

SERVICE DATE – JUNE 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: June 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 certain declaratory and injunctive/directed service relief related to rail service to their facilities provided by Norfolk Southern Railway Company (NSR) over a rail line owned by the National Railroad Passenger Corporation (Amtrak) between Rheems, Pa., and Lancaster, Pa. (the Line). (Pet. 3.) By decision served May 11, 2023, this proceeding was placed in abeyance, and all deadlines were tolled until further order of the Board.¹

By decision served May 18, 2023, the Board granted the request of Kellogg Company (Kellogg) for leave to intervene in this proceeding. The Board also granted the joint requests of Kellogg and NSR to lift the stay of proceedings as to Kellogg and set a May 30, 2023 deadline for responses to the petition for declaratory relief and for responses to Kellogg's request for injunctive relief and a directed service order. Further, the Board ordered Kellogg and NSR to file certain supplemental information by May 23, 2023. Specifically, as relevant here, the Board ordered NSR to submit its recommendations regarding feasible alternatives to Amtrak's approach to the track work that would allow for continued freight rail service. NSR filed its reply, including its supplemental information, on May 23, 2023.

On May 30, 2023, Amtrak responded to Kellogg's requests for declaratory and injunctive relief but indicated that it would respond to NSR's supplemental information by June 12, 2023. (Amtrak Reply 5 n.2.) By letter filed on June 1, 2023, NSR asserts that, "in light of the urgency of the issues alleged in this case, and the fact that the Board has already set an expedited schedule to reflect that urgency," Amtrak's response should likewise be expedited and due no later than June 6, 2023. (NSR Letter 1-2.) By letter also filed on June 1, 2023, Amtrak objects to NSR's request to expedite Amtrak's response because it would require Amtrak to divert resources away from "efforts to reach a practical solution to the issues in this case." (Amtrak Letter 2.)

¹ On May 30, 2023, Petitioners filed a motion to dismiss their petition, as they and Amtrak have finalized a settlement agreement. The motion to dismiss will be addressed in a separate decision.

Amtrak will be ordered to file its response to NSR's supplemental information by June 6, 2023. This provides Amtrak ample time to review NSR's submission, while ensuring that the Board can consider the record in a timely manner.

It is ordered:

1. Amtrak's response to NSR's supplemental information is due by June 6, 2023.
2. This decision is effective on its service date.

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