

SURFACE TRANSPORTATION BOARD DENIES BOSTON & MAINE'S MOTION TO DISMISS & REQUESTS FOR FURTHER DISCOVERY, & AMTRAK'S MOTION TO CHANGE BRIEFING PROCEDURES IN AMTRAK/BOSTON & MAINE COMPENSATION DISPUTE

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Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has denied (1) a second motion to dismiss; (2) requests for further discovery; and (3) a request to change the briefing procedures in a proceeding in which Amtrak has asked the Board to facilitate its operations over track owned by the Boston & Maine Corporation (B&M) and affiliated railroads.

In 1991, Congress directed Amtrak to institute passenger service between Boston, MA, and Portland, ME, and it appropriated \$30 million to enable Amtrak to rehabilitate the line, which is owned by B&M and its affiliates. Amtrak and B&M have been negotiating, but have apparently been unable to agree as to the terms and conditions that will govern Amtrak's use of B&M's track. As a result, the rehabilitation program has not yet begun.

Pursuant to 49 U.S.C. 24308(a), which authorizes the Board to set terms and conditions under which Amtrak may operate over track owned by operating railroads, Amtrak sought a Board order directing B&M to allow Amtrak to use its lines, and setting the compensation that Amtrak must pay. B&M's requests (1) to dismiss the proceeding, on the ground that the parties had already agreed as to terms and conditions, and (2) to have the Board issue a subpoena directing various government agencies to provide information on their opinion of Amtrak's financial condition were denied in earlier Board orders. (See Board "News" release No. 97-34, issued May 7, 1997.)

B&M then asked the Board to dismiss the proceeding, on the ground that Amtrak is on the verge of bankruptcy. It also sought further discovery on, among other things, Amtrak's financial condition. Finally, Amtrak asked the Board to modify the briefing schedule in the proceeding, so that it would have an opportunity to respond to the evidence and argument filed by B&M.

The Board denied all three requests. As to B&M's motion to dismiss, the Board

stated:

Congress has directed the Board, upon application of Amtrak, to require that certain railroad facilities and services be made available to Amtrak, and to prescribe reasonable terms and conditions for their use. Apart from this general statutory directive, here, Congress has specifically directed Amtrak to provide the service in question. B&M, if its motion were granted, would frustrate the Congressional intent. Dismissal of this case, on the ground that Amtrak's viability is suspect, would plainly undermine Congress's directive that Amtrak operate this service, and would exceed our role, which is simply to determine the compensation to be paid by Amtrak for the use of B&M's facilities. Amtrak's future has been uncertain since its creation in 1971, and yet, in no case arising under section 24308(a) has the potential of Amtrak's demise played a role in the setting of compensation. We will set compensation here, as we are required to do and as has been done in the past. We will not, however, put a cloud over this and every other Amtrak operating agreement by speculating as to whether Amtrak is now or likely will in the future be on the verge of bankruptcy.

The Board also denied B&M's request for burdensome further discovery, noting that the parties have already provided voluminous discovery, and that none of the materials sought by B&M are likely, if produced, to lead to the discovery of any admissible information. Indeed, the Board pointed out, a major portion of the discovery revolved around Amtrak's financial condition, which the Board had already found was not relevant to its role in this matter.

Finally, the Board declined to modify the procedural schedule at this time to provide for additional briefing in the proceeding. The Board noted that both parties already know the essence of the other's position, and that a request for additional briefing could be made later, if the initial briefs raise issues to which a response is needed.

The Board's decision in STB Docket Finance Docket No. 33381, Application of the National Railroad Passenger Corp. Under 49 U.S.C. 24308(a)--Springfield Terminal Railway Company, Boston and Maine Corporation, and Portland Terminal Company, was issued to the public on June 26, 1997.

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