

**PIN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

COMMUTER RAIL DIVISION of the)	
REGIONAL TRANSPORTATION)	
AUTHORITY, d/b/a METRA,)	
)	
Plaintiff,)	Case No. 20 L _____
)	
v.)	
)	
UNION PACIFIC RAILROAD COMPANY,)	
)	
Defendant.)	

COMPLAINT

The Commuter Rail Division of the Regional Transportation Authority, d/b/a Metra, by and through its undersigned counsel, as its Complaint against Union Pacific Railroad Company, states as follows:

PARTIES

Metra

1. The Commuter Rail Division of the Regional Transportation Authority, d/b/a Metra ("Metra"), is a governmental entity with its principal place of business located in Chicago, Illinois. Metra is an operating division of the Regional Transportation Authority ("RTA"). Metra provides public transportation by commuter rail in northeast Illinois.

2. Metra operates one of the largest and most complex commuter rail systems in North America, serving the counties of Cook, DuPage, Will, Lake, Kane and McHenry. Metra provides service to and from downtown Chicago with 242 stations over eleven rail routes. Metra provides approximately 270,000 passenger trips each weekday under normal circumstances.

3. Pursuant to the Regional Transportation Authority Act, 70 ILCS 3615/1.01 *et seq.*, Metra is required to recover approximately fifty percent of its operating costs through fares and other system-generated revenues.

Union Pacific

4. Union Pacific Railroad Company (“UP”) is a Delaware corporation with its principal place of business located in Omaha, Nebraska. UP is a Class I railroad that operates service over 32,200 miles of routes in 23 U.S. states west of Chicago and New Orleans.

5. UP has the second largest railroad system in the United States and it is one of the largest transportation companies in the world.

JURISDICTION AND VENUE

6. UP regularly conducts business in Illinois and is subject to both general and specific jurisdiction in Illinois.

7. Venue is proper because the transaction or some part thereof out of which the cause of action arose occurred in Cook County, Illinois.

FACTS

8. Since 1995, UP has owned, operated, and controlled three commuter railroad lines between the Ogilvie Transportation Center in Chicago and, respectively: Kenosha, Wisconsin (“North Line”); Harvard and McHenry, Illinois (“Northwest Line”); and Elburn, Illinois (“West Line”) (collectively, the “UP Lines”).

9. Pursuant to purchase of service agreements with Metra, UP employees operate and maintain the trains on the UP Lines and perform various administrative functions including selling tickets and collecting fares. UP also owns and maintains the track, bridges, signal systems, adjacent properties such as stations and parking lots located along the lines, and most of

the right-of-way. Metra owns the rolling stock (e.g. locomotives and rail cars), which bear Metra's name, and Metra receives the fare revenue collected by UP employees. Metra subsidizes UP's operation of the UP Lines through payments that include compensation to oversee train conductors, train collectors, and ticket agents.

10. The current contract between the parties is a purchase of service agreement dated January 1, 2010 ("PSA"). A true and correct copy of the PSA, as amended, is attached as Exhibit A.

11. The PSA was set to expire December 31, 2016. However, the parties entered into a fourth amendment to the PSA, which extended the term of the PSA through December 31, 2019. Thereafter, from time-to-time the parties have extended the term of the PSA, most recently through December 31, 2020. A true and correct copy of the most recent agreement extending the term of the PSA is attached as Exhibit B.

12. Exhibit 2-C of the PSA addresses the Safety Standards of Performance, and provides that "[t]he Contract Services shall be operated or provided by [UP] in accordance with the applicable standards of safety established by any agency of the Federal Government and the State of Illinois[.]" See Exhibit 2-C to PSA, Exhibit A.

13. Under Section 6.01 of the PSA, UP is obligated to collect fares and tickets onboard the trains. PSA, §6.01, Exhibit A.

14. Under Section 5.04 of the PSA, UP is obligated to maintain agents to sell tickets at the stations. PSA, §5.04, Exhibit A.

15. Pursuant to Exhibit 2-C(1) of the PSA, UP "shall maintain its existing practices and procedures (including General Orders, Superintendent Bulletins and Special Instruction,

MOW Rules, Chief Engineer Bulletins and UP Safety Rules) for the safety of its passengers, employees and property used in providing the Contract Services.

16. UP's COMMUTER OPERATIONS SUPERINTENDENT BULLETIN NO. – 1, effective January 1, 2020 ("Superintendent Bulletin"), provides, in pertinent part:

It is critical to our success that all passengers on all trains have valid tickets and that those tickets are properly audited and collected. Every effort must be made to maximize our revenue collection. Nothing is more frustrating to those passengers who consistently buy the correct ticket than to see other passengers avoid paying altogether or buying tickets from 'short' zones. The goal is 100% fare collection. Trainmen must make every reasonable effort to maximize collection. There are a variety of techniques to be used and these should be discussed as part of the job briefing. Metra consistently has employees (spotters) ride our trains and we are contractually held accountable for all uncollected fares. Trainmen must diligently check zones of travel on all ticket forms. Train crews must always remain professional keeping in mind that providing good customer service is our top priority.

Crews regularly working the same assignments should vary their starting and finishing collection routines in order to make it more difficult for passengers to evade collection. Crews should concentrate intermediate collection on different cars on different days of the week. Most passengers will not attempt to evade fare collection or override their ticket zone. **It is also critically important that trainmen make repeated passes through their assigned cars throughout the trip, in order to detect and observe medical emergencies, passengers needing assistance or information, the general orderly conduct of the train, and fare collection.** When entering each section of a car, trainmen will announce in a loud and courteous manner, 'Tickets, Please.' Requests of individual passengers may be necessary. Conductors and collectors must not bang or rap on the metal modesty panels while collecting upper levels.

Superintendent Bulletin (emphasis added).

17. In 2019, UP communicated to Metra that UP desired to transfer the operation of the UP Lines to Metra. Under UP's proposal, commuter service would continue to operate on the

UP Lines, but the proportional amount paid by Metra to UP would substantially increase. Stated differently, Metra would pay more, and UP would do less.

18. Metra has asserted that UP has a common carrier obligation to operate commuter service on the UP Lines if there is no purchase of service agreement in place.

19. In response to Metra's position, on December 5, 2019, UP sued Metra in federal court in an effort to gain leverage in the negotiations for a new contract with Metra. UP has asked the federal court to relieve UP of its longstanding responsibility to operate commuter service on behalf of the riders in northeast Illinois, by declaring that UP does not have a common carrier obligation to operate commuter service.

20. On or about March 27, 2020, in response to the COVID-19 pandemic, all public-facing activities of UP employees on the UP Lines, including on-board ticket and cash collection and ticket agent sales, were suspended.

21. Both Metra and BNSF Railway resumed collection of tickets on June 3, 2020, and the Northern Indiana Commuter Transportation District, which operates the South Shore Line between Millennium Station in downtown Chicago and South Bend, Indiana, never stopped collecting tickets. UP nevertheless refused to return trainmen to walk trains to ensure passenger safety and wellbeing and perform ticket collection/fare verification.

22. On July 9, 2020, pursuant to Section 2.04 of the PSA, Metra issued a service change notice ("Service Change Notice") to be effectuated on July 13, 2020, ordering UP to maintain station agents to sell tickets and fully staff the trains with trainmen to walk the trains to, among other things, ensure passenger safety and wellbeing verify tickets and sell cash fares (collectively, "Service Change").

23. By letter from Metra to UP dated September 2, 2020, Metra again demanded that UP resume ticket sales and collection of tickets and fares.

24. By letter dated September 14, 2020, UP informed Metra that UP's ticket agents would resume selling tickets at Ogilvie Transportation Center ("OTC") and outlying stations, and UP would construct ticket confirmation booths at OTC for UP employees in order to verify fares as commuters enter and/or leave the platform as of October 5, 2020. This process fails to ensure that Metra receives the fares to which it is entitled under the PSA.

25. The ridership on the UP Lines represents approximately thirty percent of Metra's total ridership.

26. As a result of UP's arbitrary and capricious conduct, Metra received only negligible fare revenue for the period of time from the effective date of the Service Change Notice to the date of the filing of the instant action.

27. As a result of UP's refusal to allow its trainmen to walk through the train cars, Metra has received numerous complaints about safety from riders of the UP Lines. Some of these rider complaints have pointed out that no trainman could even be found to report an incident in one of the train cars. Some of these riders have stated they will no longer ride the UP Lines as a result of these events.

28. UP's continued breach of the PSA will irreparably harm Metra and the passengers, including economic and reputational loss that is difficult to fully quantify.

29. Metra does not have an adequate remedy at law.

BREACH OF CONTRACT

30. Metra re-alleges paragraphs 1 through 29 as this paragraph 30, as if fully set forth herein.

31. The PSA is a valid and enforceable contract.
32. Metra has fully performed its obligations under the PSA.
33. UP breached the PSA by failing to maintain ticket agents at the stations, failing to collect tickets and fares on the trains, and failing to have UP trainmen walk the trains.
34. Pursuant to Section 6.05 of the PSA, UP agreed to liquidated damages caused by its breach in a sum equal to, for each fare not collected, five times the highest one-way fare for transportation on the North Line, Northwest Line, and West Line.
35. UP's breaches of the PSA, in addition to proximately causing nearly a complete loss of fare revenue from train lines that represent approximately 30% of Metra's overall ridership, has also interfered with Metra's fulfillment of its mandate under the RTA Act to recover approximately fifty percent of its operating costs through fares and other system-generated revenues.
36. UP's breaches of the PSA have proximately caused Metra to sustain reputational damage among its ridership, prospective ridership, and other third parties.

WHEREFORE, The Commuter Rail Division of the Regional Transportation Authority, d/b/a Metra, respectfully requests the Court to enter judgment in its favor, and against Union Pacific Railroad Company, as follows:

- A. A money judgment equal to, for each fare not collected, the sum of five times the highest one-way fare for transportation on the North Line, Northwest Line, and West Line; or, in the alternative, actual damages;
- B. Damages in the amount of the Additional Compensation paid by Metra under the PSA since the effective date of the Service Change Notice;
- C. A permanent injunction requiring UP to maintain trainmen to walk through the train cars in accordance with the Superintendent Bulletin and to collect tickets and fares (including cash fares) on the three UP Lines;
- D. Prejudgment interest;

- E. Costs; and
- F. Such other and further relief as the Court deems just and proper in the premises.

Respectfully submitted,

**The Commuter Rail Division of the Regional
Transportation Authority, d/b/a Metra**

By: _____
One of Its Attorneys

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