

SURFACE TRANSPORTATION BOARD¹

DECISION

STB Finance Docket No. 33004

READING BLUE MOUNTAIN & NORTHERN RAILROAD COMPANY
--ACQUISITION AND OPERATION EXEMPTION--
CONSOLIDATED RAIL CORPORATION

Decided: December 9, 1996

On August 13, 1996, the Reading Blue Mountain & Northern Railroad Company (RBMN), a Class III rail carrier, filed a verified notice invoking our class exemption under 49 CFR 1150.41: (1) to acquire and operate approximately 104.22 miles of rail line known as the Lehigh Line; and (2) to acquire approximately 2.8 miles of incidental trackage rights over track owned by Consolidated Rail Corporation (Conrail) in the Commonwealth of Pennsylvania. The exemption became effective on August 20, 1996. Notice of the exemption was served on August 30, 1996, and was published on the same date in the Federal Register at 61 FR 46019.

By petition filed September 6, 1996, the Delaware and Hudson Railway Company, Inc. (D&H)² requests that the exemption be revoked insofar as it applies to a 56.4-mile segment of the Lehigh Line between DuPont and Lehighon Yard in Pennsylvania.³ D&H alleges that it operates over this segment pursuant to trackage rights conveyed under the Final System Plan (FSP) adopted by the United States Railway Association (USRA). D&H asserts that both Conrail and RBMN have failed to maintain this segment to enable D&H to provide service pursuant to its trackage rights. For this reason, according to D&H, we must revoke the exemption under 49 U.S.C. 10502(d), commence a new proceeding to scrutinize the transaction under 49 U.S.C. 10902, and condition any approval of the transaction on steps being taken to ensure that D&H is able to operate under its trackage rights. D&H also urges us to revoke the exemption on the grounds that it was void ab initio because the notice contained false and misleading

¹ 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 to the Surface Transportation Board (Board). This petition relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10502 and 10902.

² D&H is a wholly owned subsidiary of Canadian Pacific Railway Company.

³ RBMN responds that the portion of RBMN's line that is subject to D&H's trackage rights is a shorter segment running between DuPont (MP 175.5) and M&H Junction (MP 130.6) rather than between DuPont and Lehighon (MP 119.0). We need not resolve this issue here.

information. Finally, D&H asks us to authorize discovery under 49 CFR 1114.21(b)(2).⁴

On September 24, 1996, D&H filed an additional statement presenting what it describes as supplemental information on the condition of the line.

On October 9, 1996, RBMN and Conrail filed replies in opposition to the petition for revocation. By an unverified statement made by its attorney and filed on October 22, 1996, RBMN purported to clarify certain statements in its pleading filed on October 9, 1996.

Under 49 U.S.C. 10502(d), the Board is required within 90 days after receipt of a request for revocation to determine whether to begin an appropriate proceeding. Pursuant to this section we shall institute an investigation proceeding to determine if revocation of the acquisition exemption is warranted. We are unable to decide the D&H's petition on the present record. The scope of D&H's petition is not altogether clear. Had D&H simply asserted the RBMN had failed to carry out its responsibilities as owner of the line and assignee of the trackage rights agreement between D&H and Conrail, we would dismiss the petition. D&H could assert its rights against RBMN in a complaint against that carrier under section 11701 or in a court action pursuant to the trackage rights agreement. But D&H appears to be asserting that Conrail failed to carry out obligations to D&H and that the transfer to RBMN allows Conrail to escape those obligations. Specifically, among other relief sought, D&H has asked that we "revoke the exemption in part in order to condition the transaction in a manner that will protect the public interest in competitive rail service" by D&H in the corridors designated by the Final System Plan served via the Lehigh Line.

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

It is ordered:

1. Within 90 days after the service date of this decision, D&H shall submit any further evidence and argument in support of its request and simultaneously serve RBMN and Conrail with a copy of the evidence and argument submitted. Any replies must be filed within 120 days after the service date of this decision.

2. This decision is effective on December 10, 1996.

⁴ D&H's request for our authorization for discovery is unnecessary. Under the prior version of 49 CFR 1114.21(b)(2), parties could serve interrogatories or requests for admissions without first seeking our approval, but the Board's approval was required for depositions and other types of discovery. Effective November 16, 1996, 49 CFR 1114.21(b)(2) has been revised so that all discovery procedures may be used by parties without filing a petition and obtaining prior Board approval. See Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings, STB Ex Parte No. 527, final rules (STB served Oct. 1, 1996) (61 FR 52710); final rules modified in part (STB served Nov. 15, 1996) (61 FR 58490).

By the Board, Chairman Morgan, Vice Chairman Simmons, and
Commissioner Owen.

Vernon A. Williams
Secretary