

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35498

ADRIAN & BLISSFIELD RAIL ROAD COMPANY
—CONTINUANCE IN CONTROL—
CHARLOTTE SOUTHERN RAILROAD COMPANY, DETROIT CONNECTING
RAILROAD COMPANY, AND LAPEER INDUSTRIAL RAILROAD COMPANY

Digest:¹ In October 2000, Adrian & Blissfield Rail Road Company (ADBF) spun off 3 rail lines it owned into 3 new railroad subsidiaries: Charlotte Southern Railroad Company, Detroit Connecting Railroad Company, and Lapeer Industrial Railroad Company. ADBF intended to continue in control of these newly formed railroads and, in fact, assumed control over them through stock ownership and management but, at that time, failed to seek Board authority to do so as the law requires. This decision grants ADBF's long-overdue application for that authority.

Decided: August 18, 2011

By application filed on April 18, 2011, Adrian & Blissfield Rail Road Company (ADBF) seeks Board authority under 49 U.S.C. §§ 11321-26 for continuance in control of Charlotte Southern Railroad Company (CHS), Detroit Connecting Railroad Company (DCON), and Lapeer Industrial Railroad Company (LIRR). ADBF seeks authorization for its previously consummated control, through stock ownership and management, of those 3 entities when they became Class III short line railroads (the transaction).

In a decision served and published in the Federal Register on May 18, 2011 (76 Fed. Reg. 28,847-50), the Board found that the transaction was a "minor transaction" under 49 C.F.R. § 1180.2(c) and accepted the application for consideration. The Board also established a procedural schedule that set June 17, 2011, as the due date for the filing of comments, protests, requests for conditions, and any other evidence and argument in opposition to the application. Comments on the transaction were timely filed by Dale R. Pape, a shareholder of ADBF. ADBF replied on June 30, 2011 (June 30 reply), to which Pape replied on July 26, 2011. A late-filed comment was submitted by Scott C. Cole on July 11, 2011, to which ADBF replied on July 19,

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

2011 (July 19 reply). Cole filed a reply to ADBF's July 19 reply on July 28, 2011. On July 29, 2011, ADBF filed a reply (July 29 reply) to Pape's July 26 comments and Cole's July 28 comments.

For the reasons discussed below, we are approving the application for continuance in control.

BACKGROUND

ADBF is a Class III rail carrier founded in February 1991 to operate approximately 20 miles of freight lines between Adrian and Blissfield, Mich., as well as several short branches connecting with its mainline. Through a series of transactions between 1998 and 1999, ADBF purchased a 2.27-mile rail line in Detroit, Mich., a 3.22-mile rail line in Charlotte, Mich., and a 1.34-mile rail line in Lapeer, Mich., from the Grand Trunk Western Railroad.² According to ADBF, in October 2000 it spun off these 3 newly acquired lines to 3 new ADBF subsidiaries (DCON, CHS, and LIRR, respectively)³ in order to insulate ADBF from any liabilities created by these subsidiaries. ADBF states that it intended to continue in control of these newly formed entities and, in fact, assumed control over the entities through stock ownership and management; but due to an oversight by its then-general counsel, ADBF failed to seek Board authority for continuance in control at that time.

The Board became aware of ADBF's failure to seek appropriate authority in 2009 when, in a separate proceeding, ADBF belatedly sought Board authority to acquire and operate the Tecumseh Branch Connecting Railroad Company. The Board noted that ADBF did not appear to have authority to have common control of its subsidiaries, and that it expected ADBF to seek appropriate authorization promptly for that common control.⁴ More than 15 months later, on February 15, 2011, ADBF filed a notice of exemption seeking authority for continuance in

² See Adrian & Blissfield Rail Rd.—Acquis. Exemption—Grand Trunk W. R.R., FD 33692 (STB served Dec. 28, 1998); Adrian & Blissfield Rail Rd.—Acquis. Exemption—Grand Trunk W. R.R., FD 33718 (STB served Mar. 3, 1999); Adrian & Blissfield Rail Rd.—Acquis. Exemption—Grand Trunk W. R.R., FD 33747 (STB served June 3, 1999).

³ See Charlotte S. R.R.—Acquis. & Operation Exemption—Adrian & Blissfield Rail Rd., FD 33937 (STB served Oct. 4, 2000); Detroit Connecting R.R.—Acquis. & Operation Exemption—Adrian & Blissfield Rail Rd., FD 33935 (STB served Oct. 4, 2000); Lapeer Indus. R.R.—Acquis. & Operation Exemption—Adrian & Blissfield Rail Rd., FD 33936 (STB served Oct. 4, 2000).

⁴ Adrian & Blissfield Rail Rd.—Acquis. & Operation Exemption—Tecumseh Branch Connecting R.R., FD 35035 (STB served Oct. 23, 2009).

control of the 3 carriers at issue here.⁵ The Board, however, rejected that notice, which listed several ADBF shareholders as petitioners, because it was filed purportedly on behalf of at least one party who did not authorize and was not aware of its filing.⁶ The transaction also appeared to be controversial and raised issues that made further scrutiny and the development of a more complete record necessary. Because of the questions raised as to the proper identity of the petitioners seeking authority, as well as the significant delay in seeking authority since 2009, ADBF was directed to submit either an application or a petition for exemption for continuance in control.⁷

ADBF states that it now seeks authority to continue in control of the 3 Class III carriers that it has in fact controlled since 2000. According to ADBF, the purpose of the transaction was, and would continue to be, to facilitate efficient and economical operation of its short line railroad subsidiaries through centralized management, purchasing, operations, marketing, accounting, and similar functions.

⁵ The notice of exemption was filed in Arthur W. Single II—Continuance in Control Exemption—Charlotte Southern Railroad, FD 35253. Although Jackson & Lansing Railroad Company was included in the title of that proceeding, ADBF has sought authorization for its control of that entity in a separate proceeding. See Adrian & Blissfield Rail Rd.—Continuance in Control Exemption—Jackson & Lansing R.R., FD 35410 (JAIL proceeding).

⁶ Concerning this reason for rejecting the notice of exemption, ADBF asserts that the Board lacks jurisdiction over “intracorporate squabbles.” Application at 25-26. ADBF misapprehends the basis for our action, which had nothing to do with adjudicating any intracorporate commercial dispute among ADBF and its shareholders. Rather, it had to do with the obligation of a Board practitioner to act with candor in his or her dealings before the Board. See 49 C.F.R. § 1103.27(a). The notice of exemption was filed purportedly on behalf of not only ADBF, but in addition, a number of named individuals, including Pape, who collectively were referred to as “Petitioners.” The notice purported to advance arguments and seek relief on behalf of “Petitioners.” In signing the notice, counsel identified himself as “Counsel for Petitioners,” and his signature thus constituted a representation that “Petitioners,” including Pape, had authorized him to file it. See 49 C.F.R. § 1104.49(a)(2). According to Pape, however, he did not authorize the filing and indeed was unaware of it until it was posted on the Board’s web site. That assertion is uncontested. Thus, the notice was materially false and misleading. The Board has a strong interest in maintaining the integrity of its processes and is well within its authority to reject any document filed by a practitioner purportedly on behalf of a party whom that practitioner does not, in fact, represent.

⁷ Arthur W. Single II—Continuance in Control Exemption—Charlotte S. R.R., FD 35253 (STB served Mar. 4, 2011).

PRELIMINARY MATTER

In its June 30 reply, ADBF requests that the Board reject Pape's comments as deficient, under 49 C.F.R. § 1104.10(a), because, insofar as Pape's comments contain allegations of fact, the comments are not verified, as required, under 49 C.F.R. § 1104.4(b). In its July 19 reply, ADBF requests that the Board strike Cole's comments for being late-filed, for lack of the required verification, and for lack of standing. In its July 29 reply, ADBF requests that, in accordance with 49 C.F.R. § 1104.13, the Board strike Pape's July 26 and Cole's July 28 comments as replies to replies.

ADBF's request to reject Pape's and Cole's comments will be denied. In the interest of having a more complete record and in light of Pape's and Cole's pro se status, we will accept Pape's and Cole's comments notwithstanding the absence of verification and the other issues identified by ADBF.

DISCUSSION AND CONCLUSIONS

Statutory Criteria. Under 49 U.S.C. § 11323(a)(3), the acquisition of control of a rail carrier by any number of rail carriers may be carried out only with Board approval under criteria set forth in 49 U.S.C. § 11324. Because the transaction does not involve the merger or control of 2 or more Class I railroads, this transaction is governed by § 11324(d), under which the Board "shall approve [the] application unless it finds that: (1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs."

In assessing transactions subject to § 11324(d), our primary focus is on whether there would be adverse competitive impacts that are both likely and substantial. If so, we also consider whether the anticompetitive impacts would outweigh the transportation benefits or could be mitigated through conditions. The Board also has the authority to consider the potential environmental effects of the transaction and to impose appropriate conditions to mitigate adverse environmental effects.⁸

Competitive Analysis. Based on the evidence before the Board, we conclude that the transaction has not caused, and is not likely to cause, a substantial lessening of competition or to create a monopoly or restraint of trade in freight surface transportation in any region of the United States. ADBF seeks (and has already effectively assumed) continued control over these entities through stock ownership and management. The transaction involved no change in rail operations, nor did it result in a reduction in rail service or competitive options. None of the involved carriers appears to compete or connect with one another. Further, no party has filed comments asserting that this transaction has lessened or will lessen competition.

⁸ See Canadian Nat'l Ry.—Control—EJ&E W. Co., FD 35087 (STB served Dec. 24, 2008), aff'd sub. nom. Vill. of Barrington v. STB, 636 F.3d 650 (D.C. Cir. 2011).

The concerns raised by the commenters provide no basis for finding this transaction to be anticompetitive, which is our primary concern under § 11324(d). Pape, a shareholder of ADBF, asserts that Mark Dobronski, President of ADBF, made false and misleading statements in his verified statement that was submitted with the application. Pape raises questions concerning ADBF's accurate reporting of accidents and injuries, alleging that ADBF failed to report an incident involving an ADBF employee in a timely manner to the Federal Railroad Administration (FRA), thus undermining its eligibility for an industry safety award that it has received several years in a row. Pape also raises questions regarding Dobronski's management practices and abilities, citing Dobronski's attempt to acquire a small non-profit historical railroad with what Pape described as "less than good intentions," and notes Dobronski's alleged removal from office as justice of the peace in Arizona. Pape goes on to contest Dobronski's representation of events transpiring between Dobronski and Pape.

Cole raises concerns regarding ADBF's tactics and representations made in both this proceeding and the JAIL proceeding, specifically ADBF's alleged tendency to attack the credibility of its opponents and alleged refusal to accept responsibility for various safety-related incidents. In the same vein, Cole questions the validity of ADBF's reason for its belated filing, namely ADBF's purported need to comply with the Michigan Liquor Control Commission licensing requirements associated with ADBF's dinner train operation as a reason for its delay in seeking Board authority.

None of the assertions made by Pape or Cole pertains to this particular transaction—ADBF's continuance in control of the 3 railroads—nor have they provided any evidence suggesting that the transaction is anticompetitive. The concerns regarding ADBF's reporting of injuries and accidents are primarily within the purview of the FRA.⁹ The allegations concerning Dobronski's professional conduct are not relevant to whether ADBF's continuing control of the 3 railroads is anticompetitive, but rather raise issues of state and local law that the record shows have been litigated in Michigan and Arizona courts.

ADBF's reasons for its delay in seeking authority for this transaction do not excuse its behavior. ADBF states that its initial failure to seek continuance in control authority in 2000 was due to "lack of counsel familiar with [Board] law and procedures," and that its subsequent delay in seeking authority was due to alleged threats of litigation by Pape and, in part, to ADBF's perceived need to comply with the Michigan Liquor Control Commission licensing requirements. ADBF's pattern of inattention and delay is troubling. We admonish ADBF, going forward, to devote full and proper attention to ensuring that it is in compliance with, and fulfills its responsibilities under, all regulatory requirements administered by this agency. Failure to do so could result in the imposition of administrative sanctions.

⁹ Although the Board can, under appropriate circumstances, impose safety conditions, no party has suggested any safety conditions be imposed here related to the concerns that have been expressed, nor are we convinced that the record shows that any are warranted.

Labor Protection. Under 49 U.S.C. § 11326(c), no labor protection is provided for transactions under §§ 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

Environmental Impacts. The Board's Office of Environmental Analysis (OEA) has concluded that this proceeding is "categorically excluded" from the need for an environmental review under the National Environmental Policy Act of 1969, see 49 C.F.R. § 1105.6(c)(2)(i), and that formal environmental review is not warranted in this case. Based on OEA's review, the Board's May 18, 2011 decision accepting ADBF's application noted that environmental documentation is not required because there has not been, nor will there be, operational changes that exceed the thresholds established in 49 C.F.R. §§ 1105.7(e)(4) or (5) for requiring environmental review; and there has not been, nor will there be, action that would normally require environmental documentation. The May 18, 2011 decision also indicated that an historic report is not required because there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 or more years old. See 49 C.F.R. § 1105.8(b)(1). We have not received any comments disputing those conclusions or expressing environmental concerns. Accordingly, we adopt OEA's conclusions.

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

It is ordered:

1. Adrian & Blissfield Rail Road Company's application to continue in control of Charlotte Southern Railroad Company, Detroit Connecting Railroad Company, and Lapeer Industrial Railroad Company is granted.
2. ADBF's request to reject Pape's comments is denied.
3. ADBF's request to strike Cole's comments, filed on July 11, 2011, is denied.
4. ADBF's request to strike Pape's comments filed on July 26, 2011, and Cole's comments filed on July 28, 2011, is denied.
5. This decision is effective on September 18, 2011.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey