

28885
DO

SERVICE DATE - FEBRUARY 12, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-31 (Sub-No. 30)

GRAND TRUNK WESTERN RAILROAD INCORPORATED--
ADVERSE DISCONTINUANCE OF TRACKAGE RIGHTS APPLICATION--
A LINE OF NORFOLK AND WESTERN RAILWAY COMPANY
IN CINCINNATI, HAMILTON COUNTY, OH

Decided: February 10, 1998

By petition filed January 23, 1998, Norfolk and Western Railway Company (NW) seeks waiver of certain regulations to enable it to file an adverse discontinuance application. The adverse discontinuance application evidently became necessary when the tenant railroad, Grand Trunk Western Railroad Incorporated (GTW), declined to seek authority or exemption to discontinue operations and the City of Cincinnati desired to have the railroad interests in the property terminated expeditiously so that the property could be used for public purposes.

NW seeks waiver on the grounds that the line at issue is out of service and none of the information in the regulations sought to be waived is relevant to the merits of the adverse application. Moreover, NW states that it does not have any information pertaining to the GTW trackage rights other than that which has been provided.

NW seeks waiver of all of the filing requirements of the Board's regulations applicable to discontinuance applications that do not apply to notices of exemption. These include 49 CFR 1152.22(a)(5), which requires inclusion of the line on a system diagram map (SDM); 49 CFR 1152.22(a)(6), which requires a detailed statement of the reasons for filing the application; 49 CFR 1152.22(b), which requires a statement of the condition of the properties; 49 CFR 1152.22(d), which requires a statement of revenue and costs; 49 CFR 1152.22(e)(1-3), which requires a statement of rural and community impact; and 49 CFR 1152.22(g), which requires a statement concerning passenger service.

GTW has filed a petition asking the Board to reject NW's application. In its petition, GTW states that NW should have filed its petition for waiver before filing its application. Those arguments have been addressed in the Federal Register notices accepting the application and published contemporaneously with the service of this decision. GTW's arguments will not be reiterated here.

NW's waiver request will be granted. NW correctly states that the requirements cited are not relevant to an adverse discontinuance application. In appropriate instances, such as situations involving adverse applications, the Board, or its predecessor agency, has waived inapplicable and unneeded portions of its abandonment regulations. See Chelsea Property Owners - Abandonment -

Portion of the Consolidated Rail Corporation's West 30th Street Secondary Track in New York, NY, ICC Docket No. AB-167 (Sub-No. 1094) (ICC served July 19, 1989).

The filing of a SDM, which is imposed by statute, is not appropriate in the context of an adverse abandonment. NW cannot include the line on its map because the service at issue is not service that NW provides. Nor is it appropriate to require the tenant railroad to include the line on its map as a candidate for discontinuance. The tenant has no intention to discontinue service. See Tri-County Metropolitan Transportation District of Oregon--Abandonment--A Line of Burlington Northern Railroad Company in Washington County, OR, ICC Docket No. AB-6 (Sub-No. 348) (ICC served Mar. 4, 1993). Accordingly, waiver of our regulations involving the SDM is warranted.

Nor is there any point in requiring either strict adherence to the notice provisions or the submission of material where the information is not relevant to our decision on the merits. The regulations require information relevant to abandonments or discontinuances sought by the carriers that own, or operate on, the affected lines. That information, chiefly designed to show whether or not the line is a burden on interstate commerce, is irrelevant to an application filed by a third party. Strict adherence to the notice provisions, therefore, would not serve the chief purpose for which they were promulgated, i.e., to alert those served by the line, because no rail service has been provided on the line in 11 years. Similarly, requiring NW to provide information where none exists would serve no useful purpose. NW obviously does not possess the data required by the regulations. It appears that NW has made an effort to comply with the abandonment regulations. Accordingly, NW's petition for waiver is granted.

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

It is ordered:

1. NW's petition is granted to the extent described above.
2. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary