

SERVICE DATE - FEBRUARY 10, 1997

SURFACE TRANSPORTATION BOARD¹

DECISION

Docket No. AB-167 (Sub-No. 1139)

CONSOLIDATED RAIL CORPORATION--ABANDONMENT--BETWEEN CORRY
AND MEADVILLE, IN ERIE AND CRAWFORD COUNTIES, PA

Decided: February 6, 1997

BACKGROUND

In a certificate and decision served August 1, 1994, the ICC authorized Consolidated Rail Corporation (Conrail) to abandon its 41.8-mile Meadville line between Corry and Meadville, PA. The abandonment, which was unopposed, was scheduled to become effective on August 31, 1994. Conrail's abandonment authority was postponed by decision served August 12, 1994, because the Cities of Corry, Meadville and Union City and the Boroughs of Cambridge Springs and Saegertown, PA (Municipalities) jointly filed an offer of financial assistance (OFA) under former 49 U.S.C. 10905 to purchase the line for its \$2.9 million net liquidation value. The Municipalities formed the Northwest Pennsylvania Rail Authority (Authority) to acquire the line. The ICC subsequently reopened an April 17, 1995 decision allowing the abandonment certificate to become effective and directed Conrail to sell the line to the Authority for continued rail service pursuant to the OFA. Petitions for administrative and judicial stay were denied, and the transfer of the line took place on October 31, 1995.

The ICC's decision was reversed in Consolidated Rail Corporation v. STB, 93 F.3d 793 (D.C. Cir. 1996). The court found that the ICC, in the circumstances of this case, had no jurisdiction to reopen its April 17, 1995 decision and rescind the abandonment, and instructed the Board to order the line reconveyed to Conrail.

In a decision served November 6, 1996, we reopened this proceeding and directed the parties to advise us what action, if any, the Board should take to implement the court's order. We also noted that the parties had been discussing sale of the line outside the OFA process and that a condemnation action was possible to preserve this line.

¹ The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(c) of the ICCTA provides, in general, that, if a court remands a suit against the ICC that was pending on the date of that legislation and involves functions retained by the ICCTA, subsequent proceedings related to the case shall proceed under the applicable law and regulations in effect at the time of the subsequent proceedings. The functions at issue in this proceeding were retained and are now found at 49 U.S.C. 10903-05. Thus, current 49 U.S.C. 10903-05 will apply to this proceeding on remand.

The Authority responded that it has engaged an experienced operator that is currently providing rail service on the Meadville line. The Authority states that substantial repairs have been made to the line using funds provided by the Commonwealth of Pennsylvania (the Commonwealth). The Authority adds that plans are underway for industrial development along the line and proposed connections to Canadian markets via Buffalo, NY. The Authority is allegedly planning to build a new transloading facility in Meadville to increase trans-border traffic from Canada.

According to the Authority, Conrail and the Commonwealth have not been able to resolve differences over rail service on the Meadville line. The Authority states that it would be willing to enter into negotiations with Conrail under the Board's auspices, and is prepared to use condemnation powers to acquire the right-of-way if an agreement is not reached.

Conrail replies that the Board must comply with the court's order and direct the Municipalities and the Authority to reconvey the line. In Conrail's view, the court's decision precludes any further Board involvement in a possible sale of the line or condemnation action.

Conrail states that after the line is reconveyed, the railroad would be willing to discuss continued operation of the line with the Municipalities and the Authority. If an agreement is reached, Conrail indicates that it would support Board action sought to effectuate it.

On December 6, 1996, the Authority filed a reply to Conrail's comments.² The Authority indicates that, while it does not dispute that the Meadville line must be reconveyed to Conrail under the court's decision, when taking further action the Board should consider that rail service is currently being provided to shippers on the line, and that improvements are being made to rail facilities using public and private funds. The Authority again states that it will initiate condemnation proceedings to acquire title to the line if necessary. But it requests that the Board facilitate negotiations between the parties to resolve this matter without the need to resort to condemnation.

DISCUSSION AND CONSLUSIONS

We agree with Conrail that, under the court's decision, we are limited to ordering the line reconveyed to Conrail. Because the court determined that Conrail has abandoned the line and that the Board lost jurisdiction, we have no authority to approve the subsequent acquisition of the Meadville line, whether by agreement or condemnation.³ Nor may we facilitate negotiations between the parties as the Authority requests.

We recognize that the Authority and the Commonwealth still want rail service preserved on the Meadville line. If an

² Even though our November 21, 1996 decision did not provide for filing of replies, we will accept the Authority's reply to provide a complete record.

³ See 49 CFR 1150.22, stating that the ICC (and now the Board) lacks jurisdiction over the acquisition by a State of a fully abandoned rail line.

agreement is reached to continue service, the operator of that service must apply for appropriate authority under 49 U.S.C. 10901.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The Authority is directed to reconvey the Meadville line to Conrail.
2. This decision is effective March 12, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen. Vice Chairman Owen commented with a separate expression.

Vernon A. Williams
Secretary

Vice Chairman Owen, commenting: The adverse decision of the D.C. Circuit Court of Appeals follows a noble effort by this Board to encourage a continuation of rail service that benefits the public by taking trucks off the highway, promoting safety, reducing air and noise pollution, retaining railroad jobs and enhancing the world-wide competitiveness of affected communities.

Unfortunately, the public authorities that laudably resumed rail service, rehabilitated the track and instituted innovative marketing over a line that Conrail deemed unprofitable now face loss of the line -- and the community loss of rail service -- because the new operator has been unable, in the short term, to obtain the necessary financing to acquire it.

The inescapable truth of this case is that Conrail, which was created at a cost to taxpayers of more than \$7 billion, ceased to operate the line because it was dissatisfied with the line's earnings. All Conrail sought when it first approached this Board was to rid itself of providing rail service over the line. We permitted Conrail to achieve that goal.

Now, rather than celebrate the preservation of rail service and offer assistance to the new short-line operator, Conrail is demanding a return of the line, which will result in termination of the service that has been restored.

I am not suggesting that Conrail stockholders or shippers cross-subsidize a money-losing operation. Indeed, this Board removed such a burden from Conrail while mangaining to retain rail service.

Service over this line should be retained and the new operator should be assisted in its efforts to provide existing and future shippers the service Conrail was not interested in providing.

One alternative is for Conrail promptly to negotiate an equitable lease of the line -- at least until the municipalities are able to obtain appropriate funding to pay Conrail the net liquidation value. Indeed, at that time Conrail will realize \$2.9 million from the sale -- the very price it demanded when seeking to rid itself of the obligation for service.

We have delayed the effective date of this decision for 30 days in expectation that an equitable solution that preserves local rail service will be accomplished. I will be watching events closely.