

37259
EB

SERVICE DATE – JUNE 15, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34867

GENERAL RAILWAY CORPORATION, D/B/A IOWA NORTHWESTERN
RAILROAD—EXEMPTION FOR ACQUISITION OF RAILROAD LINE—IN OSCEOLA AND
DICKINSON COUNTIES, IA

Decided: June 13, 2007

This decision denies a petition by the Dickinson Osceola Railroad Association (DORA) and the Iowa Central Railroad Company (ICR) (collectively, petitioners) to reject or revoke the notice of exemption filed by the General Railway Company (GRC) on May 19, 2006, and lifts the housekeeping stay issued by the Board's Chairman on May 25, 2006.

BACKGROUND

On March 3, 2001, GRC entered into a Sale and Repurchase Agreement with DORA to purchase and operate an approximately 37.21-mile line of railroad (the Line), extending from current milepost 215.00 at a point west of Superior, IA, to milepost 252.30 at a point west of Allendorf, IA, in Dickinson and Osceola Counties. According to GRC, DORA purchased the Line from the Union Pacific Railroad Company (UP) on April 4, 2001, one day after GRC had paid UP directly \$375,000 for the Line.¹ DORA designated GRC as the exclusive rail operator on the Line pending the subsequent sale from DORA to GRC, at which point GRC would become the sole owner. DORA transferred ownership of the Line to GRC by quitclaim deed recorded on November 1, 2001.²

On May 2, 2001, the Board authorized GRC to operate the Line through a notice of exemption under 49 CFR 1150.31 filed in General Railway Corporation d/b/a Iowa Northwestern Railroad Corporation—Operation Exemption—Line of Dickinson Osceola Railroad Association, STB Finance Docket No. 34037 (STB served and published May 11, 2001).³

¹ See Dickinson Osceola Railroad Association—Acquisition and Operation Exemption—Union Pacific Railroad Company, STB Finance Docket No. 34008 (STB served Mar. 5, 2001).

² See GRC Verified Notice of Exemption, Exhibit C.

³ On May 8, 2006, DORA filed a petition to revoke the notice of exemption. That will be addressed in a separate Board decision in Finance Docket No. 34037.

By decision served on April 10, 2006, we granted GRC's petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to discontinue operations over a portion of the Line,⁴ subject to employee protective conditions.⁵ Although GRC had filed a petition for abandonment authority, we explained in our decision that we could not grant GRC abandonment authority because GRC had not previously obtained authorization from the Board to buy the Line. Rather, GRC had only received authorization to operate over the Line. As a result, the Board stated, it could only grant GRC authority to discontinue service over the portion of the Line that GRC sought to abandon.

On April 14, 2006, DORA filed suit against GRC in Osceola County District Court to quiet title in the Line in itself.

On May 19, 2006, GRC filed a verified notice of exemption under 49 CFR 1150.31 for authority to acquire the Line. GRC acknowledges that it had the responsibility of obtaining authority from the Board to acquire and operate the Line after it purchased the line from DORA in 2001. GRC further indicates that it was because of mistake and inadvertence that it obtained authority to operate the Line but did not obtain authority to acquire it at that time.

On May 23, 2006, DORA and ICR jointly filed a petition to reject or revoke the verified notice of exemption filed by GRC or, in the alternative, to stay the effective date of the exemption pending the Board's full consideration of the issues presented by the parties. On May 25, 2006, GRC filed a reply opposing the relief sought by petitioners.

By decision served on May 25, 2006, the Board's Chairman issued a "housekeeping" stay of the effective date of GRC's notice of exemption to permit full consideration of the issues presented in the petition to reject or revoke filed by petitioners. In addition, the Chairman directed GRC to file an amended notice of exemption under 49 CFR 1150.41 instead of 49 CFR 1150.31, because GRC had become a rail carrier after having obtained authority to operate the Line in 2001.⁶

On June 1, 2006, GRC filed its amended notice of exemption under 49 CFR 1150.41 to acquire the Line pursuant to the Chairman's directive. Notice was served on July 3, 2006, and published in the Federal Register on July 5, 2006 (71 FR 38208).

⁴ GRC sought to abandon 17.05 miles of rail line extending from milepost 235.25 near Lake Park, IA, to the end of the line at milepost 252.30 near Allendorf, IA.

⁵ See Iowa Northwestern Railroad–Abandonment Exemption–In Osceola and Dickinson Counties, IA, STB Docket No. AB-1067 (Sub-No. 1X) (STB served Apr. 10, 2006).

⁶ See General Railway Corporation, d/b/a Iowa Northwestern Railroad–Exemption for Acquisition of Railroad Line–In Osceola and Dickinson Counties, IA, STB Finance Docket No. 34867 (STB served May 25, 2006).

By decision served on August 4, 2006, the Board instituted a proceeding to consider the petition to reject or revoke filed by petitioners.

POSITIONS OF THE PARTIES

In their petition, DORA and ICR argue that GRC's notice of exemption does not describe a transaction that falls within 49 CFR 1150.41 because GRC does not intend to operate the Line. Petitioners also argue that GRC's notice does not meet the requirements of 49 CFR 1150.41 and is materially false and misleading.

Petitioners contend that GRC's notice of exemption to acquire the Line is disingenuous. They argue that GRC scrapped the portion of the Line that it later sought to abandon before obtaining proper Board authority to acquire it and has since ceased service entirely over the remainder of the Line. Moreover, they argue that GRC has no intention of operating the Line in the future. Petitioners allege that GRC's underlying goal in filing the notice of exemption is merely to enhance its legal position in pending court litigation.

Petitioners also contend that there is no agreement currently in existence between GRC and DORA and that the agreement between GRC and DORA from 2001 is no longer in effect. They argue that GRC failed to meet the precondition that it obtain all necessary authority from the Board to purchase and operate the Line.

In reply, GRC argues that petitioners' evidence fails to support their request to reject or revoke the notice of exemption. GRC states that DORA sold the Line to GRC in 2001 pursuant to the Sale and Repurchase Agreement and that any disagreement about the validity of that sale now belongs before the courts. GRC also asserts that it did obtain operating authority from the Board in 2001 and subsequently obtained discontinuance authority for the 17.05-mile portion of the Line that it no longer wished to operate, and that the only matter at issue in this proceeding is GRC's failure to seek acquisition authority in 2001. GRC indicates that it has been unable to provide common carrier service over the rest of the Line because of an embargo instituted by UP in 2003.

Furthermore, GRC argues that its failure to file for acquisition authority from the Board in 2001 was merely an inadvertent oversight, and that petitioners have provided no evidence to show otherwise. Thus, GRC maintains that there has been no abuse of the Board's processes here. In addition, GRC argues that petitioners' allegations regarding its common carrier obligation on the portion of the Line where service was not authorized to be discontinued are not relevant to whether GRC is entitled to file an acquisition notice in this proceeding after-the-fact to correct an inadvertent error. Finally, GRC contends that the Board has allowed similar notices to be filed after-the-fact in other proceedings.⁷

⁷ GRC cites Horsehead Corp. –Petition for Acquisition And Operation Exemption–Chestnut Ridge Railway Company, STB Finance Docket No. 34481 (STB served Mar. 12, 2004) (granting Horsehead's request for an acquisition and operation exemption and (continued . . .))

DISCUSSION AND CONCLUSIONS

A party seeking revocation or rejection of a notice of exemption has the burden of demonstrating that the notice contains false or misleading information, or that regulation is necessary to carry out the rail transportation policy of 49 U.S.C. 10101. See 49 CFR 1150.42(c); 49 U.S.C. 10502(d). Where appropriate, the Board can revoke a notice of exemption to review the bona fides of a transaction to protect the integrity of its processes. Minnesota Comm. Ry., Inc.—Trackage Exempt.—BN RR. Co., 8 I.C.C.2d 31 (1991). However, the party seeking revocation must provide reasonable, specific concerns to demonstrate that revocation of the exemption is warranted. See I&M Rail Link LLC—Acquisition and Operation Exemption—Certain lines of Soo Line Railroad Company d/b/a Canadian Pacific Railway, STB Finance Docket No. 33326 et al. (STB served Apr. 2, 1997), aff'd sub nom. City of Ottumwa v. STB, 153 F.3d 879 (8th Cir. 1998). Our review of the record here leads us to conclude that petitioners have failed to satisfy their burden.

First, petitioners have not shown that GRC's notice of exemption contains false or misleading information. Petitioners question GRC's motives for obtaining acquisition authority for the Line at this time. They contend that GRC's notice is misleading because GRC has already obtained discontinuance authority over a portion of the Line and has ceased operations completely over the remainder. However, the evidence shows that GRC filed for acquisition authority shortly after it learned from the Board's April 10, 2006 decision in STB Docket No. 1067 (Sub-No. 1X) that it had failed to obtain the necessary Board authority to buy the Line in 2001. Moreover, the record indicates that GRC provided common carrier service on the Line from 2001 to 2003 and was unable to continue that service because of the UP embargo that began in December of 2003.

Petitioners also deny the existence of an agreement between GRC and DORA. Based on the evidence presented, however, we conclude that DORA and GRC intended to enter into a Sale and Repurchase Agreement in 2001. Any dispute regarding the validity of this agreement, or ownership of the Line, involves questions of state contract and property law. The Board is not the proper forum to resolve such disputes. Rather, these matters are best left for state courts to decide. Allowing the notice of exemption in this proceeding to become effective will not affect the contract interpretation issues that involve state law. It is well settled that the Board's issuance of a notice of exemption authorizing the acquisition of a line gives the petitioner permission to acquire the line, but does not mandate the acquisition. See, e.g., Lackawanna County Railroad Authority—Acquisition Exemption—F&L Realty, Inc., STB Finance Docket No. 33905 (STB served Oct. 22, 2001). Thus, the authority granted by the Board is permissive, not mandatory, and is not dispositive of ownership of the Line.

(. . . continued)

making the exemption retroactive back to the date when it acquired the line through a bankruptcy auction).

Second, petitioners have not demonstrated that the notice of exemption should be revoked to carry out the rail transportation policy of 49 U.S.C. 10101. Petitioners argue that GRC's acquisition is similar to the acquisition at issue in SF&L Railway, Inc.—Acquisition and Operation Exemption—Toledo, Peoria & Western Railway Corporation Between LaHarpe and Peoria, IL, STB Finance Docket No. 33995 (STB served Oct. 17, 2002) (SF&L). There, the Board revoked both an acquisition exemption and a control exemption because the Board was persuaded that the actual intent of the party seeking the acquisition authority was to abandon and salvage the line. But the facts in this case are distinguishable from SF&L. In SF&L, the Board found that the transactions at issue were structured in such a way as to make operating the subject line unprofitable in order to facilitate abandonment and salvage of the line. In addition, the respondents in that case had a long history of acquiring, and then abandoning and salvaging rail lines. Thus, the Board concluded that respondents had acquired the line with the intention of degrading service to shippers and ultimately abandoning the line and salvaging the track – a course of conduct that, the Board found, would undercut the class exemption's purpose of facilitating continued service to shippers and maintaining the national rail transportation network.

Here, in contrast, the facts are substantially different. GRC has explained that its failure to obtain acquisition authority in 2001 was the result of mistake and inadvertence. Petitioners have not presented any evidence showing otherwise. Moreover, the original notice of exemption filed by GRC in 2001 included language regarding transfer of ownership from DORA to GRC, suggesting that GRC's failure subsequently to file for acquisition authority was in fact an oversight.

In sum, after considering all of the evidence of record, we find that petitioners have not shown that GRC's notice of exemption contains false or misleading information or otherwise warrants our rejecting or revoking the exemption. Accordingly, we will deny the petition to reject or revoke and lift the housekeeping stay. The exemption authorizing GRC to acquire the Line will be effective on the date of service of this decision.

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

It is ordered:

1. Petitioners' petition to reject or revoke is denied.
2. The housekeeping stay entered on May 25, 2006, is lifted.
3. GRC's acquisition exemption will become effective on the date of service of this decision.

4. This decision is effective on its date of service.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams
Secretary