

35437
EB

SERVICE DATE - MARCH 1, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34417 (Sub-No. 3)

UNION PACIFIC RAILROAD COMPANY–
TEMPORARY TRACKAGE RIGHTS EXEMPTION–
BNSF RAILWAY COMPANY¹

Decided: February 23, 2005

By petition filed on December 17, 2004, Union Pacific Railroad Company (UP) requests that the Board partially revoke the class exemption to permit the modified trackage rights arrangement exempted in STB Finance Docket No. 34417 (Sub-No. 2)² to expire on or about May 16, 2005.³

¹ Effective January 20, 2005, The Burlington Northern and Santa Fe Railway Company has changed its name to BNSF Railway Company (BNSF).

² On December 17, 2004, UP concurrently filed a verified notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by BNSF to grant additional local trackage rights to UP over a BNSF line of railroad between BNSF milepost 113.0 and BNSF milepost 117.0 near Endicott, NE, a distance of approximately 4.0 miles. UP submits that the trackage rights are only temporary rights, but, because they are "local" rather than "overhead" rights, they do not qualify for the Board's class exemption for temporary trackage rights at 49 CFR 1180.2(d)(8). See Union Pacific Railroad Company–Temporary Trackage Rights Exemption–The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 34417 (Sub-No. 2) (STB served Jan. 6, 2005).

³ The original trackage rights granted in Union Pacific Railroad Company–Trackage Rights Exemption–The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 34417 (STB served Nov. 3, 2003), extended between BNSF milepost 114.5 and BNSF milepost 117.0 near Endicott, NE, a distance of approximately 2.5 miles. By decision served December 8, 2003, in STB Finance Docket No. 34417 (Sub-No. 1), the Board granted an exemption to permit the trackage rights granted in STB Finance Docket No. 34417 to expire. At that time, it was anticipated by the parties that the rights would expire on or about October 15, 2004. However, this authority had not been exercised at the time of filing of the notice of exemption in STB Finance Docket No. 34417 (Sub-No. 2) for the additional local trackage rights.

UP states in its petition that the trackage rights arrangement exempted in STB Finance Docket No. 34417 (Sub-No. 2) is necessary to permit UP to continue to serve the shipper at Endicott until permanent arrangements can be made for alternative rail service to this shipper, and will permit UP to handle trains carrying materials from the portion of the line that is being salvaged. Thus, UP is only seeking, and BNSF is only willing to grant, temporary operating rights over BNSF's trackage until May 16, 2005.

DISCUSSION AND CONCLUSION

Although UP and BNSF have expressly agreed on the term of the proposed temporary trackage rights arrangement, trackage rights approved under the class exemption at section 1180.2(d)(7) normally remain effective indefinitely, regardless of any durational contract provisions. Occasionally, trackage rights exemptions have been granted for a limited term rather than in perpetuity. See Union Pacific Railroad Company–Trackage Rights Exemption–The Burlington Northern and Santa Fe Railway Company, STB Finance Docket No. 34242 (Sub-No. 1) (STB served Oct. 7, 2002).

Under 49 U.S.C. 10502, the Board may exempt a person, class of persons, or a transaction or service, in whole or in part, when it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either the transaction or service is of limited scope, or regulation is not necessary to protect shippers from the abuse of market power.

UP's temporary trackage rights have already been authorized under the class exemption at 49 CFR 1180.2(d)(7). See Railroad Consolidation Procedures, 1 I.C.C.2d 270 (1985). Limiting the term of the trackage rights is consistent with the limited scope of the transaction previously exempted, and will have no adverse impact on the shipper on the line because the trackage rights that are the subject of the exemption are solely to allow the shipper to continue to receive rail service until permanent arrangements are made for alternative rail service for the shipper, and for UP to handle trains carrying materials from the portion of the line that is being salvaged. Therefore, we will grant the petition and permit the trackage rights exempted in STB Finance Docket No. 34417 (Sub-No. 2) to expire on or about May 16, 2005.

The effect of this decision is to terminate the authorization for trackage rights conferred by our rule at 49 CFR 1180.2(d)(7). As noted, UP invoked that rule by notice on December 17, 2004. Because we are required to provide protection to any employee adversely affected by the discontinuance of trackage rights, we will impose the employee protective conditions set forth in Oregon Short Line R. Co.–Abandonment–Goshen, 360 I.C.C. 91 (1979).

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

It is ordered:

1. The petition for partial revocation is granted.
2. Under 49 U.S.C. 10502, the trackage rights described in STB Finance Docket No. 34417 (Sub-No. 2) are exempted, as discussed above, to permit the trackage rights to expire on or about May 16, 2005, subject to the employee protective conditions set forth in Oregon Short Line R. Co.–Abandonment–Goshen, 360 I.C.C. 91 (1979).
3. Notice will be published in the Federal Register on March 1, 2005.
4. This decision is effective on March 31, 2005.
5. Petitions to stay must be filed by March 11, 2005. Petitions to reopen must be filed by March 21, 2005.

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

Vernon A. Williams
Secretary