

33521
EB

SERVICE DATE – APRIL 28, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34334

LANCASTER AND CHESTER RAILWAY COMPANY
–ACQUISITION AND OPERATION EXEMPTION–
NORFOLK SOUTHERN RAILWAY COMPANY

Decided: April 25, 2003

We are granting the petition of the Lancaster and Chester Railway Company (L&C) for waiver of the requirement of 49 CFR 1150.42(e)¹ that 60 days' notice be given to employees who may be affected by L&C's planned acquisition and continued operation of approximately 30.8 miles of rail line currently owned by the Norfolk Southern Railway Company (NS) in Kershaw and Lancaster Counties, SC (the Rail Line).

BACKGROUND

L&C currently leases the Rail Line from NS pursuant to a notice of exemption filed in Lancaster and Chester Railway Company – Lease and Operation Exemption – Norfolk Southern Railway Company, STB Finance Docket No. 33969, served and published in the Federal Register on February 7, 2001 (66 FR 9410). L&C is the exclusive operator on the Rail Line. L&C's February 7, 2001 notice states that the lease transaction includes an option to purchase the Rail Line. L&C says that it intends to exercise this option and that it intends to file a notice of exemption with the Board under 49 CFR 1150.41 to obtain authority to purchase the Rail Line and to continue to operate it.

¹ Under 49 CFR 1150.42(e), "If the projected annual revenue of the rail lines to be acquired or operated, together with the acquiring carrier's projected annual revenue, exceeds \$5 million, the applicant must, at least 60 days before the exemption becomes effective, post a notice of applicant's intent to undertake the proposed transaction at the workplace of the employees on the affected line(s) and serve a copy of the notice on the national offices of the labor unions with employees on the affected line(s), setting forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and the lines that are to be transferred, and certify to the Board that it has done so."

By petition filed on April 8, 2003, L&C requests waiver of our requirement at 49 CFR 1150.42(e) to permit the exemption it will be seeking in this proceeding to become effective without providing the 60-day advance notice to employees on the affected rail line and to the national offices of the labor unions of those employees. In support of its request, L&C argues that the purpose of the notice requirement is to assist employees in dealing with employment changes that may be caused by transactions subject to the class exemption at 49 CFR 1150.41, and that this purpose would not be served by requiring notice in this proceeding because no rail employees would be adversely affected. L&C states that the sale will allow it to undertake a planned capital improvement program on the Rail Line.

There is no opposition to this petition.

DISCUSSION AND CONCLUSIONS

The purpose of our notice requirement at 49 CFR 1152.42(e) is to ensure that rail labor unions and employees who would be affected by the transfer of a line are given sufficient notice of the transaction before consummation.² The Board takes seriously the requirements of the rule and cautions L&C to heed them. Here, however, it does not appear that the purpose behind the notice requirement will be thwarted by the requested waiver.

While we do not ordinarily grant waivers of the employee advance notice requirement, it is very unlikely that any NS employees will be adversely affected by waiver of the requirement here. No NS employees have worked on the Rail Line for more than 2 years and thus there is no apparent need for advance notice, which is designed to assist current employees dealing with possible displacement. Also, in connection with its notice of exemption to lease the Rail Line, L&C served and posted notice at that time in compliance with 49 CFR 1150.42(e), and that notice stated that the lease transaction involved an option to purchase. Thus, any NS employees working on the Rail Line at that time were apprised of both the lease and the potential sale at issue here.³ There should be no need for advance notice here because the planned transaction will merely convert operation under lease to a similar operation under L&C's ownership. Accordingly, we will grant the requested waiver.

² See Acq. of R. Lines Under 49 U.S.C. 10901 & 10902 – Advance Notice, 2 S.T.B. 592 (1997).

³ After the sale transaction, NS will continue to own a radio tower located near the Rail Line. Thus, to the extent that NS employees do any work associated with that tower, they will continue to do this work after the transaction.

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

It is ordered:

1. L&C's request for waiver is granted.
2. This decision is effective on its service date.

By the Board, Chairman Nober and Commissioner Morgan.

Vernon A. Williams
Secretary