

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 695

CONSOLIDATED RAIL CORPORATION'S SALES AND DISCONTINUANCES

Decided: May 13, 2010

On November 19, 2008, Consolidated Rail Corporation (Conrail), CSX Transportation, Inc. (CSXT), and Norfolk Southern Railway Company (NS) jointly filed a verified notice of exemption (Notice of Exemption), pursuant to 49 C.F.R. § 1152.50, for Conrail to abandon, and CSXT and NS to discontinue service over a 2.27 mile line of railroad in Hudson County, NJ, known as the “Lehigh Valley Main Line” (the Line). Consol. Rail—Aban. Exemption—in Hudson County, N.J., Docket No. AB 167 (Sub-No. 1190X); CSX Transp., Inc. — Discontinuance Exemption—in Hudson County, N.J., Docket No. AB 55 (Sub-No. 690X); Norfolk S. Ry.—Discontinuance Exemption—in Hudson County, N.J., Docket No. AB 290 (Sub-No. 313X).

In the Environmental and Historic Report that accompanied the Notice of Exemption, however, Conrail revealed that it no longer owns an interest in all portions of the line it sought to abandon. Conrail asserted that the proposed abandonment would have no effect upon regional or local transportation systems and patterns, noting that New Jersey Transit Corporation (NJ Transit) “took no issue with Conrail’s abandonment of the Line, and stated that it previously acquired portions of the Line[.]”¹ Conrail again disclosed its lack of ownership of the full line in addressing public health and safety issues and subsurface ground issues associated with the Line’s abandonment.² Attached to Conrail’s Environmental and Historic Report was a letter from NJ Transit in which it asserted “[n]o issue with Conrail’s ‘abandonment’ of the rail line, as we have previously acquired (from Conrail) portions of this right of way, upon which can be found the shop and yard complex for the Hudson Bergen Light Rail System.”³

Exactly what parts of the Line NJ Transit acquired is the source of some confusion, even between Conrail and NJ Transit. The same October 17, 2008 letter from NJ Transit to Conrail’s Associate General Counsel states, “Of the two parcels which Conrail alleges that they retain, NJ Transit has no interest in the parcel located between Chapel Avenue and Linden Avenue. The

¹ Notice of Exemption 12, Nov. 19, 2008.

² Id. 5, 10.

³ Id. 29.

other parcel, near Communipaw Avenue, appears to us to already be NJ Transit-owned property.”⁴ In its cover letter to many of the parties Conrail contacted to solicit environmental or historic comments about the Line, Conrail openly admitted that rail service was “previously discontinued” and that most of the underlying right-of-way has been sold to various parties.⁵ In addition, Conrail included two quitclaim deeds, dated August 29, 1996, and November 19, 1996, purporting to transfer part of the property that constitutes the Line to NJ Transit.⁶ Both deeds, in fact, appear to have been executed on behalf of Conrail by Robert Ryan, Conrail’s Director of Real Estate from October 1996 to July 31, 2009.

Questions regarding Conrail’s ownership interest (or lack thereof) in the Line have complicated this abandonment proceeding. CNJ Rail Corporation sought information from Conrail and subsequently filed a notice of intent to submit an offer of financial assistance (OFA), pursuant to 49 U.S.C. § 10904, for the Line, but for what part and for what value became a source of increasing confusion. Although, in our decision served concurrently today in Consolidated Rail—Abandonment Exemption—in Hudson County, N.J., Docket No. AB 167 (Sub-No. 1190X), we are exempting the Line from the OFA process, we continue to have serious concerns regarding what appears to be Conrail’s 1996 sale of a line without Board authorization.

As of the January 1, 1996, the effective date of the ICC Termination Act of 1996, a person other than a rail carrier may acquire a railroad line only if the Board issues a certificate authorizing its acquisition. See 49 U.S.C. § 10901(a). Similarly, a rail carrier providing transportation subject to the Board’s jurisdiction who intends to abandon or discontinue service over a line must file an application to do so with the Board. See 49 U.S.C. § 10903. The Board has promulgated regulations pertaining to section 10901 applications, see 49 C.F.R. § 1150, and abandonment and discontinuances of service, see 49 C.F.R. § 1152.

Pursuant to 49 U.S.C. § 10502, the Board has also established exemptions that allow parties to acquire lines of railroad or discontinue service on a line without using the Board’s detailed application procedures. However, to utilize those exemptions, a party must file a notice of exemption with the Board, allowing the Board and other interested persons an opportunity to challenge whether the proposed acquisition, abandonment or discontinuance is appropriate. See, e.g., 49 C.F.R. § 1150.32 (regarding exemption from 49 U.S.C. § 10901); 49 C.F.R. § 1152.50(c) (regarding exemption from to 49 U.S.C. § 10903).

There are statutory penalties for failing to comply with either 49 U.S.C. § 10901, § 10903, or the regulations promulgated to implement those provisions. Section 11901(c) states “a person knowingly authorizing, consenting to, or permitting a violation of sections 10901 through 10906 of this title [Title 49] or of a requirement or a regulation under any of those

⁴ Id.

⁵ See, e.g., Notice of Exemption 31, 35-39, 41, 43-48.

⁶ Conrail’s Sept. 11, 2009 Reply to Offerors’ Answer to Show Cause Order, V.S. of Ryan, Ex. C.

sections, is liable to the United States Government for a civil penalty of not more than \$5,000.”⁷ In addition, the Board may seek injunctive relief through a civil action to enjoin a rail carrier from violating § 10901, § 10903, or a regulation prescribed, order, or certificate issued under either of those sections. See 49 U.S.C. § 11702.

We are unable to locate any filing by Conrail, NJ Transit, or any other person seeking our authority or invoking an exemption to transfer title to any part of the Line prior to the Notice of Exemption Conrail filed with us on November 19, 2008. Similarly, we are unable to locate any filing by Conrail, NJ Transit, or any other person seeking our authority or invoking an exemption to abandon or discontinue service on any part of the Line prior to the November 19, 2008 filing of that same notice. Therefore, we are ordering Conrail to submit to us a full explanation of how and under what authority it came purportedly to transfer title to parts of the Line to NJ Transit. In addition, Conrail should explain when, under what authority, and under what circumstances it purported to discontinue service on the Line.

Finally, as the record indicates that Conrail began selling parts of the line as far back as 1996, we also hereby order Conrail to disclose to the Board all of its line or partial line sales and all of its discontinuances of service since January 1, 1996, for which no Board authority was sought and no exemption notice was filed along with an explanation of why Board authority was not sought and no exemption notice was filed.

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

It is ordered:

1. Conrail’s explanation regarding the Lehigh Valley Main Line is due on July 1, 2010.
2. Conrail’s reports regarding line sales and discontinuances are due August 16, 2010.
3. This decision is effective on its service date.

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

⁷ The trial for a civil action brought pursuant to 49 U.S.C. § 11901 takes place in a U.S. District Court where venue lies. See 49 U.S.C. § 11901(f).