This decision is effective on the date of service.

STB Service Order No. 1523

By the Board, Chairman Morgan, Vice Chairman Clyburn and Commissioner Burkes.

Vernon A. Williams  
Secretary