

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 239X)

UNION PACIFIC RAILROAD COMPANY – DISCONTINUANCE EXEMPTION –
IN OKLAHOMA CITY, OK

Decided: April 13, 2006

This decision addresses a petition filed by the Oklahoma Department of Transportation (ODOT) to revoke the exemption previously invoked by Union Pacific Railroad Company (UP) in this proceeding (or in the alternative to reopen the proceeding) and a companion petition to stay the effective date of the exemption in the meantime. At issue is the use of the class exemption under which railroads may discontinue service on lines that have been out of service for more than 2 years. The basis for the relief sought by ODOT in its petition to revoke or reopen is that environmental and historic reports were not submitted.¹ A stay is requested to provide time for UP to submit the reports allegedly required prior to the exemption taking effect. In this decision, we find that the carrier was not required to file environmental and historic reports for the action authorized in this case. Nor does our action determine private contractual rights between UP and ODOT. Therefore, the petition to revoke or reopen will be denied, and the petition for a stay will be dismissed as moot.

BACKGROUND

On February 24, 2006, UP filed a notice of exemption under 49 CFR 1152 Subpart F – Exempt Abandonments and Discontinuances to discontinue service over a 0.42-mile line of railroad, known as the Old Rock Island Main, from Stiles Avenue to the point of connection with the BNSF Railway Company (BNSF) line near Second Street in Oklahoma City, Oklahoma County, OK.² Notice of the exemption was served and published in the Federal Register on March 16, 2006 (71 FR 13673) and the exemption is scheduled to become effective on April 15, 2006. On April 5, 2006, the ODOT filed petitions to revoke or reopen, and for stay of, the exemption. UP filed a reply to the petitions on April 6, 2006.

¹ In this decision, we employ the petitioner’s term, “petition to revoke,” despite the fact that the exemption is not due to take effect until April 15, 2006. While revocation is generally discussed in the context of an exemption that has already taken effect, we are using the term to assess whether the use of the class exemption for UP’s proposed discontinuance is proper before the exemption becomes effective.

² There are no mileposts on the line.

In its exemption notice, UP asserted that no environmental or historic reports were required under 49 CFR 1105.6(c)(2) and 1105.8, respectively, because the discontinuance will have no effect on rail or truck traffic and will not result in salvage and disposition of the rail line. UP pointed out that BNSF continues to have authority to operate over the line pursuant to trackage rights. See The Atchison, Topeka and Santa Fe Railway Company – Trackage Rights – Missouri-Kansas-Texas Railroad Company, Finance Docket No. 31308 (ICC served Oct. 12, 1988).

ODOT owns the rail line and leases it to UP to provide freight service. ODOT asserts that, under the regulations on which UP relied, environmental and historic reports needed to be submitted to the Board and to various governmental entities. ODOT asks us to disallow use of the notice of exemption based on UP's failure to comply with those requirements. In the alternative, ODOT asks us to reopen this proceeding to impose two conditions on UP's discontinuance exemption: (1) that UP may not "consummate" the proposed discontinuance while BNSF retains trackage rights over the line; and (2) that the discontinuance exemption will not be deemed to affect any private contractual rights between UP and ODOT under the lease or any other private contractual arrangements.

In its stay petition, ODOT explained that there is an historic city street bridge over this rail line and that ODOT has been made a party to a dispute between the City of Oklahoma City and UP about the extent to which UP should contribute to reconstructing the bridge.³ ODOT seeks a stay of the effectiveness of the exemption so that, prior to discontinuing service on the line, UP can submit the environmental and historic reports that ODOT maintains should address the effects of discontinuing service on the historic bridge.

DISCUSSION AND CONCLUSIONS

Petition to Revoke. ODOT asserts that we should revoke the exemption for failure to comply with the Board's environmental regulations. But there is no such failure here. The proposed discontinuance of UP's service is categorically excluded from environmental reporting requirements under 49 CFR 1105.6(c)(2). This is because the discontinuance will not "result in significant changes in carrier operations," 49 CFR 1105.6(c)(2), as UP currently is not conducting any rail operations on the line, and as the proposed discontinuance itself would not result in salvage of rail materials on the line.

ODOT argues (Pet. For Stay at 3) that the categorical exclusion does not apply because "neither abandonments nor discontinuances are listed" under section 1105.6(c)(2), and that our predecessor, the Interstate Commerce Commission (ICC), in adopting our environmental regulations, "specifically determined that 'there should be an environmental review of proposals to discontinue rail service . . .,'" id. at 2. However, the categorical exclusion itself makes clear that its scope includes, but is "not limited to," the listed actions. Further, the ICC's statement

³ UP counters that the superstructure of the bridge has been removed by the City as part of a reconstruction project.

that discontinuances should be subject to environmental review was based on the rationale that “a discontinuance may result in diversion of traffic to other lines or modes, with potentially significant environmental impacts.” Implementation of Environmental Laws, 7 I.C.C.2d 807, 822 (1991). As noted, here there will be no such diversions because there is no traffic on the line.

The proposed discontinuance also is exempt from historic reporting requirements under 49 CFR 1105.8(e) because, as stated, UP’s discontinuance in itself will not permit or result in salvage of rail materials on the line and thus will have no effect on any historic properties. See 49 CFR 1105.8(e). Indeed, BNSF’s trackage rights remain in effect, even if BNSF has not recently conducted operations under those rights. See Thompson v. Texas Mexican Ry. Co., 328 U.S. 134 (1946) (ICC authority required to end trackage rights). Thus, contrary to ODOT’s contention, UP’s discontinuance exemption is not equivalent to abandonment of the line. In sum, the categorical exclusion means that UP was not required to submit either environmental or historic reports. Therefore we will deny the petition to revoke.

Petition to Reopen. As an alternative to revocation, ODOT asks us to reopen the exemption notice and impose conditions on UP’s discontinuance of service. The first condition would prevent UP from “consummating” its discontinuance while BNSF still has trackage rights over the line. As explained above, however, BNSF’s trackage rights continue in effect. Because UP’s and BNSF’s rights to operate over the line are not dependent upon each other, we see no reason to condition the discontinuance of UP’s operations upon BNSF’s also obtaining authority to terminate its trackage rights.

As for the second requested condition, we likewise see no need to reopen this proceeding to state that the exemption does not affect any private contractual rights between UP and ODOT. It is well established that we do not undertake to interpret or enforce private contracts, including operating agreements such as the ODOT-UP lease. See, e.g., The Kansas City Southern Railway Company – Adverse Discontinuance Application – A Line of Arkansas and Missouri Railroad Company, STB Docket No. AB-103 (Sub-No. 14), slip op. at 7 (STB served Mar. 26, 1999), and case cited therein. Our action here should have no effect on the contractual issues. For these reasons, we will deny ODOT’s alternative request to reopen the proceeding to place conditions on UP’s exemption.

Petition for Stay. ODOT contends that a stay is required so that UP can furnish environmental and historical documentation, including information about the historic city bridge, prior to the exemption taking effect. Because we find that no environmental or historic reports were required in this proceeding, we will dismiss the petition for stay as moot.

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

It is ordered:

1. ODOT's petition to revoke or reopen is denied.
2. ODOT's petition for stay is dismissed as moot.
3. This decision is effective on its date of service.

By the Board, Chairman Buttrey and Vice Chairman Mulvey.

Vernon A. Williams
Secretary