

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. NOR 42175

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**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**

REPLY OF THE COMMUTER RAIL COALITION

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Dated: January 22, 2025

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INTRODUCTION

Pursuant to the Board’s August 19, 2024 decision in this matter, the Commuter Rail Coalition (“CRC”) submits the following Reply to the submissions by the National Railroad Passenger Corporation (“Amtrak”) and the host railroad parties. CRC represents twenty-five commuter rail transit agencies (the “Agencies”), the vast majority of which share track with Amtrak on at least a portion of their rail lines. The Agencies are a vital part of the national rail network and their local economies. Although they receive far fewer statutory privileges than Amtrak does, four of the Agencies have greater ridership on each of their local networks than Amtrak does nationwide, and many of the Agencies serve more riders in their respective regions than Amtrak does.¹

CRC is interested in this proceeding because rules promulgated to govern interactions between Amtrak trains and freight trains often impact other passenger trains. Additionally, CRC is interested in obtaining greater clarity regarding issues governing Amtrak’s operations on track

¹ *Compare Amtrak Route Ridership: FY23 vs. FY22*, AMTRAK, <https://media.amtrak.com/wp-content/uploads/2023/11/Amtrak-Fiscal-Year-2023-Ridership.pdf> (last visited Jan. 17, 2025), with AM. PUB. TRANSIT ASS’N, PUBLIC TRANSPORTATION RIDERSHIP REPORT: FOURTH QUARTER 2023 at 5–6 (2024), <https://www.apta.com/wp-content/uploads/2023-Q4-Ridership-APTA-Update-1.pdf>.

it shares with other railroads. Although only one CRC member—the Southern California Regional Rail Authority (“SCRRA”)—hosts the Sunset Limited, and its involvement is “minuscule,” Southern California Regional Rail Authority’s Response to Amtrak’s Opening Statement at 2 (filed Dec. 23, 2024), CRC members are regularly required to navigate interactions with Amtrak trains, negotiate agreements with Amtrak, host Amtrak routes, and dispatch Amtrak trains. The Board’s decision interpreting and implementing Amtrak’s statutory preference may therefore have a major impact on the Agencies’ operations.

There is no statutory basis for the Board to award relief that harms the Agencies or other passenger railroads. The Board should therefore make clear in its decision that Amtrak’s statutory preference under Section 24308 does not apply to other passenger trains, and any relief ordered does not impact passenger railroads other than Amtrak. The Board should also narrow or reject many of Amtrak’s proposed recommendations while placing them in context to avoid setting a nationwide standard for implementing Amtrak’s preference over freight transportation that would also create an adverse impact on other passenger operators.

ARGUMENT

I. AMTRAK’S PREFERENCE IS OVER FREIGHT TRANSPORTATION AND MUST NOT IMPACT OTHER PASSENGER RAILROADS.

Each party in this proceeding states that Amtrak has preference over *freight* railroads under Section 24308(c). No party suggests that Amtrak has preference over other passenger railroads. However, there is a risk that a broad ruling by the Board that does not explicitly acknowledge this undisputed fact could be misinterpreted as support for the erroneous argument that Amtrak has preference over passenger carriers. Therefore, the Board’s ruling should make this explicit and limit itself to addressing Amtrak’s preference over freight service.

The parties' approach to this case is unsurprising because the statute's text is clear: "Except in an emergency, intercity and commuter rail passenger transportation provided by or for Amtrak has preference over *freight* transportation in using a rail line, junction, or crossing unless the Board orders otherwise" 49 U.S.C. § 24308(c). There is no suggestion that Amtrak has preference over other passenger trains, such as those run by the Agencies.

Understandably, Amtrak has refrained from asserting that position before the Board in this proceeding.² Its Opening Statement makes clear that this proceeding is solely a dispute about the responsibilities of freight carriers. Amtrak states that "[r]ail carriers are required to provide Amtrak with preference over *freight* transportation." Opening Statement at 61 (emphasis added). That preference, Amtrak explains, is rooted in historical practice: "the railroads had to—and must still—provide rail passengers with preference over freight traffic on their rail line." *Id.* at 5; *see also id.* at 65, 67. That is why, Amtrak explains, section 24308(c) "identif[ies] two kinds of transportation—Amtrak passenger rail transportation and freight transportation." *Id.* at 63. These are merely a few of the many instances in which Amtrak specifies that its statutory preference is "over freight transportation." *Id.* at 2–7, 13, 16, 19, 32, 50, 51, 55, 61–96, 99, 100, 105, 107, 114, 116, 117. Amtrak's Opening Statement does not mention commuter rail transportation at all, except to note that commuter rail transportation provided by Amtrak is entitled to the same statutory preference to which its intercity rail transportation is entitled. Each of the freight railroads frames the issue in the same way. *See, e.g.,* BNSF's Reply to Amtrak's Opening Statement at 22; CPKC Reply Statement at 5; Reply of Illinois Central Railroad Company at 25–26; New Orleans Public Belt R.R. Comm'n for the Port of New Orleans Reply at 15; Union Pacific

² Some CRC members have experienced more ambiguous or even contrary Amtrak positions in direct engagements with Amtrak unrelated to these proceedings.

R.R. Co.’s Reply Statement and Evidence at 4. At no point does any party suggest that Amtrak’s preference over freight transportation also extends to preference over other passenger transportation.

The Board should hold Amtrak to its word by making clear that Amtrak’s statutory preference is limited to freight transportation, and the interpretation of this statute to the facts presented in this matter is the only issue before the Board. As the Board has noted, “this proceeding involves issues of first impression.” *Complaint and Petition 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 and 2*, NOR 42157, slip op. at 6 (STB served Aug. 19, 2024). The Board must therefore take care to frame those issues correctly and avoid suggesting that commuter railroads are in the same position as freight railroads.

II. THE BOARD’S REMEDIAL AUTHORITY IS LIMITED TO FREIGHT RAILROADS AND ITS RECOMMENDATIONS ARE NONBINDING AND FACT-SPECIFIC.

The Board’s only authority to award “relief” against passenger railroads in proceedings under Section 24308(f) is where a passenger railroad serves as a host railroad. The Agencies respectfully request that any determination by the Board be so limited. The Board cannot order relief against passenger railroads that directs the operational or maintenance practices of those railroads’ passenger service. Nor can the Board order relief to ameliorate delays to Amtrak trains caused by anything other than freight train interference. The Board has no statutory authority to remedy those other types of delays. 49 U.S.C. § 10502(c)(2)(A).

As the Board has recognized, this investigation is proceeding under two Stages, each based on distinct grants of statutory authority under Section 24308. 49 U.S.C. § 24308(f)(1), (2). It is vital that the Board distinguish the recommendations it will offer in Stage One from the relief it will award in Stage Two and specify that its recommendations apply in a limited context.

Otherwise, there is a risk that these findings could be wrongly interpreted as a nationwide standard against passenger railroads based on a proceeding in which the passenger railroads played virtually no role and their interests were, accordingly, not considered.

In Stage One, the Board is permitted to investigate broadly and obtain information from passenger railroads like SCRRA, but the Board is not permitted to issue binding awards of relief. The Board’s task under 49 U.S.C. § 24308(f)(1) is “to determine whether and to what extent delays or failure to achieve minimum standards are due to causes that could reasonably be addressed by a rail carrier over whose tracks the intercity passenger train operates or reasonably addressed by Amtrak or other intercity passenger rail operators.” Accordingly, the Board is granted the authority to “obtain information from all parties involved.” *Id.* And the Board is then directed to “identify reasonable measures and make recommendations to improve the service, quality, and on-time performance of the” Sunset Limited. *Id.* The Board has taken on each of these steps in Stage One of its investigation. *Complaint and Petition 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 and 2*, NOR 42157, slip op. at 14 (STB served July 11, 2023) [hereinafter “July 11, 2023 Decision”].

In contrast, in Stage 2, “[i]f the Board determines that delays or failures to achieve minimum standards investigated . . . are attributable to a rail carrier’s failure to provide preference to Amtrak over freight transportation as required . . . the Board may award damages against the host rail carrier, including prescribing such other relief to Amtrak as it determines to be reasonable and appropriate.” 49 U.S.C. § 24308(f)(2); *see also* July 11, 2023 Decision at 14. Under that statutory provision, the Board may issue damages only where a rail carrier has failed to provide preference to Amtrak over freight transportation. Indeed, the provision’s reference to “other relief” does not change this limitation as the statute’s use of a comma followed by “including,” confirms

that “other relief” must be directed at a rail carrier’s failure to provide preference to Amtrak over freight transportation. So, just as Amtrak’s statutory preference is limited to freight transportation, the Board’s authority to order remedies is similarly limited to instances in which Amtrak has not received preference over freight transportation.

Any recommendation issued by the Board should clarify that the status of the recommendations it adopts do not bind commuter railroads (other than SCRRRA in exercising its host railroad responsibilities). The Board should state explicitly that any recommendations it adopts are fact-specific and inapplicable to any other Amtrak train, other than the one that is the subject of the proceeding.

Given SCRRRA’s minimal role in this proceeding, the Board has not and should not consider interactions between Amtrak and other passenger trains. Any recommendations made by the Board should be limited so that it cannot be argued that the Agencies are subject to them.

III. MANY OF AMTRAK’S RECOMMENDATIONS ARE OVERBROAD.

The Agencies also assert that the Board should not adopt Amtrak’s recommendations without first narrowing many of them significantly to make clear that they do not impact other passenger railroads. The breadth of Amtrak’s recommendations wrongly suggests that commuter and other passenger railroads could be subject to them.

First, many of Amtrak’s recommendations imprecisely reference “rail carriers”, when they should instead use the term “freight rail carriers” to avoid suggesting that passenger railroads are subject to them, *e.g.* recommendations 1, 5, and 8. For example, recommendation 8 requires that “[e]xcept in the event of an emergency or when agreed to by Amtrak in advance, rail carriers should ensure that rail lines are clear of maintenance crews or working trains in advance of the arrival of an Amtrak train.” This recommendation should refer to “freight rail carriers” as passenger railroads have no such obligation with respect to their operations.

Recommendation 6 directs rail carriers to “not route Amtrak trains on slower trackage or over slower routings when faster trackage or routings are or could be made available.” *Id.* at 115. However, there are circumstances in which a passenger rail carrier might make a decision that negatively impacts an Amtrak train in order to benefit a different passenger train. There is no statutory prohibition on such decisions as long as it is not done to provide preference to freight trains. Accordingly, if the purpose of the decision is to provide preference to a different passenger train, then this is permissible under federal law. Should the Board adopt any of these recommendations, it should be clear that host railroads may make decisions that delay Amtrak trains if they do so to prioritize other passenger transportation. The same argument applies to recommendations 5, 7, 8, 10, and 13.

Recommendations 16 and 17 pose similar problems by referring to “federal statutory and regulatory obligations to Amtrak.” If adopted, the Board should consider replacing “federal statutory and regulatory obligations to Amtrak” with “Amtrak’s statutory right to preference over freight transportation.”

Recommendation 19, which says that rail carriers should document any decisions that result in delay to an Amtrak train, contains almost no limits. Not only does it not refer specifically to Amtrak’s statutory preference over freight transportation, but it also uses the broad terms “decisions” and “result.” If adopted, the recommendation could lead to a vastly expanded scope of Board oversight over passenger railroads. Recommendation 19 should therefore be rejected, or should at least be significantly limited to dispatching decisions that result in a violation of Amtrak’s right to statutory preference over freight transportation.

As for recommendations 2, 3, 4, and 18, each of which concerns the responsibilities of railroads that dispatch Amtrak trains, CRC joins the concerns raised by Union Pacific, BNSF, and

Illinois Central Railroad Company. CRC is interested in these recommendations because some of the Agencies dispatch freight, Amtrak, and their own trains, and wish to ensure that the outcome of this proceeding does not hamper their flexibility to dispatch trains safely and efficiently. CRC also notes that recommendation 18 must be narrowed to refer solely to dispatching playbacks that involve both Amtrak trains and freight trains.

IV. AMTRAK DOES NOT ACCOUNT FOR THE LIMITED CONTROL CERTAIN COMMUTER RAIL HOST CARRIERS HAVE OVER THEIR LINES.

CRC objects to Amtrak's overbroad view of "host railroad" responsibility that, if applied beyond this case to other passenger railroads, could attribute blame to some Agencies for delays to Amtrak trains that are caused by freight railroads' dispatching and operational decisions. Passenger railroads should not incur the costs of delays to Amtrak trains that freight railroads cause and benefit from.

Amtrak states that the Board should adopt the Federal Railroad Administration's regulatory definition of "host railroad" as the definition of "host rail carrier" in Section 24308, and thereby define the term to mean "a railroad that is directly accountable to Amtrak by agreement for Amtrak operations over a railroad line segment." 49 C.F.R. § 273.3; Amtrak's Opening Statement at 16. However, some Agencies that fall within this definition have little or no effective control over delays to Amtrak trains on the segments where they "host" Amtrak because freight railroads control dispatching of the Agency's segment or dispatch or control trains on their adjacent lines so as to cause delays on the Agency's line. For example, the Board has previously heard from a CRC member in other proceedings about the impact of freight railroad-controlled dispatching and operational decisions that shift avoidable freight-caused delays onto commuter rail lines in the Chicagoland area that benefit freight service. *See Comments and Request for Conditions of the*

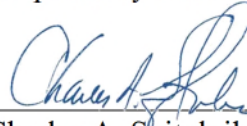
Commuter Rail Division of the Regional Transportation Authority D/B/A/ Metra, FD 36500, at 41, 79 (Filed Mar. 15, 2022).

Freight railroads whose visibility and control over national networks put them in the best position to avoid delays to Amtrak's service, not other publicly funded passenger railroads operating extremely time-sensitive service, should be responsible for preventing and ameliorating harm that their freight trains cause to Amtrak's service. The Board should therefore not adopt a definition or meaning for "host carrier" that includes passenger railroads where a freight railroad dispatches or effectively controls the train movements on the passenger railroad's lines.

CONCLUSION

For the foregoing reasons, CRC respectfully requests that the Board issue a decision that is limited to Amtrak's statutory preference over freight railroad, and does not burden the Agencies.

Respectfully submitted,



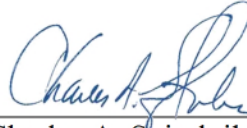
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Dated: January 22, 2025

CERTIFICATE OF SERVICE

I hereby certify that I have on the 22nd day of January 2025, caused to be served a copy of the foregoing Reply of the Commuter Rail Coalition upon all parties of record in this proceeding by email.



Charles A. Spitulnik

Dated: January 22, 2025