

21461 SERVICE DATE - LATE RELEASE JANUARY 14, 1997
CO

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33337

MINNESOTA NORTHERN RAILROAD, INC.--TRACKAGE RIGHTS EXEMPTION--
BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Decided: January 14, 1997

On January 8, 1997, Minnesota Northern Railroad, Inc. (Minnesota Northern) filed a verified notice of exemption. It also filed a motion for a protective order with respect to the agreement covering the proposed transaction. Under the proposed exemption, The Burlington Northern and Santa Fe Railway Company (BNSF) will grant overhead trackage rights to Minnesota Northern over a line of railroad between mileposts 31.0 and 33.0 near Erskine, MN. On January 13, 1997, John D. Fitzgerald, for and on behalf of the United Transportation Union-General Committee of Adjustment (UTU) for certain lines of Burlington Northern Railroad Company (BN),¹ filed a petition to reject, revoke and/or stay operation of the notice of exemption and reply to the motion for a protective order.² Minnesota Northern replied. The petition to stay the effective date of the exemption will be denied.

BACKGROUND

These trackage rights arise out of an agreement by which Minnesota Northern acquired certain rail lines and incidental trackage rights in STB Finance Docket Nos. 33315 and 33316.³ Minnesota Northern states that these trackage rights supplement the incidental trackage rights that were involved in those proceedings and provide for more efficient operations by Minnesota Northern.

As part of the transaction, Minnesota Northern and BNSF have agreed to the imposition of labor protective conditions established in Norfolk and Western Ry. Co.--Trackage Rights--BN,

¹ Parties' references to the trackage rights grantor in this proceeding are either to "BNSF" or to "BN." The apparent reason for this is that the carrier's name changed on December 31, 1996, when The Atchison, Topeka and Santa Fe Railway Company merged with and into Burlington Northern Railroad Company. The name of the surviving corporation is The Burlington Northern and Santa Fe Railway Company.

² UTU's petition to reject or revoke and Minnesota Northern's motion for a protective order will be addressed in a subsequent decision.

³ Minnesota Northern Railroad, Inc.--Exemption--Acquisition and Operation of Rail Line and Incidental Trackage Rights From Burlington Northern Railroad Company, STB Finance Docket No. 33315; and RailAmerica, Inc.--Continuance in Control Exemption--Minnesota Northern Railroad Inc., STB Finance Docket No. 33316. Petitions to reject or revoke these exemptions also are pending and will be addressed in a separate decision as well.

354 I.C.C. 605 (1978), as modified by Mendocino Coast Ry., Inc.-- Lease and Operate, 360 I.C.C. 653 (1980).

In its stay request, UTU argues that the notice should be stayed pending disposition of its petition to reject or revoke the exemption. UTU states that railroad employees will be injured by the transaction because the instant trackage rights will link up certain operating rights in the Erskine area, with a loss of jobs and work for BN employees and with displacement effects. Petitioner further asserts that Minnesota Northern would not be injured by a stay, that the public would benefit from a stay as reliable BN service would continue in lieu of Minnesota Northern's uncertain operations, and that UTU has a high likelihood of success on the merits of its rejection/revocation requests.

DISCUSSION AND CONCLUSIONS

The standards governing disposition of a petition for stay are: (1) whether petitioner is likely to prevail on the merits; (2) whether petitioner will be irreparably harmed in the absence of a stay; (3) whether issuance of a stay would substantially harm other interested parties; and (4) whether issuance of a stay is in the public interest. See, e.g., Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977). The party seeking a stay carries the burden of persuasion on all of the elements required for such extraordinary relief. Canal Authority of Fla. v. Callaway, 489 F.2d 567, 573 (5th Cir. 1974).

In its petition, UTU has provided scant support for its assertion that it is likely to prevail on the merits of its petition to revoke or reject the exemption in this proceeding. UTU also has not shown irreparable harm in the absence of a stay. Indeed, UTU acknowledges that employee protective conditions are to be imposed on the trackage rights transaction that is the subject of notice in STB Finance Docket No. 33337. UTU argues that these protective conditions "afford only the minimum redress, and do not fully compensate for the injuries." While it is true that our protective conditions establish minimum protection, it is also true that they establish the protection we require to be afforded employees absent a showing that extraordinary protection is required. Petitioner has not suggested that extraordinary protection is required here. In any event, any financial injury can be compensated and is neither immediate nor irreparable. Finally, UTU has not provided any information to support its assertion that Minnesota Northern and other interested parties would not be harmed by a stay, nor has it demonstrated that issuance of a stay would be in the public interest.

The burden is on UTU to demonstrate that it has met the conditions for issuance of a stay. UTU has fallen short of making such a demonstration here. It has failed to show that such relief is necessary or appropriate in the circumstances. Accordingly, its stay petition will be denied.

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

It is ordered:

1. UTU's petition for stay is denied.
2. This decision is effective on January 14, 1997.

By the Board, Linda J. Morgan, Chairman.

Vernon A. Williams
Secretary