

31574
EB

SERVICE DATE - APRIL 23, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. MC-F-20972

LIDLAW INC., ET AL.—CONTROL AND MERGER—918897 ONTARIO INC.,
B. R. BABCOCK LIMITED, BABCOCK COACH LINES LIMITED,
LEE LINE CORP., AND LEE CHARTER SERVICES, INC.

Decided: April 19, 2001

In an order in this proceeding (MC-F-20972) served July 13, 2000, discussed infra, we tentatively approved the application of Laidlaw Inc. (Laidlaw) to acquire indirect control of several motor passenger carriers. We subsequently postponed the date on which that approval would become effective, in the absence of any filings in opposition, because of concerns about Greyhound Lines, Inc. (Greyhound) and Laidlaw that were discussed in Laidlaw Inc. and Laidlaw Transit Acquisition Corp. – Merger – Greyhound Lines, Inc., STB Docket No. MC-F-20940 (STB served Aug. 18, 2000) and published in the Federal Register on August 24, 2000 (65 FR 51644) (MC-F-20940). In a decision served December 6, 2000, in MC-F-20940, we stated that we were encouraged by financial and operational developments pertaining to Greyhound, and noted that Greyhound and Laidlaw had made positive assertions about Laidlaw's financial position. In view of these developments and representations and the lack of any public comments supporting denial of the application or further postponement of approval, we are now allowing the approval of the transactions in MC-F-20972 to become effective 10 days after the service date of this decision.

BACKGROUND

In a notice in MC-F-20972 served and published in the Federal Register on July 13, 2000 (65 FR 43395), we tentatively approved, inter alia, an application filed under 49 U.S.C. 14303, by Laidlaw, a noncarrier, to acquire indirect control, through two subsidiaries, Laidlaw Transit Ltd. and Laidlaw Transit, Inc., of a noncarrier and several motor passenger carriers. Comments concerning the application were due August 28, 2000, and if no opposing comments were received, the notice would become the final Board action effective on that date.

In a decision served in MC-F-20972 on August 18, 2000, and published in the Federal Register on August 24, 2000 (65 FR 51644), however, we temporarily postponed the effective date in this proceeding. We took that action because Greyhound, in a Securities and Exchange Commission filing, had indicated that Laidlaw was having financial problems that could adversely affect Greyhound's operations.

In response to our expressed concerns about whether this proposed transaction is in the public interest, we received two comments from the owner and a majority shareholder of bus companies whose stock has been acquired by Laidlaw and placed in voting trusts pending Board approval of the transactions in this proceeding. They argue that the financial difficulties of Laidlaw, arising from non-bus industry businesses, should not affect Board approval of the transactions here. They request, as do applicants, that these transactions be allowed to become effective.

In our December 6, 2000 decision in MC-F-20940, we noted Greyhound's increase in its ridership, and its securing of a two-year credit facility with Foothill Capital Corporation. We also noted that Greyhound had obtained financing to cover its near-term financial needs, that Greyhound had paid Laidlaw \$43 million of intercompany accounts due, and that Laidlaw was finalizing a 6-month bridge facility to address the near-term capital needs of Laidlaw. We indicated that the inter-company amounts due were converted into an intercompany loan subordinate to the Foothill facility. We also observed that Laidlaw and Greyhound had asserted that Laidlaw's passenger transportation operations were viable, and that its difficulties were mainly due to its hazardous waste disposal and health care businesses. Subsequently, on December 20, 2000, Laidlaw filed a letter requesting that, in light of the December 6 decision, the Board allow approval of the acquisitions in MC-F-20972 to become effective.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 14303(b), we are to approve a transaction when we find it "consistent with the public interest." The encouraging developments noted in our December 6 decision in MC-F-20940 related to Greyhound, but we also indicated that the record contained assertions of improvement and soundness for Laidlaw as well. While the Securities and Exchange Commission filings in MC-F-20940¹ reflecting Laidlaw's financial difficulties continue to concern us, the record in MC-F-20972 is essentially devoid of specific evidence that approving the transaction is inconsistent with the public interest. Laidlaw's assertions in its application that the postponed transactions will benefit the public are unchallenged, and the only comments we have received in this proceeding support approval of the transactions. Finally, in its reply to the comments, Laidlaw asserts at 3 that its financial difficulties stem mainly from its non-transportation businesses, and "[t]he core passenger transportation business of Laidlaw . . . is viable and in good market position to continue to serve the travelling public." Thus, we do not believe we have sufficient grounds to further postpone these transactions. Given the positive representations in the record and the fact that the assertions in the application that the transactions will benefit the public are unchallenged, we will allow the transactions to become

¹ These include filings by Laidlaw made in that proceeding in March 2001.

effective. Accordingly, we will provide that the approval of the transactions in MC-F-20972 will be effective 10 days from 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. The application in this proceeding is approved.
2. This decision is effective May 3, 2001.

3. A copy of this decision will be served on: (1) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530; (2) the U.S. Department of Transportation, Federal Motor Carrier Safety Administration – MC-RI, 400 Virginia Avenue, S.W., Suite 600, Washington, DC 20024; and (3) the U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, S.W., Washington, DC 20590.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams
Secretary