

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36299

SOO LINE RAILROAD COMPANY—PETITION FOR DECLARATORY ORDER AND
PRELIMINARY INJUNCTION—INTERCHANGE WITH CANADIAN NATIONAL

Digest:¹ In this decision, the Board orders the parties to participate in Board-sponsored mediation.

Decided: May 9, 2019

On April 30, 2019, Soo Line Railroad Company d/b/a Canadian Pacific (CP) filed a petition for declaratory order and preliminary injunction arising from the termination of an interchange agreement with Wisconsin Central Ltd. d/b/a Canadian National (CN) in the Chicago Terminal Area. CP states that the agreement provides for all interchange of CN and CP rail cars in Chicago, Ill., at Spaulding, where the two railroads physically connect. (CP Pet. 1.) According to CP, on March 11, 2019, CN gave CP notice that it is terminating the agreement effective May 10, 2019. (Id. at 2.) Instead of Spaulding, according to the petition, CN has stated that it will accept rail cars in interchange at CN's Kirk Yard in Gary, Ind. (Id.)

CP requests that the Board issue a declaratory order that CN's Kirk Yard is an unreasonable interchange location. (Id.) CP argues that interchanging at Kirk Yard is unreasonable due to its distance from CP's Bensenville Yard and the associated costs of interchanging at such a distance. (Id.) CP also requests that the Board issue a preliminary injunction, ordering CN to "continue to receive CP cars at Spaulding unless and until the parties agree upon a replacement location, CN designates a reasonable replacement location, or the Board prescribes a replacement location." (Id.)

CN filed a reply to the preliminary injunction request on May 3, 2019. In its reply, CN states that CP is "willing" to use one of multiple options for alternative interchange points that CP and CN have discussed, in which CP would deliver CN-bound cars to the Belt Railway Company of Chicago's Clearing Yard, although CP and CN disagree on who should bear the

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. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

expenses arising from that option. (CN Reply 1-2 (citing CP Pet., Exs. E & G).) Both parties filed letters on May 6, 2019.²

The Board will order the parties to participate in Board-sponsored mediation to resolve this dispute. See 49 C.F.R. § 1109.2(a)(2). The parties must follow the mediation procedures outlined at 49 C.F.R. § 1109.3. Within 10 days of the service date of this decision, the Chairman will appoint one or more Board employees to serve as mediator(s).³ In the alternative, the parties may choose to hire a non-Board mediator in accordance with 49 C.F.R. § 1109.3(a). If the parties choose to use a non-Board mediator, they must file a joint notice with the Board within 10 days of the service date of this decision. Once appointed or selected, the mediator(s) will contact the parties to discuss the time and location of any meetings, and other matters. At least one principal of each party, who has authority to commit that party, shall participate in the mediation and be present at any session at which the mediator(s) request(s) that the principal be present. The mediation period shall be 30 days, beginning on the date of the first mediation session. 49 C.F.R. § 1109.3(b). The Board may extend mediation pursuant to mutual written requests of the parties to the mediation. Id. The mediator(s) shall inform the Board when mediation has ended, with or without a resolution.

The Board expects that CN and CP will maintain the status quo and continue to interchange rail cars at Spaulding while they mediate this dispute.

It is ordered:

1. CN and CP are directed to engage in mediation under the Board's procedures at 49 C.F.R. § 1109.3, as discussed above.
2. This decision is effective on the date of service.

By the Board, Board Members Begeman, Fuchs, and Oberman.

² Under 49 C.F.R. § 1104.13(c), a reply to a reply is not permitted. However, in the interest of a more complete record, the Board will accept the letters filed by CP and CN.

³ Parties should note that the Chairman may appoint one or more mediators well before the 10 days elapse.