

SERVICE DATE – APRIL 13, 2021

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36332

PETITION BY THE NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)
FOR PROCEEDING UNDER 49 U.S.C. § 24903(c)(2)

Digest:¹ The Board denies a motion to strike and allows the Northeast Illinois Regional Commuter Railroad Corporation and the Commuter Rail Division of the Regional Transportation Authority to file a response.

Decided: April 9, 2021

On July 22, 2019, the National Railroad Passenger Corporation (Amtrak) filed a petition under 49 U.S.C. § 24903(c)(2), requesting that the Board institute a proceeding to determine the compensation and terms for the use of Chicago Union Station by the Northeast Illinois Regional Commuter Railroad Corporation and the Commuter Rail Division of the Regional Transportation Authority (collectively, Metra).

The Board instituted a proceeding on September 27, 2019, and, after engaging in discovery, the parties filed confidential versions of their opening statements on May 20, 2020, and confidential versions of their replies on June 24, 2020.² Following a period of Board-sponsored mediation requested by the parties, which ended on December 4, 2020, Amtrak and Metra filed supplemental initial briefs on January 22, 2021, and supplemental reply briefs on February 19, 2021.

Meanwhile, on January 19, 2021, Metra filed a letter identifying 16 errata in its June 24, 2020 reply brief. Amtrak responded to Metra's errata letter on January 29, 2021, contending that Metra did not fully correct the errors in its reply brief, explain the meaning of the errors, or correct the errors in the verified statements it submitted in support of its reply brief. Amtrak also offered an explanation and context for the errata. On February 8, 2021, Metra filed a motion to strike Amtrak's January 29, 2021 letter as an impermissible surreply to Metra's June 24, 2020 reply brief, alternatively requesting leave to file a substantive response to Amtrak's January 29, 2021 letter. Amtrak responded to Metra's motion to strike on February 11, 2021, arguing that its

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 Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² The parties filed public versions of their opening statements and replies on May 27 and July 1, 2020, respectively.

January 29, 2021 letter did not constitute an improper surreply but rather a permissible response to the errors Metra introduced into the record through its errata letter. Additionally, Amtrak stated that it has no objection to Metra filing a substantive response.

In the interest of building a full record and as there is no real controversy given Amtrak's consent, Metra's motion to strike will be denied and the Board will allow Metra until April 20, 2021, to file a response for the limited purpose of addressing the issues Amtrak raised in its January 29, 2021 letter.

It is ordered:

1. Metra's motion to strike is denied. Metra may file a response to Amtrak's January 29, 2021 letter by April 20, 2021.
2. This decision is effective on its service date.

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