

**SURFACE TRANSPORTATION BOARD CLARIFIES THE NATURE
OF "EXPRESS" TRAFFIC THAT AMTRAK MAY CARRY ON ITS PASSENGER TRAINS; DIRECTS UP/SP TO CONTINUE
TO MAKE TRACKS AND FACILITIES AVAILABLE TO AMTRAK**

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has completed the proceeding that it instituted 8 months ago to determine under the law the nature and extent of the duty of freight railroads to allow the National Railroad Passenger Corporation (Amtrak) to use their tracks and facilities for the carriage of express. The Board also ordered the Union Pacific Railroad Company (UP) and its affiliate, Southern Pacific Transportation Company (SP) (collectively, UP/SP), to permit Amtrak to transport express over UP/SP lines.

The case raised questions about the definition of "express" transportation and the extent to which freight railroads are required to allow Amtrak to use their facilities to carry express. Freight railroads must permit Amtrak to operate over their lines. Amtrak is authorized by law to operate intercity and commuter rail passenger transportation and to transport mail and express, and the law directs Amtrak to seek to increase its revenues from the transportation of mail and express. The law, however, does not define "express."

Historically, in addition to its passenger service, Amtrak has carried what it and UP/SP appear to agree is express traffic. Recently, however, Amtrak has attempted to increase its express traffic revenues by carrying additional volumes of traffic that UP/SP argued in fact is general freight that freight railroads may handle, but that Amtrak under the law may not. Because Amtrak and UP/SP could not resolve the issue privately, Amtrak asked the Board to intervene. The Board instituted a proceeding seeking public comment on the "express" issue and provided interim guidelines to govern the conduct of the parties during the pendency of the proceeding.

During the proceeding, many of the Nation's railroads argued that Congress, in limiting Amtrak to express service, contemplated only the station-to-station delivery of small packages that historically were handled in the typical express shipment, and that passenger trains comprised almost entirely of express cars, which the freight railroads claimed Amtrak intended to operate, would contravene the legislative intent that Amtrak's express service be "incidental" to its passenger service. The carriers urged the Board to find that Amtrak trains must have at least as many passenger cars as express cars; that express traffic must be differentiated from general freight by limiting it to small packages and less-than-truckload or less-than-carload (LTL or LCL) shipments of no more than 8,000 pounds; that Amtrak may not use other switching or line-haul railroads to move express shipments to or from shipper sidings, or to or from cross-docking facilities not associated with its passenger stations; and that Amtrak should not be allowed to provide carload train space to third-party consolidators or carriers such as UPS.

In its decision issued today, the Board disagreed. Instead, it found, as Amtrak had suggested, that "express" need not be restricted by commodity, shipment size, type of equipment, or a variety of other operational factors that may have been applied in the past, but instead should be defined more flexibly as a premium transportation service at premium rates — expedited, regularly scheduled train service provided at prices which are generally higher than freight service — that is provided as an adjunct to Amtrak's passenger service. The Board recognized that, as a practical matter, particular operations would have to be evaluated on a case-by-case basis. But the Board found generally that, because Amtrak's proposed express service would fall within the limits described above, and because Amtrak's proposal reflects the legislative intent that it take steps to increase express revenue, the Board should not block Amtrak's efforts by defining express narrowly. Thus, the Board found that the statute does not preclude Amtrak from: offering carload or trailerload express service; transporting express under contract or in partnership with third-party providers such as freight forwarders, less-than-truckload motor carriers, or express companies like UPS and Federal Express; or engaging other carriers, including other railroads, to transfer express traffic to off-terminal cross-docking facilities or otherwise perform off-terminal pickup, delivery, and consolidation.

The Board noted, however, that Amtrak's discretion to transport express is not unlimited. Thus, it found that Amtrak may not run express-only trains, except on the Northeast Corridor, which Amtrak owns, and that express service generally must be an adjunct to genuine passenger service. Additionally, the Board noted, in response to the railroads' concerns that increased express service could pose operational difficulties for the freight railroads, that it has authority to intervene, on a

case-by-case basis, to address operational issues.

Finally, the Board noted that the law permits railroads to charge Amtrak for the use of their facilities. It found that, if Amtrak's increased express service should cause capacity constraints requiring additional infrastructure investment, the freight railroads should be able to recover those or any other directly attributable costs from Amtrak.

The Board's decision was issued today in Application of the National Railroad Passenger Corp. Under 49 U.S.C. 24308(a)--Union Pacific Railroad Company and Southern Pacific Transportation Company, STB Docket Finance Docket No. 33469.

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