

25466

SERVICE DATE - APRIL 30, 1997

DO

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33380]

The Indiana Rail Road Company--Trackage Rights Exemption--Consolidated Rail Corporation

Consolidated Rail Corporation (Conrail) has agreed to grant trackage rights to The Indiana Rail Road Company (INRD) between INRD's connection with Conrail's Indianapolis Belt Running Track (Belt Track) near Raymond Street, Indianapolis, IN, at approximately milepost 5.3 and the end of Conrail's Belt Track at the connection with the former Norfolk and Western Railway Company at approximately milepost 13.5, a distance of approximately 8.2 miles.¹

In its notice, INRD stated its intention that the trackage rights would become effective on April 20, 1997. On April 18, 1997, Joseph C. Szabo, for and on behalf of United Transportation Union-Illinois Legislative Board (UTU-IL), filed a petition to reject

¹ INRD, Conrail, and CSX Transportation, Inc. (CSXT), are surviving parties to an agreement dated September 20, 1883, whereby all three maintained the right to operate over property owned by the former Indianapolis Union Railway Company (IU). IU's properties were conveyed to Conrail in 1976 by the United States Railway Administration. The track over which INRD operates consists of Conrail's 13.5-mile Belt Track and approximately 1.1 miles in downtown Indianapolis through the Indianapolis Union Station area. The surviving parties have agreed to terminate the 1883 agreement because many of its provisions have become obsolete. INRD has filed a notice of exemption to discontinue its trackage rights over the remainder of the Belt Track between mileposts 0.0 and milepost 5.3, as well as over the 1.1 miles of trackage in the Indianapolis Union Station area in *The Indiana Rail Road Company--Discontinuance of Trackage Rights Exemption--in Marion County, IN*, STB Docket No. AB-295 (Sub-No. 3).

INRD's notice of exemption because the notice, filed on April 14, 1997, purported to give only 6 days' notice of the transaction when the Board's rules require that the notice be filed with the Board at least 7 days prior to consummation of an exempt transaction. *See* 49 CFR 1180.4(g). INRD replied on April 22, 1997, in opposition to the petition to reject. INRD argues that the trackage rights should be allowed to become effective on April 20, 1997, because it mailed its notice of exemption on April 10, 1997, and that it "could reasonably assume that the Notice of Exemption would get from Jacksonville, Florida to Washington, D.C. in three days via first-class U.S. mail service."

The notice of exemption was not received by the Board until Monday, April 14, 1997, and hence was not filed until April 14, 1997.² The earliest the exemption could take effect, therefore, was Monday, April 21, 1997, and INRD's intended consummation date of April 20, 1997, was premature. While this is not a basis for rejection, UTU-IL is correct that INRD could not lawfully consummate the trackage rights transaction that is the subject of its notice until April 21, 1997.

If INRD consummated the trackage rights transaction (for which it invoked the class exemption) prior to April 21, 1997, it will need to pursue after-the-fact relief by means of a petition for exemption that would permit effectiveness of the exemption sooner than 7 days

² The April 14, 1997 date of receipt at the Board is controlling. Moreover, there is no merit to INRD's argument that it could reasonably have expected a document mailed via first class mail in Jacksonville on Thursday, April 10, 1997, to have been received for filing at the Board in Washington, D.C., on or before April 13, 1997. If a document filed by mail had been received by the Board on April 13 (a Sunday) or even on April 12 (a Saturday), it would not have been processed in any event until the next business day (Monday, April 14, 1997).

after the filing of its notice of exemption. The petition should be filed with an appropriate filing fee.³

The purpose of the trackage rights is to allow INRD to continue to interchange with Norfolk Southern Railway Company, at milepost 13.5, and with CSXT near State Street, at approximately milepost 8.9.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.--Trackage Rights--BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc. - Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33380, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of

³ See *Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services--1997 Update*, STB Ex Parte No. 542 (Sub-No. 1) (STB served Jan. 23, 1997). Specific questions concerning filing fees should be directed to the Office of the Secretary, (202) 565-1650.

STB Finance Docket No. 33380

each pleading must be served on Charles M. Rosenberger, Esq., 500 Water Street,
Jacksonville, FL 32202.

Decided: April 23, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary