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SERVICE DATE - LATE RELEASE NOVEMBER 22, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33960

THE CENTRAL ILLINOIS RAILROAD COMPANY—LEASE AND OPERATION EXEMPTION—LINES OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY AT CHICAGO, COOK COUNTY, IL

Decided: November 22, 2000

On November 16, 2000, The Central Illinois Railroad Company (CIRR or the Lessee) filed a notice of exemption under 49 CFR 1150.31 to lease from The Burlington Northern and Santa Fe Railway Company (BNSF) and operate approximately 5.9 miles of main line track and approximately 12.47 miles of sidetrack, collectively referred to as the Lumber District and Illinois Northern lines or portions thereof, in the vicinity of BNSF's Western Avenue Yard in Chicago, Cook County, IL.

BACKGROUND

On November 20, 2000, Joseph C. Szabo, on behalf of United Transportation Union-Illinois Legislative Board (UTU-IL), filed a petition to stay the effective date of the exemption. On November 22, 2000, CIRR filed a reply to UTU-IL's stay petition.

UTU-IL argues that the exemption should be stayed pending its filing, and the Board's disposition, of a forthcoming petition to reject or revoke the notice of exemption. The petitioner enumerates a number of specific objections to the notice. UTU-IL says that CIRR's notice of exemption failed to provide adequate information regarding the consummation date of the transaction, the exact location of the lines and the total route miles involved. The petitioner argues that the identity of the lessee was not properly established. UTU-IL claims that, because some of the line is side track, the Board lacks jurisdiction over the transaction as to that track.

Underlying the petitioner's various objections is the assertion that the lease is in reality an attempt by BNSF to subcontract union work to a "bogus" nonunion, substandard operator in an effort to influence ongoing contract negotiations between the carrier and the union. The petitioner asserts that the lease serves no useful purpose and would lead to inefficient operations. UTU-IL has sought a copy of the lease agreement between BNSF and CIRR and states that, once it has the lease, it will file a petition to revoke the exemption.

UTU-IL maintains that, although BNSF has notified affected employees that they will continue to work in other assignments, such employees will suffer irreparable injury because any new work assignment would inevitably result in losses in seniority, jobs, and overtime

opportunities. Its members will assertedly suffer immediate and irreparable injury, and it argues that it will likely prevail on the merits of its petition to revoke. The petitioner therefore asks the Board to stay the effectiveness of the notice of exemption pending its filing and the Board's resolution of the petition to revoke.

CIRR disputes the petitioner's arguments. The Lessee claims that there are no defects on the face of the notice. It notes that the effective date, "no earlier than seven days after the filing of this notice of exemption" comports with Board regulations and precedent, and CIRR states that UTU-IL has not shown otherwise. The Lessee points out that the mileage and a description of the involved track are given in the notice and are shown on a map appended to the notice. CIRR further notes that the notice plainly identifies it as the Lessee and the party filing the notice. CIRR states that part of the transaction involves main line track and that the entire transaction is therefore subject to Board jurisdiction. The Lessee says that there is no support for petitioner's claim that the proposed operations would be inefficient.

In particular, CIRR rejects the argument that any union employee will suffer irreparable harm if the exemption is not stayed. CIRR notes that this section of track is operated by a three-man crew and that BNSF has stated that it will not reassign the crew. Rather, BNSF says that it will give them other work at their present assignment. Thus, CIRR says, a loss of overtime or job loss elsewhere is neither inevitable nor apparent. Even if injury were established, CIRR notes that it would be an identifiable amount of lost wages and overtime and that such economic loss does not, by itself, constitute irreparable injury. Union Pacific RR Co. –Aban.– Fremont & Teton Counties, ID, 6 I.C.C.2d 641, 648 (1990), citing Wisconsin Gas Co. v. FERC, 758 F. 2d 669, 674 (D.C. Cir. 1985).

DISCUSSION AND CONCLUSIONS

The standards governing a stay request are: (1) whether petitioner is likely to prevail on the merits of an appeal; (2) whether petitioner will suffer irreparable harm in the absence of a stay; (3) whether issuance of a stay would substantially harm other parties; and (4) whether issuance of a stay is in the public interest. Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc., 559 F. 2d 841 (D.C. Cir. 1977); Virginia Petroleum Jobbers Ass'n v. FPC, 259 F. 2d 921, 925 (D.C. Cir. 1958). UTU-IL has failed to meet these standards.

The question of whether a petitioner may suffer irreparable harm is central to any consideration of granting a request for a stay. Here, the 18.37 miles of track in Chicago is operated by a single, three-man crew, which BNSF states will not be reassigned, but rather will continue to perform work in other service. The petitioner's argument is that the transfer of the work previously performed by these three will necessarily result in a loss to some union member somewhere, in that a person elsewhere might lose a position or, if not, employees who remain employed might lose overtime pay. While this harm may exist (although there is no such evidence before the Board), it is not the sort of harm that would be either immediate or irreparable and does not constitute a basis upon which to grant a stay. Were UTU-IL to file a

petition to revoke an exemption and prevail, it could seek damages against the parties to this transaction and collect damages if those claims were supported. Thus, the speculative argument that this transaction must, by its nature, cause some loss somewhere must fail in the absence of some evidence of an actual loss that could not be remedied.

Petitioner's arguments that it is likely to prevail on the merits are also flawed or, at best, premature. UTU-IL's claims that the notice should be rejected due to defects on its face lacks merit. The notice complies with our regulations in all respects. Moreover, it is clear that we have jurisdiction over this transaction, as CIRR may not acquire and operate a line of railroad by lease or otherwise without Board authority. The fact that part of the track may be exempt spur is irrelevant, because part of the track is main line for which authority must be sought, and the transaction before the Board is a single lease of all 18.37 miles of track. CIRR is obligated to tell us about the entire transaction and we approve — or disapprove — the transaction as a whole.

The heart of petitioner's revocation argument is that this is a sham transaction. The Board and the Interstate Commerce Commission before us have decided a long line of cases adjudicating claims that acquisitions under section 10901 should be disallowed. UTU-IL may review the lease between CIRR and BNSF to see if there is anything in this transaction to support petitioner's assertion that the exemption should be revoked. However, nothing in UTU-IL's petition for stay affords any basis for such a conclusion at this point.

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

It is ordered:

1. The petition for stay is denied.
2. This decision is effective on its service date.

By the Board, Linda J. Morgan, Chairman.

Vernon A. Williams
Secretary