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SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34880

UNION PACIFIC RAILROAD COMPANY–TRACKAGE RIGHTS EXEMPTION–
BNSF RAILWAY COMPANY

Decided: June 2, 2006

On May 26, 2006, the Union Pacific Railroad Company (UP) filed a notice of exemption pursuant to 49 CFR 1180.2(d)(7) to acquire overhead trackage rights over a line of railroad of BNSF Railway Company (BNSF) between BNSF Milepost 0.69 near Portland and BNSF Milepost 8.1 near North Portland Junction, OR, a distance of approximately 7.41 miles. The exemption was scheduled to become effective June 2, 2006.

On June 1, 2006, John D. Fitzgerald, for and on behalf of the United Transportation Union-General Committee of Adjustment (UTU/GO-386), filed a petition seeking a stay of the operation of the notice of exemption. The proposed trackage rights, which are limited to two trains per day, would create an additional overhead routing for UP trains in the Portland area. UTU/GO-386 points out that the trackage rights agreement indicates that UP and BNSF will enter into a supplemental agreement granting BNSF the right to allow the Portland & Western R.R., Inc. (PNWR) to act as BNSF's agent between Portland and Labish, OR.

UTU/GO-386 asserts that UP's notice should be stayed until the supplemental agreement between UP and BNSF governing operations between Portland and Labish is made public and any Board approval or exemption is obtained. UTU/GO-386 argues that UP's notice is incomplete and that operations involving PNWR under the contemplated supplemental agreement are important to assessing the validity of any trackage rights agreement. UTU/GO-386 argues further that railroad employees have a strong interest in knowing the full scope of this transaction so that they may evaluate whether employee protection conditions will protect their interests. UTU/GO-386 adds that UP will not be harmed because it presently has satisfactory routes in the Portland area. UP filed a response on June 2, 2006.

DISCUSSION AND CONCLUSIONS

The standards governing a stay request are: (1) whether petitioner has a strong likelihood of prevailing on the merits; (2) whether petitioner will be irreparably harmed in the absence of a stay; (3) whether issuance of a stay would substantially harm other parties; and (4) whether issuance of a stay is in the public interest. Hilton v. Braunskill, 481 U.S. 770, 776 (1987);

Washington Metropolitan Area Transit Comm. v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958).

UTU/GO-386 has failed to meet its burden of demonstrating that the stay criteria are satisfied. In particular, UTU/GO-386 has not demonstrated a strong likelihood of prevailing on the merits. UP has submitted sufficient information with its notice to comply with our rules at 49 CFR 1180.4(g). The remaining concerns expressed by UTU/GO-386 are not relevant to a grant of overhead trackage rights by BNSF to UP.

Invoking the Board's authority under the class exemption for the overhead trackage rights merely confers authority on UP to acquire those trackage rights and nothing more. Should BNSF attempt to enter into an agreement with PNWR that would require Board authorization, then UTU/GO-386 properly may challenge that agreement at that time.

Further, UTU/GO-386 has failed to demonstrate irreparable harm to affected employees absent a stay of the effectiveness of the exemption authorizing the trackage rights. Any BNSF employees adversely affected by the grant of trackage rights will be subject to the standard labor protective conditions imposed in this proceeding. Employees may attempt to show that those protections are insufficient to address the harm from a grant of the trackage rights, but UTU/GO-386 has not made such a showing on this record.

Finally, staying the effectiveness of the exemption would delay the benefits of enhanced flexibility and efficiency associated with the alternate route for UP in the Portland area. Such action would harm UP and would not be in the public interest

For these reasons, UTU/GO-386's petition for stay is denied.

It is ordered:

1. UTU/GO-386's petition for stay is denied.
2. This decision is effective on its service date.

By the Board, W. Douglas Buttrey, Chairman.

Vernon A. Williams
Secretary