

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33358

WISCONSIN CENTRAL LTD.--ACQUISITION EXEMPTION--TOMAHAWK RAILWAY,
LIMITED PARTNERSHIP

Decided: May 21, 1997

By petition filed March 5, 1997, Wisconsin Central Ltd. (WCL)¹ seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10902 to acquire from Tomahawk Railway, Limited Partnership (TRL)² 4.93 miles of rail line between Tomahawk and Bradley, WI (the Bradley Line).³ We will grant the exemption, subject to the labor protection requirements of 49 U.S.C. 10902(d), including a 60-day notice requirement.

BACKGROUND

The Bradley Line extends from milepost 133.49 at Somo Avenue in Tomahawk to milepost 138.42 at Bradley. Together with a short segment of trackage between milepost 133.49 and milepost 133.09 in Tomahawk (the Tomahawk Segment), which TRL will continue to own, the Bradley Line provides a connection between an east-west WCL line at Bradley, previously owned by Soo, and a north-south WCL line terminating at Tomahawk, previously owned by the Chicago, Milwaukee, St. Paul & Pacific Railroad Company (MILW). After Soo acquired MILW's lines in 1986, it obtained trackage rights⁴ over TRL's line between Tomahawk and Bradley to allow operations between the former Soo and MILW lines. Subsequently, these trackage rights were assigned to WCL in 1987 when WCL purchased certain of Soo's rail lines.⁵

¹ WCL, a Class II rail carrier, owns approximately 2,000 miles of line and conducts operations in Wisconsin, Illinois, Michigan, and Minnesota. WCL began operations in 1987 after it acquired rail lines from Soo Line Railroad Company (Soo). *See Wisconsin Central Ltd.--Exemption Acquisition and Operation--Certain Lines of Soo Line Railroad Company*, Finance Docket No. 31102 (ICC served July 28, 1988) (*Wisconsin Central*). WCL is a wholly owned subsidiary of Wisconsin Central Transportation Corporation (WCTC). In addition to controlling WCL, WCTC also controls: (1) Fox Valley & Western Ltd., a Class II rail carrier, which owns approximately 500 miles of rail line in Wisconsin; and (2) Sault Ste. Marie Bridge Company, a Class III rail carrier, which owns approximately 220 miles of rail line in northern Wisconsin, and the Upper Peninsula of Michigan, and between Sault Ste. Marie, MI, and Sault Ste. Marie, Ontario, Canada.

² TRL, a Class III rail carrier controlled by K. Earl Durden, owns and operates approximately 13.7 miles of rail line between Tomahawk, Bradley, and Wisconsin Dam, WI. TRL acquired the rail lines in 1992 from the former Marinette, Tomahawk & Western Railroad Company. *See Tomahawk Railway, L.P.--Acquisition and Operation Exemption--Marinette, Tomahawk & Western Railroad Company*, Finance Docket No. 31996 (Sub-No. 1) (ICC served Jan. 29, 1992, and Dec. 17, 1992).

³ This proceeding is related to *Wisconsin Central Ltd.--Trackage Rights Exemption--Tomahawk Railway, Limited Partnership*, STB Finance Docket No. 33359 (STB served Mar. 25, 1997), in which TRL has agreed to grant WCL non-exclusive overhead trackage rights over a 0.40-mile portion of TRL's rail line between milepost 133.09 and milepost 133.49 in Tomahawk, WI.

⁴ *See Soo Line Railroad Company--Trackage Rights--Marinette, Tomahawk and Western Railroad Company*, Finance Docket No. 30839 (ICC served June 26, 1986).

⁵ *See Wisconsin Central, slip op.* at Appendix B, Part 2.

WCL's trackage rights on the Bradley Line have served as an important overhead link between WCL's line to Ashland, WI, and the remainder of its system south of Tomahawk. WCL currently is the predominant user of the Bradley Line. TRL uses the line only to serve the sole local shipper, American Tissue Company, at milepost 134.11 (Leather Avenue) and to reach its Wisconsin Dam line at milepost 134.37 (the Jersey Interlocking). TRL currently does not operate on the Bradley Line north of the Jersey Interlocking, and there are no shippers on that segment.

Pursuant to an asset purchase agreement, dated December 31, 1996, between WCL and TRL, WCL will acquire TRL's right, title and interest in the Bradley Line. TRL will retain trackage rights over the southern 0.88-mile portion of the Bradley Line to continue to serve American Tissue Company and to reach its Wisconsin Dam line. It will retain ownership of the Tomahawk Segment extending from the south end of the Bradley Line at milepost 133.49 to the connection with WCL's existing line at milepost 133.09 in Tomahawk, but WCL will operate over this segment of the line pursuant to trackage rights granted in STB Finance Docket No. 33359.⁶

According to WCL, the proposed transaction will simply reverse the current owner/tenant relationship between WCL and TRL. WCL, which already possesses trackage rights over the Bradley Line and is the sole operator of the line north of the Jersey Interlocking, will assume ownership of the line, while TRL will continue its existing operations on the line via retained trackage rights.

DISCUSSION AND CONCLUSIONS

The ICC Termination Act of 1995 (ICCTA) established a new statutory provision--49 U.S.C. 10902--that governs the purchases of additional rail lines by Class II or Class III railroads. As enacted, section 10902(c) requires the Board, after application by a Class II or III rail carrier, to issue a certificate authorizing the transaction "unless the Board finds that such activities are inconsistent with the public convenience and necessity."

Under section 10902, a Class II rail carrier's acquisition of a rail line requires prior Board approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation if we find that: (1) application of a provision of law administered by the Board is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) application of such provision is not necessary to protect shippers from the abuse of market power.

An exemption from the requirements of section 10902 for WCL's acquisition is consistent with the standards set forth in section 10502. Detailed scrutiny of the transaction, through an application for review and approval under section 10902, is not necessary to carry out the rail transportation policy established in 49 U.S.C. 10101. According to WCL, acquisition of the line will allow it to exercise full control over a rail line that forms a crucial link in its system. Thus, the exemption will promote efficient rail transportation, ensure the continuation of a sound transportation system to meet the needs of the public, foster sound economic conditions in transportation, ensure effective competition and coordination between rail carriers and other modes, and promote efficient management [49 U.S.C. 10101(3), (4), (5) and (9)]. Granting the exemption will also reduce the need for Federal regulatory control over the rail transportation system and regulatory barriers to entry [49 U.S.C. 10101(2) and (7)].

The transaction will not result in an abuse of market power. The proposed acquisition merely shifts ownership of the line to the rail carrier that has been the physical provider of rail service in recent years. Service will continue unchanged and no shipper will lose access to any rail service that it currently receives. Competition or transportation options for the shipping public will not be reduced. To the contrary, WCL's acquisition will ensure the continued efficiency of WCL's

⁶ WCL's existing trackage rights over the Bradley Line will merge into WCL's ownership of that line once the transaction in STB Finance Docket No. 33358 is consummated. See *Norfolk and Western Railway Company--Acquisition Exemption--Consolidated Rail Corporation*, STB Finance Docket No. 32957 (STB served Aug. 15, 1996), *slip op.* at 1, n.3.

operations by allowing WCL to directly manage an important component of its rail system. Nevertheless, to ensure that the shipper on the line is informed of our action, we will require petitioner to serve a copy of this decision on American Tissue Company within 5 days of the service date of this decision and to certify to us that it has done so. Given our finding regarding the probable effect of the transaction on market power, we need not determine whether the transaction is limited in scope.

Under section 10502(g), we may not use our exemption authority to relieve a rail carrier of its obligation to protect the interests of adversely affected employees. Section 10902(d) provides for labor protection in line acquisitions by Class II rail carriers. WCL agrees to the imposition of the section 10902(d) labor protective conditions on the proposed transaction and asserts that its acquisition of the Bradley Line from TRL will not have any adverse impact on the employees of either WCL or TRL.

Recently, in a case of first impression involving a line acquisition by a Class II carrier in *Wisconsin Central Ltd.--Acquisition Exemption--Lines of Union Pacific Railroad Company*, STB Finance Docket No. 33116 (STB served Apr. 17, 1997) (*WCL Exemption*), the Board adopted standards and procedures for implementing the labor protection requirements of section 10902(d). We will impose those standards and procedures as a condition to the granting of the exemption here. While finding that the Class II carrier in *WCL Exemption* had provided adequate notice to rail employees on the lines being acquired, the Board did not adopt a specific notice standard in that case. Rather, the Board instituted a rulemaking proceeding to seek comments on a proposed requirement that Class II rail carriers provide a minimum of 60 days' notice to employees on the lines being acquired in future petitions or applications filed under section 10902. *Acquisition of Rail Lines Under 49 U.S.C. 10901 and 10902--Advance Notice of Proposed Transactions*, STB Ex Parte No. 562 (STB served May 1, 1997). Although that proceeding is pending and we have not made a final determination of whether to adopt the proposed rule, we conclude that it is appropriate to follow the approach of the proposed rule regarding notice here. WCL asserts that there will be no adverse effect on employees and we have no reason to question that assessment. We will, nonetheless, make the exemption in this proceeding effective 60 days after WCL certifies to the Board that it has posted notice at the workplace of the employees on the affected line and served notice of the transaction on the national offices of the labor unions representing employees on the affected line, setting forth the terms of employment and principles of employee selection to be used in making any changes contemplated by the transaction that will affect employees on the line or their positions.

Petitioner states that this transaction is excepted from environmental reporting requirements under 49 CFR 1105.6(c)(2)(i) and that an historic report is not required under 49 CFR 1105.8(b)(1). Our Section of Environmental Analysis (SEA) has reviewed the transaction and has concluded that this transaction is exempt from the environmental and historic reporting requirements.⁷

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

It is ordered:

1. Under 49 U.S.C. 10502, we exempt WCL's acquisition of the above-described line from the prior approval requirements of 49 U.S.C. 10902, subject to the labor protective conditions implementing 49 U.S.C. 10902(d) as provided in this decision.

2. Notice will be published in the *Federal Register* on June 2, 1997.

⁷ This transaction does not involve a significant change in carrier operations, petitioner has no plans to dispose of or alter historic properties, and further Board approval would be required for WCL to abandon any service.

3. WCL must serve a copy of this decision on American Tissue Company within 5 days of the service date of this decision and certify to us that it has done so.

4. This exemption will be effective 60 days after WCL certifies to the Board that it has posted notice at the workplace of the employees on the affected line and served notice of the transaction on the national offices of the labor unions representing employees on the affected line, setting forth the terms of employment and principles of employee selection to be used in making any changes contemplated by the transaction that will affect employees on the line or their positions.

5. Petitions to stay must be filed by June 17, 1997. Petitions to reopen must be filed by June 27, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary