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SERVICE DATE - MAY 20, 1998

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC.,
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
--CONTROL AND OPERATING LEASES/AGREEMENTS--
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

Decision No. 82

Decided: May 18, 1998

In Decision No. 76, served April 17, 1998, we denied the motion by Richard and Judith Bell and George Rigamer for leave to intervene and participate individually and as representatives of a class of approximately 8,000 plaintiffs in the court proceeding In Re: New Orleans Train Car Leakage Fire Litigation, No. 87-16374, Civil District Court for the Parish of Orleans, LA. By motion filed May 12, 1998,¹ movants seek reconsideration of our Decision No. 76. CSX² replied in opposition to the request. See CSX-146. The motion for reconsideration will be denied.

Appeals from a decision by the entire Board will be granted only upon a showing that the prior decision is materially in error or materially affected by new evidence or changed circumstances. See 49 CFR 1115.3. Movants fail to show any of these required elements. Movants state that they did not seek to enter this proceeding prior to the due date for comments, protests, and requests for conditions “because of the uncertainty of the status of the case [before the Louisiana courts].” Movants concede, however, that their jury verdict was rendered on September 9, 1997, as noted in Decision No. 76. By necessary implication, any evidence presented to the trial court could have been submitted in this proceeding on or before the October 21, 1997 deadline.

¹ Although movants attached a certificate of service, dated April 24, 1998, to their reconsideration request, the pleading was not officially filed and entered into the record until May 12, 1998, when movants tendered the appropriate filing fee. See 49 CFR 1002.2(61).

² CSX refers to CSX Corporation and CSX Transportation, Inc. In this proceeding, Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively NS), Conrail Inc., and Consolidated Rail Corporation (collectively Conrail), and CSX seek approval and authorization under 49 U.S.C. 11323-25 for: (1) the acquisition by CSX and NS of control of Conrail; and (2) the division of Conrail’s assets by and between CSX and NS.

Movants maintain that they had no notice of our deadlines. However, public notice of this proceeding, and the public's right to participate in it, was provided on a number of occasions.³ In addition, the proposed acquisition of Conrail by CSX and NS received widespread publicity, as did the fact that approval of the transaction was subject to our review. In these circumstances, we must affirm our conclusion that movants' request to intervene, filed more than 5 months after the October 21, 1997 deadline, is too late.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The motion for reconsideration, filed by Richard and Judith Bell and George Rigamer, is denied.
2. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

³ See Decision No. 2, served April 21, 1997, and published that day in the Federal Register at 62 FR 19390, where we invited public comments on the proposed procedural schedule; and Decision No. 6, served May 30, 1997, and published that day in the Federal Register at 62 FR 29387, where we adopted a procedural schedule to govern the course of the proceeding.