

Service Date- November 14, 1996

SURFACE TRANSPORTATION BOARD¹

DECISION

Docket No. AB-433 (Sub-No. 2X)

IDAHO NORTHERN & PACIFIC RAILROAD COMPANY--
ABANDONMENT DISCONTINUANCE EXEMPTION--
IN WASHINGTON AND ADAMS COUNTIES, ID

Decided: November 4, 1996

By decision served July 5, 1996, we ordered this proceeding held in abeyance to allow Idaho Northern & Pacific Railroad Company (IN&P) and Union Pacific Railroad Company (UP) to clarify the status of the 83.1-mile line between Weiser and Rubicon, TD, that is the subject of this case. This decision: (1) finds that the proceeding should continue to be held in abeyance pending further order of the Board; (2) directs UP to undo its acquisition of the line from **IN&P**, or to file an application or petition for exemption to acquire the line within 30 days of the service date of this decision; and (3) denies a petition for administrative review filed by the Coalition of Concerned Citizens (CCC).

BACKGROUND

In a decision served November 1995 the ICC exempted IN&P from the prior approval requirements of 49 U.S.C. 10903-04 to: (1) abandon approximately 83.1 miles of rail line between milepost 1.0 near Weiser and milepost 84.1 at Rubicon, in Washington and Adams Counties, ID; and (2) discontinue trackage rights over a rail line owned and operated by UP between milepost 0.0 and milepost 1.0 in Weiser, ID, subject to standard labor protective, environmental, and public use conditions. The public use condition commenced on December 1, 1995, and expired on May **28**, 1996. The exemption became effective..on December 1, 1995 .

¹The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (the ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the ICCTA provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the ICCTA. This decision relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903 and 16 U.S.C. 1247(d). Therefore, this decision applies the law in effect prior to the ICCTA, and citations are to the former sections of the statute, unless otherwise indicated.

By decision served December 28, 1995, the ICC issued a decision and notice Of interim trail use or abandonment (NITU) authorizing a 180-day period for the Idaho Department of Parks and Recreation (IDPR) to negotiate an interim trail use@rail banking agreement with IN&P for the right-of-way covering the line being abandoned.² The NITU was scheduled to expire on June 25, 1996.

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. By letter dated May 31, 1996 IDPR requested a 180-day extension of time to negotiate under the NITU, until December 21, 1996. IDPR stated that the parties had been delayed in their negotiations because IN&P had recently transferred the corridor to UP, and that IDPR must now start the negotiation process with UP. By letter filed June 14, 1996, UP agreed to the extension request and indicated that the involved line had been reconveyed to it on May 14, 1996.

.On June 17, 1996, a letter-petition was filed on behalf of CCC requesting rejection of IDPR's extension request. Also, two additional NITTJ requests were filed on June 21, 1996 t by Friends of the Weiser River Trail, Inc. (Friends) and the City of Weiser (the City).³ In a letter received June 24, 1996, UP consented to negotiate with these parties for trail use.

In the decision served July 5, 1996, the Director of the office of Proceedings questioned how IN&P could have conveyed the property, an active line of railroad until it is authorized to be abandoned and the abandonment authority is exercised, without Board authorization. Accordingly, the proceeding was held in abeyance and Board action on the NITU extension request was deferred to give IN&P and UP an opportunity to answer questions about the reconveyance.

In response to the July 5 decision, I - N&P and UP jointly filed a status report on the line on July 12, 1996. On July 24, 1996, CCC filed a petition for administrative review of the July 5 decision. On August 6, 1996 IN&P and UP filed a joint opposition to CCC's petition. On August 19, 1996, CCC filed a reply to the railroads' statement. On September 4, 1996, Friends filed a letter-response to the CCC petition.

DISCUSSION AND CONCLUSIONS

The status of the line. In their report, the railroads state that IN&P discontinued operations over the line, effective November 18, 1995. According to IN&P and UP, at that time the line no longer was an active rail line for which Board authorization would be required for UP's acquisition of the line. The railroads further state that: (1) on November 1, 1995, UP had only an interest in the proceeds from salvage of the line; (2) IN&P's subsequent reconveyance to UP of a full property interest in the line did not take place until after IN&P had discontinued

²The ICC's authority to issue a NITU is not contested.

³ The City actually seeks trail use over a .5 mile segment of line not included in the 83.1 miles of rail line at issue here. on July 29, 1996, the Board exempted UP's abandonment of that segment in Union Pacific Railroad Company--Discontinuance of Service Exemption--in Wash v. ID, S.B. Docket No. AB-33 Sub-No. IOOX) (S.B. served July 29, 1996). By petition filed August 22, 1996, the City filed a NITU request in that proceeding, which was granted in a decision and notice of interim trail use or abandonment served September 18, 1996.

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operations (pursuant to ICC authority) over the line and the NITU had been imposed; (3) while UP has no intention at this time to reactivate rail service over the line, it intends to negotiate in good faith with the parties for interim trail use subject to rail banking and thus does not intend to fully abandon the line; and (4) the reconveyance was not intended in any way to subvert the provisions of the National Trails System Act.

Our jurisdiction over a line ends when a line is fully abandoned. Hayfield Northern R. Co. v. Cy Co., 467 U.S. 622, 633-34 (1984). The United States Supreme Court has recognized that once a carrier abandons a line pursuant to authority granted by the Board, the line is no longer part of the national transportation system and Board jurisdiction generally terminates. See Preseault v. ICC, 494 U.S. 1, 5 n.3 (1990).

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Here, the railroads' actions demonstrate an intent not to fully abandon the line. consummation has not taken place because of the ongoing Trails Act negotiation process and the railroads' consent to the requests for an extension of the Trails Act negotiation period. The fact that the extension requests were filed in May 1995, well before the NITU was scheduled to expire--and that both IDPR and UP agreed to the extensions prior to the date the NITTJ was scheduled to expire--also show that the railroads' intent here was to retain control over the line.

Because the line has not been fully abandoned, it was subject to the Board's jurisdiction at the time UP acquired it. from IN&P. The acquisition of a line of railroad by a rail carrier from another rail carrier is a transaction subject to Board jurisdiction under 49 U.S.C. 11323(a)(2). Consequently, UP's acquisition of the line required, but did not receive, Board approval under section 11323 or exemption from that approval under section 10502.

Accordingly, we will continue to hold this proceeding (including the NITU extension request) in abeyance so that UP may rectify the situation. UP is directed either to undo its acquisition of the rail line from IN&P, or to seek authority or an exemption to acquire the line within 30 days of the service date of this decision.

The Petition for administrative review. In its petition, CCC asserts that the Board lacked authority to hold the proceeding in abeyance but, rather, was required either to grant the NITU extension or to authorize abandonment. The petition will be denied. The Board has authority to control its own docket. in exercising that authority, we may hold a proceeding in abeyance if we conclude that doing so would be the best course of action. Here, the Director appropriately decided to defer a ruling on the extension request pending the filling of further information on the reconveyance.

We also reject CCC's assertion that, because the NITU negotiation period has expired, a full abandonment has occurred and our jurisdiction over this matter has been lost. See Birt v. STBI 90 F.3d 580 (D.C. Cir. 1996), pet. for re' hg pending; Grantwood Village v. Missouri Pacific Railroad, 95 F.3d 654 (8th Cir. 1996). A railroad must take action to exercise abandonment authority. Moreover, the Board does not lose jurisdiction over the underlying right-of-way unless the railroad's action is to fully abandon the line, as opposed to exercising the lesser included authority to discontinue service over the line. Here, the parties, expressed desire and intention to continue trail use negotiations beyond the 130-day period, and the railroads, joining in the requests for more time, show that there was no intent to fully abandon the line. Thus, we retain jurisdiction over the property.

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

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It is ordered:

1. This proceeding will continue to be held in abeyance pending further order of the Board.
- .2. Union Pacific Railroad Company is directed either to undo its acquisition from Idaho Northern & Pacific Railroad Company of the subject rail line or to file an application or petition for exemption to acquire the line within 30 days of the service date of this decision.
3. The CCC petition for administrative review is denied .
- 4 This decision is effective on the service date.

By the Board, Chairman Morgan, Vice Chairman Simmons, and
Commissioner Owen.

Vernon A. Williams
Secretary

