

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36281

PETITION BY THE SOUTHEASTERN PENNSYLVANIA TRANSPORTATION
AUTHORITY FOR RELIEF UNDER 49 U.S.C. § 24903

Digest:¹ This decision institutes a proceeding to determine compensation for use by the Southeastern Pennsylvania Transportation Authority (SEPTA) of certain National Railroad Passenger Corporation (Amtrak) passenger rail stations and parking facilities, requires Amtrak to continue to provide SEPTA access to the stations and facilities on an interim basis, and grants a joint motion to hold the proceeding in abeyance.

Decided: March 27, 2019

On March 11, 2019, the Southeastern Pennsylvania Transportation Authority (SEPTA) filed a petition requesting that the Board institute a proceeding and issue an order under 49 U.S.C. § 24903(c)(2) prescribing the terms of an agreement between SEPTA and the National Railroad Passenger Corporation (Amtrak) governing the use of passenger rail stations and associated parking facilities along SEPTA's Paoli/Thorndale Line, Trenton Line, and Wilmington/Newark Line (the Stations).² (SEPTA Pet. 1, 5.) SEPTA states that Amtrak has a property interest in the Stations. (*Id.* at 1.)

The petition also requests that the Board issue an interim service order requiring Amtrak to permit SEPTA to use the Stations under the terms of their current agreement for the pendency of the proceeding. (*Id.* at 2.) SEPTA asks that the requested interim service order be made effective March 29, 2019, the date the current agreement expires. (*Id.* at 2.) On March 18, 2019, the Board directed Amtrak to respond to SEPTA's interim service order request by March 22, 2019.

On March 22, 2019, Amtrak and SEPTA filed a joint motion to hold this proceeding in abeyance pending resolution of a related court proceeding in the U.S. District Court for the District of Columbia. See Nat'l R.R. Passenger Corp. v. Se. Pa. Transp. Auth.,

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 Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² On March 15, 2019, following an order of the Board, SEPTA filed a certificate of service stating that it served the petition on Amtrak.

No. 1:19-cv-00537-TNM (D.D.C. filed Feb. 28, 2019). The parties state that the district court proceeding will address separate legal issues from those before the Board, but the proceeding involves the same parties, rail properties, stations, and parking facilities. (Jt. Mot. 1.)

In addition, the parties jointly request a Board order directing the parties to maintain the status quo under the agreement Amtrak and SEPTA entered into on January 1, 1987, for SEPTA's use of the Stations (Station Agreement), as amended and extended, pending the final disposition of this proceeding, but allowing the parties to enter into "amended, new, or different agreements with the express written consent of both [p]arties." (*Id.* at 2 (citing 49 U.S.C. § 24903(c)(2)).) The parties also request that any final Board determinations be applied retroactively to March 30, 2019. (*Id.*) The parties agree that "it would be in the public interest and most conducive to administrative efficiency for the Board to hold this proceeding in abeyance and maintain the status quo during the pendency of the abeyance." (*Id.* at 1-2.)

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 24903(a)(6), Amtrak may "make agreements with . . . commuter authorities to grant, acquire, or make arrangements for . . . commuter rail passenger transportation over, rights of way and facilities acquired under the Regional Rail Reorganization Act of 1973 and the Railroad Revitalization and Regulatory Reform Act of 1976." 49 U.S.C. § 24903(a)(6) (citations omitted). An agreement under § 24903(a)(6) "shall provide for reasonable reimbursement of costs but may not cross-subsidize intercity rail passenger, commuter rail passenger, and rail freight transportation." 49 U.S.C. § 24903(c)(1). If Amtrak and the commuter authority do not agree, the Board is instructed to "order that the transportation continue," and "determine compensation . . . for the transportation not later than 120 days after the dispute is submitted." 49 U.S.C. § 24903(c)(2).

According to SEPTA's petition, Amtrak and SEPTA entered into the Station Agreement on January 1, 1987. (SEPTA Pet. 7.) The Station Agreement originally had a 30-year term, which later was extended until March 29, 2019. (*Id.*) SEPTA states that, last month, "Amtrak declared the Station Agreement would terminate on March 29, 2019, and SEPTA could continue to use the Stations only if SEPTA paid 'annual fair market rent' of \$1.5 million as a 'hold-over tenant', with an annual escalation rate of 2%." (*Id.* at 9.) SEPTA states that it cannot accept Amtrak's demand.³ (*Id.*)

Pursuant to 49 U.S.C. § 24903(c)(2), the Board will institute a proceeding to determine compensation for SEPTA's use of the Stations. Additionally, the Board will order Amtrak to continue to provide SEPTA access to the Stations under the terms of the current Station Agreement for the duration of this proceeding. Amtrak and SEPTA may enter into amended, new, or different agreements with the express written consent of both parties. See 49 U.S.C.

³ The petition also states that SEPTA cannot accept Amtrak's demand for "service limitations," (SEPTA Pet. 9), but it is not clear to what service limitations this refers.

§ 24903(a)(6). The Board's final decision will address the parties' request to make the Board's determinations retroactive.

At the request of the parties, this proceeding will be held in abeyance until further order of the Board.⁴

It is ordered:

1. A proceeding is instituted to determine compensation for SEPTA's use of the Stations.
2. Beginning March 29, 2019, Amtrak must continue to provide SEPTA access to the Stations on an interim basis under the terms of the Station Agreement in effect on the date of this decision, as discussed above.
3. If, while this proceeding is pending, the parties reach an agreement on some or all of the issues involved in this proceeding, they shall promptly notify the Board.
4. This proceeding is held in abeyance until further order of the Board.
5. The parties are directed to serve the Board with the district court's final decision within 30 days of the conclusion of that proceeding. The parties are also directed to serve the Board with decisions addressing any dispositive motions (such as motions for summary judgment or motions to dismiss) filed in the district court proceeding.
6. Amtrak's March 27, 2019 request is denied as moot.
7. This decision is effective on its date of service.

By the Board, Board Members Begeman, Fuchs, and Oberman.

⁴ On March 27, 2019, Amtrak filed a request for an extension of time to respond to SEPTA's petition in the event the Board denies the joint request for an abeyance. That request will be denied as moot.