

SERVICE DATE – MAY 19, 2010

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35314

MASSACHUSETTS COASTAL RAILROAD, LLC—ACQUISITION—
CSX TRANSPORTATION, INC.

Decided: May 18, 2010

This decision clarifies a condition imposed in the Board's earlier decision approving, subject to certain conditions, the application of Massachusetts Coastal Railroad, LLC (Mass Coastal) in this proceeding.

In the decision served on March 29, 2010 (Approval Decision), the Board authorized Mass Coastal to acquire and operate the rail freight easement on approximately 33 miles of the rail lines owned by CSX Transportation, Inc. (CSXT) in Massachusetts.¹ Upon consummating the authorized transaction, Mass Coastal would replace CSXT as the only rail carrier providing freight service on these lines. In their application, Mass Coastal and CSXT (collectively, Applicants) asked the Board to impose as conditions the required employee protections in: New York Dock Railway—Control—Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979) (New York Dock), as modified by Wilmington Terminal Railroad—Purchase & Lease—CSX Transportation, Inc., 6 I.C.C.2d 799, 814-26 (1990) (Wilmington Terminal), aff'd sub nom. Railway Labor Executives' Ass'n v. ICC, 930 F.2d 511 (6th Cir. 1991). In the Approval Decision, however, the Board imposed as the appropriate conditions those set out in New York Dock without reference to Wilmington Terminal. By letter filed April 15, 2010, Applicants asked us to clarify whether the imposition of the New York Dock conditions was meant to include Wilmington Terminal's modification of those conditions.

Under 49 U.S.C. § 11326, with the exception of transactions involving only Class III rail carriers, the Board must impose employee protective conditions when it approves an application for authorization of a transaction under §§ 11323-25. In approving line sales under §§ 11323-25 that involve a Class I rail carrier, the appropriate employee protection conditions under § 11326(a) are New York Dock, as modified by Wilmington Terminal. We note that whether or

¹ These lines consist of: (1) the New Bedford Subdivision, which is 18.40 miles between milepost QN 13.40 at Cotley Junction and milepost QN 31.80 at New Bedford; (2) the Fall River Subdivision, which is 14.20 miles between milepost QNF 0.00 at Myricks and milepost QNF 14.20 at the Fall River, Massachusetts – Rhode Island state line; and (3) 0.08 miles of the North Dartmouth Industrial Track between milepost QND 0.00 and milepost QND 0.08, a total distance of approximately 32.68 miles.

not the Board cites to Wilmington Terminal in approving line sales, the modification is to apply unless expressly stated otherwise. Consequently, we clarify that, in the Approval Decision, our approval is subject to the conditions for the protection of railroad employees set out in New York Dock Railway—Control—Brooklyn Eastern District Terminal, 360 I.C.C. 60, aff'd, New York Dock Railway v. United States, 609 F.2d 83 (2d Cir. 1979), as modified by Wilmington Terminal Railroad—Purchase & Lease—CSX Transportation, Inc., 6 I.C.C.2d 799, 814-26 (1990), aff'd sub nom. Railway Labor Executives' Ass'n v. ICC, 930 F.2d 511 (6th Cir. 1991).

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

It is ordered:

1. The decision served on March 29, 2010 is clarified as set forth above.
2. This decision is effective on its date of service.

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