

ENTERED
Office of Proceedings
May 5, 2022
Part of
Public Record

SURFACE TRANSPORTATION BOARD

Ex Parte 711 (Sub. No. 1)

Summary of Ex Parte Meeting Between Norfolk Southern Railway Company

and Surface Transportation Board Chairman Martin Oberman

April 21, 2022

Norfolk Southern Attendees:

- Tom Zoeller, General Counsel Markets and Regulation
- Randy Noe, AVP Regulatory Affairs
- Raymond Atkins, Counsel to Norfolk Southern

STB Attendees:

- Martin Oberman, Chairman
- Ellen Erichsen, Chief of Staff
- Laura Wilson, Attorney Advisor
- Carolyn Chachkin, Attorney Advisor
- Stephanie Borges, Administrative Assistant

Meeting Summary:

The meeting began with a discussion of existing regulatory remedies for service issues and whether they are suitable tools for addressing service problems. Norfolk Southern offered the perspective that in light of existing service remedies, when combined with existing rate mechanisms, taking a no-fault approach to reciprocal switching is redundant and unnecessary. The better way forward in Norfolk Southern's view is to address any perceived deficiencies in the existing regulations on inadequate service (49 C.F.R. § 1147), regulations which have been in place for over 20 years.

Chairman Oberman asked why from Norfolk Southern's perspective focusing on existing service remedies was preferable to the proposal in EP 711 (Sub-No. 1). Norfolk Southern said there are two primary reasons – first, the existing service regulations set a standard within the railroads' control and as long as they abide by it a regulatory remedy won't be imposed against them; second, the existing service remedies are not permanent, and while they encourage railroads to fix service problems, which is desirable, they do not create significant disincentives for investment the way a permanent remedy would, which is undesirable.

Chairman Oberman suggested that permanence may be more of a theoretical problem than a real-world one. He asked whether Norfolk Southern had any data on what percentage of its customers who are open to reciprocal switch actually use it. Norfolk Southern said it would look into that, but noted that even if a reciprocal switch were open but not used it would still result in rate compression and create a disincentive to invest.

Chairman Oberman suggested that in order for a service remedy to be practically usable by a shipper, there would need to be some minimum period of time in which it would be available, and asked whether there would be downward pressure on rates during whatever period the remedy was granted.

Norfolk Southern agreed it would, but permanent relief would provide a much greater disincentive than temporary relief.

The meeting participants discussed how the existing service regulations fit into the overall regulatory scheme and whether the regulations could be revised to make them clearer and provide parties greater certainty.

They also discussed the spectrum of available relief provided by the regulations at 1146, 1147, and 1144, and Norfolk Southern expressed its view that this approach makes sense.

The last topic discussed was the idea of taking an incremental approach to reciprocal switching. Norfolk Southern said that while it appreciated a more incremental way forward, it was concerned that one of the ideas raised during the hearing – the availability of a no-fault reciprocal switching rule at locations that are already open to reciprocal switching – would fall more heavily on railroads that have been more generous with voluntary reciprocal switching.

Norfolk Southern thanked Chairman Oberman for the opportunity to further discuss the Board's 2016 reciprocal switching proposal and Chairman Oberman thanked the Norfolk Southern team for meeting with him and offering its perspective.