

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. 31

Decided: September 10, 1997

The first set of interrogatories submitted by the Allied Rail Unions (ARU)<sup>1</sup> to applicants<sup>2</sup> included, among others, Interrogatories Nos. 48, 49, 50, and 51. Interrogatories Nos. 48 and 49 asked CSX<sup>3</sup> to identify all savings that CSX believes were obtained by, and to explain how CSX believes the public was benefitted by, four "consolidations" related to the control transaction approved by the Interstate Commerce Commission (ICC) in CSX Corp.--Control--Chessie and Seaboard C.L.I., 363 I.C.C. 518 (1980) (CSX Control).<sup>4</sup> Interrogatories Nos. 50 and 51 asked NS<sup>5</sup> to identify all savings that NS believes were obtained by, and to explain how NS believes the public was benefitted by, one "consolidation" related to the control transaction approved by the ICC in Norfolk Southern Corp.--Control--Norfolk & W. Ry. Co., 366 I.C.C. 171 (1982) (NS Control).<sup>6</sup> When applicants objected to these interrogatories, ARU asked Judge Leventhal to order compliance. Judge Leventhal, at a hearing held August 21, 1997, declined to compel applicants to respond to the challenged interrogatories. ARU has now appealed to the Board, and applicants have filed a response.<sup>7</sup>

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<sup>1</sup> The Allied Rail Unions are: American Train Dispatchers Department/BLE (ATDD); Brotherhood of Locomotive Engineers (BLE); Brotherhood of Maintenance of Way Employees (BMWE); Brotherhood of Railroad Signalmen (BRS); Hotel Employees and Restaurant Employees International Union (HERE); International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers (IBB); International Brotherhood of Electrical Workers (IBEW); The National Conference of Firemen & Oilers/SEIU (NCFO); and Sheet Metal Workers' International Association (SMWIA).

<sup>2</sup> CSX Corporation, CSX Transportation, Inc., Norfolk Southern Corporation, Norfolk Southern Railway Company, Conrail Inc., and Consolidated Rail Corporation are referred to collectively as applicants.

<sup>3</sup> CSX Corporation and CSX Transportation, Inc. are referred to collectively as CSX.

<sup>4</sup> The referenced consolidations were: the consolidation of B&O, C&O, WM, and RF&P operating craft employees into the Eastern B&O consolidated district; the consolidation of B&O and C&O operating craft employees into the Central B&O consolidated district; the consolidation of Waycross, GA carmen work to CSX's Raceland, KY shops; and the consolidation of CSX dispatching work in Jacksonville, FL.

<sup>5</sup> Norfolk Southern Corporation and Norfolk Southern Railway Company are referred to collectively as NS.

<sup>6</sup> The referenced consolidation was the consolidation of locomotive power distribution in Atlanta, GA.

<sup>7</sup> ARU's appeal is designated ARU-14. Applicants' response is designated CSX/NS-64.

## DISCUSSION AND CONCLUSIONS

Appeals from discovery decisions issued by Judge Leventhal will be granted only "in exceptional circumstances to correct a clear error of judgment or to prevent manifest injustice." 49 CFR 1115.1(c). See Decision No. 6, slip op. at 7, 62 FR 29387, 29390 (May 30, 1997). Because ARU has not met this standard, we will deny its appeal.

ARU has a right to ask applicants to identify the savings they believe will be obtained by, and to explain how they believe the public will be benefitted by, any envisioned "consolidations" related to the control transaction that applicants have asked us to approve in this proceeding. The challenged interrogatories, however, ask applicants instead to identify the savings they believe were obtained by, and to explain how they believe the public was benefitted by, certain "consolidations" related to the control transactions that the ICC approved in the CSX Control and NS Control proceedings. The answers called for by the challenged interrogatories have very little or no connection to the matters at issue in the present proceeding.

ARU contends that the information sought in the challenged interrogatories "is relevant to this proceeding." ARU-14 at 4. We disagree. Such information, in our opinion, is at best marginally relevant to the matters at issue in this proceeding.

ARU contends that "[t]he only way to test the validity of the assumptions on which [prior merger decisions] have been predicated is to seek actual evidence from prior transactions and coordinations to test whether prior savings/public benefits assertions have been verified by actual experience." ARU-14 at 17. We agree with Judge Leventhal, however, that information about the five referenced "consolidations" would have very little or no predictive value regarding the savings and benefits that applicants project can be achieved if we approve and they execute the transaction at issue in the present proceeding. CSX/NS-64 at 6-7. The savings and benefits from the transaction at issue in the present proceeding must stand or fall on their own merits. Moreover, the challenged interrogatories are extremely burdensome and would require applicants to undertake studies of activities that have taken place over many years. Given the burden of producing such evidence and its very limited relevance, we conclude that Judge Leventhal properly denied discovery.

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

It is ordered:

1. The ARU-14 appeal is denied.
2. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams  
Secretary