

## Q&A: CSX is most pressing issue at STB

**Houston, 3 November 2017 (Argus)** — *One-time Surface Transportation Board (STB) chairman Dan Elliott resigned last month after eight years at the rail regulator but 15 months before his term was to expire. During his tenure at the STB, Elliott focused on improving agency efficiency and enhancing transparency for the railroads and shippers bring-ing cases before the board. He advanced new rules about reciprocal switching but left before seeing those initiatives implemented. In this interview, edited for length and clarity, Elliott discusses his time at the agency and what he views as the most important issues going forward.*

### What are you doing now that you have left the board?

I am at a law firm called Connor and Winters. I will likely focus on things from the shipper side of issues at the board and see if I can develop a law practice dealing with those issues.

### What did you most enjoy working on at the board?

I always tried to get the balance between shippers and railroads right. It was always my focus to engage in rulemaking and decisions so that shippers and carriers viewed the board as a fair place.

### What is the most pressing issue before the board right now?

I think it is probably the CSX stuff just because it is an immediate concern. That is about as far as I want to go on that. [CSX's service issues are a pending matter before the agency.]

It seems like railroads, either individually or collectively, have a service failure every four or five years. Is there anything the board or the industry can do better to deal with and prevent these periodic issues?

Every time we go through them, it seems like things arise that you want railroads to keep a careful eye on. That is why we kept the data reporting requirement in place. That was a very helpful tool for the board and for shippers. Different things can cause these things, but the most important thing to tell the railroads is to be available to their customers and make sure there is a lot of communication. It is very important. And the more communication there is, the better, especially with individual shippers. If shippers are suffering, they want to communicate with the carrier so that it addresses their problem, so they can get it resolved.

### Where do you come down on the issue of reciprocal switching?

The decision that I voted for [establishing the rulemaking that is still active at the agency] pretty much speaks for itself. I voted for the new rules and my opinion on that matter has not changed.

### You focused on helping shippers and railroads resolve disputes informally. Has that been helpful to the board and parties bringing potential actions?

Filing things informally is something that you want, instead of people coming to you formally. The [Rail Customer and Public Assistance office] has solved many issues that could have come to us formally. And it is better for the relationship if they can not have to litigate things.

### Where do the complaints against freight carriers for their handling of passenger trains stand?

The 8th Circuit Court of Appeals overturned our decision, so at the present time, those cases are kind of stalled. I am not sure what the next step is, but it is being discussed by the groups in that case. I left before any decision was made about further court action, but it is pretty tough when you get an adverse appellate court decision.

### You were very involved in trying to use more communication and public hearings during your time at the agency. Why did you choose to go that route and why did the number of those events trail off later in your tenure?

I was very involved in various ex parte meetings during my time at the board and I found it very helpful to discuss relevant issues with stakeholders and get that one-on-one time. It enables the board members to have more of a conversation with parties and figure out what is really important to them, rather than just reading a pleading.

Oral arguments are a great way to hear cases and, to start, we did a number of them. I think some of the slowdown in the numbers had to do with budget cuts we were forced to implement because oral arguments, while helpful, cost money and require resources. The budget situation we were faced with did require some slowing down, especially as we did not have as many staff or amount of resources that we had when I first took over at STB.

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### How big an issue is the budget for the agency?

Resources can be an issue at times. It depended on what the budget was in a given year, but it can put a limit on what you can do as an agency. The budgets lately have been pretty good, and I was happy with the last two numbers we got. The numbers started to get a little better after Congress passed the STB Reauthorization Act.

### Shippers often talk about how long it takes for cases — especially rate cases — to be decided at the agency. The board has made some efforts in recent years to streamline its processes to address this. Is there more the board can do in this regard?

I think the agency is on the right track in terms of improving that. I started a number of initiatives to try and improve the speed with which decisions get out the door and the board has continued them. So I think things are going in the right direction in that regard. On rate cases, we did have a study that I authorized during my time from [Pricewaterhouse Coopers] that is in the first phase of being implemented to help the process improve. Only time will tell how successful it is, but I think it is a good step in the right direction and we are doing things as well as we can do them. There will have to be some tweaks as we go along, but I think it was a good way to start with processes inside the agency.

### Why did you leave the agency 15 months before the end of your term? Was the present regulatory pause a factor?

That really was not a factor. I had been the chairman for most of my time at the agency and felt like it was time to leave with a change in leadership. It just seemed like the right time. It had nothing to do with the board but was a personal decision.

### Did you have a favorite board member to work with? And how could the dynamics between board members change when it is fully staffed with five commissioners?

I have worked with a number of folks for different periods of time, and I enjoyed working with all of the board members because they each brought their own assets to the table and had various qualities and expertise that was very helpful to me. [Former mem-

ber Frank] Mulvey is an economist, and so he really knew that area. Ann Begeman has a lot of knowledge about the way Capitol Hill worked and the way bills are actually drafted, so they each have had their own skill sets that were helpful.

When I joined the agency, we could not talk directly to other members. But we were allowed to talk to other members' staff, and so you could have conversations that way. It was what we were used to, and we handled it as well as we could. Since the reauthorization, Section 5 meetings have helped to bring the three of us together to talk about cases, obviously without taking a vote on a decision.

When the board expands to five members, it will have pros and cons. Any two will be able to talk to each other, but you will have more people that will have to talk to each other and come to a conclusion. But I think the ability to walk down the hallway and stick your head in to discuss a case in the long run will be very helpful.

### What is the greatest disappointment of your tenure?

I do not really have one, in terms of a disappointment. I just really enjoyed my time there, and it was a real honor to work there. I enjoyed the people I worked with, especially the staff, and it was a really nice period in my professional life to be able to work there.

I wish that I would have moved a little quicker on some of the proceedings that I started, like exemptions and reciprocal switching, to finally have them resolved during my tenure. So I will definitely be watching with interest how those move forward.

### You have worked on and overseen a lot of change at STB in your eight years. Is there an accomplishment of which you are most proud? What would you like to be remembered for?

It was the five straight years of winning the greatest small agency to work for in the federal government. I am very proud of that because of the culture and environment that we established. In terms of my legacy, it goes back to that and being an effective manager and having the agency be a good place to work. That is how I would like to be remembered.



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