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SERVICE DATE - LATE RELEASE DECEMBER 10, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34291

COMRAIL INTERNATIONAL RAILROAD, INC.
– OPERATION EXEMPTION –
CHICAGO HEIGHTS RAILCAR, INC.

Decided: December 10, 2002

The request to stay the effectiveness of the exemption in this proceeding is being denied.

BACKGROUND

By notice filed on December 4, 2002, pursuant to 49 CFR 1150.31, Comrail International Railroad, Inc. (Comrail) invoked the Board's class exemption to allow its operation over approximately 4,200 feet of trackage owned by Chicago Heights Railcar, Inc. (CHR) at Chicago Heights, IL. The exemption is scheduled to become effective on December 11, 2002.

By petition filed on December 9, 2002, Joseph C. Szabo, for and on behalf of the United Transportation Union-Illinois Legislative Board (UTU-IL), filed a petition for stay of the exemption pending disposition of a forthcoming petition to revoke the exemption. As grounds for stay, UTU-IL argues that the Board lacks jurisdiction over the transaction, and thus jurisdiction to exempt it, because Comrail would be operating over switching or spur track excepted from the Board's section 10901 authority pursuant to 49 U.S.C. 10906. UTU-IL also argues that Union Pacific Railroad Company (UP) employees would suffer irreparable injury if the exemption were to go into effect.

On December 9, 2002, Comrail replied to UTU-IL's stay petition.

DISCUSSION AND CONCLUSIONS

The request for stay will be denied. The standards governing disposition of a petition for stay are:

(1) that there is a strong likelihood that the movant will prevail on the merits; (2) that the movant will suffer irreparable harm in the absence of a stay; (3) that other interested

parties will not be substantially harmed; and (4) that the public interest supports the granting of the stay.

Hilton v. Braunskill, 481 U.S. 770, 776 (1987); Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); Virginia Petroleum Jobbers Association v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958). On a motion for stay, “it is the movant’s obligation to justify the . . . exercise of such an extraordinary remedy.” Cuomo v. United States Nuclear Regulatory Comm., 772 F.2d 972, 978 (D.C. Cir. 1985). The parties seeking a stay carry the burden of persuasion on all of the elements required for such extraordinary relief. Canal Authority of Fla. v. Callaway, 489 F.2d 567, 573 (5th Cir. 1974).

UTU-IL has not met this burden. UTU-IL has not shown that there is a strong likelihood that it will prevail in its request for revocation. UTU-IL alleges that the track at issue here is switching or spur track and thus excepted from Board authority under section 10906. To support this contention, UTU-IL claims that the track is not heavy duty track, that current operations are performed by a trackmobile, and that operations would be performed “inside the fence of the industrial site.” Whether track is excepted under section 10906, however, is a complex, fact-bound issue that must be resolved in light of precedents that require considerable analysis. At this point, the Board is not prepared to find that the characteristics alleged by UTU-IL alone demonstrate the required “strong likelihood” of a finding on the merits that the operation would be over excepted track not subject to Board authority pursuant to section 10906. The issue must be subjected to a more searching analysis that would give Comrail an opportunity to reply in detail.

Nor has UTU-IL shown that UP employees would suffer irreparable injury if the exemption were to go into effect. UTU-IL acknowledges that UP does not perform switching for CHR on these tracks. Rather, CHR is currently doing its own switching on this track, and UP merely picks up and delivers the cars to the point where they are switched. Allowing Comrail to operate over the CHR lines thus cannot displace UP crews, because those crews are not working on CHR’s lines now. UTU-IL also alleges that, if Comrail were to receive operating authority via the exemption, it could, at some undetermined future time, displace UP employees by establishing connections with other railroads and acquiring trackage rights over them. This, however, is highly speculative. Moreover, any such trackage rights would require the imposition of standard labor protection conditions.

A grant of the stay would frustrate CHR’s attempt to use an operator for its switching operations and would compel it to continue an endeavor it wishes to delegate to others. Further, UTU-IL’s argument that the public interest would be harmed because the name Comrail would be misleading is unsupported by any argument or by the facts of this case.

Because UTU-IL has failed to meet the criteria for stay, its request for stay will be denied.

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

It is ordered:

1. The petition for stay is denied.
2. This decision is effective on its date of service.

By the Board, Roger Nober, Chairman.

Vernon A. Williams
Secretary