

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 32980

MEXRAIL, INC.

v.

UNION PACIFIC RAILROAD COMPANY AND
MISSOURI PACIFIC RAILROAD COMPANY

Decided: July 11, 2000

Mexrail, Inc. (Mexrail),¹ which owns the northern portion of the International Bridge spanning the Rio Grande River between Laredo, TX, and Nuevo Laredo, Tamaulipas, Mexico, petitioned the Board for an order requiring the Union Pacific Railroad Company (UP) to pay \$13.50 per loaded car for using Mexrail's portion of the bridge from June 15, 1993, through February 28, 1998.² In reply, UP denied any liability to Mexrail for that time period under the terms of a joint-use arrangement and moved to dismiss the petition. We find that Mexrail may impose the \$13.50 per car charge for the period in question, and, as explained below, we direct UP to pay that charge, less certain amounts previously paid during that period, plus interest.

BACKGROUND

The 1,072-foot International Bridge is the only rail connection between the United States and Mexico at Laredo and is used exclusively by the Texas Mexican Railway Company (Tex Mex) and UP as their principal gateway for rail traffic moving between the two countries.³ The

¹ Mexrail is owned by Transportacion Maritima Mexicana S.A. de C.V., a Mexican corporation (51%), and Kansas City Southern Industries, Inc. (KCS) (49%).

² As discussed below, Mexrail originally requested the Board to impose compensation at \$38.00 per loaded car. The parties subsequently agreed that UP would pay a \$13.50 per loaded car charge for its operations over the bridge on and after March 1, 1998, and Mexrail amended its request to ask that this same charge apply to the earlier time period.

³ Tex Mex, a wholly owned subsidiary of Mexrail, owns and operates approximately 157 miles of track between the port of Corpus Christi, TX, and the midpoint of the bridge. A UP line from San Antonio, TX, connects with Tex Mex's line in Laredo near the approach to the bridge.

bridge was built in 1910 by Ferrocarriles Nacionales de Mexico (FNM).⁴ FNM installed the track and conducted rail operations over the Mexican half of the bridge until 1997, when it sold the track to the current owner and operator, Transportacion Ferrocarriles de Mexicana (TFM), a private Mexican company. Tex Mex installed the track (including approach track) on, and continues to conduct rail operations over, the United States portion of the bridge. Rail cars are interchanged between the U.S. carriers and TFM at the international boundary at the bridge's midpoint.

As relevant here, for several years after the bridge was constructed, Tex Mex moved the traffic of one of UP's predecessors, the former International-Great Northern Railroad Company (IGN), over the U.S. side of the bridge under various arrangements.⁵ In 1929, Tex Mex formally contracted with IGN to switch the latter's cars to and from the mid-bridge interchange point. The contract was to remain in effect until 1953.

By 1947, IGN had become dissatisfied with the switching arrangement. It filed an application with our predecessor, the Interstate Commerce Commission (ICC), under former section 5(2) (now 49 U.S.C. 11323) and related sections of the Interstate Commerce Act for authority to operate under trackage rights, or by joint use, the Tex Mex track necessary to reach the mid-bridge interchange point. The ICC determined the appropriate terms and conditions to govern IGN's use of the track, including an annual payment by IGN for its operations over the

⁴ After building the bridge, FNM transferred its interest in the northern half to its wholly owned subsidiary, National Railroad Company of Mexico (National Railroad), a Utah corporation, to comply with the Texas Railroad Commission requirement that there be separate administration and accounting for FNM's properties in Texas. Prior to the transfer, National Railroad had acquired control of Tex Mex and certain real estate in Laredo. National Railroad subsequently pledged the U.S. portion of the bridge, all of Tex Mex's common stock, and Laredo real estate to secure certain mortgage bonds. When National Railroad defaulted on the mortgage bonds in 1982, Mexrail purchased the right, title, and interest to the underlying assets for \$31 million, and received a quitclaim deed for the bridge. Mexrail, Amended Petition at 4-5; see also International—G. N. R. Co. Trustee Trackage Rights, 275 I.C.C. 27, 29-31 (1949) (IGN I).

⁵ In 1924, the Missouri Pacific Railroad Company (MP) acquired the New Orleans, Texas & Mexico Railway Company, Control of Gulf Coast Lines by M.P.R., 94 I.C.C. 191 (1924), which had just acquired control of IGN, Control of International—Great Northern R.R., 90 I.C.C. 262 (1924), and subsequently IGN became an integral part of MP. On May 23, 1996, when Mexrail filed the instant petition, UP and MP were wholly owned subsidiaries of Union Pacific Corporation. On January 1, 1997, they merged; UP succeeded to MP's rights and obligations, and MP ceased to exist as a separate entity. Union Pac. Corp.—Control & Merger—Southern Pac. Rail Corp., Finance Docket No. 32760, Decision No. 67, slip op. at 1 n.3 (STB served Jan. 14, 1997).

U.S. side of the bridge,⁶ but declined to compel such an arrangement. Instead, the ICC stayed its hand to give IGN and Tex Mex an opportunity to negotiate a voluntary joint use arrangement. IGN I, 275 I.C.C. at 56-58.

Tex Mex and IGN subsequently filed a joint petition asking the ICC to approve the parties' agreement for the joint use and operation of the track and other incidental terminal facilities and to grant IGN's trackage rights request. The ICC approved both, International—G. N. R. Co. Trustee Trackage Rights, 282 I.C.C. 30 (1951) (IGN II), and to prevent conflict it specified, at the parties' request, that the trackage rights authorization could not be exercised as long as the joint-use agreement continued in effect.

The joint-use agreement specified how cars could move over the bridge and appurtenant track and which railroad's employees and equipment would perform the movements. The agreement also adopted the terms of compensation developed by the ICC in IGN I, including the formulas governing IGN's payments to Tex Mex for using and maintaining the bridge. Tex Mex acknowledged, however, that it was not the owner of the bridge, IGN II, 282 I.C.C. at 35, and the agreement does not state that the bridge-use payments to Tex Mex established the compensation level that the owner of the bridge could receive. The original joint-use agreement (1951 Agreement), as modified in 1973 and 1998, continues in effect.⁷

CURRENT DISPUTE

By letter dated May 20, 1993, Mexrail notified UP and Tex Mex that it intended to impose a \$38.00 bridge-use charge for each loaded car moving over its northern (U.S.) half of the bridge, beginning on June 15, 1993. UP refused to pay this charge and, after unsuccessful negotiations, Mexrail petitioned the ICC to find the \$38.00 charge reasonable compensation for use of the bridge and to order UP to pay that amount.

The ICC dismissed Mexrail's initial petition without prejudice to refile if Mexrail obtained a final court judgment conclusively establishing its ownership of the bridge. Mexrail, Inc. v. Union Pacific Railroad Company, Finance Docket No. 32468 (ICC served Nov. 17, 1994) (Mexrail). Mexrail obtained that judgment in 1996, Mexrail, Inc. v. International Bridge,

⁶ The ICC determined that an annual amount "equal to a user proportion of 6%" of the agreed value of the bridge would be "reasonable rental" for IGN's use of the bridge and bridge track (including approach track), plus an annual amount based on the same user proportion percentage for IGN's share of the maintenance, operational costs, and taxes. IGN I, 275 I.C.C. at 56-57.

⁷ MP and Tex Mex, on May 7, 1973, agreed to supplement and amend the original agreement. The revision has no effect on our analysis and conclusion here.

In Rem. No. C-95-00809-D2 (11th Judicial Circuit, Webb County, TX, Apr. 4, 1996) (contained in Mexrail's Amended Petition, Exhibit D), and refiled its petition with the Board.

While the petition was pending, UP, Mexrail, Tex Mex, and KCS entered into an agreement in February 1998 providing for UP to pay Tex Mex an increased charge for UP to continue using Tex Mex's track on the northern half of the bridge, the underlying half of the bridge superstructure owned by Mexrail, and the approach track and other incidental terminal facilities owned by Tex Mex. The agreed-upon charge, a flat charge of \$13.50 per loaded car, is applicable to cars that used the bridge on and after March 1, 1998, and is subject to future cost adjustments.⁸

The parties were unable to agree on whether the increased charge should apply retroactively to movements made after June 14, 1993, but prior to March 1, 1998. They left this issue for us to resolve but agreed that the charge should be set at the same level (\$13.50 per car) if we determined that Mexrail was entitled to collect an increased charge for this time period. On April 2, 1998, Mexrail filed an amended petition to reflect the parties' agreement and to renew its request for an order directing UP to compensate it for the period in dispute. On April 22, 1998, UP replied and moved to dismiss, reasserting that for the period in dispute Mexrail is entitled to compensation only under the terms of the then-existing joint-use

⁸ See 49 U.S.C. 10708; Railroad Cost Recovery Procedures, 364 I.C.C. 841 (1981), modified, Railroad Cost Recovery Procedures—Productivity Adjustment, 5 I.C.C.2d 434 (1989); Productivity Adjustment—Implementation, 9 I.C.C.2d 1072 (1993).

agreement.⁹ We find that Mexrail is entitled to collect the \$13.50 charge for UP's movements during that time period.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 11323(a), the Board has plenary authority over trackage rights agreements between rail carriers and the authority, if necessary, to set the terms of compensation. Thompson, 328 U.S. at 145-47. UP denies that it is obligated to pay anything more for its use of the bridge during the period from June 15, 1993, through February 28, 1998, than the 6% interest rental payment that the ICC allegedly prescribed when it provisionally granted IGN's trackage rights request in IGN I, and that was contained in the parties' joint use agreement approved in IGN II. According to UP, the ICC recognized that the rightful owner of the bridge superstructure could emerge and seek compensation for past movements but did not authorize bridge use fees in excess of the allegedly prescribed amount. UP claims that it could be obligated to pay additional use fees for the time period at issue but only if new terms of compensation had been prescribed prospectively by the ICC (or the Board) or if the parties had terminated or modified their agreement. Because neither event occurred, UP maintains it cannot be subject to additional liability. We disagree.

⁹ UP also argues that Mexrail's amended petition must be dismissed for failing to identify which statutory or regulatory provisions were violated, under the procedures of 49 CFR 1111.1(a). We disagree. As we noted above, in Mexrail the ICC determined that petitioner could seek compensation once it established (as it now has done) its ownership of the bridge, and the Part 1111 procedures have previously been invoked by parties seeking this kind of relief. See, e.g., Arkansas & Missouri R. Co. v. Missouri Pac. R. Co., 6 I.C.C.2d 619 and 7 I.C.C.2d 164 (1990), and 8 I.C.C.2d 567 (1992) (complaint and petition filed under 49 CFR 1111 to set terms and conditions for use of track and a bridge), aff'd sub nom. Missouri Pac. R. Co. v. I.C.C., 23 F.3d 531 (D.C. Cir. 1994). UP's argument elevates form over substance in any event. See 49 CFR 1100.3; see also, e.g., PSI Energy, Inc.—Feeder Line—Norfolk Southern Corp., 7 I.C.C.2d 227, 229 (1991) (PSI). In PSI, a motion to dismiss for joining the noncarrier parent instead of its common carrier subsidiary (the alleged indispensable party), and an alternative motion to substitute the common carrier subsidiary (or add it as a party of record), were denied as needless procedural formalities. Here, Mexrail is a carrier, and it gave UP adequate notice of the relief sought (it alleged that UP refused to pay Mexrail compensation for use of the bridge, and it requested that the Board, pursuant to Thompson v. Texas Mexican Ry., 328 U.S. 134 (1946) (Thompson), issue an order directing UP to pay appropriate compensation). There would be little point in insisting that Mexrail file a petition for a declaratory order, and a petition to reopen the decisions in IGN I or IGN II does not lie because Mexrail was not a party to those proceedings. In any event, under 49 U.S.C. 11327, we retain jurisdiction to issue supplemental orders in connection with transactions governed by 49 U.S.C. 11323 [former section 5(2)].

1. Indispensable Parties. Even if we were to construe the ICC's approval in IGN II of the original joint-use agreement (that voluntarily adopted the compensation terms developed by the ICC in IGN I) as a prescription of its terms, IGN's request for trackage rights was directed at Tex Mex's track and facilities, and its joint use agreement was solely with Tex Mex. Nowhere in its decisions did the ICC establish, or purport to establish, the compensation IGN was to pay the owner of the underlying bridge superstructure. Had such an action been sought by IGN, or intended by the ICC, the rightful owner would have been an indispensable party and would have been entitled to receive notice and fully assert its interests.¹⁰ See, e.g., Ford Motor Co. v. I.C.C., 714 F.2d 1157 (D.C. Cir. 1983) (Ford).¹¹ IGN and Tex Mex were the only parties to those proceedings, and, as such, the only ones that could be bound by the ICC's decisions. Thus, the ICC's approval of the 1951 Agreement in IGN II could, at most, establish compensation for use of the bridge between Tex Mex and IGN, but not between IGN and the bridge owner.¹²

2. The Agreement. UP emphasizes section 10(C) of the 1951 Agreement to support its contention that the rightful bridge owner was bound by the usage terms contained therein.¹³

¹⁰ With the identity of the owner of the bridge uncertain, Tex Mex had been, and under the 1951 Agreement was to continue, maintaining, repairing, and operating the superstructure. As explained above, under the agreement IGN paid Tex Mex a separate use-based fee for these expenses, as well as for any related taxes that Tex Mex paid. This was in addition to the rent IGN paid Tex Mex for using the superstructure.

¹¹ As the court stated in Ford, 714 F.2d at 1160 (footnote omitted):

Failure to join [an indispensable party] *never* strips a tribunal of its subject matter jurisdiction or of its authority over the persons before it. A tribunal which has jurisdiction over the subject matter of a claim generally may impose no dispositive order on an absentee, [although] it unquestionably has power to enter orders binding the parties it confronts.

¹² Because the ICC in IGN II could not, and did not, prescribe what the non-party bridge owner could charge, UP's reliance on rate-prescription cases such as Arizona Grocery Co. v. Atchison, T. & S. F. R. Co., 284 U.S. 370 (1932), requiring carriers to adhere to prescribed charges until changed prospectively, is misplaced.

¹³ Section 10(C) of the 1951 Agreement states:

The Tex-Mex Company makes no claim to title in and to that portion of the International Bridge on which Tex-Mex Company's tracks are located, although it will receive payments of interest rental and taxes thereon under the provisions of this agreement. . . . [A]ny such payments made to Tex-Mex

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Specifically, UP points to language in that section declaring that, should the owner of the bridge be verified and step forward, Tex Mex could not be forced to reimburse IGN or its successors “in excess of the amount of interest rental and taxes paid” Tex Mex for use of the bridge. UP argues that this provision, together with statements in IGN I¹⁴ and IGN II,¹⁵ established a cap on the charge the owner of the bridge could assess upon establishing proper title, and that this cap could not be changed until the agreement was terminated or superseded.

That argument was properly rejected by the ICC in 1994.¹⁶ Section 10(C) did not purport to limit the bridge owner to the agreement’s bridge-use terms. Section 10(C) unequivocally states that the bridge owner is entitled to compensation for use of the bridge and specifically acknowledges that Tex Mex has no ownership claim. Because the owner was

¹³(...continued)

Company are on the express condition . . . that in the event any person or party shall establish by proper legal proceeding that such person or party is the owner of said portion of the International Bridge and entitled to be paid interest rental and taxes thereon by the International Trustee and that Tex-Mex Company has not paid to such person or party any of the interest rental and taxes on said portion of the International Bridge paid to it by International Trustee to which such person or party may be lawfully entitled, then Tex-Mex Company shall reimburse International Trustee such interest rental and taxes as International Trustee shall be compelled to pay to such party, but not in excess of the amount of interest rental and taxes paid to Tex-Mex Company by International Trustee for the period to which said interest rental and taxes paid such person or party shall be applicable.

¹⁴ “[A] reasonable rental for use of the International Bridge including the bridge itself, the approach thereto, and the track thereon would be payment to the owner or owners thereof by the applicant of an amount equal to a user proportion of 6 percent annually on the agreed value of the property involved.” IGN I, 275 I.C.C. at 56 [underlining by UP].

¹⁵ “[T]he Texas Mexican does not claim ownership of the superstructure of the International Bridge upon which its tracks are located, but will receive interest rental and taxes thereon. The applicant [IGN] will be reimbursed by the Texas Mexican in the event the former is compelled to pay sums in the like amount to the rightful owners of the property by reason of their failure to receive such sums from the Texas Mexican.” IGN II, 282 I.C.C. at 35 [underlining by UP].

¹⁶ Mexrail, supra, at 5-6 (finding that Mexrail was not “governed by the provisions of the . . . agreement,” and that the 1951 Agreement did not “preclude the true owner [of the bridge] from requesting more compensation and, in fact, recognizes that the rent due the owner could be established in a separate proceeding.”)

unknown at the time, section 10(C) merely provides that, if the rightful owner appears and establishes title and the right to receive compensation (which Mexrail has now done), Tex Mex would reimburse IGN up to the amount collected from IGN (had it not already turned over those amounts to the owner itself), but no more. Thus, section 10(C) only sets a cap on what Tex Mex might be required to reimburse IGN and ensures that IGN will not pay that amount to the rightful owner of the bridge a second time;¹⁷ it does not limit any additional amounts the owner of the bridge could seek to collect from IGN.¹⁸ Nothing else in section 10(C) suggests a different result.¹⁹ In the end, the mutual promises and protections of the 1951 Agreement make sense only when viewed as acknowledging that only the parties to the agreement (not Mexrail) were bound by its terms.

3. Equitable Considerations. Finally, UP contends that Mexrail is not otherwise entitled to retroactive payment of additional bridge use fees. UP asserts that Mexrail purchased Tex Mex and the bridge in 1982 with full knowledge of the joint-use agreement, did nothing until UP announced plans to construct another bridge at Laredo a full decade later, and never indicated, prior to 1993, that it was entitled to compensation as the owner of the bridge. UP also suggests that FNM was the likely owner of the bridge at the time IGN I (1949) and IGN II (1951) were decided, and that FNM permitted Tex Mex to intervene in those proceedings in the belief that it did not have a separate interest to protect or that its interest was fully protected by Tex Mex. Having acquired FNM's interest in Tex Mex and the bridge, UP argues that Mexrail is subject to, and bound by, FNM's earlier alleged concessions.²⁰ Mexrail acknowledges that it

¹⁷ See IGN I, 275 I.C.C. 44. The quid pro quo is reflected in the title the parties gave to section 10 of the 1951 Agreement: "Interest Rental and Taxes. Guarantee against Duplicate Payments of Interest Rental and Taxes on International Bridge."

¹⁸ If section 10(C) actually was intended to bar the non-party owner of the bridge from collecting additional amounts for its use, there would have been no need place a cap on Tex Mex's liability to IGN.

¹⁹ The ICC's use of the term "in the like amount" in IGN II (see supra note 16) to describe the reimbursement mechanism in section 10(C) does not warrant a different conclusion. The ICC simply paraphrased the agreement and equated the reimbursement IGN was entitled to receive from Tex Mex with the charges Tex Mex was authorized to collect from IGN. Read in context, the term does not suggest an intent to establish a maximum amount IGN ultimately might owe if the actual owner came forward.

²⁰ UP had also claimed that Mexrail was using its holding company relationship with Tex Mex to circumvent the bridge-usage fees of the 1951 Agreement and to disadvantage UP, Tex Mex's only competitor. UP had argued that it was the only carrier that would be affected adversely by the increased charges, and that this burden was in addition to other existing

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did not seek to impose a bridge charge until 1993, but argues that it has diligently pursued its right to do so since then.

There is no support for UP's claims regarding FNM. Nor can UP claim detrimental reliance. As IGN's successor, UP, under section 26 of the 1951 Agreement, was knowingly and expressly bound by all of the terms of the agreement, including section 10(C). As explained above, section 10(C) did not preclude the actual owner of the bridge from seeking further compensation once its ownership interest was established. This is all that has occurred here. Mexrail's failure to assert its property interests earlier did not adversely affect UP and does not preclude Mexrail from asserting them now.²¹

4. Conclusion. As the rightful owner of the northern half of the bridge, Mexrail may properly seek reasonable compensation for its use. The parties have agreed that, should we find Mexrail entitled to compensation for the period at issue here, the \$13.50 per car charge applicable to all movements after February 28, 1998, would be reasonable compensation. We therefore find that Mexrail is entitled to collect, and UP is obligated to pay, the \$13.50 per car charge (less the portion of the former charges UP previously paid Tex Mex for maintenance and operating expenses, as the parties had agreed) for each loaded car that moved over the bridge from June 15, 1993, through February 28, 1998, plus interest at the rate prescribed in 49 CFR part 1141 to the date payment is made.²²

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

It is ordered:

1. UP's motions to dismiss are denied.
2. UP is directed to pay the \$13.50 per car charge negotiated by the parties in 1998, reduced by amounts previously paid Tex Mex for maintenance and operating expenses under the

²⁰(...continued)
restrictions imposed on its use of the bridge. UP dropped this argument after the 1998 settlement was adopted. In any event, the record indicates that in 1993, Mexrail notified both UP and Tex Mex of its intent to increase the bridge-usage fees, and that, unlike UP, Tex Mex apparently has paid the increased amount.

²¹ Indeed, UP benefitted over the years (1982-93) and ultimately will have benefitted from Mexrail's delay in establishing ownership and increasing bridge use charges.

²² See Procedures to Calculate Interest Rates, 9 I.C.C.2d 528 (1993); Huron Valley Steel Corp. v. CSX Transp., Inc., No. 40385 (ICC served Oct. 6, 1992).

1951 Agreement, for each loaded UP car that moved over the bridge from June 15, 1993, through February 28, 1998, plus interest to the date payment is made at the rate of interest prescribed in 49 CFR part 1141.

3. This decision is effective August 12, 2000.

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

Vernon A. Williams
Secretary