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SERVICE DATE - JANUARY 13, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33136

CANADIAN PACIFIC LIMITED, CANADIAN PACIFIC RAILWAY COMPANY,
AND NAPIERVILLE JUNCTION RAILROAD COMPANY--CORPORATE FAMILY
TRANSACTION EXEMPTION--ST. LAWRENCE & HUDSON
RAILWAY COMPANY LIMITED

Decided: January 7, 1998

By petition filed June 2, 1997, the American Train Dispatchers Department of the International Brotherhood of Locomotive Engineers (the Train Dispatchers) seeks to revoke the exemption in this proceeding that was the subject of a notice served and published in the Federal Register (61 FR 52994) on October 9, 1996, authorizing a series of intracorporate transactions involving Canadian Pacific Limited (CPL), Canadian Pacific Railway Company (CPR), Napierville Junction Railway Company, Ltd. (NJR), and St. Lawrence & Hudson Railway Company Limited (St. L&H) (collectively, the CPR parties). The CPR parties filed a reply to which the Train Dispatchers also filed a reply.¹ We will deny the Train Dispatchers' petition.

BACKGROUND

Prior to the instant proceeding, the Interstate Commerce Commission (ICC), the Board's predecessor, authorized CPL, through its wholly owned subsidiary, D&H Corporation, to acquire the assets, properties, and business of the bankrupt Delaware & Hudson Railway Company (Delaware & Hudson). See Canadian Pacific Ltd.--Pur. & Trackage--D&H Ry. Co., 7 I.C.C.2d 95 (1990) (CPL/DHRC).² Since that time, train movements and traffic on the Delaware & Hudson rail lines have been controlled by members of the Train Dispatchers, working first at offices in Albany, NY, and, since 1993, in Milwaukee, WI. Dispatching on the Delaware & Hudson has been performed by another CPR subsidiary in Milwaukee, the Soo Line Railroad Company (Soo).

¹ The Train Dispatchers' reply was accompanied by a motion for leave to file the reply. In the interest of obtaining the most complete record possible, we will grant the motion and accept the reply for consideration.

² The proceeding was docketed at the agency as Finance Docket No. 31700 et al. On October 23, 1997, the Train Dispatchers filed a petition in STB Finance Docket No. 31700 (Sub-No. 13) asking the Board to: (1) review an arbitrator's decision in a proceeding related to this one; and (2) stay implementation of the arbitrator's award pending the Board's review of the arbitrator's decision and a ruling in this revocation proceeding.

By letter dated June 28, 1996, CPR notified the Train Dispatchers that five Delaware & Hudson dispatch jobs would be moved from Milwaukee to Montreal, Canada. In the letter, CPR stated that a new carrier, the St. L&H, was to be formed to operate CPR's business in eastern North America and that, for operating purposes, it would be necessary for the St. L&H to manage its own train dispatching functions. CPR also wrote that the transfer of the dispatching functions from Milwaukee to Montreal was in accordance with CPL/DHRC.³ The transfer of the Delaware & Hudson dispatching function to Canada would result in five Train Dispatchers members losing jobs. In Montreal, the dispatching of Delaware & Hudson trains would be handled by a separate desk in the St. L&H's facility.⁴

Subsequently, on September 23, 1996, CPL, CPR, NJR, and the St. L&H jointly filed the verified notice of exemption at issue in this proceeding, notifying the Board that CPR would transfer its interest in certain identified U.S. rail assets to St. L&H, a newly-created subsidiary of CPR and a noncarrier. The transactions were to be consummated on or after October 1, 1996. The St. L&H would become a carrier on consummation of the transactions. CPR represented in the notice of exemption that the transactions were intracorporate family transactions that were exempt from prior review and approval under 49 CFR 1180.2(d)(3). As noted previously, notice of the exemption, which the Train Dispatchers seek to have revoked here, was served and published on October 9, 1996.

DISCUSSION AND CONCLUSIONS

To support a petition to revoke an exemption from part or all of the statute, the petitioner must show that regulation is necessary to carry out the national rail transportation policy (NTP) of 49 U.S.C. 10101. The party seeking to revoke the exemption has the burden of proof. A petition to revoke must be based on reasonable, specific concerns, demonstrating that reconsideration of the exemption is warranted and regulation of the transaction is necessary. CSX Transp., Inc.--Aban.--In Randolph County, WV, 9 I.C.C.2d 447, 449 (1992) (CSX).

The CPR parties' notice in this proceeding stated that their proposed transactions came within Board regulations at 49 CFR 1180.2(d). Specifically, the CPR parties used the category of transactions found at section 1180.2(d)(3), which provides that an exemption is available for:

Transactions within a corporate family that do not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

³ The Train Dispatchers' petition to revoke, Attachment A.

⁴ The CPR parties' reply at 11.

The Train Dispatchers assert that the transfer of dispatching functions from Milwaukee to Montreal, and the resulting loss of five Train Dispatchers jobs, constitutes a “major operational change”⁵ that renders the previously authorized corporate simplification transactions ineligible for the class exemption set forth at 49 CFR 1180.2(d)(3).⁶ Specifically, the Train Dispatchers argue that, if allowed to occur, this change in operations would remove train dispatching on these U.S. lines from the regulatory and enforcement authority of U.S. federal regulatory agencies, including the Federal Railroad Administration (FRA). As such, the Train Dispatchers state, the Hours of Service Act and federal drug and alcohol testing requirements and protections would not apply to the train dispatchers controlling rail traffic on these domestic lines. The Train Dispatchers maintain that this lack of regulatory control would adversely affect employees working on the trains and tracks, shippers that ship goods over those tracks, carriers that possess hauling rights on the tracks, and the public in general. The Train Dispatchers also assert that the transfer threatens the NTP goals of promoting a safe and efficient rail system.⁷ For these reasons, the Train Dispatchers argue that the proposal violates the exemption criteria and, therefore, the previously authorized exemption must be revoked.

The CPR parties respond that the relocation of the DHRC dispatch desk to Montreal will not, in fact, produce any major operational change. They state that all dispatchers working the Delaware & Hudson territory will be fully trained and qualified regarding the appropriate operating rules and FRA regulations, and that St. L&H will comply with all FRA operating and recordkeeping requirements as they apply to the dispatching of Delaware & Hudson trains. The CPR parties also

⁵ The Train Dispatchers do not allege that the notice of exemption would cause adverse changes in service levels or change the competitive balance with carriers outside the corporate family. Accordingly, we need not and will not address these section 1180.2(d)(3) elements.

⁶ The CPR parties and the Train Dispatchers argue about whether the labor issues underlying the Train Dispatchers’ petition to revoke were the direct result of the notice of exemption here or were a result of the CPL/DHRC decision. Those arguments will not, however, be addressed here because they are not relevant to the specific issue raised in the Train Dispatchers’ petition to revoke (i.e., whether the transfer of five dispatching jobs to Canada under the labor protective provisions imposed on both of those transactions constitutes a major operational change or violates NTP goals so as to render the previously authorized corporate simplification transactions in this proceeding ineligible for the class exemption set forth at section 1180.2(d)).

⁷ Specifically, they refer to the goals of 49 U.S.C. 10101(3) (promoting a safe and efficient rail transportation system); 49 U.S.C. 10101(8) (promoting the operation of transportation facilities and equipment without detriment to the public health and safety); and 49 U.S.C. 10101(11) (encouraging fair wages and suitable working conditions in the transportation industry).

attach a copy of a letter addressed to the FRA⁸ wherein CPR notified that agency of CPR's plan to move the dispatching function to Canada. According to CPR, FRA has not registered any objection to the proposal. The CPR parties also state that their U.S. train operations have been dispatched from facilities located in Canada for more than a century with FRA's knowledge and subject to FRA's regulations.⁹ These parties further state that there will be no change in the manner in which Delaware & Hudson trains are dispatched, but that only the physical location of the dispatching function will change. The CPR parties also allege that no shipper will experience an adverse change in service, that St. L&H and Delaware & Hudson will continue to compete in all of the markets that they serve today, and that the railroads will continue to provide the same train services as before. Finally, these parties argue that the transaction at issue advances several NTP goals¹⁰ and does not, contrary to the Train Dispatchers' position, adversely impact any such goals.¹¹

We find no merit to the Train Dispatchers' arguments that the proposed transfer of dispatching functions will hinder NTP goals and result in significant operational changes. The basis for these arguments is the Train Dispatchers' allegation that such transfer will remove dispatching from U.S. regulatory and enforcement authority and lead to serious safety problems. However, the Train Dispatchers do not support assertions that there will be operational changes. Operational changes embrace changes in operating procedures and functions or in services offered shippers. The record here shows that no changes of that nature will occur as a result of the transfer. Nor is there sufficient evidence on the record to support a cause for concern about safety. In particular, FRA, which has primary responsibility over railroad safety enforcement, has been notified of CPR's plan to move the dispatching function to Canada and has not raised any objections to the proposal.

⁸ CPR parties' reply, Exh. 2; letter dated February 28, 1997.

⁹ CPR witness Franczak V.S. 3-5.

¹⁰ Specifically, these relate to 49 U.S.C. 10101(2) (minimizing the need for Federal regulatory control over the rail transportation system); 49 U.S.C. 10101(3) (promoting a safe and efficient rail transportation system); 49 U.S.C. 10101(5) (fostering sound economic conditions in transportation); and 49 U.S.C. 10101(9) (encouraging honest and efficient management of railroads).

¹¹ In response to the Train Dispatchers' claim that a prospective haulage agreement between CPR and Norfolk Southern Railway Company may increase traffic at some future point, the CPR parties argue that any issues related to the impact of that agreement should properly be addressed in CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company--Control and Operating Lease /Agreements--Conrail, Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33388, and not in this proceeding. The Train Dispatchers do not show that the haulage agreement is the product of, or in any way related to, the intracorporate transaction that is the subject of this petition to revoke.

The Train Dispatchers have not sustained their burden of proof that the transfer of five dispatcher positions threatens NTP policies favoring a safe and efficient rail system, nor has the union demonstrated that such transfer constitutes a significant operational change. Accordingly, we find no grounds for revoking the previously authorized exemption at issue here, and we will deny the Train Dispatchers' request that we do so.

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

It is ordered:

1. The Train Dispatchers' motion for leave to file a reply is granted.
2. The Train Dispatchers' petition to revoke the exemption is denied.
3. This decision is effective on the service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

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By the Board, Chairman Morgan and Vice Chairman Owen.

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