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SERVICE DATE – SEPTEMBER 15, 2023

SURFACE TRANSPORTATION BOARD

Docket No. NOR 42175

COMPLAINT AND PETITION OF THE NATIONAL RAILROAD PASSENGER CORP. UNDER
49 U.S.C. § 24308(f)–FOR SUBSTANDARD PERFORMANCE OF AMTRAK’S SUNSET
LIMITED TRAINS 1 AND 2

ORDER MEMORIALIZING SEPTEMBER 7, 2023 CONFERENCE CALL

Before: Judge McCarthy

On December 8, 2022, National Railroad Passenger Corporation (“Amtrak”) filed a Complaint and Petition

invoking the Board’s authority pursuant to Section 213 of the Passenger Rail Investment and Improvement Act of 2008 (“PRIIA”) (codified at 49 U.S.C. § 24308(f)) to initiate an investigation into the customer on-time performance of Amtrak’s Sunset Limited Service and award Amtrak damages and other relief. At the same time, Amtrak submitted a “Proposed Procedures and Framework” for the Board to follow in this proceeding. Amtrak alleges that Union Pacific Railroad Company (“UP”) is largely responsible for the performance of the Sunset Limited Trains and suggests the Board’s investigation should focus primarily on UP.

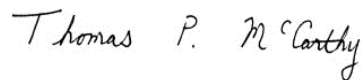
See Union Pacific Railroad Company’s (“Union Pacific”) Request for Extension of Time to Respond to Amtrak, December 19, 2022, NOR 42175, at 2.

On July 9, 2023, the undersigned was assigned as the Administrative Law Judge tasked with overseeing discovery disputes in NOR 42175 pursuant to an interagency agreement between the Federal Mine Safety and Health Review Commission and the Surface Transportation Board. The Board memorialized this assignment in a Decision issued on July 11, 2023. In that Decision, the Board initiated an investigation under section 213 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), Pub. L. No. 110-432, 122 Stat. 4848, codified at 49 U.S.C. § 24308(f)(1), to examine the cause(s) of substandard on-time performance on Amtrak’s Sunset Limited service. See July 2023 Decision, NOR 42175, slip op. at 10. The Decision also set a 120-day period for party-led discovery, which was set to run concurrently with the Board’s investigation. *Id.* at 13. Accordingly, discovery ends on November 8, 2023.

On August 23, 2023, Union Pacific served Amtrak with 150 requests for production and interrogatories, with a response date of September 7. *See* Amtrak Mot. for Protective Order at 4-5. On September 1, 2023, Amtrak filed a Motion for a Protective Order Pursuant to 49 C.F.R. § 1114.21(C). *Id.* Within its motion, Amtrak requested “either that the discovery not be had, pursuant to 49 C.F.R. § 1114.21(c)(1), or that the scope of discovery be limited, as provided in 49 C.F.R. § 1114.21(c)(5).” *Id.*

On September 7, 2023, the undersigned held a conference call regarding the Motion. All parties to these proceedings were represented. After extensive discussion with the undersigned, Union Pacific and Amtrak were ordered to ‘meet and confer’ with respect to each of the 150 discovery requests served by Union Pacific on Amtrak by C.O.B. on Friday, September 22, 2023. Following a compromise proposed by the undersigned based on arguments set forth in Amtrak’s motion, the parties agreed that – unless good cause is otherwise shown – any discovery request would not relate back further than November 16, 2020, the date of the Board’s publication of its Customer OTP Rule. Further, the parties agreed to identify any instance(s) where UP’s discovery requests were duplicative of the forty-four interrogatories and document requests already issued to Amtrak by the Board and they agreed that duplicative discovery would not be required.

Wherefore, the undersigned restates the Order dictated telephonically during the conference call on September 7, 2023, and encourages the parties to continue to work cooperatively consistent with past practice to resolve any future discovery issues.



Thomas P. McCarthy
Administrative Law Judge
Surface Transportation Board

Distribution:

Jessica Ring Amunson
Alex Trepp
Grace Wallack
Michael B. Kang
Jenner & Block, LLP
1099 New York Avenue, NW, Suite 900
Washington, DC 20001
jamunson@jenner.com
atrepp@jenner.com
gwallack@jenner.com
MKang@jenner.com

Eleanor D. Acheson
Executive Vice President and General Counsel
National Railroad Passenger Corporation
1 Massachusetts Avenue, NW
Washington, DC 20001

Michael L. Rosenthal
Samuel Crimmins
Covington & Burling LLP
One CityCenter
850 Tenth Street, N.W.
Washington, DC 20001
mrosenthal@cov.com

Craig V. Richardson
James B. Boles
Josephine Jordan
Joseph Price
Union Pacific Railroad Company
1400 Douglas Street
Omaha, NE 68179

Ali Mojibi
Covington & Burling LLP
1999 Avenue of the Stars
Los Angeles, CA 90067