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SERVICE DATE - NOVEMBER 17, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-167 (Sub-No. 1179X)

CONSOLIDATED RAIL CORPORATION--DISCONTINUANCE EXEMPTION--IN  
SUFFOLK COUNTY, MA

Decided: November 12, 1997

By petition filed on July 31, 1997,<sup>1</sup> Consolidated Rail Corporation (Conrail) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to discontinue service, for a period of approximately 3 years, over a line of railroad known as the Boston Terminal Running Track (also referred to as "Track 61"), lying between the west side of Summer Street at approximately railroad milepost 0.85 and the end of the track at Boston Harbor Pier, a distance of approximately 2,635 feet, in the City of Boston, Suffolk County, MA. The United Transportation Union seeks imposition of labor protective conditions. We will grant the exemption, subject to standard employee protective conditions.

BACKGROUND

The line is owned and maintained by the Massachusetts Port Authority (MPA) and operated by Conrail. The Massachusetts Highway Department (MHD) has asked Conrail to seek this temporary discontinuance authority to accommodate the South Boston Interchange portion of the Central Artery/Tunnel project, an \$8.8 billion highway project involving the depression of the existing Interstate 93 viaducts within the City of Boston and extension of Interstate 90 through South Boston to Logan Airport and Route 1A via a new harbor tunnel. The South Boston Interchange involves the section of the I-90 tunnel between the completed Boston Harbor tunnel and the Fort Point Channel tunnels, and the ramps to South Boston surface roadways. The purpose of the South Boston Interchange is to improve highway access in the South Boston area, including improved transportation of containers by motor carrier from MPA's Conley Container Terminal to Conrail's Beacon Park Yard. MHD has concluded that this project could be completed by July 2000, but only if the line is closed for service during construction. After completion, MHD will restore the line so that Conrail will be able to resume operations. Because the line will be restored to operational use, MPA supports the proposed discontinuance.

According to Conrail, Port Terminals has been the only active customer on the line for the

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<sup>1</sup> Notice of the filing was served on August 20, 1997, and published in the Federal Register on August 21, 1997 (62 FR 44514).

past 18 months. Conrail states that prior to January 1997, Port Terminals was a “tenant-at-will” in a facility owned by MPA. Pursuant to arrangements facilitated by MHD, Port Terminals has temporarily moved to a different location off the line and alternate transportation arrangements have been made for the shipper. Accordingly, Conrail avers that a grant of this term discontinuance will not affect any traffic on the line and will have no adverse effects upon any shipper.<sup>2</sup>

#### DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail carrier may not discontinue operations without prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative time and expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. Further, by allowing Conrail to discontinue operations for the limited period of time requested, thereby, enabling the construction of an improved transportation network, an exemption will promote a safe and efficient rail transportation system, foster sound economic conditions in transportation and encourage efficient management [49 U.S.C. 10101(3), (5), and (9)]. Other aspects of the rail transportation policy are not affected adversely.

Because the line’s only shipper has been temporarily relocated and provided with alternate transportation while this discontinuance is in effect, we find that regulation is not necessary to protect shippers from an abuse of market power. Nevertheless, to ensure that the shipper is informed of our action, we will require Conrail to serve a copy of this decision on Port Terminals within 5 days of the service date of this decision and certify to us that it has done so. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of a statutory obligation to protect the interests of its employees. Accordingly, we will impose the employee protective conditions in Oregon Short Line R. Co--Abandonment--Goshen, 360 I.C.C. 91 (1979), as a condition to granting this exemption.

Because this is a discontinuance proceeding and not an abandonment, we need not consider

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<sup>2</sup> For this reason, Conrail states that it has embargoed the line pending a decision on its petition, but adds that it will restore service or make other arrangements to provide adequate common carrier service, should its petition be denied.

offers of financial assistance (OFA) to acquire the line for continued rail service,<sup>3</sup> trail use and public use of the line. This proceeding is exempt from environmental reporting requirements under 49 CFR 1105.6(c) (2) and from historic reporting requirements under 49 CFR 1105.8(b) (3). As such, this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Conrail has sought this discontinuance for a period of approximately 3 years. To avoid any uncertainty, however, we will limit the term of the discontinuance authority to exactly 3 years from the effective date of this exemption. If the South Boston Interchange portion of the Central Artery/Tunnel project is not completed within that time frame, Conrail may request that this discontinuance authority be extended; otherwise, this authority will expire by its terms and Conrail's common carrier obligation to provide service on the line will automatically resume in 3 years from the effective date of this decision.<sup>4</sup>

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the discontinuance of service by Conrail over the above-described line, subject to the employee protective conditions in Oregon Short Line R. Co--Abandonment--Goshen, 360 I.C.C. 91 (1979). This exemption will remain in effect until December 16, 2000.

2. Conrail is directed to serve a copy of this decision on Port Terminals within 5 days after the service date of this decision and to certify to the Board that it has done so.

3. Any OFA under 49 CFR 1152.27(b)(2)<sup>5</sup> to subsidize continued rail service must be received by the railroad and the Board by November 26, 1997, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). Each OFA must be accompanied by the filing fee, which currently is set at \$900. The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1).

4. OFA's and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: "**Office of Proceedings, AB-OFA.**"

5. Petitions to stay must be filed by December 2, 1997. Petitions to reopen must be filed by

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<sup>3</sup> OFA's to subsidize continued rail service, however, do apply to discontinuances.

<sup>4</sup> If the project is completed and the line is restored prior to the expiration of this discontinuance authority, Conrail shall request that the exemption be vacated.

<sup>5</sup> See Abandonment and Discontinuance of Rail Transportation Under 49 U.S.C. 10903, STB Docket No. 537 (STB served Dec. 24, 1996, and June 27, 1997).

STB Docket No. AB 167 (Sub-No. 1179X)

December 12, 1997.

6. Provided no OFA has been received, this exemption will be effective on December 17, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams  
Secretary

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STB Docket No. AB-167 (Sub-No. 1179X)

CONSOLIDATED RAIL CORPORATION--DISCONTINUANCE EXEMPTION--IN  
SUFFOLK COUNTY, MA

Decided: November 12, 1997

By petition filed on July 31, 1997,<sup>1</sup> Consolidated Rail Corporation (Conrail) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to discontinue service, for a period of approximately 3 years, over a line of railroad known as the Boston Terminal Running Track (also referred to as "Track 61"), lying between the west side of Summer Street at approximately railroad milepost 0.85 and the end of the track at Boston Harbor Pier, a distance of approximately 2,635 feet, in the City of Boston, Suffolk County, MA. The United Transportation Union seeks imposition of labor protective conditions. We will grant the exemption, subject to standard employee protective conditions.

BACKGROUND

The line is owned and maintained by the Massachusetts Port Authority (MPA) and operated by Conrail. The Massachusetts Highway Department (MHD) has asked Conrail to seek this temporary discontinuance authority to accommodate the South Boston Interchange portion of the Central Artery/Tunnel project, an \$8.8 billion highway project involving the depression of the existing Interstate 93 viaducts within the City of Boston and extension of Interstate 90 through South Boston to Logan Airport and Route 1A via a new harbor tunnel. The South Boston Interchange involves the section of the I-90 tunnel between the completed Boston Harbor tunnel and the Fort Point Channel tunnels, and the ramps to South Boston surface roadways. The purpose of the South Boston Interchange is to improve highway access in the South Boston area, including improved transportation of containers by motor carrier from MPA's Conley Container Terminal to Conrail's Beacon Park Yard. MHD has concluded that this project could be completed by July 2000, but only if the line is closed for service during construction. After completion, MHD will restore the line so that Conrail will be able to resume operations. Because the line will be restored to operational use, MPA supports the proposed discontinuance.

According to Conrail, Port Terminals has been the only active customer on the line for the

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past 18 months. Conrail states that prior to January 1997, Port Terminals was a “tenant-at-will” in a facility owned by MPA. Pursuant to arrangements facilitated by MHD, Port Terminals has temporarily moved to a different location off the line and alternate transportation arrangements have been made for the shipper. Accordingly, Conrail avers that a grant of this term discontinuance will not affect any traffic on the line and will have no adverse effects upon any shipper.<sup>2</sup>

#### DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail carrier may not discontinue operations without prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative time and expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. Further, by allowing Conrail to discontinue operations for the limited period of time requested, thereby, enabling the construction of an improved transportation network, an exemption will promote a safe and efficient rail transportation system, foster sound economic conditions in transportation and encourage efficient management [49 U.S.C. 10101(3), (5), and (9)]. Other aspects of the rail transportation policy are not affected adversely.

Because the line’s only shipper has been temporarily relocated and provided with alternate transportation while this discontinuance is in effect, we find that regulation is not necessary to protect shippers from an abuse of market power. Nevertheless, to ensure that the shipper is informed of our action, we will require Conrail to serve a copy of this decision on Port Terminals within 5 days of the service date of this decision and certify to us that it has done so. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of a statutory obligation to protect the interests of its employees. Accordingly, we will impose the employee protective conditions in Oregon Short Line R. Co--Abandonment--Goshen, 360 I.C.C. 91 (1979), as a condition to granting this exemption.

Because this is a discontinuance proceeding and not an abandonment, we need not consider

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offers of financial assistance (OFA) to acquire the line for continued rail service,<sup>3</sup> trail use and public use of the line. This proceeding is exempt from environmental reporting requirements under 49 CFR 1105.6(c) (2) and from historic reporting requirements under 49 CFR 1105.8(b) (3). As such, this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Conrail has sought this discontinuance for a period of approximately 3 years. To avoid any uncertainty, however, we will limit the term of the discontinuance authority to exactly 3 years from the effective date of this exemption. If the South Boston Interchange portion of the Central Artery/Tunnel project is not completed within that time frame, Conrail may request that this discontinuance authority be extended; otherwise, this authority will expire by its terms and Conrail's common carrier obligation to provide service on the line will automatically resume in 3 years from the effective date of this decision.<sup>4</sup>

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 10903 the discontinuance of service by Conrail over the above-described line, subject to the employee protective conditions in Oregon Short Line R. Co--Abandonment--Goshen, 360 I.C.C. 91 (1979). This exemption will remain in effect until December 16, 2000.

2. Conrail is directed to serve a copy of this decision on Port Terminals within 5 days after the service date of this decision and to certify to the Board that it has done so.

3. Any OFA under 49 CFR 1152.27(b)(2)<sup>5</sup> to subsidize continued rail service must be received by the railroad and the Board by November 26, 1997, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). Each OFA must be accompanied by the filing fee, which currently is set at \$900. The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1).

4. OFA's and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: "**Office of Proceedings, AB-OFA.**"

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<sup>5</sup> See Abandonment and Discontinuance of Rail Transportation Under 49 U.S.C. 10903, STB Docket No. 537 (STB served Dec. 24, 1996, and June 27, 1997).

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By the Board, Chairman Morgan and Vice Chairman Owen.

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Conrail has sought this discontinuance for a period of approximately 3 years. To avoid any uncertainty, however, we will limit the term of the discontinuance authority to exactly 3 years from the effective date of this exemption. If the South Boston Interchange portion of the Central Artery/Tunnel project is not completed within that time frame, Conrail may request that this discontinuance authority be extended; otherwise, this authority will expire by its terms and Conrail's common carrier obligation to provide service on the line will automatically resume in 3 years from the effective date of this decision.<sup>4</sup>

It is ordered:

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