

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35772

SAN JOAQUIN VALLEY RAILROAD CO.—LEASE AMENDMENT AND OPERATION
EXEMPTION INCLUDING INTERCHANGE COMMITMENT—BNSF RAILWAY
COMPANY

[REQUEST FOR WAIVER OF 49 C.F.R. § 1150.42(e)]

Digest:¹ This decision allows San Joaquin Valley Railroad Co., a Class III rail carrier, to continue to lease from BNSF Railway Company and operate approximately 2.0 miles of rail line in California without giving employees notice of the transaction because no employees would be adversely affected.

Decided: May 26, 2015

On May 1, 2015, San Joaquin Valley Railroad Co. (SJVR) filed a request for waiver of the employee notice requirements of 49 C.F.R. § 1150.42(e). The waiver request is related to a verified notice of exemption concurrently filed by SJVR in this docket under 49 C.F.R. § 1150.41 to continue to lease and operate a rail line in California, in which SJVR certified that its projected annual revenues as a result of this transaction would exceed \$5 million. Accordingly, unless waived, § 1150.42(e) requires SJVR, at least 60 days before the notice of exemption can become effective, to send notice of the transaction to the national offices of the labor unions with employees on the affected lines, post a copy of the notice at the workplace of the employees on the affected lines, and certify to the Board that it has done so. No opposition to this waiver request has been filed.

BACKGROUND

SJVR filed its verified notice of exemption² to continue to lease from BNSF Railway Company (BNSF) and operate the Landco spur line between the Porterville Subdivision,

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 Notice of exemption was served and published in the Federal Register on May 15, 2015 (80 Fed. Reg. 28047). But for the labor notice requirements, the exemption would become effective May 31, 2015, 30 days from its filing date, May 1, 2015.

MP 111+ 4029 feet, near Oil Junction, Cal., and milepost 113 + 3717 feet at or near Bakersfield, Cal., a distance of approximately 2.0 +/- miles (the Leased Line).³ SJVR and BNSF recently entered into an amended lease agreement, which extends the term of the lease through December 31, 2022, and makes other minor changes to the lease.

Because SJVR has been leasing and operating the Leased Line and would continue to do so, SJVR requests a waiver so that the authority it seeks in its exemption notice can become effective without SJVR's providing notice. In support, SJVR asserts that: (1) no employees of the transferring carrier, BNSF, would be affected by the lease and no employees of BNSF or its predecessor have worked on the Leased Line since 1992; (2) no SJVR employees would be affected by the lease and there would be no operational changes; and (3) posting notices on the Leased Line would be futile because no BNSF employees work on the Leased Line.

DISCUSSION AND CONCLUSIONS

The purpose of our notice requirements at 49 C.F.R. § 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. The Board takes seriously the requirements of the rule, but it does not appear that the purpose behind the notice requirements would be thwarted if the requested waiver is granted in this case.

The record indicates that no employees would be adversely affected by a waiver of the requirements here. SJVR employees would continue to provide the same service and maintenance they have provided since 1999, and BNSF employees, and its predecessor's employees, have performed no work on the Leased Line since 1992.⁴ Because no employees would be adversely affected by the waiver of the 60-day notice period, we will grant the waiver request, thereby allowing the related exemption authority to lease and operate the Leased Line to become effective on May 31, 2015.

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

It is ordered:

1. SJVR's request for waiver is granted, and the exemption authority to lease and operate the Leased Line is effective on May 31, 2015.

³ SJVR's predecessor, Tulare Valley Railroad Company, was granted authority to lease and operate the Leased Line, in addition to authority to acquire other lines as part of the same transaction, in Tulare Valley Railroad—Acquisition & Operation Exemption—The Atchison, Topeka & Santa Fe Railway, FD 32215 (ICC served Jan. 13, 1993).

⁴ Verified Notice of Exemption 7.

2. This decision is effective on its date of service.

By the Board, Acting Chairman Miller and Vice Chairman Begeman.