

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 34533 (Sub-No. 1)

SOUTHWESTERN RAILROAD, INC.—AMENDED LEASE AND OPERATION
EXEMPTION—BNSF RAILWAY COMPANY

Decided: August 26, 2016

On July 29, 2016, Southwestern Railroad, Inc. (SWRR), a Class III rail carrier, filed a verified notice of exemption under 49 C.F.R. § 1150.41 from the prior approval requirements of 49 U.S.C. § 10902 to continue to lease and operate approximately 227.6 miles of rail line, located in New Mexico, from BNSF Railway Company (BNSF).¹ Through this transaction, SWRR and BNSF seek to implement an amendment of the original lease they entered into in 2004. See Sw. R.R.—Lease & Operation Exemption—Burlington N. & Santa Fe Ry., FD 34533 (STB served Oct. 22, 2004). In particular, the amendment would change the termination date of the lease from December 31, 2023,² to January 17, 2017.³ Notice of the exemption concerning the current transaction was served and published in the Federal Register on August 12, 2016 (81 Fed. Reg. 53,535), and the exemption is scheduled to become effective on August 28, 2016.

On August 12, 2016, two SWRR employees filed letters asking that the Board impose the labor protective conditions in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho (Oregon Short Line), 360 I.C.C. 91 (1979). In support of their request, they note that the Board imposed Oregon Short Line conditions in Yellowstone Valley Railroad—Discontinuance of Lease & Trackage Rights Operations Exemption—in Richland, Sheridan, Roosevelt, & Daniels Cts., Mont., & McKenzie Cty., N.D., AB 991 (Sub-No. 1X) (STB served May 10, 2013).

By statute, the Oregon Short Line conditions cannot be imposed on a lease transaction of a Class III rail carrier (such as SWRR) under 49 U.S.C. § 10902, the statute SWRR has invoked in this case. See § 10902(d); Neb. Cent. R.R.—Lease & Operation Exemption—Lines of Union

¹ The rail line (the Line) consists of: (1) the Carlsbad Subdivision between milepost 0.5 at Clovis and milepost 183.0 at Carlsbad; (2) the Carlsbad Yard; (3) the Carlsbad Industrial Spur between milepost 0.0 at Carlsbad and milepost 20.0 near Carlsbad; and (4) the Loving Industrial Spur between milepost 0.0 at Carlsbad and milepost 20.0 at Loving.

² Sw. R.R.—Lease & Operation Exemption—BNSF Ry., FD 35855, slip op. at 2 (STB served Oct. 15, 2014).

³ Sw. R.R.—Amended Lease & Operation Exemption—BNSF Ry., FD 34533 (Sub-No. 1) (STB served Aug. 12, 2016).

Pac. R.R., FD 32879 (STB served May 7, 1996). In contrast, Yellowstone Valley was not a lease transaction but rather a discontinuance of service case under a different statute, 49 U.S.C. § 10903. That statute requires the Board to impose labor protective conditions regardless of the type of rail carrier involved in the transaction. See 49 U.S.C. § 10903(b)(2). Because the transaction in Yellowstone Valley was pursuant to § 10903, not § 10902, that case does not provide a basis for imposing Oregon Short Line conditions at this time.

Here, notwithstanding the end of the lease on January 17, 2017, SWRR will remain obligated to provide common carrier service on the Line upon reasonable request unless and until it obtains authority from the Board under 49 U.S.C. § 10903 to discontinue service. See Sierra R.R. v. Sacramento Valley R.R., NOR 42133 (STB served Nov. 28, 2012). If SWRR obtains discontinuance authority, employee protective conditions would be imposed at that time, as in Yellowstone Valley. See 49 U.S.C. § 10903(b)(2).

It is ordered:

1. The requests to impose labor protective conditions on this transaction are denied.
2. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.