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SERVICE DATE – SEPTEMBER 25, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36420

COMMUTER RAIL DIVISION OF THE REGIONAL TRANSPORTATION AUTHORITY
D/B/A METRA—PETITION FOR DECLARATORY ORDER

Decided: September 24, 2020

Digest:¹ The Board denies a request for a declaratory order on issues already pending before a district court that declined to refer the issues to the Board. The Board declines to institute a proceeding and denies a related petition for preliminary injunction.

On July 21, 2020, the Commuter Rail Division of the Regional Transportation Authority d/b/a Metra (Metra) filed a petition for declaratory order and a petition for preliminary injunction arising out of a 2010 Purchase of Service Agreement (PSA), which was set to expire on August 31, 2020, after multiple extensions. Under that agreement, Union Pacific Railroad Company (UP) operates three of Metra's commuter rail lines in the Chicago region. For the reasons discussed below, the Board will deny the petitions and discontinue this proceeding.

BACKGROUND

According to Metra, the PSA has been subject to a series of 60-day extensions during this calendar year as the parties have attempted to negotiate the terms of a new arrangement. (Pet. for Declaratory Order 8.) Metra states that on June 30, 2020, UP advised Metra that UP would begin to phase out various specific services provided under the PSA on July 31, 2020. (Id. at 9, Ex. C (June 30 letter).)

Last December, UP filed suit in federal court seeking a declaration that UP has no common carrier obligation to operate commuter rail passenger service on its lines after the PSA expires.² (Pet. for Declaratory Order 9.) On March 3, 2020, Metra moved to dismiss or stay that case and asked the court to refer the issues to the Board under the doctrine of primary jurisdiction. (Id.) That motion was pending when Metra filed its petitions with the Board on July 21, 2020. (Id.)

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² Union Pac. R.R. v. Commuter Rail Div. of the Reg'l Transp. Auth., No. 1:19-cv-07957 (N.D. Ill. filed Dec. 5, 2019).

Metra seeks a declaratory order from the Board finding that UP has a “continuing common carrier obligation to provide commuter rail passenger service” on the subject UP lines and that the Board has the jurisdiction and authority to require UP to fulfill that obligation. (Pet. for Declaratory Order 2.) Metra also seeks a preliminary injunction ordering UP to “continue to operate, and provide the services associated with the operation of, the three lines . . . until the Board issues a decision on the question presented in Metra’s Petition for a Declaratory Order.” (Pet. for Prelim. Inj. 18.)

On July 22, 2020, UP filed a motion to hold the proceeding in abeyance pending a decision on Metra’s motion to dismiss or stay the federal district court case. UP argued that the district court case involves the same issues that Metra has subsequently brought before the Board, and that the district court has jurisdiction to grant Metra preliminary injunctive relief if warranted. (UP Mot. 1-2.)³ Metra responded to UP’s motion for abeyance on July 24, 2020, arguing that the dispute over UP’s common carrier obligation presents a question of law that is more properly before the Board and that the motion ignored UP’s June 30 letter to Metra. (Metra Reply 2.)

On August 6, 2020, the Board held this proceeding in abeyance pending further Board order and directed the parties to promptly notify the Board of any decision by the district court.⁴ On August 27, 2020, UP, in coordination with Metra, notified the Board that the district court that day had denied Metra’s motion to dismiss or stay the case and refer the issues to the Board. (UP Ltr. 1, Aug. 27, 2020.)

DISCUSSION AND CONCLUSIONS

The Board has discretionary authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321 to issue a declaratory order to terminate a controversy or remove uncertainty. See Bos. & Me. Corp. v. Town of Ayer, 330 F.3d 12, 14 n.2 (1st Cir. 2003); Delegation of Auth.—Declaratory Order Proc., 5 I.C.C.2d 675 (1989). Here, the issues raised in Metra’s petition are already pending before the district court, which has concurrent jurisdiction over this matter (including authority to order injunctive relief if warranted), and which denied Metra’s motion to refer the issues to the Board. In these circumstances, the Board will deny Metra’s request for a declaratory order and decline to institute a proceeding, and consequently will also deny the

³ UP also noted that briefing on Metra’s motion in the district court was scheduled to be completed the next day. (UP Mot. 1.)

⁴ On August 18, 2020, comments in support of Metra’s petition for preliminary injunction were filed by a coalition of labor and passenger rail organizations consisting of the Transportation Communications Union, Brotherhood of Railway Carmen, International Association of Machinists & Aerospace Workers, Rail Passengers Association, and Transportation for America.

petition for preliminary injunction. See, e.g., Tesoro Ref. & Mktg. Co.—Pet. for Declaratory Order, FD 36041, slip op. at 3-5 (STB served Nov. 16, 2016) (declining to institute proceeding and denying related petitions where district court had concurrent jurisdiction and denied motion to refer).

It is ordered:

1. Metra's petition for declaratory order and petition for preliminary injunction are denied.
2. This decision is effective on its service date.

By the Board, Board Members Begeman, Fuchs, and Oberman. Board Member Oberman did not participate.