

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 209X)

CAMP LEJEUNE RAILROAD COMPANY—ABANDONMENT
EXEMPTION¹—IN ONSLOW COUNTY, NC

Decided: February 1, 2001

By petition filed on October 17, 2000, Camp Lejeune Railroad Company (CL), a wholly owned subsidiary of Norfolk Southern Railway Company, seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 5.5-mile rail line extending between milepost CK-2.5 at Camp Lejeune and milepost CK-8.0 at Marine Junction, in Onslow County, NC.² The City of Jacksonville, NC, and the North Carolina Department of Transportation (NCDOT) filed letters in support of the petition. We will grant the exemption, subject to standard employee protective conditions.

BACKGROUND

CL operated over the above-described rail line under a lease from the Federal Government. Although the Government owns the line, it never operated the line as a common carrier. CL's lease expired in August 1999, at which time it stopped service on the line. According to CL, the Government will not renew the lease because it desires return of the property. Upon return of the property, CL states that the Government will cooperate with the City of Jacksonville and NCDOT with their plans to use the property for a trail and for commercial development, and to accommodate street improvements.

No freight service has originated or terminated on the line since June 1999. Of the two shippers located on the line, Barrus Concrete d/b/a APAC Carolina, Inc. (APAC), and Eastern Rulane Sales Corporation (Rulane), Rulane does not oppose the proposed abandonment. APAC, in a letter dated October 3, 2000,³ states that it was a regular user of the line until it was notified a

¹ The proceeding has been reentitled as an abandonment exemption rather than a discontinuance exemption. See infra note 2.

² Notice of the filing was served and published in the Federal Register on November 6, 2000 (65 FR 66585). The notice described the transaction as a discontinuance of service but, because only the petitioner has a common carrier obligation to operate the line, the transaction is properly considered as an abandonment.

³ A copy of the letter is attached to the petition as Exhibit B.

year ago that the line would be closed. It then made the decision not to repair its spur track and began using truck transportation. According to APAC, it now receives rail shipments at its Kinston, NC facility and then reloads the material into trucks for further shipment to Jacksonville. APAC states that it needs rail service and would make appropriate repairs to its spur if it were assured of continuous rail service. CL denies that there is a need for rail service and submits that the shippers have alternative transportation. There is no overhead traffic on the line.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by relieving CL from the cost of maintaining a line that is no longer being used [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be affected adversely.

Because the shippers have alternative transportation, regulation is not necessary to protect shippers from the abuse of market power. Nevertheless, to ensure that the shippers are informed of our action, we will require CL to serve a copy of this decision on the shippers on the line within 5 days of the service date of this decision and certify to us that it has done so. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).

CL has submitted an environmental report with its petition and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed abandonment. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified its data, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on December 15, 2000, and requested comments.

In the EA, SEA recommends that no conditions be imposed and no comments to the EA were received. Accordingly, we will not impose any conditions. We conclude that the proposed abandonment, if implemented, will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903, the abandonment by CL of the line described above, subject to the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).

2. CL is directed to serve a copy of this decision on APAC and Rulane within 5 days after the service date of this decision and to certify to the Board that it has done so.

3. An OFA under 49 CFR 1152.27(b)(2) to allow rail service to continue must be received by the railroad and the Board by February 12, 2001 subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by a \$1,000 filing fee. See 49 CFR 1002.2(f)(25).

4. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

5. This exemption will be effective March 4, 2001. Petitions to stay must be filed by February 20, 2001, and petitions to reopen must be filed by February 27, 2001.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes. Vice Chairman Clyburn commented with a separate expression.

Vernon A. Williams
Secretary

Vice-Chairman Clyburn, commenting:

While I agree with the result in this proceeding, I highlight one aspect of this case. Although not contained in a verified statement, there are allegations from a shipper, APAC, that it was a regular user of the line until it was notified by a representative of the petitioner's parent company that service over the line soon would be discontinued. APAC infers that it was at this time that it decided not to repair its spur track, ceased using the line, and arranged alternative transportation. Moreover, APAC's letter of October 3, 2000 intimates it still desires to use the line to transport its product. While here the result is justified, and contrary evidence is far from clear, neither a petitioner nor the Board, in general, should cite a lack of traffic to support authorizing an abandonment when a major cause of that lack of traffic is an action by or representation of the petitioner upon which the shipper relies.