

SERVICE DATE – NOVEMBER 2, 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

Digest:¹ This decision extends Board-sponsored mediation and denies, without prejudice, a joint request to stay the underlying proceeding during mediation.

Decided: November 2, 2022

BACKGROUND

On April 4, 2022, the Board commenced the evidentiary hearing phase of this proceeding, which continued on April 5, 6, 8, 12, 14, 18, and 19, and on May 9, 11, and 12, involving the National Railroad Passenger Corporation (Amtrak), CSX Transportation, Inc. (CSXT), Norfolk Southern Railway Company (NSR), and the Alabama State Port Authority and its rail carrier division, the Terminal Railway Alabama State Docks (collectively, the “Port”; and with Amtrak, CSXT, and NSR, the “Parties”). A decision served on October 28, 2022, announced that the evidentiary hearing would continue on November 17 and 18, 2022, and scheduled a voting conference for December 7, 2022. See Appl. of the Nat’l R.R. Passenger Corp. Under 49 U.S.C. § 24308(e)—CSX Transp., Inc., FD 36496 (STB served Oct. 28, 2022).

On October 31, 2022, the Parties filed a joint motion requesting that the Board order the Parties to participate in a second round of Board-sponsored mediation, to begin on November 2, 2022, and conclude on December 1, 2022.² (Parties Joint Motion 1-2, Oct. 31, 2022.) The Parties also request that the Board stay the proceeding until December 1, 2022 while they continue to mediate. (Id.) According to the Parties, it would be difficult to focus on settlement efforts while also preparing for the November 17 and 18 hearing and the December 7 voting conference. (Id. at 2.)

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 By decision served June 10, 2022, the Board, among other things, ordered the Parties to participate in Board sponsored mediation. 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 5 (STB served June 10, 2022). At the Parties’ request, the mediation period was extended three times, concluding on October 25, 2022.

The Board favors the resolution of disputes through mediation in lieu of formal Board proceedings whenever possible. 49 C.F.R. § 1109.1; see generally BNSF Ry.—Terminal Trackage Rts.—Kan. City S. Ry., FD 32760 (Sub-No. 46) (STB served July 3, 2019); Nat’l R.R. Passenger Corp.—Investigation of Substandard Performance of the Capitol Ltd., NOR 42141 (STB served Apr. 7, 2015). In light of the Parties’ desire to continue to mediate, the Board will order the Parties to resume mediation and will extend the mediation period to December 1, 2022.

However, at this time the Board denies, without prejudice, the request to stay the underlying proceeding during mediation. This case has already involved substantial delay since the last hearing session on May 12, 2022. The Board granted the Parties substantial additional time to submit supplemental evidence and even before today extended the mediation period several times. The public interest militates against further delay of the evidentiary hearing phase of this proceeding and the Board’s planned voting conference.

Because the Board would still prefer the Parties to reach a settlement, however, the Board will afford the Parties an opportunity to persuade it that a change in the procedural schedule is warranted and would be constructive. The Parties may either seek to reschedule the hearing dates or waive further evidentiary hearing. In either event, if each of the Parties submits a statement signed by its chief executive officer (CEO), by **November 10, 2022**, certifying that substantial progress has been made towards reaching a settlement with an explanation that there is a substantial probability that a settlement will be reached, the Board will entertain a motion to cancel the hearing on November 17 and 18.

If each of the Parties submits only the signed statement described above, and all do not waive the additional evidentiary hearing, and the Board determines that the November 17 and 18 hearing dates should be postponed, the hearing will be rescheduled for November 30 and December 1, 2022, to be conducted virtually by Zoom. If each of the Parties submits the signed statement and waives additional evidentiary hearing before the Board (thereby agreeing that the Board may decide the case on the record already presented and compiled), the Board will cancel the additional hearing dates without rescheduling for November 30 and December 1.

If each of the Parties does not submit the signed statement described above, the hearing will continue on November 17 and 18. Unless the Parties inform the Board that they have agreed to a settlement, the voting conference will take place as scheduled on December 7, 2022.³

It is ordered:

1. Mediation is extended to December 1, 2022, as discussed above.
2. The request to stay the underlying proceeding during mediation is denied without prejudice.

³ The Board will serve a subsequent decision if any changes to the schedule are necessary.

3. The Parties may submit statements signed by their CEOs by November 10, 2022, as discussed above.

4. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.