

SERVICE DATE – JUNE 1, 2007

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34979

BNSF RAILWAY COMPANY—TRACKAGE RIGHTS EXEMPTION—GRAND TRUNK
WESTERN RAILROAD INCORPORATED

Decided: May 30, 2007

We are denying the petition of J.M. Karakian, General Chairman, General Committee of Adjustment for Grand Trunk Western Railroad Incorporated, Brotherhood of Locomotive Engineers & Trainmen (BLET/GTW), seeking to revoke the exemption authorized in this proceeding.

BACKGROUND

By notice of exemption served and published in the Federal Register on February 15, 2007 (72 FR 7506), BNSF Railway Company (BNSF) was authorized to acquire overhead trackage rights over a 2.4-mile line of railroad known as the Elsdon Subdivision. The line is owned by Grand Trunk Western Railroad Incorporated, doing business as Canadian National Railway Company (GTW/CN), and extends between the connection with Norfolk Southern Corporation (NS) trackage at or near GTW/CN's milepost 8.5 and the connection with NS at the west end of GTW/CN's Fence Track at or near GTW/CN's milepost 6.1, all located within the State of Illinois.¹ The exemption became effective on March 1, 2007.

On March 5, 2007, BLET/GTW filed a protest in opposition to the exemption. BLET/GTW expresses concern that its Elsdon industrial switching assignment (Eldson 510 Assignment) may be adversely affected by BNSF or NS using the grant of trackage rights to compete for GTW traffic at nearby industries currently served by that assignment.

On March 23, 2007, BNSF replied that BLET/GTW essentially is seeking revocation of the exemption, but BLET/GTW's unsupported supposition that the exemption may permit BNSF or NS to take away work from GTW does not warrant revocation. BNSF characterizes BLET/GTW's concern as speculative and notes the imposition of labor protective conditions.

¹ A redacted version of the trackage rights agreement between GTW/CN and BNSF was filed with the notice of exemption. The full version of the draft agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. A protective order was served on February 21, 2007.

On March 28, 2007, BLET/GTW replied that BNSF's failure to deny that the exemption will be used by BNSF to capture work of GTW's Elsdon 510 Assignment and other GTW work in that area has confirmed that it would do so.

On April 3, 2007, BNSF responded that BLET/GTW's March 28 filing is a prohibited "reply to a reply" that only reasserts the same speculative arguments that BLET/GTW raised previously.

On April 5, 2007, BLET/GTW responded that, once again, through the language contained in its response, BNSF has admitted that its plans are to capture the work of the Elsdon 510 Assignment and other GTW assignments within the area. BLET/GTW criticizes BNSF for a lack of communication on this matter. BLET/GTW requests that the Board throw out all BNSF filings and deny/revoke the exemption.

DISCUSSION AND CONCLUSIONS

Because the exemption has become effective, we will treat BLET/GTW's filing as a petition to revoke the exemption. Under 49 U.S.C. 10502(d), we may revoke an exemption, in whole or in part, if we find that regulation of a transaction is necessary to carry out the rail transportation policy of 49 U.S.C. 10101 (RTP). To justify revocation, a petitioner must demonstrate reasonable, specific concerns addressing the need for regulation. See Wisconsin Central Ltd.—Exemption Acquisition and Operation—Certain Lines of Soo Line Railroad Company, Finance Docket No. 31102 (ICC served July 28, 1988); Minnesota Comm. Ry., Inc.—Trackage Exempt.—BN RR. Co., 8 I.C.C.2d 31 (1991); and 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). BLET/GTW has failed to make the requisite showing here.

BLET/GTW argues that BNSF intends to use the grant of trackage rights to capture work of GTW's Elsdon 510 Assignment and other GTW work in the area. But, as indicated by BNSF in its notice of exemption and as provided in the written trackage rights agreement, the overhead trackage rights granted to BNSF here are for the sole purpose of conducting interchange between BNSF at its Corwith Yard and NS at its Ashland Avenue Yard in Chicago. BLET/GTW fails to explain how BNSF could use these overhead trackage rights granted by GTW to compete better for GTW traffic in that area and, even if it could do so, how such activities would contravene the RTP or otherwise warrant revocation. Rather, the grant of trackage rights should facilitate the efficient movement of traffic through Chicago, which would be consistent with the goals of the RTP.

Moreover, any employees adversely affected by the grant of trackage rights will be protected by the labor protective conditions imposed in Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980). Employees of the Elsdon 510 assignment may attempt to show that those protections are insufficient to address the harm from a grant of trackage rights, but

BLET/GTW has not made such a showing on this record. For these reasons, we will deny BLET/GTW's revocation request.

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

It is ordered:

1. BLET/GTW's petition to revoke the exemption is denied.
2. This decision is effective on its service date.

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

Vernon A. Williams
Secretary