

SURFACE TRANSPORTATION BOARD¹

DECISION

Finance Docket No. 32479

CADDO ANTOINE AND LITTLE MISSOURI RAILROAD COMPANY
--FEEDER LINE ACQUISITION--
ARKANSAS MIDLAND RAILROAD COMPANY LINE
BETWEEN GURDON AND BIRDS MILL, AR

Decided: November 12, 1996

On March 18, 1994, the Caddo Antoine and Little Missouri Railroad Company (CALM) filed a feeder line application under former 49 U.S.C. 10910 (now 49 U.S.C. 10907) and 49 CFR part 1151 to acquire the Arkansas Midland Railroad Company's (AMR) 52.9-mile Norman Branch line between Gurdon and Birds Mill, AR. CALM's application was supported by GS Roofing Products Company, Inc., Beazer West, Inc. d/b/a Gifford-Hill & Company, Bean Lumber Company, Curt Bean Lumber Company, and Barksdale Lumber Company (collectively, Shippers). The Shippers, which are part owners of CALM, are located on the 49.2-mile northern segment of the line. International Paper Company (IP), the line's largest shipper, is located on the 3.7-mile southern segment of the line.² The line connects at the southern end with the Union Pacific Railroad Company (UP).

AMR acquired the entire 52.9-mile line in 1992. In December 1993, following storm damage, AMR embargoed 31 miles of the northern segment. The rest of the 49.2-mile northern segment was embargoed in February 1994. AMR continued to serve IP on the southern segment.

¹ The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (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(c) of the ICCTA provides, in general, that, if a court remands a suit against the ICC that was pending on the date of that legislation and involves functions retained by the ICCTA, subsequent proceedings related to the case shall proceed under the applicable law and regulations in effect at the time of the subsequent proceedings. The functions at issue in this proceeding were retained and are now found at 49 U.S.C. 10907. Thus, current 49 U.S.C. 10907 will apply to this proceeding on remand.

² While we will continue in this decision to refer in general terms to the 52.9-mile Norman Branch as having a 49.2-mile northern segment and a 3.7-mile southern segment, we note that the ICC, in a decision regarding trackage rights compensation owed by CALM to AMR in Dardanelle & Russellville Railroad Company--Trackage Rights Compensation--Arkansas Midland Railroad Company, Finance Docket No. 32625 (ICC served June 22, 1995), at 2-3, accepted CALM's assertion that the southern segment was actually 3.13 miles in length.

In February 1994, AMR filed a system diagram map (SDM), on which it designated the entire Norman Branch as being a candidate for abandonment. Six days later, it corrected its SDM, designating only the 49.2-mile northern segment as a candidate for abandonment. In response to the prospect of losing rail service, the Shippers requested that CALM file a feeder line application to acquire the entire Norman Branch. With their support, CALM's affiliate, the Dardanelle & Russellville Railroad Company (DRRC), also requested that the ICC authorize it immediately to provide interim service over the northern segment and operate overhead trackage rights over the southern segment. After receiving comments from the Shippers and AMR, the ICC, pursuant to 49 U.S.C. 11123(a), issued Service Order No. 1516 on March 28, 1994 (subsequently extended to June 15, 1995), authorizing DRRC to serve the northern segment and operate overhead trackage rights over the southern segment to interchange with UP. AMR continued serving IP by operating over the southern segment.

During the course of the feeder line proceeding, AMR entered into a lease and option to purchase agreement with Glenwood & Southern Railroad Company (GSR) for the northern segment. The ICC rejected GSR's notice of exemption. GSR then filed a competing feeder line application, which was denied on the ground that GSR had not shown that it was financially responsible, as required by former 49 U.S.C. 10910(a).

In the feeder line proceeding, in a decision served April 18, 1995, the ICC granted CALM's feeder line application only as to the northern segment. The ICC determined that the southern segment did not qualify for forced sale under the feeder line procedures. On April 26, 1995, CALM filed a petition for judicial review of the ICC's decision in the United States Court of Appeals for the Eighth Circuit in No. 95-2006, Caddo Antoine & Little Missouri Railroad Company, et al. v. ICC. On April 28, 1995, CALM notified the ICC that it declined to purchase only the northern segment.

On May 17, 1995, GSR filed a second notice of exemption in Finance Docket No. 32705 to lease and operate, with an option to purchase, the northern segment, and to operate trackage rights over the southern segment. GSR's notice, which became effective May 24, 1995, was served and published on June 15, 1995 (60 FR 31494).³

On June 15, 1995, the ICC issued a decision in the service order proceeding finding that, because GSR was now available to provide service, there was no longer an emergency. For that reason, and because AMR objected to any further extensions of the service order, the ICC granted only a 15-day extension; DRRC was ordered to clear the Norman Branch by June 30, 1995.⁴ On June 29, 1995, however, the court granted petitioners' motions

³ The ICC subsequently denied a motion filed by CALM to have GSR's notice of exemption declared void ab initio or, in the alternative, to revoke GSR's notice of exemption. Glenwood and Southern Railroad Company--Acquisition and Operation Exemption--Arkansas Midland Railroad Company, Inc., Finance Docket No. 32705 (ICC served Aug. 8, 1995).

⁴ A petition for review was filed in the Eighth Circuit in No. 95-2582.

for stay of the April 18, 1995 decision in the feeder line proceeding and the June 15, 1995 order in the service order proceeding pending judicial review. The court also consolidated the pending appeals of both orders.

In a decision issued September 13, 1996, the Eighth Circuit set aside the ICC's April 18, 1995 decision to permit CALM to purchase only the northern segment of the Norman Branch under the feeder line provisions. The court remanded the proceeding for the Board to consider CALM's application to purchase the entire Norman Branch under the public convenience and necessity standards in former section 10910(c)(1) (now section 10907(c)(1)). Caddo Antoine and Little Missouri R. Co. v. STB, 95 F.3d 740 (8th Cir. 1996).

The court also instructed the Board to extend the service order authorizing DRRC to operate over the line pending disposition of CALM's feeder line application to purchase the entire line. DRRC, however, notified the court that it is unable to continue operating the line, and the Shippers have engaged a new operator, the East Texas Central Railroad Company (ETC). Thus, with the consent of all parties, we recently extended the service order and substituted ETC as the authorized operator. East Texas Central Railroad Company--Authority to Operate--Lines of Arkansas Midland Railroad Company, Supplemental Order No. 7 to Service Order No. 1516 (STB served Sept. 24, 1996).

In accordance with the court's order, we will now reopen this feeder line proceeding and provide an opportunity for all interested parties (i.e., CALM, the Shippers, DRRC, GSR, ETC, and AMR) to present their views on how the Board should proceed on remand when, as directed by the court, we will treat the Norman Branch as a single line.

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

It is ordered:

1. This proceeding is reopened.
2. Parties are directed to present their views on how the Board should proceed in this proceeding by December 2, 1996.
3. This decision is effective on the service date.

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

Vernon A. Williams

Secretary