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SERVICE DATE – NOVEMBER 22, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34531

THE INDIANA RAIL ROAD COMPANY–ACQUISITION EXEMPTION–
LINE OF MONON RAIL PRESERVATION CORPORATION

[REQUEST FOR WAIVER OF 49 CFR 1150.42(e)]

Decided: November 17, 2004

We are granting the petition of The Indiana Rail Road Company (INRD) for waiver of the requirement of 49 CFR 1150.42(e)¹ that 60 days' notice be given to employees who may be affected by INRD's planned acquisition of approximately 3.98 miles of rail line currently owned by Monon Rail Preservation Corporation (Monon) in Monroe County, IN.

BACKGROUND

By decision served on October 16, 1998 in Monon Rail Preservation Corporation–Acquisition Exemption–Lines of CSX Transportation, Inc., in Monroe County, IN, STB Finance Docket No. 33668, Monon was authorized to acquire the involved rail line from CSX Transportation, Inc., extending from milepost Q217.67 at Hunters, IN, to milepost Q213.41 at Ellettsville, IN. In 2001, INRD entered into an operating agreement with Monon, whereby INRD became the operator of the line. See The Indiana Rail Road Company–Operation Exemption–Monon Rail Preservation Corporation, STB Finance Docket No. 33670 (STB served Feb. 21, 2001). INRD adds that, although there is no existing shipper presently located on the line, it is considering construction of a spur

¹ Under 49 CFR 1150.42(e), “If the projected annual revenue of the rail lines to be acquired or operated, together with the acquiring carrier’s projected annual revenue, exceeds \$5 million, the applicant must, at least 60 days before the exemption becomes effective, post a notice of applicant’s intent to undertake the proposed transaction at the workplace of the employees on the affected line(s) and serve a copy of the notice on the national offices of the labor unions with employees on the affected line(s), setting forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and the lines that are to be transferred, and certify to the Board that it has done so.”

track from the line to permit rail service to a nearby industry, Rogers Quarry, which is adjacent to the line. INRD indicates that, if the spur track is built, it expects to provide service to Rogers Quarry daily.

On November 12, 2004, INRD, a Class III rail carrier, filed a verified notice of exemption under 49 CFR 1150.41 to acquire Monon's 3.98 miles of rail line between milepost Q217.67 and milepost Q213.69.² INRD states that the parties contemplate consummating the transaction on or shortly after December 6, 2004.

By petition filed on October 21, 2004, INRD requested waiver of our requirement at 49 CFR 1150.42(e) to permit the exemption it would be seeking in this proceeding³ to become effective without providing the 60-day advance notice to employees on the affected rail line and to the national offices of the labor unions of those employees. In support of its request, INRD argues that the purpose of the notice requirement is to assist employees in dealing with employment changes that may be caused by transactions subject to the class exemption at 49 CFR 1150.41. Here, according to petitioner, that purpose would not be served by requiring notice because no rail employees would be adversely affected. INRD states there has been no request for service on the line during the past 24 months,⁴ that no service has been provided over the line,⁵ and that there are no employees of Monon, INRD, or any other carrier working on the line. INRD also points out that, in the event it develops business on the

² By decision served on December 7, 2001, in Monon Rail Preservation Corporation—Abandonment Exemption—in Monroe County, IN, STB Docket No. AB-589X et al., Monon was authorized to abandon, and INRD was authorized to discontinue service over, a 1,500-foot segment of Monon's rail line extending from milepost Q213.41 to milepost Q213.69.

³ As noted, the pertinent notice of exemption was subsequently filed on November 12, 2004.

⁴ According to INRD, the only business on the line (Wickes Lumber at Ellettsville) can no longer be served by rail in view of the abandonment of the 1,500-foot segment of line in December 2001.

⁵ On October 27, 2004, INRD's attorney filed a letter supplementing the waiver request. He avers that the statement made in the waiver request relating to service/service requests is not entirely accurate. The attorney explains that, in 2003 and 2004, ballast stone was trucked from Rogers Quarry, dumped on the ground adjacent to the Monon line, loaded into INRD ballast cars that had been placed on the Monon line, and the cars were then moved onto the INRD line. According to the attorney, the employees who moved the cars were INRD employees, not Monon employees, and, therefore, this activity should not affect the merits of INRD's petition for waiver of the employee notice requirements. We agree and will not discuss the matter further.

line after the acquisition, that business will be served by current INRD employees – the same employees who would serve the line if there were any business on it today.

DISCUSSION AND CONCLUSIONS

The purpose of our notice requirement at 49 CFR 1152.42(e) is to ensure that rail labor unions and employees who would be affected by the transfer of a line are given sufficient notice of the transaction before consummation.⁶ The Board takes seriously the requirements of the rule, but here it does not appear that the purpose behind the notice requirement will be thwarted if the requested waiver is granted.

While we do not ordinarily grant waivers of the employee advance notice requirement, the record indicates that there are no employees of Monon, INRD, or any other carrier employed on the line. Consequently, there is no need for advance notice here because posting notice would be a futile act, providing notice to no one. Accordingly, we will grant the requested waiver.

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

It is ordered:

1. INRD's request for waiver is granted.
2. This decision is effective on its date of service.

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

Vernon A. Williams
Secretary

⁶ See Acq. of R. Lines Under 49 U.S.C. 10901 & 10902 – Advance Notice, 2 S.T.B. 592 (1997).