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Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0012

Re: *Application of the National Railroad Passenger Corporation under 49 U.S.C. § 24308(a) – Canadian National Railway Company (Docket No. FD 35743)*

Dear Ms. Brown:

In the interest of narrowing and clarifying the issues before the Board, this responds briefly to Amtrak's March 23, 2015 Reply ("Reply") to CN's Fourth Motion to Compel ("Motion").¹

In its Reply, Amtrak has finally provided information in response to questions CN has been asking for three months concerning various documents referenced in Amtrak's own production. Based on these long-overdue answers, CN withdraws its Motion with respect to: (a) the Policy & Procedures Manual referenced in ATK0000126036; (b) the Delay Analysis Reports; and (c) the Delay Between Station Reports.

Amtrak's Reply does not resolve the pending motion with respect to the two remaining items – the Host Railroad Issue Log and the Quarterly Dockets. Its relevance arguments and "burden" arguments are without merit.

¹ Insofar as the Board may deem it necessary, CN requests leave to file this brief letter in order to narrow and clarify the issues pending before the Board. CN acknowledges the Board's admonition not to bring broad motions to compel and then change position and make narrower demands in a sur-reply. September 23 Order at 10-11. CN is not offering a new compromise here; it is instead withdrawing certain requests based upon new information previously denied it by Amtrak.

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Amtrak argues that the Log “is not relevant to the issues in this matter” because it “relates to invoicing (i.e. financial) issues, not operational issues.” Reply at 6. But under the CN-Amtrak operating agreement, “financial” issues include incentives and penalties determined by the on-time performance of Amtrak’s trains and CN’s responsibility for delays. Therefore, there remains good reason to believe the “financial” issues addressed in the Log involve disputes regarding delays and delay attribution – a topic the Board has already ruled appropriate for discovery and which is responsive to multiple discovery requests to which Amtrak agreed to respond. *See* RFP 25; RFP 26; IR 21.

With respect to the Quarterly Dockets, Amtrak admits that these records “discuss scheduling issues contemplated internally with respect to all host railroads,” including CN. Reply at 8. Amtrak’s schedules are at the heart of the Amtrak-CN Operating Agreement at issue in this proceeding. Amtrak’s performance is measured against the schedules, and incentives and penalties are based on that performance. Thus, the issue of whether Amtrak’s schedules require adjustment relates directly to the performance and compensation issues central to this proceeding. The reference to adjusting pure run time in the one Quarterly Docket Amtrak has produced (ATK000046816) suggests both (i) that Amtrak has recognized internally that schedule adjustments are appropriate, and (ii) that the other Dockets Amtrak is withholding are likely to contain similarly relevant and responsive material.

Amtrak argues with respect to both the Log and Quarterly Dockets that production is not required or would be overly burdensome because the requested documents also contain information about host railroads other than CN. Reply at 6-7, 8-9. This is not a legitimate basis for withholding production. In granting in part CN’s second motion to compel, the Board ruled that delay coding issues with respect to other host railroads are relevant. September 23, 2014 Order at 10. And, in granting in part CN’s first motion to compel, the Board ruled that documents that contain a mix of relevant and irrelevant material must be produced in full. April 15, 2014 Order at 6-7. As for burden, these are discrete, easily produced documents. There appears to be only one issues Log, which Amtrak has apparently already located and reviewed (Reply at 6),² and just nine missing Quarterly Dockets.³ Further, CN is not asking Amtrak to “sift through” anything to locate responsive, CN-specific material, nor is there any need for

² CN seeks any and all subsequent iterations of the Log during the period May 1, 2011 through October 31, 2013. *See* Motion at 9, Conclusion, ¶ 1. The Reply seems to indicate that there are no other iterations, but it is unclear. In case there are, as requested, the Board’s order should require their production.

³ CN’s Motion seeks only the dockets “that refer or relate to Amtrak services run in whole or in part over CN lines for the period May 1, 2011 through October 31, 2013.”

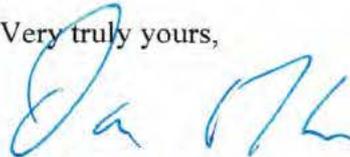
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Amtrak to do so, given the protective order in this proceeding. Amtrak should have produced these documents months ago. It should be ordered to do so without further delay.

Very truly yours,



David A. Hirsh

Counsel for Illinois Central Railroad Company
and Grand Trunk Western Railroad Company

Attachment

cc: Linda J. Morgan, Esquire
William H. Herrmann, Esquire