

SURFACE TRANSPORTATION BOARD<sup>1/</sup>

DECISION

Finance Docket No. 32625

DARDANELLE & RUSSELLVILLE RAILROAD COMPANY -- TRACKAGE RIGHTS  
COMPENSATION -- ARKANSAS MIDLAND RAILROAD COMPANY

Decided: December 10, 1996

By decision in this proceeding served June 3, 1996, we established the compensation to be paid by the Dardanelle & Russellville Railroad Company (DRRC) and the Caddo Antoine and Little Missouri Railroad (CALM) (collectively DRRC/CALM or petitioner) for trackage rights over the 3.13-mile southern segment of Arkansas Midland Railroad Company's 52.9-mile Norman Branch line between Gurdon and Birds Mill, AR. In a decision served September 5, 1996, we denied DRRC/CALM's appeal and petition for rehearing of our compensation decision. DRRC/CALM then filed a petition for review of the compensation decision in the United States Court of Appeals for the Eighth Circuit. No. 96-3352, Caddo Antoine and Little Missouri Railroad Company Et Al. v. Surface Transportation Board Et Al. (filed September 9, 1996). The court case is being held in abeyance pending our consideration of DRRC/CALM's supplement to their administrative appeal, which was filed on August 29, 1996, and thus was not considered in our decision denying rehearing. That decision, although served September 5th, had been decided August 28th, the day before the supplement was filed.<sup>2/</sup>

Shortly after the issuance of our September 5th decision in this case, however, the Eighth Circuit issued its decision in Caddo Antoine and Little Missouri R. Co. v. United States, 95 F.3d 740 (8th Cir. 1996). In that decision, which was issued September 13, 1996, the court set aside the ICC's April

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<sup>1/</sup> The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the ICCTA provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the ICCTA. This decision relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11123.

<sup>2/</sup> DRRC/CALM's supplement claims that the compensation period should not commence on May 1, 1994, as stated in our June 3 decision. Instead, DRRC/CALM submit that the compensation period began on June 1, 1994, as reflected in ICC Supplemental Order No. 1 to Service Order No. 1516, served April 26, 1994.

18, 1995 decision in Finance Docket No. 32749<sup>3/</sup> authorizing CALM to purchase only the northern segment of the Norman Branch under the feeder line provisions of former 49 U.S.C. 10910 (now 49 U.S.C. 10907). The court remanded the feeder line proceeding for the Board to consider the entire Norman Branch as a single line. By decision served November 15, 1996 in Finance Docket No. 32749, we reopened the feeder line proceeding and provided an opportunity for all interested parties to present their views on how the Board should proceed in considering the Norman Branch as a single line.

In light of the court's remand of the feeder line proceeding, and our November 15th decision reopening that proceeding, we have decided to reopen this matter to stay the effect of our June 3, 1996 and September 5, 1996 decisions setting compensation until the reopened feeder line proceeding is decided. The feeder line proceeding will give us a full picture of the status of the entire Norman Branch. To ensure that we have all the information needed to reach a reasoned decision in the compensation case, we will stay the effect of our June 3rd and September 6th decisions until the feeder line case is resolved.

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

It is ordered:

1. Subject to the approval of the reviewing court, this proceeding is reopened. The effect of our June 3, 1996 and September 6, 1996 decisions is stayed until Finance Docket No. 32749, which has also been reopened, is resolved.

2. This decision is effective on its date of service.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen. Commissioner Owen commented with a separate expression.

(SEAL)

Vernon A. Williams  
Secretary

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**Commissioner Owen, commenting:** In reopening this proceeding, I urge the Board to demand more track-specific data with regard to direct maintenance expenditures used to compute trackage-rights compensation. The system-wide average previously utilized may reflect substantial maintenance expense for track not at issue in this proceeding.

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3/ Caddo Antoine and Little Missouri Railroad Company -- Feeder Line Acquisition -- Arkansas Midland Railroad Company Line Between Gurdon and Birds Mill, AR.