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SERVICE DATE – LATE RELEASE JULY 27, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34337

MICHAEL H. MEYER, TRUSTEE IN BANKRUPTCY FOR CALIFORNIA WESTERN  
RAILROAD, INC.

v.

NORTH COAST RAILROAD AUTHORITY, d/b/a NORTHWESTERN PACIFIC RAILROAD

STB Ex Parte No. 346 (Sub-No. 25B)<sup>1</sup>

RAIL GENERAL EXEMPTION AUTHORITY—LUMBER OR WOOD  
PRODUCTS—PETITION FOR PARTIAL REVOCATION

Decided: July 27, 2005

In this decision, we are denying the complaint in STB Finance Docket No. 34337 and dismissing as moot the petition for partial revocation in STB Ex Parte No. 346 (Sub-No. 25B).

BACKGROUND

Michael H. Meyer is the trustee in bankruptcy (Mr. Meyer or trustee) for California Western Railroad, Inc. (CWR).<sup>2</sup> CWR operated a 40-mile line of railroad between Fort Bragg and Willits, CA, from August 1996 until November 25, 1998.<sup>3</sup> CWR's primary shipper on this

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<sup>1</sup> These proceedings are not consolidated, but are factually related. A single decision is being issued for administrative convenience.

<sup>2</sup> On December 3, 2002, CWR filed a Voluntary Petition in Bankruptcy in Case No. 02-12924, In re California Western Railroad, Inc., Debtor, before the U.S. Bankruptcy Court for the Northern District of California. Mr. Meyer was appointed CWR's trustee by court order entered January 7, 2003.

<sup>3</sup> CWR became a licensed carrier subject to the Board's jurisdiction pursuant to authority obtained in CWRR, Inc. – Acquisition and Operation Exemption – Mendocino Coast Railway, Inc., d/b/a California Western Railroad, STB Finance Docket No. 33005 (STB served Aug. 19, 1996). CWR's line was ultimately sold pursuant to Board authorization in Mendocino Railway – Acquisition Exemption – Assets of The California Western Railroad, STB Finance Docket No. 34465 (STB served Apr. 9, 2004).

line was Georgia Pacific Corporation (Georgia Pacific), which operated a lumber mill at Fort Bragg until September 2002. CWR transported lumber for Georgia Pacific.

CWR connected to the national rail system at Willits, where it joined a line operated by the Northwestern Pacific Railroad (NWP),<sup>4</sup> running south to Schellville, CA. At Schellville, NWP connected with the California North Coast Railroad Company, which, in turn, connected with the Union Pacific Railroad Company.

On November 25, 1998, the Federal Railroad Administration (FRA), after finding unsafe conditions and widespread noncompliance with Federal railroad safety laws and regulations, issued an emergency order requiring NWP to stop operating trains over the line between Arcata, CA, and Schellville/Napa Junction, CA.<sup>5</sup> The emergency order had the effect of severing CWR from the national rail system. The emergency order remains in effect as to the NWP line at issue here.

CWR did not tender traffic to NWP for movement, nor did it ask NWP to make the necessary repairs to restore service over its line following the FRA order. CWR filed for bankruptcy on December 3, 2002. On December 1, 2004, Mr. Meyer filed with the Board (1) a complaint on behalf of CWR, asking the Board to find NWP<sup>6</sup> liable for damages sustained as a result of NWP's alleged violation of its common carrier obligation, and (2) a petition for the partial revocation of the Board's exemption for rail transportation of lumber or wood products, 49 CFR 1039.11.

On December 21, 2004, NCRA separately filed a reply to the petition for partial revocation and an answer to the complaint. On January 28, 2005, NCRA filed a motion to dismiss the complaint. The trustee replied to the motion on February 17, 2005.

Mr. Meyer argues that, without its connection to the national rail system via NWP's line, CWR was unable to tender carloads of freight to be interlined for movement to points across the country or to receive carloads of freight interlined from other railroads. He maintains that

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<sup>4</sup> NWP operated the line pursuant to authority obtained in North Coast Railroad Authority – Lease and Operation Exemption – California Northern Railroad Company, Northwestern Pacific Railroad Authority and Golden Gate Bridge, Highway and Transportation District, STB Finance Docket No. 33115 (STB served Sept. 27, 1996).

<sup>5</sup> Emergency Order No. 21, Notice No. 1, 63 FR 67976 (Dec. 9, 1998).

<sup>6</sup> NWP operated pursuant to a lease from the owner of the line, North Coast Railroad Authority (NCRA), a public agency created by the State of California. The trustee filed the complaint against “North Coast Railroad Authority, d/b/a Northwestern Pacific Railroad.”

NWP's failure to bring itself into compliance with FRA's safety regulations effectively removed CWR from the freight hauling business. The trustee alleges that CWR's inability to serve Georgia Pacific cost CWR \$660,000 in lost freight revenue and \$132,000 in net operating income.<sup>7</sup>

The trustee maintains that NWP violated its common carrier obligation to render service on its line, to maintain an effective interchange with CWR, and to provide for the continuous movement of freight from origin to destination. According to Mr. Meyer, the substantial cost of rehabilitating the line and the lack of funds available to do so do not excuse NWP from fulfilling its common carrier obligation. The trustee concedes that CWR never asked NWP to repair the line or provide service. He argues, however, that a railroad need not engage in the "useless gesture" of requesting service over a line widely known to be out of service due to prolonged disrepair.<sup>8</sup> Mr. Meyer notes that the lumber traffic at issue here has been exempted from regulation pursuant to 49 U.S.C. 10502,<sup>9</sup> and he asks for partial revocation of that exemption so that the Board can institute a proceeding and set a procedural schedule to consider his complaint.

In its answer, NCRA denies the allegations in the complaint and asks us to dismiss the complaint. Citing the balancing test used by the Board to determine the reasonableness of an embargo in Decatur County Commissioners, et al. v. The Central Railroad Company of Indiana, STB Finance Docket No. 33386, slip op. at 7 (STB served Sept. 29, 2000) (Decatur), aff'd, Decatur County Commissioners v. STB, 308 F.3d 710, 716 (7th Cir. 2002), NCRA argues, in its motion to dismiss, that the cost of repairs needed to make the line operational would be in the millions of dollars, that it has never had the funds necessary to do so, and that such an expenditure would not be justified given the limited amount of traffic that had moved over the line before operations ceased. Finally, NCRA argues that CWR failed to make a specific request for service, which is necessary under 49 U.S.C. 11101(a) to invoke a carrier's duty to provide service.

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<sup>7</sup> Mr. Meyer initially alleged \$1.35 million in lost freight revenue and \$270,000 in net operating income. No explanation was provided for the above revised figures subsequently offered in the trustee's reply to NCRA's motion to dismiss.

<sup>8</sup> Meyer Reply at 9.

<sup>9</sup> See Rail Exemption—Lumber or Wood Products, 7 I.C.C.2d 673 (1991).

## DISCUSSION AND CONCLUSIONS

We find no merit to the trustee's complaint. In order to be found to have violated the common carrier obligation at 49 U.S.C. 11101(a), a carrier must have failed to provide service upon reasonable request. CSX Transportation, Inc.—Abandonment—Between Bloomingdale and Montezuma, in Parke County, IN, Docket No. AB-55 (Sub-No. 486), et al., slip op. at 10 (STB served Sept. 13, 2002). It has been held that a reasonable request is one that is specific as to the volume, commodity, and time of shipment. See LI Acquisition Corp.—Abandonment Exemption—In Montgomery County, PA, Docket No. AB-405 (Sub-No. 1X), et al., slip op. at 9 (ICC served Aug. 23, 1994); The Atchison, Topeka and Santa Fe Railway Company—Abandonment Exemption—In Lyon County, KS, Docket No. AB-52 (Sub-No. 71X), slip op. at 6 (ICC served June 17, 1991). Here, the trustee concedes that, in the 6½ years since the line went out of service in 1998, neither CWR nor Georgia Pacific, the only shipper on the line, ever requested that service be provided. Moreover, the record does not show that CWR or any other party ever asked that the line be repaired and put back into service.

Furthermore, the record shows that there was minimal traffic on the line and that the repairs that would have been required to bring the line into compliance with FRA safety regulations would have been extensive. NCRA indicates that it did not have adequate funding to allocate toward this expensive project. As we have previously found under similar circumstances, there would have been little justification on this record for expending the resources, or attempting to secure the funding, that would have been needed to make the necessary repairs. Decatur, slip op. at 20.

The Supreme Court has found that “[it] is well settled that a carrier cannot legitimately be required to expend money to rehabilitate a line where it will lose money on the operation.” Purcell v. United States, 315 U.S. 381, 385 (1942). See also Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co., 450 U.S. 311, 325 (1981). The trustee's claim that NWP's failure to expend the resources necessary to repair the line triggered CWR's demise ignores the necessary predicate to requiring such an expenditure. Before it can be charged with the failure to meet its common carrier obligation, NWP must have received a reasonable demand for its services. That did not happen. Nor is there any indication in the record that CWR or Georgia Pacific ever asked that the line be repaired. We cannot find that NWP had an obligation to repair the line in this situation.

In short, based on the record before us and well settled case law, we find no basis for granting the trustee's requested relief, and we therefore conclude that the trustee's complaint should be denied. As a result, we need not address the trustee's request for partial revocation of the lumber or wood products exemption. The trustee's request for that relief is therefore moot. NCRA's motion to dismiss is likewise moot.

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

It is ordered:

1. The complaint in STB Finance Docket No. 34337 is denied.
2. The petition for partial revocation in STB Ex Parte No. 346 (Sub-No. 25B) is dismissed as moot.
3. This decision is effective on the date of service.

By the Board, Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams  
Secretary