

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-367 (Sub-No. 2X)

GEORGIA CENTRAL RAILWAY, L.P.--ABANDONMENT EXEMPTION--  
IN CHATHAM COUNTY, GA

Decided: September 16, 1997

By petition filed May 28, 1997, Georgia Central Railway, L.P. (Georgia Central or petitioner) seeks an exemption under 49 U.S.C. 10502 from the provisions of 49 U.S.C. 10903 to abandon a portion of its line of railroad extending from Value Station 42+33, where it switches off the Georgia Central main line, to Value Station 37+72, a distance of 0.71 miles in Savannah, Chatham County, GA. Notice of the petition was served and published in the Federal Register at 62 FR 32855 on June 17, 1997.

Also on June 17, 1997, shippers A&T Industries (A&T) and Roland's Bonded Warehouse (Roland's) filed a joint statement in opposition to the petition for exemption. These two shippers (jointly herein, the Protestants) requested that the exemption be denied, citing a lack of evidence in support of petitioner's statements about its avoidable costs, revenues, track rehabilitation, and annual maintenance.<sup>1</sup> CSX Transportation, Inc. (CSXT), the line's former owner, replied to Protestants' statement on June 27, 1997. On July 7, 1997, Georgia Central filed a reply to the statement in opposition, in which it submitted detailed data in support of its cost and revenue projections, rehabilitation figures, and annual maintenance projections. On July 28, 1997, Protestants filed a motion to strike portions of Georgia Central's reply discussing the data and, alternatively, asked that they be given an opportunity to rebut Georgia Central's data. In a decision served August 6, 1997, the Board denied the motion to strike but gave Protestants until August 21, 1997, to respond to Georgia Central's reply. Protestants filed a reply on August 21, 1997.

We have reviewed the information provided by Georgia Central and the Protestants. We will grant the exemption request, subject to standard labor protective conditions.

BACKGROUND

The Georgia Central line was constructed by Seaboard Coast Line Railroad Company (Seaboard) in the 1970s. Seaboard and its successors, including CSXT, operated the line until November 1990. At that time, CSXT sold the line and granted an easement over the underlying right-of-way to Georgia Central's corporate predecessor, Georgia Central Railway. Petitioner operated the line until September 30, 1996, at which time it embargoed the line.<sup>2</sup>

Georgia Central's reasons for seeking to abandon the line were the loss of the largest shipper on the line, the Georgia Pacific Corporation (Georgia Pacific), the lack of significant traffic and revenues from other shippers, and the unsafe condition of the line. Georgia Central asserts that abandonment of the line is appropriate because the dramatically reduced traffic and revenue levels

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<sup>1</sup> On August 6, 1997, the Georgia Department of Transportation (GaDOT) filed letter-comments in opposition to this abandonment. Petitioner replied on August 18, 1997. Because GaDOT's comments were late-filed and GaDOT failed to explain the delay or to seek permission to intervene at such a late date, its comments will not be considered. We note, however, that most of GaDOT's arguments are the same as those made by Protestants, which will be addressed in this decision.

<sup>2</sup> While petitioner initially claimed that it had imposed the embargo due to insufficient traffic, Georgia Central later claimed that the unsafe condition of the line was the reason for the embargo and cessation of service.

on the line cannot justify continued operation, particularly in light of the significant costs that would be associated with restoring the line to an acceptable operating condition. Finally, Georgia Central asserts that shippers have alternative transportation service available to them in the form of water and motor carriers.

Protestants dispute virtually all of Georgia Central's assertions. Specifically, the Protestants charge that petitioner's embargo of the line is invalid and unlawful, that many of petitioner's costs are unsupported, that the railroad has failed to demonstrate that the line cannot be operated profitably, and that Protestants generate substantial traffic and revenues for the line. Protestants' also claim that they have no economical transportation alternatives to rail service, and that the Protestants will thus be seriously harmed by abandonment of this rail line.<sup>3</sup>

## DISCUSSION AND CONCLUSIONS

Because Protestants' opposition here is based primarily on their challenge to petitioner's revenue and cost figures, we will address those issues first.

### Revenues and Costs

Protestants challenge Georgia Central's estimate of forecast year operating results, rehabilitation, and track maintenance costs. We conclude that petitioner's revenue and cost estimates, with minor revision, demonstrate that continued operation of this line at likely traffic levels will be unprofitable.

Traffic level during forecast year and revenue per carload. Georgia Central's estimate of forecast year revenue of \$19,440 is predicated upon the movement of 108 carloads during the year at \$180 a carload. Petitioner provides detailed traffic and revenue figures for each of the 36 months before the embargo. Petitioner states that the line's major shipper, Georgia Pacific, recently relocated its Savannah, GA operations. Due to this departure and due to the lack of significant traffic from other shippers, the line was embargoed effective September 30, 1996. According to Georgia Central, Georgia Pacific accounted for 70% of the total traffic (249 carloads out of a total of 357 carloads) and \$57,375 of the total revenues of \$74,871 generated from the line from October 1, 1995, through September 30, 1996. Georgia Central states that, during that period, the more active of the two remaining shippers, A&T, tendered only 103 carloads, generating \$16,686 in revenues out of the total revenues of \$74,871. According to Georgia Central, this represents a significant downward traffic trend for A&T, which two years earlier (October 1, 1993, through September 30, 1994) had tendered 257 carloads out of a total of 331 carloads for that period.

Protestants argue that this estimate of 108 carloads is not reliable because it is based on a sample taken too long ago to serve as a reliable predictor of future traffic. Protestants allude to the Board's abandonment regulations at 49 CFR 1152.2(c) which require that the "base year"--the year for which data to be used in the abandonment application are collected-- end no more than 6 months prior to the initiation of the abandonment proceeding.

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<sup>3</sup> Protestants also contend that, in the event Georgia Central abandons the line, CSXT, the owner of the right-of-way, retains a residual common carrier obligation to provide service over the line. In its reply, CSXT disputes Protestants' claims. We agree with CSXT. Georgia Central's predecessor purchased this line in 1990, including all track and rail facilities; CSXT retained only the real property interests. Thus, petitioner is the owner of the line while CSXT merely owns the underlying real estate. Often, a railroad possesses an easement or, as here, owns the tracks and ties, but another entity owns the underlying real estate. We have never held that the passive ownership of underlying real estate confers a common carrier obligation. Protestants cite no authority to the contrary. In the transaction by which Georgia Central's predecessor acquired the line, Wilmington Terminal R.R. Inc.--Purchase and Lease--CSX Transp. Inc., 6 I.C.C.2d 799 (1990), the Interstate Commerce Commission made clear that the transaction was a "purchase," not a contract to operate a line owned by another railroad. Consequently, only petitioner has a common carrier obligation vis-a-vis the line.

We find this argument to be unpersuasive. Because this proceeding involves a petition for exemption rather than a formal application, the petitioner is free to submit any evidence it believes to be representative. The petitioner provided data for the entire period prior to the embargo; it has provided the most recent data it has. The Protestants have not demonstrated that petitioner's traffic figures are stale or otherwise unrepresentative. Nor have they shown that some higher figure represents a more likely forecast. Rather, A&T relies on the bare assertion that political unrest in Taiwan, apparently the location of major customers of A&T, resulted in the reduced demand for A&T's paper products. A&T claims that this reduction was temporary and that traffic would have increased following the cessation of political unrest but for the embargo of the line.

A&T has failed to show why or how political unrest, if present, would affect its market in Taiwan. A&T did not identify its customers in Taiwan, disclose what percentage of its product moved to that country, nor has it shown how much of its traffic moved by truck during that period. Finally, A&T has not shown why it could not sell its paper to other markets during that period. Given these deficiencies in A&T's argument, we cannot and will not disregard the data representing the actual traffic volumes on the line during the most recent period for which that information is available.

Protestants also argue that Georgia Central's base year estimate of traffic levels is understated because it does not take into account increased traffic flow from Roland's asserted opportunity to receive 60 additional carloads of rolled paper. Protestants estimate future traffic volume at 260 carloads annually. However, Protestants' arguments about the potential for increased traffic is speculative and is not founded on a firm commitment to provide these additional carloads in the future. Moreover, the movement of 260 carloads is not consistent with the downward trend in traffic tendered by Protestants in the 36 months prior to the embargo (i.e., 218 cars the first year versus 108 in the third). We cannot, therefore, accept Protestants' arguments concerning increased traffic flow as the basis for estimating forecast year business volume and revenue for the railroad. Rather, we conclude that Georgia Central's projection of 108 carloads is better supported and provides a more credible estimate of future traffic volume and serves as a reasonable basis for estimating future annual revenue on the line.

Finally, Protestants argue that Georgia Central should have explained why it did not attempt to assess CSXT a greater amount than \$180 per carload on Protestants' traffic in view of Georgia Central's claim of deficit operation of the line. However, Protestants provide no valid factual basis to adopt a figure higher than this for purposes of the Board's profitability analysis. The revenues developed for the 108 carloads of freight shipped by A&T and Roland's over the final twelve months of operations are based on the average revenue per carload (\$162) increased to \$180. This amount is applied to all 108 carloads to develop revenue of \$19,440 attributable to this traffic. We accept this revenue based on the current traffic consist and use it in our forecast year operating scenarios.

Avoidable costs and operating profitability. Georgia Central provides revenue and cost data for both three-day and two-day-a-week service. Revenues and costs are estimated as follows:

<u>Item</u>	<u>3-day/week</u>	<u>2-day/week</u>
Revenues	\$19,440	\$19,440
Labor	16,848	11,232
Locomotive Expense	3,276	2,184
Locomotive Fuel	8,875	5,850
Track Repairs	7,209	7,209
Car Hire	1,425	1,425
Admin./Misc.	3,000	3,000
Return on Investment	<u>4,612</u>	<u>4,612</u>
Total Avoidable Cost	45,246	35,513
Net Avoidable Loss	\$25,806	\$ 16,073

Protestants claim that evidentiary support was not provided for certain avoidable costs, i.e., labor, locomotive expense, locomotive fuel, track repairs and car hire. However, notwithstanding their problems with the railroad's lack of support for its cost estimates, Protestants provide no alternative costs or suggestions as to better or more accurate evidence. Additionally, Georgia Central explains in its reply statement the derivation of each item of claimed cost. Aside from the misclassification of return on investment, as subsequently discussed, the railroad's estimates of avoidable cost do not appear to be unreasonably high or inflated. Thus, absent any avoidable cost evidence from Protestants to the contrary, we accept petitioner's avoidable cost estimates in this proceeding. Individual cost items are addressed below.

Administrative and miscellaneous costs. Protestants argue that administrative and miscellaneous costs are not avoidable. Such costs are, in fact, eligible for inclusion in the calculation of avoidable costs under longstanding Interstate Commerce Commission and Board practice. The avoidable costs of providing freight service on a branch line include that portion of administrative and miscellaneous costs attributable to the branch line.

Return on investment. Georgia Central states that the net liquidation value for the line is \$46,117. The unit costs used to compute this value are reasonable. We note that the line was constructed in the 1970s, so the materials should be in relatively good condition, and that the return on investment was calculated using a conservative 10 percent. However, Protestants argue that return on investment in track materials is an economic cost, not an operating cost. We agree. Return on investment is an opportunity cost which should be excluded from total avoidable costs. Restated avoidable costs, without return on investment, are \$40,634 for 3-day-a-week service and \$30,901 for 2-day-a-week service. Return on investment is an opportunity cost and should therefore be considered in determining the economic profitability of a rail line.

Rehabilitation and associated costs. Georgia Central contends that the line was embargoed because of track conditions and that the line does not meet minimum FRA class 1 standards. Based on a recent inspection of the line, petitioner contends that the line contains 600 defective ties evenly spaced over its entire length. Georgia Central estimates that there are 2,154 ties in the line. In addition, there are 180 defective switch ties. Georgia Central states that it would have to replace 155 cross-ties and 68 switch ties at a cost of \$21,047 to bring the line up to FRA class 1 standards. The railroad's figures indicate that approximately 28% of the ties are defective, and that the defective ties are not clustered in any one location.

Protestants contend that Georgia Central's rehabilitation costs are unsupported and that petitioner's evidence overstates the number of non-defective ties required for FRA class 1 standards. According to Protestants, the line does not require any rehabilitation.

FRA class 1 standards require that 5 ties per 39 foot rail length must be non-defective. That means that approximately 23% of the total number of ties must be non-defective. The remaining 77% can be defective. Georgia Central's inspection found only 28% of the ties defective, substantially less than the 77% allowed by FRA standards. Based on this comparison, the line generally meets FRA class 1 standards and we agree with Protestants that the line does not require any rehabilitation.

Maintenance of way. If service were restored on the line, Georgia Central states that annual maintenance costs for the line would be \$7,209. This figure includes the annual replacement of 25 ties, weed and brush control, contract labor, and machine rental.

Protestants argue that Georgia Central's track maintenance costs are unsupported. The shippers raise questions concerning some of the maintenance cost items. However, the Protestants do not propose any alternative costs in their reply evidence.

Further, Protestants note that the maintenance for the line would be about \$10,000 per mile (the line is less than a mile long), an amount that exceeds the costs commonly associated with FRA class 1 track. Estimated FRA class 1 maintenance costs vary widely depending on specific conditions of the line. As a result, general figures such as those used by Protestants have little meaning when applied to a particular line and should be used only in the absence of more specific

costs. Georgia Central presents the only cost evidence specifically related to the line. We continue to consider line-specific information to be better than general non-specific estimates, particularly for very short line segments such as this one. Moreover, the dollar amount and tie replacement rate proposed by Georgia Central appear reasonable based on our experience.

Summary. As adjusted to remove return on investment from avoidable costs, we find that Georgia Central will incur avoidable costs of \$40,634 for 3-day-a-week service and \$30,901 for 2-day-a-week service, resulting in an operating loss of \$21,194 for 3-day-a-week service and \$11,461 for 2-day-a-week service.

#### Exemption Criteria

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.

Based on our analysis of the evidence of record, we find that further detailed scrutiny of this transaction under U.S.C. 10903 is not necessary to carry out the rail transportation policy. Exempting the proposed transaction will minimize the need for Federal regulatory control over rail transportation and, by eliminating the administrative expense of processing an abandonment application, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(2) and (7)]. An exemption will also eliminate the need for Georgia Central to spend significant sums to maintain and operate a line that has no potential for profitable operation. Thus, an exemption will foster sound economic conditions and encourage efficient management [49 U.S.C. 10101(5) and (10)]. Other aspects of the rail transportation policy will not be affected adversely.

Regulation is also not necessary to protect shippers from an abuse of market power. The record establishes that alternative truck and water carrier services are available and, in light of the embargo here, if any of protestants' traffic is currently moving, it is by means of those alternative modes. Although Protestants have claimed that such alternative modes are not economical, the fact that shippers may or even likely will incur some inconvenience and added cost does not, by itself, outweigh the detriment to the public interest of continued uneconomic operations. See, e.g., Chicago and North Western Transp. Co.--Abandonment, 354 I.C.C. 1, 7 (1977). Given our market power finding, we need not determine whether the proposed abandonment is limited in scope.

Although we are approving this abandonment exemption, we note that interested persons may offer to purchase or subsidize the line pursuant to our financial assistance procedures should they continue to believe that the line may become economically viable. Although Georgia Central notified all former shippers of the proposed abandonment, to ensure that they are informed of our action, we will require Georgia Central to serve a copy of the decision on each of them within 5 days after the service date and to certify to us that it has done so.

#### Embargo

As noted, Protestants have challenged the legality of petitioner's embargo. We have addressed the Protestant's arguments that, but for the embargo, the Protestants would have tendered more traffic to the petitioner than A&T and Roland did during the 36 months preceding the embargo. We have found those arguments to be unpersuasive for the reasons noted above. Neither A&T nor Roland has filed a complaint under 49 U.S.C. 11701 against the Georgia Central arguing that the railroad unlawfully embargoed the line, and we need not address that issue further for purposes of adjudicating the exemption petition before us.

#### Labor Protection

Under 49 U.S.C. 10505(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect employee interests. 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).

#### Environmental Analysis

Georgia Central 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 action. See 49 CFR 1105.11. Our Section of Environmental Analysis (SEA) has examined the environmental report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on August 8, 1997, in which it recommended that no environmental or historic conditions be imposed on the abandonment. No comments to the EA were filed by the September 5, 1997 due date. Accordingly, based on SEA's recommendation, 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 of the above-described line, subject to the employee protective conditions in Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979).

2. Georgia Central must serve a copy of this decision on A&T Industries and Roland's Bonded Warehouse within 5 days after the service date of this decision and certify to us that it has done so.

3. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1)<sup>4</sup> to allow rail service to continue must be received by the railroad and the Board by September 26, 1997, 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 \$900 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. Provided no OFA has been received, this exemption will be effective on October 17, 1997. Petitions to stay must be filed by October 2, 1997; petitions to reopen must be filed by October 14, 1997.

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), Georgia Central shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by Georgia Central's filing of a notice of consummation by September 17, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed not later than 60 days after satisfaction, expiration or removal of the legal or regulatory barrier.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams

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<sup>4</sup> See Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, STB Ex Parte No. 537 (STB served Dec. 24, 1996, and June 27, 1997).

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Secretary