

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35700

CHESSIE LOGISTICS CO., LLC—ACQUISITION AND OPERATION EXEMPTION—
J. EMIL ANDERSON & SON, INC.

Decided: December 21, 2012

Chessie Logistics Co., LLC (CLC), a noncarrier, filed a verified notice of exemption under 49 C.F.R. § 1150.31 to acquire from J. Emil Anderson & Son, Inc. (Anderson) and operate 1.006 miles of private terminal trackage, including 431 feet of siding, in the city of Melrose Park, Cook County, Ill. (the Track). The Track, which is owned by Anderson and currently used by Indiana Harbor Belt Railroad (IHB), does not have assigned mileposts but is located west of the Mannheim Road crossing at the end of the Harvester Spur, an IHB spur track located between milepost 37.0 and milepost 38.0 off of the IHB main line, just south of the IHB Norpaul Yard. CLC states that under its agreement with Anderson, CLC will acquire all of Anderson's rights to the Track and assume Anderson's obligation to serve the owners of the adjacent commercial properties. Notice of the exemption was served and published in the Federal Register on December 6, 2012 (77 Fed. Reg. 72,906). The exemption is effective on December 21, 2012.

On December 14, 2012, CSX Transportation, Inc. (CSXT) filed a letter with the Board noting its concern that the use of the name "Chessie" by CLC could be misleading to shippers. CSXT asserts that because one of its predecessors was known as the Chessie System and the Chessie brand remains well known in the railroad industry, use of the name "Chessie" by CLC could mislead shippers to believe that CLC is affiliated with CSXT. CSXT submits that this type of misrepresentation may result in competitive harm to the shippers who utilize CLC's services or to CLC's competitors, who, CSXT asserts, may lose business from those shippers that believe CLC is affiliated with CSXT. In order to avoid any misunderstandings by shippers, CSXT requests that the Board condition Chessie's acquisition and operation of the Track on a commitment by Chessie that it not represent to shippers, or anyone else, that it is affiliated in any way with CSXT.

It is incumbent upon carriers subject to the Board's jurisdiction to manage their affairs with honesty, and the Board expects that CLC will not deliberately mislead its customers or the public at large by claiming an affiliation with CSXT where none exists. Cf. 49 U.S.C. § 10101(9) (in regulating the U.S. rail industry, it is the policy of the United States Government to, among other things, "encourage honest and efficient management of railroads.") That said, the Board does not see the need to impose the specific condition CSXT requests. CSXT does not claim that CLC's use of the name "Chessie" renders the verified notice materially false or misleading such that it should be rejected, see 49 C.F.R. § 1150.32(c), or that the use of the class

exemption here is inappropriate, or that the transaction itself is inconsistent with the public convenience and necessity, see 49 U.S.C. § 10901. To the extent that CSXT believes CLC's use of the name "Chessie" infringes on CSXT's intellectual property, that would appear to be a dispute for resolution in another forum. On the record before us, CSXT apparently is not seeking a condition that would ameliorate a harm resulting from this transaction, but one that is intended to preemptively prevent CLC from engaging in potentially misleading conduct in the future. CSXT has not demonstrated or provided evidence that CLC has directly, indirectly, or misleadingly represented to shippers, or to the shipping public, that it is, or is affiliated with, CSXT. In the absence of any evidence that CLC has in fact affirmatively misrepresented itself as affiliated with CSXT, the Board need not impose a condition that presumes it intends to do so.

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

It is ordered:

1. CSXT's request for a condition is denied.
2. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.