

SERVICE DATE – MAY 2, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36695

THE WENGER GROUP, INC., AND ESBENSHADE, INC.
—PETITION FOR DECLARATORY ORDER AND INJUNCTIVE RELIEF—
RAIL SERVICE TO PENNSYLVANIA FEED MILLS AND OTHER FACILITIES

Decided: May 2, 2023

On April 24, 2023, The Wenger Group, Inc., and Esbensshade, Inc. (collectively, Petitioners), filed a petition under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321, requesting declaratory and injunctive relief. Petitioners' facilities are located on a rail line owned by the National Railroad Passenger Corporation (Amtrak) that runs between Rheems, Pa., and Lancaster, Pa. (the Line). (Pet. 3.) Norfolk Southern Railway (NSR) provides rail service to Petitioners' facilities pursuant to a trackage rights agreement between NSR and Amtrak. (*Id.*) Petitioners state that Amtrak intends to block all freight rail service on the Line for at least six weeks, beginning on May 20, 2023, to allow for a planned track project. (*Id.* at 3-4, 4 n.4.) Petitioners seek a declaration that the cessation of freight rail service during Amtrak's track project would be a violation of their right to receive rail service upon reasonable request under 49 U.S.C. § 11101(a). (Pet. 9.) Petitioners also request that the Board enjoin Amtrak from carrying out its planned shutdown of the Line until the Board approves a freight rail service plan filed by Amtrak and NSR that preserves service to Petitioners on the same terms and with the same frequency that NSR currently provides. (*Id.* at 12.) In the alternative, Petitioners request that the Board issue a directed service order under 49 U.S.C. § 11123 that would preserve the status quo for at least 30 days to allow for Amtrak and NSR to work out a feasible way to accomplish necessary track work while providing freight rail service. (Pet. 17-18.) Petitioners further request that, should the track project go forward without continued freight service, the Board provide guidance and direction on the categories of damages that Petitioners may pursue from Amtrak and/or NSR. (*Id.* at 19.)

By decision served April 26, 2023, Amtrak and NSR were directed to reply to Petitioners' requests for injunctive relief and a directed service order by May 1, 2023.¹ In its May 1, 2023 reply, Amtrak indicated that its counsel was scheduled to speak with Petitioners' counsel on May 2, 2023, to address the concerns raised in the petition.

¹ Amtrak and NSR were directed to respond to Petitioners' request for declaratory relief by May 15, 2023.

Petitioners, Amtrak, and NSR are directed to file a status report, jointly if possible, no later than 5:00 PM EDT on May 3, 2023, updating the Board on the status of the dispute following Amtrak and Petitioners' meeting.

It is ordered:

1. Petitioners, Amtrak, and NSR are directed to file a status report, jointly if possible, no later than 5:00 PM EDT on May 3, 2023.
2. This decision is effective on its service date.

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