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SERVICE DATE – FEBRUARY 6, 2024

SURFACE TRANSPORTATION BOARD

DECISION

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

Digest:¹ The Board delegates authority to the Director of the Office of Passenger Rail to perform certain functions as part of this investigative proceeding.

Decided: February 6, 2024

By decision issued on July 11, 2023 (July 2023 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), to examine the cause(s) of substandard on-time performance of Amtrak’s *Sunset Limited* service from October 1, 2021, through December 8, 2022 (the Relevant Period). The *Sunset Limited* is a 1,997-mile-long Amtrak passenger train service that runs three times weekly, in each direction, between New Orleans, La., and Los Angeles, Cal.

After directing the parties in the July 2023 Decision to file an initial round of evidence, the Board subsequently issued decisions amending one of its requests for information, see Complaint & Pet. of the Nat’l R.R. Passenger Corp. Under 49 U.S.C. § 24308(f)—for Substandard Performance of Amtrak’s Sunset Ltd. Trains 1 & 2, NOR 42175 (STB served Aug. 3, 2023), and directing Amtrak, UP, and BNSF to clarify their responses to several of the Board’s requests for information, see Complaint & Pet. of the Nat’l R.R. Passenger Corp. Under 49 U.S.C. § 24308(f)—for Substandard Performance of Amtrak’s Sunset Ltd. Trains 1 & 2, NOR 42175 (STB served Nov. 20, 2023).

Given the volume and technical nature of the evidence contained in this record, the Board will need to issue additional decisions directing parties to clarify, correct, or supplement the record as the investigation progresses. To expedite this process, the Board will delegate certain functions, as they relate to this docket only, to the Director of the Office of Passenger Rail (OPR).

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).

Under 49 C.F.R. § 1011.2(a), the Board reserves for itself consideration and disposition of “[a]ll investigations and other proceedings instituted by the Board, except as may be ordered in individual situations.” The Board finds that, for this investigation, delegating authority for certain investigative functions to the Director of OPR is warranted. Permitting the Director of OPR to issue such decisions will increase administrative efficiency while ensuring that the investigative proceeding continues as expeditiously as possible. The Board will therefore delegate to the Director of OPR, for purposes of this proceeding only,² the following functions:

- Directing a party (or parties) to clarify, modify, or reformat evidence that has previously been submitted or to produce evidence to supplement evidence that has previously been submitted (including evidence that was provided pursuant to a decision of the entire Board);
- Directing a party (or parties) to produce any information, documents, books, papers, correspondence, memoranda, agreements, or other records, in any form or media, that is likely to be directly relevant to the issues of the Board’s passenger on-time performance investigation; and
- Disposing of routine procedural matters directly related to the foregoing delegations, including, as appropriate, the authority to issue decisions by grant stamp under the circumstances described in Policy Statement on Grant Stamp Procedure in Routine Director Orders, EP 709 (STB served Nov. 14, 2011).

As with other duties that the Board has delegated to specific offices, see 49 C.F.R. § 1011.7, the Board will reserve for itself the consideration and disposition of all appeals of initial decisions issued by the Director of OPR. See e.g., 49 C.F.R. § 1011.2(a)(7); Austin Area Terminal R.R.—Discont. of Serv. Exemption—in Bastrop, Burnet, Lee, Llano, Travis & Williamson Cntys., Tex., AB 578X, slip op. at 2 (STB served Nov. 3, 2023). Specifically, when reviewing an interlocutory appeal of the Director’s initial decision, the Board will consider whether the Director made the correct decision, given the circumstances presented. See Flats Indus. Inc.—Aban. Exemption—in Cleveland, Ohio, AB 1327X, slip op. at 3 (STB served July 19, 2023). The Board will require that all such appeals be filed within five business days after the service date of the decision being appealed. Replies will be due within five business days of the filing date of the appeal (not the date when the appeal would be due).³

² The delegation is limited to this docket and will terminate at the conclusion of this proceeding. The Board may, in the future, consider whether delegations of investigative functions via regulation are warranted in proceedings conducted pursuant to 49 U.S.C. § 24308(f).

³ Under 49 C.F.R. § 1011.2(a)(7), appeals of decisions issued by Directors pursuant to authority delegated under 49 C.F.R. § 1011.7 must be filed within 10 days after service of the Director’s decision, and replies must be filed within 10 days after the due date for appeals. The case-specific delegation in this docket is not governed by that rule and, in the interest of ensuring that investigative proceedings under 49 U.S.C. § 24308(f) are handled expeditiously, the Board finds that shorter due dates are warranted.

It is ordered:

1. The Board delegates to the Director of OPR authority to perform specific investigative functions and related procedural dispositions, as set forth in this decision. The delegation is limited only to actions relating to this proceeding and will terminate upon conclusion of the proceeding.
2. Parties may appeal decisions issued by the Director of OPR to the Board. Appeals to the Board will be evaluated using the same legal standard applied to appeals under 49 C.F.R. § 1011.2(a)(7).
3. Appeals of decisions issued by the Director of OPR must be filed within five business days of the service date of the decision being appealed, and replies must be filed within five business days of the filing date of the appeal.
4. This decision is effective on its service date.

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