

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-457 (Sub-No. 1X)

RLTD RAILWAY CORPORATION--ABANDONMENT EXEMPTION--
BETWEEN RENNIE'S STATION AND HATCH'S CROSSING
IN LEELANAU COUNTY, MI

Decided: October 20, 1997

On March 11, 1997, the RLTD Railway Corporation (RLTD) filed a notice of exemption under 49 CFR 1152 Subpart F--Exempt Abandonments to abandon what it characterizes as a line of railroad of approximately 3.62 miles in length in Leelanau County, Michigan.¹ On March 7, 1997, the Leelanau Trails Association (LTA) filed a request for a public use condition pursuant to 49 CFR 1152.28 and a statement of willingness to assume financial responsibility for use of the line as a trail pursuant to 49 CFR 1152.29. We are rejecting RLTD's notice of exemption and LTA's requests for public use and trail use conditions because our predecessor, the Interstate Commerce Commission (ICC) lost jurisdiction over the property many years ago.²

The provisions of 49 CFR 1152 are inapplicable to property that is not subject to our continuing jurisdiction. Here, the property is not subject to our jurisdiction because it long since had been severed from the interstate rail network. Until 1978, the property was a line of railroad owned by the former Chesapeake and Ohio Railway Company (C&O). In Finance Docket No. 26757, Chesapeake & Ohio Ry. Co.--Abandonment, 348 I.C.C. 343 (1975), the ICC permitted C&O to abandon and cease to operate the 3.62-mile branch line. By letter dated May 16, 1978, the C&O notified the ICC that it had consummated the abandonment of that line.

RLTD seems to maintain that the C&O's subsequent sale of the property to the Leelanau Transit Company (LTC), RLTD's predecessor in interest, on May 5, 1981,³ somehow negated the effect of C&O's letters of consummation and kept the property within the national rail system. We disagree. The C&O took no steps to reverse the ICC's grant or its own exercise of the abandonment authority, or otherwise to reinstitute service before the property was sold to LTC. If the C&O had considered the property still to be an active line of railroad when it was sold to LTC in 1981, the C&O presumably would have complied with the longstanding statutory requirement that transfers of active lines of railroad be approved by the ICC.

The other key factor here is that the property no longer could be used to provide rail service in interstate commerce. As discussed in Leelanau, the C&O connection between Rennie's Station and Traverse City, which constituted this track's only link to the interstate rail network, was irrevocably severed from the national rail transportation system when that track was abandoned in 1981. That forever eliminated the ability of LTC or RLTD (or anyone else) to provide rail freight

¹ According to RLTD, the track runs between (a) mile marker 1.9 near a point known as "Rennie's Station" in Elmwood Township and (b) mile marker 5.52 near Hatch's Crossing in Elmwood Township.

² The jurisdictional issues are related to No. AB-457X, RLTD Railway Corporation--Abandonment Exemption--In Leelanau County, MI (Leelanau), where a petition was filed to reopen and reconsider an earlier notice of exemption filed by RLTD for abandonment of an adjacent segment on September 29, 1995. Our decision of August 23, 1996, and our subsequent decision denying a petition for stay, reopening, and reconsideration of that decision, contain a detailed description of the history of this line, and the reasons why we now lack jurisdiction over any of this property. We will not repeat here all of the analysis in Leelanau but incorporate it by reference because the same analysis applies here.

³ See pages 11, 18 of RLTD's notice.

service in interstate commerce on the 3.62 miles of track between Hatch's Crossing and Rennie's Station. It is well settled that neither the ICC nor the Board has jurisdiction over lines that are not linked to and part of the interstate rail system. See, e.g., *Magner - O'Hara Scenic Ry. v. ICC*, 692 F.2d 441 (6th Cir. 1982).

In short, because the track at issue here previously had been severed from the interstate rail network, the ICC lost jurisdiction over the property many years before the notice of exemption was filed in this case.

Therefore, we will reject the notice of exemption and LTA's requests for public use and trail use conditions.

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

It is ordered:

1. The notice of exemption is rejected, and this proceeding is dismissed for lack of jurisdiction.
2. LTA's requests for public use and trail use conditions are rejected.
3. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary