

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35992

WISCONSIN CENTRAL LTD.—TRackage RIGHTS EXEMPTION—LINES OF UNION
PACIFIC RAILROAD COMPANY AND ILLINOIS CENTRAL RAILROAD COMPANY

Digest:¹ The Board denies a request to stay the effective date of the exemption sought in this proceeding.

Decided: March 4, 2016

On January 28, 2016, Wisconsin Central Ltd. (WCL) filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(7) to acquire overhead trackage rights over two rail segments owned by Union Pacific Railroad Company (UP) and one segment owned by WCL's affiliate, Illinois Central Railroad Company (IC) (collectively, the Trackage Rights Lines) in Will County, Ill.² WCL explains that it will acquire the trackage rights over these connecting lines pursuant to an agreement with IC,³ which itself has trackage rights for the Trackage Rights Lines. Specifically, WCL claims that IC has agreements with UP that allow IC to admit others to operate over the Trackage Rights Lines under certain circumstances.⁴ WCL states that the

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).

² The Trackage Rights Lines consists of: a segment owned by UP from AO 36.7 at Joliet, Ill., to milepost AO/AH 38.5 at South Joliet, Ill. (UP Segment 1); a segment owned by UP from milepost AO/AH 38.5 to milepost AH 39.43 at South Joliet (UP Segment 2); and a segment owned by IC from milepost AH 39.43 (immediately south of and connecting with UP Segment 2) to milepost AH 41.13.

³ WCL and IC are indirect subsidiaries of Canadian National Railway Company.

⁴ In 1987, IC, under its previous corporate name (Illinois Central Gulf Railroad Company) sold what became UP Segments 1 and 2 to a predecessor of UP. To effectuate IC's retained easement rights, UP's predecessor and IC entered into a "Reservation of Trackage Rights Agreement" dated April 28, 1987, governing IC's operations on UP Segment 1. IC subsequently entered into a trackage rights agreement dated May 5, 2005, applicable to IC's operations over UP Segment 2. See WCL Notice 3-4. WCL included with its notice of exemption the 1987 trackage rights agreement (as amended) as well as a 2016 amendment (to a

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proposed trackage rights will facilitate the efficient provision of service to and from a rail-served logistics facility. Notice of the exemption was served and published in the Federal Register on February 12, 2016 (81 Fed. Reg. 7,625). The exemption was scheduled to become effective on February 27, 2016.

On February 17, 2016, UP filed a response to the notice of exemption and requested that the Board impose a housekeeping stay. UP claims that WCL does not have a contractual right to operate over UP Segments 1 and 2 and that WCL cannot “piggyback” on IC’s rights. Accordingly, UP seeks a housekeeping stay to provide the parties time to negotiate regarding the trackage rights sought by WCL. In the alternative, UP asks that the Board indicate that allowing the exemption to become effective in this proceeding does not constitute a ruling on the parties’ contractual rights.

On February 22, 2016, WCL filed in opposition to UP’s stay request. In its opposition, WCL asserts that the parties’ disagreement rests on whether UP may insist on a separate written trackage rights agreement with WCL or whether the existing agreements only require either UP’s expression of consent or a finding that UP’s withholding of consent is legally invalid. WCL asserts that these are contract matters and that the Board has traditionally found such disputes are within the purview of other forums. As such, WCL claims that they do not represent a proper basis for a stay. WCL also states that it does not oppose UP’s suggestion that the exemption be permitted to go into effect if the Board indicates that it is not ruling on the parties’ respective contract rights.

On February 26, 2016, the Board’s Director of the Office of Proceedings served a decision postponing the effective date of the exemption to provide sufficient time for the Board to address the arguments presented.

DISCUSSION AND CONCLUSIONS

We will deny the request for a stay and permit the trackage rights exemption to go into effect immediately. UP does not allege that WCL’s verified notice is false or misleading, and there is no indication that WCL has failed to comply with the requirements for the exemption. Instead, UP contends that WCL still needs to negotiate an agreement with UP, while WCL contends that the existing agreements are sufficient and merely require UP’s consent. Thus, this is a contractual dispute. The Board’s exemption authority is permissive, and we do not typically resolve contract disputes. The contractual dispute between UP and WCL is a matter for another forum to decide and need not be resolved before the Board’s permissive authority is allowed to take effect. See BNSF Ry.—Trackage Rights Exemption—Union Pac. R.R., FD 35601, slip op. at 5-6 (STB served Sept. 11, 2013).⁵ We agree with UP and WCL in noting that the

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2009 agreement) by which IC permits WCL as a trackage rights operator over the Trackage Rights Line. See Notice 6-7 & Exs. B & D.

⁵ As noted by UP and WCL, the Board rejected a notice of exemption seeking trackage rights in Winamac Southern Railway—Trackage Rights Exemption—A. & R. Line, Inc.,

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authorization granted through this exemption does not constitute a ruling on the parties' contractual rights. See, e.g., Rock & Rail, Inc.—Acquis. & Operation Exemption—Burlington N. & Santa Fe Ry., FD 33738, slip op. at 2 n.2 (STB served Apr. 30, 1999).

It is ordered:

1. UP's motion for a stay is denied.
2. WCL's exemption is effective immediately.
3. This decision is effective on its service date.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.

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FD 35208 (STB served Jan. 9, 2009). There, the exemption sought would have belatedly authorized trackage rights under an agreement entered into nearly 14 years earlier. Moreover, the successor to the original granting party asserted that the agreement was no longer in effect and actively opposed the grant of the exemption. Here, on the other hand, UP is willing to enter negotiations and does not seek rejection of WCL's notice of exemption. Thus, Winamac Southern is inapposite.