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SERVICE DATE - AUGUST 29, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33854

MERIDIAN SOUTHERN RAILWAY, LLC
--ACQUISITION AND OPERATION--
LINE OF KANSAS CITY SOUTHERN RAILWAY COMPANY

Decided: August 24, 2000

We are denying the petition filed by Marshall Durbin Companies (MDC) to revoke an exemption permitting Meridian Southern Railway, LLC (Meridian Southern) to acquire and operate a 54.5-mile rail line between Meridian and Waynesboro, MS.

On March 24, 2000, Meridian Southern, a noncarrier, filed a verified notice of exemption under 49 CFR 1150.31 to purchase the ownership interest of the Kansas City Southern Railway Company (KCS) in, and to operate, the line. The notice was served and published in the Federal Register (65 FR 17943) on April 5, 2000. The exemption became effective on March 31, 2000. Meridian Southern acquired the line on April 1, 2000, and subsequently began providing service to shippers located on the line.

On April 14, 2000, MDC, a shipper served by the line, filed a petition to revoke the exemption. On the same day, MDC filed with the Board a request for discovery and the production of documents. On May 4, 2000, Meridian Southern filed a motion to dismiss MDC's petition to revoke. Meridian Southern also filed a separate motion for a protective order in response to MDC's discovery request. Also on May 4, 2000, the American Short Line and Regional Railroad Association (ASLRRA) petitioned for leave to intervene and file comments in support of Meridian Southern's motion to dismiss. On May 8 and 11, 2000, two shippers on the line, Fort James-Meridian and Hood Industries, filed letters in support of the exemption. A letter in support from a third shipper, Hankins Lumber Company, Inc., was included as an exhibit to Meridian Southern's motion to dismiss.

By decision served May 15, 2000, we granted ASLRRA's petition for leave to intervene, accepted its comments, and granted MDC's request for an extension of the time for completion of discovery. We ordered that the procedural schedule, including the deadline for completion of discovery, be held in abeyance pending our further order. On May 22, 2000, MDC replied to Meridian Southern's motion to dismiss and motion for protective order.

DISCUSSION AND CONCLUSIONS

The petition to revoke reflects MDC's concern over being served by a new carrier, rather than by KCS. We understand MDC's concern. KCS is an established Class I railroad with a proven track record, while Meridian Southern is a new entrant into the business, and even though its personnel have substantial railroad experience, they can not collectively match the experience (or the financial resources) of KCS. Moreover, we share MDC's goal of maintaining, to the extent feasible, continued service by a viable rail carrier. Indeed, our statute requires us to regulate so as to "ensure the development and continuation of a sound rail transportation system . . . to meet the needs of the public," 49 U.S.C. 10101(4).

Erecting impediments that would make it more difficult for an established carrier to hand over a line to a new operator, however, would not necessarily advance our mandate. In Class Exemption for the Acquisition and Operation of Rail Lines Under 49 U.S.C. 10901, 1 I.C.C.2d 810, 811-13 (1986) (Class Exemption), review denied without opinion sub nom. Illinois Commerce Comm'n v. ICC, 817 F.2d 145 (D.C. Cir. 1987), our predecessor, the Interstate Commerce Commission (ICC), found that this type of transaction, which generally involves either the resumption or continuation of rail service with no change in operations, was rarely opposed and nearly always permitted.¹ Thus, rather than requiring a detailed justification in each case – which the ICC found added cost and delay – the ICC issued a class exemption allowing this type of transaction to proceed.

In Class Exemption, the ICC addressed, and found no basis for, concerns that permitting large railroads to divest themselves of rail lines would degrade service, or that the new carriers that would take over these lines would be unfit or unable to sustain adequate rail service. 1 I.C.C.2d at 812-13. The ICC explained that a new shortline carrier often can operate a line more economically and effectively and will tailor its services to the needs of the shipper. 1 I.C.C.2d at 813. Indeed, because it is dependent on local traffic for its survival, a small carrier has greater incentive to provide good service than the larger railroad from which it bought the line. Id. Accordingly, the ICC specifically declined to require new carriers to demonstrate their viability as a condition for invoking the class exemption. 1 I.C.C.2d at 817.

¹ What KCS and Meridian Southern have done here is no different from what many other Class I railroads and shortline railroads have done throughout the Nation under the Class Exemption. Larger railroads have shed many of their lighter density lines, either through abandonment or through line sales, and have focused more of their resources on their mainline service. For the larger railroads, this refocusing has helped improve their financial health. For many rural shippers, service has not been degraded because the slack has been taken up by shortline railroads, many of which have been start-ups just like this one. One of the reasons the shortline railroad industry has been able to fill in the gaps where Class I carriers no longer provide service is because, consistent with 49 U.S.C. 10101(7), the ICC and the Board, have sought to minimize barriers to entry into the railroad industry.

Of course, in Class Exemption, the ICC recognized that there could be cases in which more scrutiny would be appropriate, and it provided for revocation when necessary to carry out the rail transportation policy. But our general policy is that a person seeking to revoke an exemption such as this must present not just generalized concerns, but rather some specific, particularized, and reasonable cause for concern in order for us to revoke an individual use of this class exemption. See Wheeling Acquisition Corporation – Acquisition and Operation Exemption – Lines of Norfolk and Western Railway Company, Finance Docket No. 31591, slip op. at 4-5 (ICC served Dec. 28, 1990); Wisconsin Central Ltd. – Exemption Acquisition and Operation – Certain Lines of Soo Railroad Company, ICC Finance Docket No. 31102, slip op. at 15 n.17 (ICC served July 28, 1988).

In this case, MDC has offered, as the basis for its petition to revoke, two arguments: (1) that Meridian Southern does not qualify to use the class exemption because it is really a rail carrier; and (2) that Meridian Southern has not shown that it will be a viable carrier. But it has provided no support for these arguments, and we find no merit in either of these arguments.

1. Status as Noncarrier. MDC first asserts that Meridian Southern’s parent company, Cayuga Railway Company (Cayuga), is a shortline railroad; that Meridian Southern is the alter ego of Cayuga; and that we should therefore treat Meridian Southern as a carrier, rendering it ineligible to use the class exemption.² There is no support, however, for MDC’s premise that Cayuga is a rail carrier. Indeed, MDC acknowledges (Petition to Revoke at 4) that Cayuga neither owns nor operates any rail lines; nor have we authorized Cayuga to conduct any railroad operations. Cayuga’s ownership of three locomotives (MDC Reply at 5) does not make it a carrier. Nor does the fact that Cayuga’s Vice President owns and operates other lines confer such status, as there is no affiliation between Cayuga and those other lines.

2. Viability Argument. MDC argues that we should not permit the line to be transferred unless and until Meridian Southern shows that it is a viable entity capable of fulfilling the common carrier obligation of serving the Waynesboro line. As discussed above, we do not ordinarily require a detailed showing by a new carrier. MDC argues that a new carrier must demonstrate viability “when questions are raised in the form of a petition to revoke” (MDC Reply at 2), but merely “raising questions” is not sufficient. A party seeking to revoke an exemption must provide some basis for concern that the new operator will not be able to operate the line.

Here, MDC has not provided any basis for its stated concern that Meridian Southern will be unable to operate this line.³ Moreover, the record contains substantial evidence of Meridian

² The class exemption used here is not available for a line sale by one carrier to another.

³ MDC cites four decisions in support of its petition, but none is comparable to this case, and
(continued...)

Southern's ability to provide adequate service on this line.⁴ First, KCS would not have agreed to sell the line to Meridian Southern if it had not been satisfied that Meridian Southern had the financial resources not only to purchase the line but also to operate the line as a going concern that would feed traffic to KCS. In addition, Meridian Southern has submitted letters from three shippers who are fully satisfied with its service thus far. Finally, Meridian Southern has detailed the considerable experience of its management personnel, notably Steve May and Resident General Manager Thomas Jacobs, who between them have 42 years' experience managing and supervising various aspects of shortline and Class I railroads. Indeed, Mr. May currently owns two other shortline railroads.⁵

In sum, we find that revocation of the exemption is not warranted under 49 U.S.C. 10502(d).

³(...continued)

none supports a more detailed scrutiny here. In Iowa Interstate Railroad, Ltd. – Lease and Operate – Exemption, ICC Finance Docket No. 30554 (ICC served Oct. 1, 1984), the ICC specifically recognized that the theoretical possibility that a start-up railroad might experience financial or operational difficulties does not, by itself, provide a basis for increased scrutiny. In Railroad Ventures, Inc. – Acquisition and Operation Exemption – Youngstown and Southern Railway Company, STB Finance Docket No. 33336 (STB served Jan. 9, 1997), there was substantial evidence that the notice of exemption rejected by the Board contained misleading or erroneous information. In Ozark Mountain Railroad – Construction Exemption, ICC Finance Docket No. 32204 (ICC served Feb. 18, 1994), widespread community opposition, as well as the possibility that significant agency resources might be wasted on a required environmental review, justified increased scrutiny of the proposal to construct a new rail line. And I&M Rail Link, LLC – Acquisition and Operation Exemption – Certain Lines of Soo Line Railroad Company D/B/A Canadian Pacific Railway, STB Finance Docket No. 33326 (STB served Apr. 4, 1997), involved concerns that two affiliated Class II carriers had structured their transactions to avoid labor protection requirements under 49 U.S.C. 11323.

⁴ Indeed, MDC has not even asserted that Meridian Southern has failed to provide adequate service since it acquired the line, nor has MDC provided any information that would suggest that Meridian Southern will fail to provide adequate service on the line in the future.

⁵ Particularly given what we know here about Meridian Southern, we see no reason to grant MDC's request for extensive discovery. MDC seeks to use discovery to see if it can find a cause for concern. But without some showing to warrant an exploration, routinely permitting this type of burdensome discovery would chill this type of transaction and create an unwarranted entry barrier that is inconsistent with the statute and the Class Exemption. Because we are denying the discovery requests, Meridian Southern's request for a protective order is moot.

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

It is ordered:

1. The discovery motion is denied.
2. MDC's petition to revoke is denied.
3. This decision is effective on the date of service.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams
Secretary