

SURFACE TRANSPORTATION BOARD SUMMARIZES 1999 "CONRAIL DOCKET" ACTIVITY; NOTES PARTIES' RESOLUTION OF ALL LABOR IMPLEMENTING DISPUTES

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that, to date, the Board has issued 25 written decisions in 1999 in the Conrail railroad control proceeding[FOOTNOTE 1: Docketed as *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.] and in two related arbitration review proceedings.[FOOTNOTE 2: Docketed as *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 (Arbitration Review)*, STB Finance Docket No. 33388 (Sub-Nos. 88 and 89).]

By decision issued to the public on July 23, 1998, the Board approved, subject to various conditions, the application of CSX[FOOTNOTE 3: *CSX Corporation and CSX Transportation, Inc.*] and NS[FOOTNOTE 4: *Norfolk Southern Corporation and Norfolk Southern Railway Company.*] to acquire control of Conrail[FOOTNOTE 5: *Conrail Inc. and Consolidated Rail Corporation*. CSX, NS, and Conrail collectively are referred to as applicants.] and to divide Conrail's assets between them.[FOOTNOTE 6: The decision issued July 23, 1998, which is commonly referred to as Decision No. 89, is discussed in "Surface Transportation Board News" release No. 98-44 issued July 23, 1998.] The conditions imposed by the Board included, among many others, the "east of the Hudson" condition, the Leewood-Aulon condition, the IP&L[FOOTNOTE 7: *Indianapolis Power & Light Company.*] condition, the Buffalo Creek condition, the Niagara Falls condition, and the *New York Dock* labor protective conditions,[FOOTNOTE 8: *New York Dock Ry—Control--Brooklyn Eastern Dist.*, 360 I.C.C. 60, 84-90 (1979).] and also a number of environmental conditions.[FOOTNOTE 9: Out of the hundreds of parties that participated in this proceeding affecting rail service throughout the eastern United States, five parties are challenging the Board's decision in the United States Court of Appeals for the Second Circuit. A briefing schedule has yet to be set in that case.]

Acquisition of control of Conrail was effected by CSX and NS on August 22, 1998 (referred to as the Control Date). The division of the assets of Conrail will be effected on June 1, 1999 (that date is generally referred to as Day One, but has also been referred to as the Closing Date and the Split Date).[FOOTNOTE 10: The 22 written decisions that the Board issued in the Conrail docket in 1998 after Decision No. 89 are discussed in "Surface Transportation Board News" release No. 98-86 issued December 23, 1998.]

DECISIONS ISSUED IN CONRAIL PROCEEDING IN 1999

In Decision No. 112 (issued January 22, 1999), the Board denied a request made by Fort Orange Paper Company for clarification of the "east of the Hudson" condition that required CSX to attempt to negotiate, with CP,[FOOTNOTE 11: *Canadian Pacific Railway Company, Delaware and Hudson Railway Company, Inc., Soo Line Railroad Company, and St. Lawrence & Hudson Railway Company Limited.*] an agreement pursuant to which CSX would grant CP either haulage rights or trackage rights over the east-of-the-Hudson Conrail line that runs between Selkirk (near Albany, NY) and Fresh Pond (in Queens, NY).

In Decision No. 113 (issued January 22, 1999), the Board's Secretary granted a 60-day extension of the deadline for the submission, by CSX and IC,[FOOTNOTE 12: *Illinois Central Railroad Company.*] of a status report relative to implementation of the Leewood-Aulon condition, which concerns dispatching of the Leewood-Aulon line in Memphis, TN.

In Decision No. 114 (issued February 5, 1999), the Board revised two environmental conditions (Condition Nos. 21 and 51) to reflect the terms of a settlement agreement that had been entered into by CSX and the cities (known as the Four Cities) of East Chicago, Hammond, Gary, and Whiting, IN.

In Decision No. 115 (issued February 8, 1999), to implement the IP&L condition relative to access by NS to IP&L's Stout generating plant (located in Indianapolis, IN), the Board ordered CSX to procure the necessary trackage rights from INRD,[FOOTNOTE 13: Indiana Rail Road Company.] a carrier in which CSX holds an 89% controlling interest.

In Decision No. 116 (issued February 23, 1999), the Board's Secretary granted a 45-day extension of the deadline by which CSX and NS were to complete negotiations with the State of Ohio regarding highway/rail at-grade crossing improvements.

In Decision No. 117 (issued February 25, 1999), the Board's Secretary granted extensions of the deadlines by which CSX and NS were required to certify compliance with several environmental conditions.

In Decision No. 118 (issued March 23, 1999), the Board revised two environmental conditions (Condition Nos. 8 and 51) to reflect the terms of a settlement agreement entered into by CSX and the Village of Ridgefield Park, NJ, and the terms of a settlement agreement entered into by NS and the City of Lafayette, IN.

In Decision No. 119 (issued March 23, 1999), the Board's Secretary granted a 30-day extension of the deadline for the submission, by CSX and IC, of a status report relative to implementation of the Leewood-Aulon condition.[FOOTNOTE 14: By letter filed April 22, 1999, CSX notified the Board that CSX and IC have established a protocol for dispatching the Leewood-Aulon line pursuant to that condition. They will test the protocol for a period extending until August 1, 1999, after which they will report back to the Board.]

In Decision No. 120 (issued April 5, 1999), the Board's Secretary extended, to June 1, 1999, the deadline by which CSX and NS must complete negotiations with the State of Ohio regarding highway/rail at-grade crossing improvements.

In Decision No. 121 (issued April 14, 1999), the Board revised two environmental conditions (Condition Nos. 11 and 51) to reflect the terms of a settlement agreement entered into by CSX and the Village of Deshler, OH.

In Decision No. 122 (issued April 15, 1999), the Board's Secretary granted a brief extension of the deadline for filing replies to a pleading filed by General Mills, Inc., requesting the Board's issuance of a declaratory order concerning the Buffalo Creek condition.

In Decision No. 123 (issued May 20, 1999), the Board addressed requests by CSX and CP for reconsideration of a prior decision that had set initial compensation for the trackage rights awarded to CP under the "east of the Hudson" condition.

In Decision No. 124 (issued May 20, 1999), the Board addressed a petition filed by Occidental Chemical Corporation seeking modification of the Niagara Falls condition.

In Decision No. 125 (issued May 20, 1999), the Board addressed a petition filed by CSX seeking reconsideration or clarification of Decision No. 115 with respect to the IP&L condition.

In Decision No. 126 (issued May 20, 1999), the Board addressed the request filed by General Mills for the issuance of a declaratory order concerning the Buffalo Creek condition.

In Decision No. 127 (issued May 20, 1999), the Board announced that the date on which the division of the assets of Conrail will be effected by and between CSX and NS (i.e., the date that has been referred to variously as Day One, the Closing Date, and the Split Date) will be June 1, 1999.

DECISIONS ISSUED IN ARBITRATION REVIEW PROCEEDINGS IN 1999

The *New York Dock* labor protective conditions establish a process (negotiation, if possible; arbitration, if necessary) for achieving the labor "implementing arrangements" required to effectuate the division of Conrail's assets between CSX and NS. Arbitration awards entered by two *New York Dock* arbitrators have been the focus of arbitration review proceedings before the Board and, consistent with the Board's ongoing directive to negotiate these matters, the applicants and affected unions have reached settlement agreements resulting in the voluntary withdrawal of all appeals, as set forth below.

The Sub-No. 88 Arbitration Review Proceeding. In the Sub-No. 88 arbitration review proceeding, [FOOTNOTE 15: *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 (Arbitration Review)*, STB Finance Docket No. 33388 (Sub-No. 88).] the Brotherhood of Maintenance of Way Employees (BMWE) and the International Association of Machinists and Aerospace Workers (IAM) appealed an implementing arrangement arbitration award entered on January 14, 1999, by Arbitrator William E. Fredenberger, Jr., and requested that implementation of the award be stayed pending the resolution of their appeals. Six decisions were issued by the Board in the Sub-No. 88 proceeding.

By decision issued January 29, 1999, the Board's Secretary extended to February 12, 1999, the deadline for filing appeals to the Fredenberger Award.

By decision issued February 19, 1999, the Board's Secretary extended to February 22, 1999, the deadline for filing a reply to IAM's request for a stay.

By decision issued February 24, 1999, the Board's Secretary extended to March 12, 1999, the deadline for filing a reply to BMWE's appeal and its stay request.

By decision issued March 11, 1999, the Board's Secretary extended to March 24, 1999, the deadline for filing a reply to BMWE's appeal and its stay request.

By decision issued May 5, 1999, Chairman Morgan, noting that the ratification by the BMWE membership of a settlement that BMWE had reached with the carriers had left only IAM's appeal and stay request outstanding, and

expressing the hope that the settlement of the issues respecting BMW E might facilitate a settlement of the issues relative to IAM, stayed until May 20, 1999, the effect of the Fredenberger Award to the extent that Award covers the rights of IAM employees that are the subject of IAM's appeal.

By decision issued May 18, 1999, the Board's Secretary, noting that BMW E and IAM, with the benefit of the stay, had reached settlement agreements with the applicants and that BMW E and IAM had withdrawn their appeals, ordered that the Sub-No. 88 proceeding be discontinued.

The Sub-No. 89 Arbitration Review Proceeding. In the Sub-No. 89 arbitration review proceeding, [FOOTNOTE 16: *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 (Arbitration Review)*, STB Finance Docket No. 33388 (Sub-No. 89).] the Transport Workers Union of America (TWU) appealed an implementing arrangement arbitration award entered on February 27, 1999, by Arbitrator Richard R. Kasher. Three decisions were issued in the Sub-No. 89 proceeding.

By decision issued April 1, 1999, the Board's Secretary extended to April 14, 1999, the deadline for filing a reply to TWU's appeal.

By decision issued April 29, 1999, the Board's Secretary, noting that TWU had reached a settlement with CSX and had therefore withdrawn its appeal insofar as it related to CSX, and noting further that TWU had also reached a settlement with NS that, if ratified by the TWU membership, would allow TWU to withdraw its appeal in its entirety, granted a request made jointly by TWU and NS that the Sub-No. 89 proceeding be held in abeyance until September 1, 1999.

By decision issued May 11, 1999, the Board's Secretary, noting that TWU had reached a final settlement with NS and had therefore withdrawn its appeal, ordered that the Sub-No. 89 proceeding be discontinued.

AVAILABILITY OF COPIES OF DECISIONS

Printed copies of the written decisions discussed in this news release are available for a fee by contacting: **D.C. News & Data, Inc., Room 210, 1925 K Street, N.W., Washington, DC 20006, telephone (202) 463-8112.** These decisions are available for viewing and downloading via the Board's website at **www.stb.dot.gov**.

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