

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34746

KANSAS & OKLAHOMA RAILROAD, INC.–ACQUISITION EXEMPTION–RAIL LINE
OF UNION PACIFIC RAILROAD COMPANY

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

Decided: September 15, 2005

By petition filed on August 22, 2005, Kansas & Oklahoma Railroad Company, Inc. (K&O), seeks a waiver of the requirements of 49 CFR 1150.42(e)¹ to permit the exemption it is seeking in this proceeding to become effective without providing advance notice to employees who may be affected by K&O's planned acquisition and continued operation of a line of railroad and to the national offices of the employees' labor unions.

Concurrently with this filing, K&O, a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire (by purchase) from Union Pacific Railroad Company (UP) a 27-mile line of railroad between milepost 485.0, at Newton, KS, and milepost 512.0, at McPherson, KS. K&O currently leases the rail line from UP and has operated the line under the lease since September 2002.² Because K&O's current revenues exceed \$5 million, the notice requirements of 49 CFR 1150.42(e) would apply absent a waiver.

K&O asserts that no purpose would be served by requiring labor notice because no employees of UP or K&O will be affected by this transaction. According to K&O, no UP employee has performed operations or maintenance on the line in nearly 3 years and K&O will continue to provide the same service and perform the same maintenance as it did under the lease.

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."

² See Kansas & Oklahoma Railroad, Inc.–Lease Exemption–Union Pacific Railroad Company, STB Finance Docket No. 34232 (STB served and published in the Federal Register Oct. 1, 2002) (67 FR 61725).

K&O argues that, because this transaction will simply convert operations pursuant to a lease to operations over a K&O-owned line, providing advance labor notice would be a futile act.

DISCUSSION AND CONCLUSIONS

The purpose of our notice requirements at 49 CFR 1150.42(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.³ The Board takes seriously the requirements of the rule, but it does not appear that the purpose behind the notice requirements will be thwarted if the requested waiver is granted.

While we do not ordinarily grant waivers of the employee advance notice requirements, the record indicates that it is unlikely that any UP employees will be adversely affected by waiver of the requirements here.⁴ No UP employee has been involved in any operations or maintenance on the line in nearly 3 years and thus there is no apparent need for advance notice, which is designed to assist current employees with possible displacement. Furthermore, no K&O employees will be adversely affected by waiver of the requirements because the planned transaction will merely convert operation under lease to a similar operation under K&O's ownership. Accordingly, we will grant the waiver request. Granting the waiver request will have the effect of making the exemption for the acquisition transaction in this proceeding effective on the date of service of this waiver decision.

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

It is ordered:

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

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

Vernon A. Williams
Secretary

³ See Acq. of R. Lines Under 49 U.S.C. 10901 & 10902 – Advance Notice, 2 S.T.B. 592 (1997).

⁴ No opposition to the request has been filed with the Board.