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SERVICE DATE - JULY 30, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33601

GRAND TRUNK WESTERN RAILROAD INCORPORATED
--PETITION FOR DECLARATORY ORDER--
SPUR, INDUSTRIAL, TEAM, SWITCHING OR SIDE TRACKS IN DETROIT, MI

Decided: July 26, 1998

By petition filed on May 20, 1998, Grand Trunk Western Railroad Incorporated (GTW) requests that we issue an order under 5 U.S.C. 554(e) and 49 U.S.C. 721(a) declaring that certain tracks located near the Renaissance Center in Detroit, MI, are "spur, industrial, team, switching, or side tracks" that are, under 49 U.S.C. 10906, exempt from our authority over the abandonment and purchase of lines of railroad.¹ The trackage at issue, denominated the "Southerly Tracks," includes three groups of tracks: the Freight House Tracks, the Cement Spur and the Dry Dock Spurs. These tracks extend from GTW's Dequindre Line at mileposts 0.57, 0.71, and 0.81, respectively, near the Detroit river front.² According to GTW, this land is to be developed to support (a) relocation of General Motors Corporation's global headquarters to the Renaissance Center on the Detroit river front and (b) a casino district designated by the City of Detroit.

By notice published in the Federal Register on June 4, 1998, at 63 FR 30559, we requested comments on GTW's petition. The petition is unopposed.³

We will grant GTW's petition. In demonstrating whether track is spur, industrial, switching or team track exempt from our jurisdiction under 49 U.S.C. 10906, we consider:

¹ If these parcels are not exempt under 49 U.S.C. 10906, they would be subject to our jurisdiction over the abandonment of lines of railroad under 49 U.S.C. 10903, unless an exemption therefrom is obtained under 49 U.S.C. 10502 via separate petition or class exemption.

² The trackage is described in greater detail in a verified statement submitted by Charles J. Tucker attached to the petition.

³ The only comment received was a protest from the United Transportation Union (UTU). UTU's protest was predicated on its belief that GTW is requesting that we grant an exemption under our general exemption authority, which has been recodified as 49 U.S.C. 10502. This is not the case -- GTW is requesting that we find that the track is exempt under section 10906.

the length of the track; whether it serves more than one shipper; whether it is stub ended; whether it was built to invade the territory of another railroad; whether the shipper is located at the end of the track; whether there is regularly scheduled service; the volume of traffic moving over the track; who owns and maintains the track; whether the track was constructed with light weight rail; the condition of the track; what the track is used for (e.g., loading, unloading, switching); and whether there are stations on the track.

Battaglia Distrib. Co. v. Burlington N.R.R., Finance Docket No. 32058 (STB served June 27, 1997). In Nicholson v. ICC, 711 F.2d 364, 367 (D.C. Cir. 1983), cert. denied, 464 U.S. 1054 (1984), the court noted that the designation of a length of track as a spur rather than a line of railroad depends on the “use of the track segment.” In Chelsea Prop. Owners--Abandonment--Portion of the Consolidated Rail Corp’s West 30th Street Secondary Track in New York, N.Y., 8 I.C.C.2d 773, 790, aff’d on other grounds sub nom. Consolidated Rail Corp. v. ICC, 29 F.3d 706 (D.C. Cir. 1994), our predecessor agency said,

There is no single test for what constitutes a spur [citation omitted]. Rather, we have adopted a case-by-case approach for such cases, relying on the track’s use, history and physical characteristics.

Applying these tests to those sections of track, it becomes clear that those sections are exempt track within the meaning of section 10906. The verified statement of witness Tucker provides a detailed statement of the physical description and historical use of the tracks. The Southerly Tracks are a collection of short, stub-ended tracks used to switch cars to and from local businesses. They have not been used for line haul service or for any other purpose that would disqualify them from the exemption in section 10906.

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

It is ordered:

1. We declare that the tracks described in GTW’s petition are exempt spur, industrial, team, switching, or side tracks under 49 U.S.C. 10906.
2. This decision is effective on its date of service.

STB Finance Docket No. 33601

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary