

SERVICE DATE – APRIL 14, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 33388 (Sub-No. 102)

CSX TRANSPORTATION, INC.—PETITION FOR DECLARATORY ORDER AND CEASE
AND DESIST ORDER

Digest:¹ The Board grants a motion filed by CSX Transportation, Inc., to withdraw its petition and amended petition for declaratory and cease-and-desist orders.

Decided: April 13, 2023

On June 15, 2021, CSX Transportation, Inc. (CSXT), filed a petition for declaratory order requesting that the Board determine that a dispute between CSXT and the International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART-TD) regarding CSXT's use of Consolidated Rail Corporation employees to perform certain rail transfer movements in and around Detroit, Mich., is within the Board's exclusive jurisdiction and must be resolved through arbitration pursuant to the New York Dock labor protective provisions.² Among other things, CSXT's petition also seeks a cease-and-desist order prohibiting SMART-TD from arbitrating the parties' dispute before the National Railroad Adjustment Board (NRAB) pursuant to the Railway Labor Act (RLA). (CSXT Pet. 6, 28-31.) SMART-TD replied on July 13, 2021, contending that CSXT's petition should be denied and that the parties' dispute should be resolved by the NRAB. (SMART-TD Reply 2, 11-12, July 13, 2021.)³

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. Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² N.Y. Dock Ry.—Control—Brooklyn E. Dist. Terminal, 360 I.C.C. 60 (1979), aff'd sub nom. N.Y. Dock Ry. v. United States, 609 F.2d 83 (2d Cir. 1979). New York Dock provides, among other things, financial benefits for employees that suffer a loss of compensation or employment because of a Board-approved transaction. Under New York Dock, labor changes related to approved acquisition-of-control transactions are to be implemented by agreements negotiated before the changes occur. 360 I.C.C. at 77-78. If the parties cannot agree on the terms of an implementing agreement or are unable to resolve disputes that subsequently arise under that agreement, the issues are to be resolved under arbitration procedures set out in Article I, Section 11 of the New York Dock conditions. Id. at 80.

³ On July 19, 2021, CSXT sought leave to file a reply to SMART-TD's reply, and on July 23, 2021, CSXT requested to supplement the record further. SMART-TD then responded to

On July 29, 2022, CSXT filed an amended petition pursuant to 49 C.F.R. § 1117.1, stating that it no longer seeks declaratory relief because, since its petition was filed, arbitration under New York Dock has been completed and resulted in an arbitration award that, CSXT states, resolved the dispute. (CSXT Am. Pet. 1.) CSXT stated, however, that it was still seeking a cease-and-desist order because, notwithstanding the New York Dock arbitration award, SMART-TD had continued to pursue a separate arbitration of the same dispute before the NRAB. (Id.)

Thereafter, SMART-TD replied to CSXT's amended petition, arguing that the Board should declare that New York Dock arbitration is improper and allow the parties to proceed in arbitration before the NRAB. (SMART-TD Reply 5, Aug. 5, 2022.) SMART-TD requests, however, that, if the Board allows CSXT to withdraw its petition for declaratory order, the Board should issue a finding as to the proper forum for resolution of similar disputes in the future. (Id.)

On December 21, 2022, CSXT filed a motion to withdraw its petition and amended petition. CSXT reiterates that declaratory relief is no longer necessary as New York Dock arbitration, which CSXT asserts is administratively final, has resolved the parties' dispute. (CSXT Mot. to Withdraw 1.) CSXT also asserts that it no longer seeks a cease-and-desist order to prohibit SMART-TD from pursuing this same dispute before the NRAB because the NRAB issued an arbitration award, dismissing SMART-TD's claim for lack of jurisdiction. (Id. at 1-2.)

SMART-TD replied on December 28, 2022, arguing, among other things, that the Board should still issue a decision regarding the appropriate forum for arbitration of the parties' dispute notwithstanding the New York Dock and NRAB arbitration awards. (SMART-TD Reply 5-6, Dec. 28, 2022.) According to SMART-TD, a finding by the Board in favor of SMART-TD's position with respect to jurisdiction would allow SMART-TD, if necessary, to proceed to district court to vacate the NRAB's award. (Id. at 6.)

BACKGROUND

In CSX Corp.—Control & Operating Leases/Agreements—Conrail Inc. (Conrail Decision), 3 S.T.B. 196 (1998), the Board approved the acquisition of control of Conrail Inc. and Consolidated Rail Corporation (collectively, Conrail) and the division of their assets by CSX Corporation (CSXC) and CSXT and Norfolk Southern Corporation (NSC) and Norfolk Southern Railway Company (NSR). Acquisition of control of Conrail was effected by CSXC and NSC on August 22, 1998 (the effective date of the Conrail Decision), and the division of the assets of Conrail by and between CSXC/CSXT and NSC/NSR was effected on June 1, 1999. (CSXT Pet., Ex. 1, Detroit SAA Operating Agreement 1.) As part of that transaction, certain rail lines and facilities were retained by Conrail and are operated by Conrail for the benefit of CSXT and NSR

CSXT's July 23, 2021 letter, arguing, among other things, that CSXT's July 19 reply violated the general rule against filing replies to replies. Although the Board's regulations generally prohibit replies to replies, see 49 C.F.R. § 1104.13(c), the Board will accept all submissions filed to date in the interest of a complete record. See City of Alexandria—Pet. for Declaratory Ord., FD 35157, slip op. at 2 (STB served Nov. 6, 2008).

in three shared assets areas, including Detroit (the Detroit SAA).⁴ Conrail Decision, 3 S.T.B. at 226, 228. The Board’s approval of the acquisition of control in the Conrail Decision was subject to certain conditions, including standard employee protective conditions pursuant to New York Dock. Conrail Decision, 3 S.T.B. at 216, 328. According to CSXT, in accordance with the New York Dock conditions, CSXT, NSR, Conrail, and SMART-TD’s predecessor, the United Transportation Union (UTU), negotiated New York Dock implementing agreements, including an agreement specific to the Detroit SAA (the Detroit SAA New York Dock Implementing Agreement). (CSXT Pet. 10.)

Here, CSXT and SMART-TD disagree as to the appropriate forum for resolving claims filed by SMART-TD on behalf of an employee affected by the abolishment of a CSXT yard job in the Detroit SAA. (CSXT Pet. 4-5; SMART-TD Reply 2, July 13, 2021.) As noted above, CSXT initiated arbitration under Section 11 of the New York Dock conditions, while SMART-TD filed a claim in arbitration before the NRAB, pursuant to the RLA. (CSXT Pet., Exs. 7, 11.)

Subsequent to the filing of this proceeding, both of the arbitration processes advocated by the parties have concluded. CSXT’s preferred New York Dock process resulted in an arbitration decision (the VanDagens Award), effective June 27, 2022. That arbitration award finds, among other things, that arbitration under Section 11 of the New York Dock conditions was proper under the Detroit SAA Operating Agreement and the Detroit SAA New York Dock Implementing Agreement, and that the replacement of the CSXT yard job with a Conrail yard job was an operational change allowed by the Conrail transaction and the related agreements. (CSXT Am. Pet., Ex. 1 at 8.) SMART-TD’s preferred NRAB approach resulted in an arbitration award dated December 8, 2022, dismissing SMART-TD’s claim before the NRAB. (CSXT Mot. to Withdraw, Ex. 1 at 11.) The NRAB arbitration award states that “it was clear that there is no jurisdiction” and that “since this matter arises under the auspices of the [New York Dock conditions], the parties must utilize the dispute resolution procedures set forth in the [New York Dock conditions] to resolve this dispute.” (Id. at 10.)

DISCUSSION & CONCLUSIONS

Given the clarity afforded by the two arbitration rulings, the Board will grant CSXT’s motion to withdraw its petitions. See generally 5 U.S.C. § 554(e). Although SMART-TD continues to argue that the Board should reject CSXT’s attempt to withdraw and find that New York Dock arbitration was inappropriate, (see, e.g., SMART-TD Reply 4-5, Aug. 5, 2022; SMART-TD Reply 6, Dec. 28, 2022), the Board need not issue an order here to address a past dispute that has already been resolved. See Bos. & Me. Corp. v. Town of Ayer, 330 F.3d 12, 14 n.2 (1st Cir. 2003) (the Board has broad discretion in determining whether to issue a declaratory order); see also Delegation of Auth.—Declaratory Ord. Proc., 5 I.C.C.2d 675, 675 (1989) (same). Indeed, the issues raised by CSXT in its initial petition are effectively now moot.

⁴ CSXT states that the shared assets areas are defined geographic areas that include shared assets operated by Conrail and lines and yards of CSXT and NSR within the same geographic area. (CSXT Pet. 7.) Rail operations in the Detroit SAA are governed by the Detroit SAA Operating Agreement, which was entered into among CSXT, NSR, and Conrail, and approved by the Board in the Conrail Decision, see 3 S.T.B. at 372-73.

Both the VanDagens Award and the NRAB arbitration award found that arbitration under Section 11 of the New York Dock conditions was proper. Further, while the Board's regulations at 49 C.F.R. § 1115.8 permit parties to appeal labor arbitration decisions under New York Dock to the Board, SMART-TD did not file an appeal of the VanDagens Award, and the time to do so has expired.⁵

It is ordered:

1. CSXT's motion to withdraw its petition and amended petition for declaratory and cease-and-desist orders is granted.
2. All filings submitted to date are accepted into the record.
3. This decision is effective on the date of service.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.

⁵ To the extent SMART-TD argues that it might not be "allow[ed]" to challenge the NRAB award in district court absent a favorable Board order, (SMART-TD Reply 6, Dec. 28, 2022), the Board notes that a Board decision on the declaratory order would not change SMART's ability to seek relief in that forum.