

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35129

SSP RAILROAD HOLDING LLC  
–ACQUISITION AND OPERATION EXEMPTION–  
MITTAL STEEL USA - RAILWAYS INC.

[REQUEST FOR WAIVER OF 49 CFR 1150.32(e)]

Decided: April 28, 2008

We are granting the petition filed on April 1, 2008, by SSP Railroad Holding LLC (SSP), seeking a waiver of the requirement of 49 CFR 1150.32(e)<sup>1</sup> to permit the exemption it is seeking to become effective without SSP providing the full 60-day advance notice to employees who may be affected by SSP’s planned acquisition and operation of certain lines of railroad and to the national office of the employees’ labor union.

BACKGROUND

Concurrently with the filing of the petition for waiver, SSP, a newly formed noncarrier, filed a verified notice of exemption<sup>2</sup> under 49 CFR 1150.31 to acquire from Mittal Steel USA – Railways Inc. (Mittal Railways) and to operate approximately 183 miles of rail lines in and around Sparrows Point, MD.<sup>3</sup> Previously, BIP Acquisition Sub, Inc. obtained Board authority to

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<sup>1</sup> Under 49 CFR 1150.32(e), “If the projected annual revenue of the carrier to be created by a transaction under this exemption exceeds \$5 million, applicant must, at least 60 days before the exemption becomes effective, post a notice of intent to undertake the proposed transaction at the workplace of the employees on the affected line(s) and serve a copy of the notice on the national offices of the labor unions with employees on the affected line(s), setting forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and the lines that are to be transferred, and certify to the Board that it has done so.”

<sup>2</sup> Notice of the filing of the verified notice was served April 17, 2008, and published in the Federal Register on that same date at 73 FR 13272.

<sup>3</sup> SSP is a wholly owned subsidiary of Severstal US Holdings, LLC, which in turn is a wholly owned subsidiary of OAO Severstal, a publicly owned Russian steel company. ArcelorMittal USA Inc. (ArcelorMittal USA) is the U.S. subsidiary of ArcelorMittal, an international steel company. ArcelorMittal USA and its subsidiaries, including Mittal Railways, (. . . continued)

acquire and operate the subject line as part of a proposed sale of the Sparrows Point properties; however, that proposed sale of the properties was terminated and the line sale transaction was never consummated.<sup>4</sup> Also, on April 1, 2008, SSP filed a certification of labor notice compliance pursuant to 49 CFR 1150.32(e).

SSP is seeking waiver of the 60-day labor notice requirement to enable it to consummate the transaction as soon as possible after May 1, 2008, but before the May 14, 2008 “drop dead” date, after which either party may terminate, with certain exceptions, the purchase agreement. SSP states that its acquisition and operation of the rail lines at Sparrows Point will not have an adverse impact on the employees or their union. According to SSP, it does not intend to make any significant changes in the operation of those lines, the employees performing the work or the terms or conditions of their employment. SSP emphasizes that it is contractually obligated to provide those employees with compensation and employee benefits no less favorable in the aggregate than that being received immediately prior to the closing of the transaction. SSP also includes a letter from the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW), the sole collective bargaining representative of the employees at Sparrows Point, strongly supporting the proposed sale and waiver petition.

#### DISCUSSION AND CONCLUSIONS

The purpose of our notice requirements at 49 CFR 1150.32(e) is to ensure that rail labor unions and employees who would be affected by the transfer of a line are given sufficient notice of the transaction before consummation.<sup>5</sup> The Board takes seriously the requirements of the rule, but it does not appear that the purpose behind the notice requirements will be thwarted if the requested waiver is granted in this case.

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(continued . . .)

own various properties in the United States, including a steel plant at Sparrows Point and an extensive rail network serving the plant.

SSP states that, pursuant to a 2007 consent decree resulting from an action brought by the U.S. Department of Justice, ArcelorMittal USA has agreed to divest its properties at Sparrows Point, including the rail lines that are the subject of this notice. As provided in the purchase agreement, OAO Severstal has agreed to acquire the non-rail properties at Sparrows Point and SSP has agreed to acquire the rail properties, which SSP intends to operate as a common carrier.

<sup>4</sup> See BIP Acquisition Sub, Inc. –Acquisition and Operation Exemption–Mittal Steel USA – Railways Inc., STB Finance Docket No. 35074 (STB served Aug. 24, 2007).

<sup>5</sup> See Acq. of R. Lines Under 49 U.S.C. 10901 & 10902 – Advance Notice, 2 S.T.B. 592 (1997).

While we do not ordinarily grant waivers of the employee advance notice requirements, the record indicates that employees of Mittal Railways will not be adversely affected by waiver of the requirements here. As noted, SSP states that it does not intend to make any significant changes in the operation of the subject lines, the employees performing the work or the terms or the conditions of their employment. According to SSP, there presently are approximately 9 salaried and 70 hourly employees on the subject lines, and SSP is contractually obligated to provide to those employees compensation and employee benefits no less favorable in the aggregate than they were receiving immediately prior to the closing of the transaction. Also, as noted, on April 1, 2008, SSP has certified that it posted notice at the workplace of the Mittal Railways employees and served a copy on the national office of the USW, which strongly supports SSP's acquisition of the rail properties at Sparrows Point and the waiver request.<sup>6</sup> Because of the circumstances and because the employees potentially affected by the proposed transaction will have had approximately 30 days' notice of the proposed transaction by May 1, 2008, we will waive the 60-day requirement under 49 CFR 1150.32(e) to the extent necessary to permit the transaction to be consummated on or after May 1, 2008. Our action will allow sufficient time for the parties to consummate the transaction prior to the May 14, 2008 deadline.

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

It is ordered:

1. SSP's request for waiver is granted as set forth in this decision.
2. This decision is effective on its date of service.

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

Anne K. Quinlan  
Acting Secretary

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<sup>6</sup> See USW's letter attached to SSP's petition for partial waiver of the 60-day labor notice requirements.