

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33355

NORFOLK AND WESTERN RAILWAY COMPANY--PURCHASE EXEMPTION--  
CONSOLIDATED RAIL CORPORATION

Decided: April 30, 1997

By petition filed February 3, 1997, Norfolk and Western Railway Company (NW) and Consolidated Rail Corporation (Conrail) seek an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323-25 for NW to purchase<sup>1</sup> a 0.47 mile segment of track from Conrail known as the "Foreman Wye" in Detroit, Wayne County, MI.<sup>2</sup> The track begins at milepost 0.00 where it connects with NW and ends at milepost 0.47 where it connects with CSX Transportation, Inc. (CSXT). We will grant the exemption subject to standard labor protective conditions.

BACKGROUND

The Foreman Wye was part of the property previously managed by the Union Belt of Detroit (Union Belt), which was an agency jointly owned by NW, CSXT and Conrail. Union Belt acted as agent for the three railroads in managing the joint operation and equal use of certain trackage and property in Detroit. Union Belt was dissolved and operation of the property was taken over by its respective owners on June 1, 1992, at which time the Foreman Wye track reverted to Conrail's ownership. Conrail has, however, made no use of the track, which is isolated from its system. NW, on the other hand, has been using the track under a joint facility or lease agreement.

Although Conrail does not use the segment, it must maintain the track under its current lease or joint facility agreement with NW. After transfer of the segment, NW will continue to use the track as it is currently employed, i.e., to turn trains and locomotives. No shippers are located on the track segment. As a result of this transaction, NW will continue to operate, and will take over maintenance of, the Foreman Wye. Because the segment is adjacent to NW's system and NW currently uses the track, transfer to NW ownership will allow NW to effect operating and maintenance efficiencies as part of its existing operations in the Detroit area.

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<sup>1</sup> Although NW seeks to purchase and operate the line, the petition is properly styled as a "purchase" exemption. NW requires neither separate authority nor an exemption to operate the line being acquired. When a rail carrier petitioned for an exemption to purchase or lease a rail line from another rail carrier under former section 11343 of the Interstate Commerce Act, the Interstate Commerce Commission (ICC) normally also exempted the operation of the line, if requested, but the exemption to operate was not necessary. The status of the purchaser or lessor, as a carrier, coupled with the purchase agreement or lease, constituted sufficient authority to conduct operations. Similarly, authority or an exemption for a carrier to purchase or lease a line under 49 U.S.C. 11323 provides the necessary authority to conduct operations.

<sup>2</sup> Petitioners state that NW believes that the transaction is not subject to Board jurisdiction because the track in question is a yard, switching or spur track within the Detroit, MI terminal area. They also state that Conrail believes that, regardless of its current characterization or use, the track appears to have been part of a line of railroad at one time, as evidenced in part by the existence of milepost designations for the track's end points, and thus that its transfer is subject to Board jurisdiction. Out of an abundance of caution and to facilitate prompt consummation of the transaction, NW and Conrail have filed this petition. Given the ultimate position of the parties, we see no need to address further the issue of jurisdiction.

According to petitioners, in the absence of acquisition by NW, the Foreman Wye could be a candidate for eventual abandonment by Conrail. The acquisition of the Foreman Wye by NW will allow Conrail to rationalize its system by removing an isolated line that it does not use and that is inefficient for Conrail to maintain. The line transfer will allow NW to maintain and, if necessary, improve a track that it uses in its existing operations. According to petitioners, this will result in increased economics and efficiencies for both Conrail and NW, which can only improve overall service to area shippers.

## DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 11323(a)(2), prior Board approval is required for a rail carrier to purchase the rail operating property of another rail carrier. However, under 49 U.S.C. 10502, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. 11323-25 of the proposed purchase is not necessary to carry out the rail transportation policy. By minimizing the administrative time and expense of the application process, an exemption will reduce barriers to entry and exit [49 U.S.C. 10101(7)]. In addition, the transaction will help promote a safe and efficient rail transportation system, ensure coordination between rail carriers, and encourage efficient management [49 U.S.C. 10101(3), (5), and (9)].

The exemption will assure that the Foreman Wye is maintained by the most interested party, NW, its current user. A connection between NW and CSXT lines at this location will also be available through maintenance of the segment. While the Foreman Wye is a small, isolated portion of Conrail's rail system, elimination of Conrail's obligation to maintain the segment will permit Conrail to concentrate its resources where it provides rail service. NW, on the other hand, can operate and maintain the Foreman Wye in connection with its adjacent line. This will allow NW to conduct more efficient train operations on a track maintained at a level appropriate for those operations, thereby ensuring that a sound transportation system will continue to meet the needs of the public [49 U.S.C. 10101(4)]. Other aspects of the rail transportation policy are not affected adversely.

Regulation of the transaction is not necessary to protect shippers from the abuse of market power because there are no shippers located on the Foreman Wye. Existing NW operations will, however, be continued and improved and there will be no loss of rail competition. Given our market power finding, we need not also determine whether the proposed transaction is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve rail carriers of their statutory obligation under 49 U.S.C. 11326 to protect the interests of their employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions in *New York Dock Ry.--Control--Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), as clarified in *Wilmington Term. RR, Inc.--Pur. & Lease--CSX Transp., Inc.*, 6 I.C.C.2d 799 (1990), modified 7 I.C.C.2d 60 (1990), *aff'd sub nom. Railway Labor Executives Ass'n v. ICC*, 930 F.2d 511 (6th Cir. 1991).

Petitioners state that this transaction is excepted from environmental reporting requirements under 49 CFR 1105.6(c)(2)(i) and that an historic report is not required under 49 CFR 1105.8(b)(1). Our Section of Environmental Analysis has reviewed the transaction and has concluded that it is, in fact, exempt from environmental and historic reporting requirements.<sup>3</sup>

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<sup>3</sup> This transaction does not involve a significant change in carrier operations, petitioners have no plans to dispose of or alter historic properties, and further Board approval would be required for NW to abandon any service.

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

*It is ordered:*

1. Under 49 U.S.C. 10502, we exempt the above described purchase from the prior approval requirements of 49 U.S.C. 11323-25, subject to the employee protective conditions in *New York Dock Ry.--Control--Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), as clarified in *Wilmington Term. RR, Inc.--Pur. & Lease--CSX Transp., Inc.*, 6 I.C.C.2d 799 (1990), *modified* 7 I.C.C.2d 60 (1990), *aff'd sub nom. Railway Labor Executives Ass'n v. ICC*, 930 F.2d 511 (6th Cir. 1991).

2. Notice will be published in the *Federal Register* on May 9, 1997.

3. This exemption will be effective on June 8, 1997.

4. Petitions to stay must be filed by May 19, 1997. Petitions to reopen must be filed by May 29, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams  
Secretary