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SEC

SERVICE DATE - LATE RELEASE MAY 3, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33134

NORTH CAROLINA RAILROAD COMPANY—PETITION TO SET TRACKAGE
COMPENSATION AND OTHER TERMS AND CONDITIONS—NORFOLK SOUTHERN
RAILWAY COMPANY, NORFOLK & WESTERN RAILWAY COMPANY,
AND ATLANTIC AND EAST CAROLINA RAILWAY COMPANY

Decided: May 3, 1999

On September 23, 1996, North Carolina Railroad Company (NCRR) filed petitions seeking the prescription of interim and permanent compensation for the exclusive use of its 317-mile rail line between Charlotte and Morehead City, NC (the line), by operating subsidiaries¹ of Norfolk Southern Corporation. In a decision served May 29, 1997 (May 1997 decision), the Board instituted a proceeding and prescribed interim compensation, but placed the proceeding in abeyance pending a proposed buyout by the State of North Carolina (the State) of minority shareholders² and the subsequent reopening of lease negotiations.³ The due date for petitions to reopen the May 1997 decision was serially extended to May 3, 1999.⁴

On April 29, 1999, NCRR and NS filed a joint motion for an additional extension of time to September 15, 1999. They state that they have reached a Memorandum of Understanding (MOU)

¹ Norfolk Southern Railway Company, Norfolk & Western Railway Company, and Atlantic and East Carolina Railway Company (collectively, NS).

² The State, NCRR's majority shareholder, and then-minority shareholders Jefferson-Pilot Life Insurance Company (Jefferson-Pilot) and Walker F. Rucker (Rucker), representing himself and others, were granted leave to intervene. Jefferson-Pilot subsequently withdrew from the proceeding.

³ Dissension among the private shareholders of NCRR over a negotiated lease had precipitated the compensation dispute.

⁴ In a decision served July 7, 1997, the due date was extended indefinitely to a date later determined to be June 30, 1998 (90 days after consummation of the State's April 1, 1998 acquisition of all the outstanding common stock of NCRR). In a decision served June 30, 1998, the due date was extended to December 1, 1998. The due date was again extended to March 1, 1999, in a decision served December 1, 1998, and to May 3, 1999, in a decision served February 26, 1999.

concerning, among other things, the terms and conditions of NS's operation of the line,⁵ but that they require additional time to negotiate a definitive agreement.⁶

On April 22, 1999, Rucker filed a preemptive motion asking: (1) that no further extensions of time be granted; (2) that Rucker, the State, and NCRR be allowed, jointly and severally, to participate in negotiations;⁷ (3) that, if negotiations fail, Rucker, the State, and NCRR be allowed, jointly and severally, to participate in any further Board compensation proceedings; and (4) for other general relief. NCRR and NS filed replies to the motion on April 29, 1999, contending that the interest of Rucker, as an intervener, was extinguished when the State acquired the interest of the minority shareholders on April 1, 1998, and, accordingly, that Rucker has no standing to participate in Board proceedings or the negotiations.⁸

While NCRR and NS have raised valid questions regarding Rucker's continued standing in this proceeding, it may be premature to rule at this point on his standing as an intervener in possible, future Board proceedings because the terms of the buyout are not before us. In any event, the negotiations are a private matter, as to which the Board has no authority to require or permit any party to participate. In view of the fact that NCRR and NS have executed a MOU, the request for an extension to negotiate a definitive agreement is reasonable and will be granted.

It is ordered:

1. The motion of Rucker is denied, but his status as intervener is continued until further notice.
2. The due date for filing petitions to reopen the Board's decision, served May 29, 1997, is extended to September 15, 1999.

⁵ The MOU provides for a renewable 15-year trackage rights arrangement with an annual compensation of \$11 million.

⁶ Reportedly, the State consents to the proposed extension.

⁷ In this regard, Rucker avers that counsel for the State has not participated in negotiations, but should be directed to participate. (As noted, NCRR is already a participant.)

⁸ NS asks that Rucker's standing as an intervener be revoked.

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3. This decision is effective on its date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary