

SERVICE DATE — JULY 1, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36496

APPLICATION OF THE NATIONAL RAILROAD PASSENGER CORPORATION UNDER
49 U.S.C. § 24308(e)—CSX TRANSPORTATION, INC., AND NORFOLK SOUTHERN
RAILWAY COMPANY

Decided: July 1, 2022

On May 19, 2022, the National Railroad Passenger Corporation (Amtrak) filed a motion requesting that the Board order CSX Transportation, Inc. (CSXT) and Norfolk Southern Railway Company (NSR) to redesignate all the materials produced in connection with the 2020 and 2021 Rail Traffic Controller (RTC) studies from “highly confidential” to “confidential.” Amtrak made the request so that its personnel could work with its outside consultants to submit to the Board additional RTC modeling. (Amtrak Mot. 1, May 19, 2022.) In the alternative, Amtrak requested that the Board modify the protective order served on April 14, 2021, to allow certain Amtrak personnel to access this highly confidential material after they signed the highly confidential undertaking pursuant to the protective order. (Amtrak Mot. 1, May 19, 2022.) In addition, Amtrak requested that the Board order CSXT and NSR to produce the additional RTC analyses that Mark Dingler testified that he performed during the hearing on the record, as well as all supporting workpapers. (*Id.*) CSXT and NSR opposed Amtrak’s motion. (*See* CSXT & NSR Reply, May 31, 2022.)

On May 23, 2022, Amtrak filed a motion to compel CSXT and NSR to produce information requested in Amtrak’s supplemental interrogatories to CSXT and NSR. (Amtrak Mot. to Compel 1, May 23, 2022.) On May 31, 2022, CSXT and NSR replied in opposition to the motion to compel. (*See* CSXT & NSR Reply Mot. to Compel, May 31, 2022.)

By decision served June 10, 2022, the Board, among other things, modified the protective order in this proceeding to allow certain Amtrak personnel to access select materials designated as “highly confidential,” provided those Amtrak personnel sign the undertaking for “highly confidential” material. See Appl. of the Nat’l R.R. Passenger Corp. Under 49 U.S.C. § 24308(e)—CSX Transp., Inc., FD 36496, slip op. at 2 (STB served June 10, 2022). The Board also noted that it would address in a subsequent decision several remaining outstanding matters, including Amtrak’s request, in its motion for redesignation, that CSXT and NSR produce the additional RTC analyses Mr. Dingler testified he performed. (*Id.* at 2 n.4, 5.)

On June 24, 2022, CSXT and NSR filed a status report on their discussions with Amtrak regarding the supplemental interrogatories and explained that CSXT and NSR have each agreed to produce certain information and documents to Amtrak. (CSXT & NSR Status Report 1,

June 24, 2022.) CSXT and NSR anticipate that they will complete production by July 1, 2022. (See id.)

In light of the status report, CSXT, NSR, and Amtrak will be directed to file with the Board a joint status report, if possible, or separate status reports, if necessary, by July 6, 2022. In the status report(s), CSXT and NSR must state whether they have completed the production of information and documents to Amtrak referenced in the June 24 status report. Additionally, Amtrak must identify any outstanding discovery requests from the motion to compel or from the motion for redesignation that still require Board resolution.

It is ordered:

1. CSXT, NSR, and Amtrak shall file with the Board a joint status report, if possible, or separate status reports, if necessary, by July 6, 2022, as explained above.
2. This decision is effective on its service date.

By the Board, Mai T. Dinh, Director, Office of Proceedings.