

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33358

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

Decided: July 14, 1997

By decision served and published in the *Federal Register* on June 2, 1997 (62 FR 29778-79), the Board granted an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10902 for Wisconsin Central Ltd. (WCL or petitioner) to acquire from Tomahawk Railway, Limited Partnership (TRL) 4.93 miles of rail line between Tomahawk and Bradley, WI (the Bradley Line), subject to the labor protection requirements of 49 U.S.C. 10902(d), including a 60-day notice requirement.¹ On July 1, 1997, WCL filed a petition requesting that we reopen this proceeding and make the exemption effective 30 days after the June 2, 1997 service date of the decision granting the exemption or as soon thereafter as practicable.²

WCL states that it gave the employees proper notice of the transaction and provided the required certification to the Board on June 7, 1997.³ WCL and TRL posted notice of the proposed transaction at the workplace of TRL's employees.⁴ The posted notice indicated that neither "terms of employment" nor "principles of employee selection" would be relevant to the transaction because, according to WCL, there will be no changes in existing operations, no adverse impacts on TRL employees, and no related hiring by WCL. Unless we reopen this proceeding and grant the requested relief, the exemption will not become effective until August 8, 1997.

DISCUSSION AND CONCLUSIONS

WCL asserts that, the Board having found that the transaction is consistent with the exemption criteria of 49 U.S.C. 10502, there is no reason for any further delay in the sale of the Bradley Line to WCL. Petitioner states that no employees of TRL or WCL will be adversely affected by the transaction; none will be required to make any decisions or take any actions with respect to their employment; and thus none would obtain any benefit from the prescribed 60-day notice period.⁵

¹ The decision provided that the exemption would be effective 60 days after WCL certified 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.

² WCL has requested expedited consideration of its petition and we have given it expedited consideration.

³ Board records reflect that the certification was filed with the Board on June 9, 1997.

⁴ WCL stated in the certification that the portion of the notice condition that requires service on the "national offices of the labor unions representing employees on the affected line" is not pertinent here because the employees of TRL and WCL are not represented by any labor union.

⁵ In *Acquisition of Rail Lines Under 49 U.S.C. 10901 and 10902--Advance Notice of Proposed Transaction*, STB Ex Parte No. 562 (STB served May 1, 1997), we instituted a rulemaking proceeding to seek comments on a proposed requirement that, in future petitions or applications filed under section 10902 involving a line acquisition by a Class II rail carrier, the Class II carrier provide a minimum of 60 days' notice to employees on the lines being acquired. To the extent WCL's petition for reopening of the present proceeding includes or constitutes its

Petitioner alleges that the notice requirement simply burdens WCL's acquisition of the Bradley Line with further delay, without any concomitant benefit to TRL employees. Finally, WCL states that, had it known that a 60-day notice would be required, it could have posted the notice when the petition for exemption was filed, thus avoiding further delay once the Board's decision was issued.

We will reopen this proceeding. Based on the facts presented, we conclude that adequate notice to employees has been given. Accordingly, we will modify the notice requirement and permit the exemption to take effect on the date of service of this decision. We find that WCL has complied with the notice requirement by posting a notice of the transaction at the employee's workplace. As we have received no comments from employees to dispute WCL's assertions that there will be no adverse effect on employees, no purpose would be served by further delaying the consummation of the transaction.

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

It is ordered:

1. This proceeding is reopened.
2. The notice requirement imposed in ordering paragraph number 4 in the decision served June 2, 1997, is modified to permit the exemption to become effective on the service date of this decision.
3. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

comments on the proposal in STB Ex Parte No. 562, those comments will be addressed in that proceeding. Moreover, our action here is limited to the present proceeding and should not be seen as a determination, or a prejudgment, of issues raised in STB Ex Parte No. 562.