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SERVICE DATE – SEPTEMBER 19, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36629

RAIL LINK, INC.—
PETITION FOR DECLARATORY ORDER

Decided: September 19, 2022

On August 4, 2022, Rail Link, Inc. (Rail Link), filed a petition for declaratory order requesting that the Board institute a proceeding and establish a procedural schedule to address the issues referred to the Board by the District Court of Harris County, Texas (Court) in Reed v. Ineos Americas LLC, No. 2019-29955 (Tex. Dist. Ct., 215th Jud. Dist., Harris County July 7, 2022). As explained below, the Board will institute a declaratory order proceeding and establish a procedural schedule.

The Court referral stems from a lawsuit filed by Demaree Reed, a Rail Link employee, against Rail Link and other entities. According to the petition, Reed has asserted a personal injury claim against Rail Link under the Federal Employers' Liability Act, 45 U.S.C. §§ 51-60 (FELA), and Rail Link has asserted that it is not subject to a claim under FELA because it does not provide rail service as a common carrier. The Court ordered that the issue of Rail Link's common carrier status be referred to the Board.

Under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321, the Board has discretionary authority to issue a declaratory order to terminate a controversy or remove uncertainty. The matter above has been referred by a court of competent jurisdiction and is within the Board's jurisdiction. Therefore, a proceeding will be instituted to address the issue referred by the Court.

Rail Link proposes an abbreviated 16-day procedural schedule, asserting that discovery in the Court case has been completed. Counsel for Reed did not respond to Rail Link's proposed procedural schedule. Rail Link's proposed procedural schedule will be modified to ensure that the parties have sufficient time to prepare their arguments. Rail Link's opening statement will be due 20 days from the date this decision is served. Reed's reply statement will be due 20 days after Rail Link's opening statement is served. Rail Link's rebuttal statement will be due 10 days after Reed's reply statement is served.

It is ordered:

1. A declaratory order proceeding is instituted.
2. The parties shall comply with the procedural schedule as set forth in this decision.
3. This decision is effective on its service date.

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