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SERVICE DATE - NOVEMBER 19, 2014

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35865

THE BALTIMORE AND OHIO CHICAGO TERMINAL RAILROAD COMPANY—JOINT
USE EXEMPTION—INDIANA HARBOR BELT RAILROAD COMPANY

Digest:¹ This decision allows The Baltimore and Ohio Chicago Terminal Railroad Company to acquire dispatching authority over approximately 483 feet of track near Chicago, Ill., from Indiana Harbor Belt Railroad Company pursuant to the modification of a joint use agreement between the two carriers.

Decided: November 18, 2014

By petition filed on October 20, 2014, The Baltimore and Ohio Chicago Terminal Railroad Company (BOCT)² and Indiana Harbor Belt Railroad Company (IHB) (collectively Petitioners) seek an exemption under 49 U.S.C. § 10502 from the requirements of 49 U.S.C. § 11323(a)(6) to modify a joint use agreement that pertains to approximately 483 feet of track between Blue Island Junction Eastward Absolute Signal, milepost DIH 15.2, and the Westward Absolute Signal at CP Francisco (CP 154), milepost 15.3 (the Line). Currently, IHB dispatches and controls train movements over the Line. Petitioners have agreed to a modification of their joint use agreement that would instead give BOCT the responsibility to dispatch and control train movements over the Line, and they seek an exemption to permit this modification. We will grant the exemption, subject to labor protective conditions.

BACKGROUND

In October 1896, the Chicago and Calumet Terminal Railway Company (predecessor to BOCT) and the Chicago, Hammond and Western Railroad Company (predecessor to IHB) entered into an agreement that provides for the joint use of a line of railroad from Blue Island, Ill., to Franklin Park, Ill. (1896 Joint Use Agreement).³ In a supplemental agreement, dated

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² BOCT is a wholly owned subsidiary of CSX Transportation, Inc. (CSXT). (Pet. 3 n.1.)

³ Pet. 3-4, Ex. A, 1896 Joint Use Agreement at 3 (the 1896 Joint Use Agreement is the first of three agreements in Exhibit A to the Petition). The Line is a small segment of the line that was originally subject to the 1896 Joint Use Agreement.

January 1, 1930 (1930 Supplement), BOCT and IHB agreed that IHB would have the responsibility to dispatch and control train movements over the jointly used line.⁴ On October 1, 2014, BOCT and IHB entered into an agreement to modify Article IV of the 1930 Supplement (2014 Modification) in order to give BOCT responsibility for dispatching and control of train movements over the Line.⁵

Petitioners state that in addition to BOCT and IHB, CSXT, BNSF Railway Company, Canadian Pacific Railway Company, and Union Pacific Railroad Company currently operate over the Line.⁶ Petitioners assert that at present, for trains to move over the Line, dispatching and control must be conducted in three discrete stages by different carriers: by CSXT at Blue Island Junction; by IHB on the Line; and again by CSXT at CP Francisco. This arrangement, they state, leads to inefficient movements over the Line and through the adjacent Blue Island Junction.⁷ Under the 2014 Modification, BOCT would arrange with CSXT to dispatch and control train movements on its behalf over the Line.⁸ Because CSXT currently controls train movements and provides dispatching for BOCT at Blue Island Junction and CP Francisco, Petitioners assert that the modification would unify dispatching in one dispatcher, and improve fluidity and efficiency on the Line, at Blue Island Junction, and in the Chicago terminal.⁹

DISCUSSION AND CONCLUSIONS

Pursuant to 49 U.S.C. § 11323(a)(6), prior Board approval is required for the joint use and operation of a line of railroad. However, under 49 U.S.C. § 10502, the Board must exempt a transaction or service from regulation if it finds that (1) regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is limited in scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

Here, an exemption from the prior approval requirements of 49 U.S.C. §§ 11323-25 is consistent with 49 U.S.C. § 10502. Detailed scrutiny of the proposed transaction is not necessary to carry out the RTP. The purpose of the proposed modification is to improve efficiency and fluidity of operations over the Line.¹⁰ An exemption would promote the policy considerations of § 10101 by minimizing Federal control over the rail system; fostering sound

⁴ Pet. 4, Ex. A, 1930 Supplement at 9 (the 1930 Supplement is the second agreement in Exhibit A to the Petition).

⁵ Pet. 1, Ex. A, 2014 Modification at 1-2 (the 2014 Modification is the third agreement in Exhibit A to the Petition).

⁶ Pet. 4.

⁷ Id.

⁸ Id. at 4-5.

⁹ Id.

¹⁰ Pet. 7.

economic conditions by increasing effective coordination between rail carriers, leading to more fluid and efficient railroad operation; and encouraging or promoting energy conservation, consistent with 49 U.S.C. § 10101(2), (3), (5), (9), and (14).¹¹ Further, because the purpose of the transaction is to improve efficiency and fluidity over the Line by changing only which railroad would have dispatching authority, there should be no negative effect on competition.¹² Other aspects of the RTP would not be adversely affected.

Regulation of the transaction is not needed to protect shippers from the abuse of market power. The modification would not disrupt service to shippers or expand service into new areas, nor would it reduce the number of railroads operating over the Line. Given our market power finding, we need not also determine whether the proposed transaction is limited in scope.

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of employees. Accordingly, as a condition to granting this exemption, the Board will impose the standard employee protective conditions established in Norfolk & Western Railway—Trackage Rights—Burlington Northern, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Railway—Lease & Operate—California Western Railroad, 360 I.C.C. 653 (1980).¹³

This transaction is exempt from environmental review under 49 C.F.R. § 1105.6(c) and historic review under 49 C.F.R. § 1105.8(b) because it would only result in a change in responsibility for dispatching under an existing joint use agreement and is not expected to result in a change in rail operations.

Finally, Petitioners state that operations in the Chicago terminal can be challenging and that any transaction “that enhances efficiency and fluidity of those operations should be encouraged and implemented as soon as possible.”¹⁴ They request expedited consideration of their petition for the benefit of the six railroads operating over the Line, and to enhance fluidity over the Line and through Blue Island Junction as soon as possible. Given the importance of the Chicago terminal to the national rail network, and the absence of any opposition to the requested exemption, the request for expedited action is reasonable. Accordingly, this decision is being issued on an expedited basis and the exemption will be effective on the service date of this decision.

¹¹ See Pet. 7.

¹² Id. at 7-8.

¹³ See also CSXT Letter 1 (agreeing to the imposition of labor protection for its dispatching employees affected by this transaction).

¹⁴ Pet. 9.

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

It is ordered:

1. Under 49 U.S.C. § 10502, we exempt the above-described transaction from the prior approval requirements of 49 U.S.C. §§ 11323-25, subject to the employee protective conditions in Norfolk & Western Railway—Trackage Rights—Burlington Northern, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Railway—Lease & Operate—California Western Railroad, 360 I.C.C. 653 (1980).

2. Notice will be published in the Federal Register on November 24, 2014.

3. This exemption will be effective on November 19, 2014.

4. Petitions to reopen must be filed by December 9, 2014.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.