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SERVICE DATE – OCTOBER 16, 2014

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35733

MIDWEST RAILROAD COMPANY—LEASE AND OPERATION—  
CHICAGO RAIL LINK, L.L.C.

Decided: October 16, 2014

On August 13, 2014, Midwest Railroad Company (Midwest), a noncarrier, filed a verified notice of exemption pursuant to 49 C.F.R. § 1150.31 to lease from Chicago Rail Link, L.L.C. (CRL) and operate approximately 2,000 feet of track near milepost 15 in Blue Island, Ill. (Notice of Exemption).<sup>1</sup> Midwest stated that, following consummation of the transaction, it would begin using the track as part of its railroad operations, including providing excursion and dinner train services.

On August 26, 2014, Midwest filed a motion to withdraw the Notice of Exemption, stating that it intended to file a petition for exemption. Subsequently, on September 11, 2014, Midwest filed a second notice, under 49 U.S.C. § 10902 and 49 C.F.R. § 1150.41—which the Board accepts as a supplement to the Notice of Exemption (September 11 Supplement)—to lease and operate the same 2,000 feet of track. In the September 11 Supplement, Midwest alleged that it was a Class III rail carrier due to a Railroad Retirement Board (RRB) determination that Midwest is an employer under the Railroad Retirement Act and the Railroad Retirement Tax Act.<sup>2</sup> In the September 11 Supplement, Midwest stated that it intends to: (1) own and operate passenger rail cars; (2) provide premium-level passenger rail services using those cars; (3) maintain and operate passenger rail cars owned or operated by other companies; and (4) provide excursion and dinner train services. Midwest further stated that it would use the track leased from CRL in connection with those operations. The September 11 Supplement did not include a description of Midwest's potential routes.

On September 17, 2014, Midwest filed an additional supplement to the Notice of Exemption (September 17 Supplement), stating that the Notice of Exemption was now being

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<sup>1</sup> Midwest stated that the August 13 Notice was submitted under 49 U.S.C. § 10902 and 49 C.F.R. § 1150.31. In fact, 49 C.F.R. § 1150.31 applies to 49 U.S.C. § 10901, not 49 U.S.C. § 10902.

<sup>2</sup> As Midwest subsequently acknowledged, Midwest is not a rail carrier providing transportation subject to the jurisdiction of the Board, see 49 U.S.C. § 10501(a) and (b).

submitted under § 1150.31, rather than § 1150.41, because Midwest is a new carrier, not an existing carrier.<sup>3</sup> Midwest acknowledges that the Track Lease Agreement (Lease Agreement) between itself and CRL has been terminated, but Midwest states that it is negotiating for continuation of that lease. Midwest indicates that, upon approval of the September 11 Supplement, it intends to operate using the leased track. Additionally, Midwest specifies several routes it is considering for its services.

Also on September 17, 2014, CRL filed a motion to reject the September 11 Supplement.<sup>4</sup> CRL argues that: (1) the Notice of Exemption filed by Midwest contains numerous errors and omissions; (2) the services Midwest plans to provide are not subject to the jurisdiction of the Board; (3) the Lease Agreement explicitly provides that Midwest shall use the track “for the purpose of switching and storing empty passenger cars and for no other purpose whatsoever”; and (4) CRL terminated the Lease Agreement on September 11, 2014, because Midwest owed CRL \$60,969.68 in unpaid rental fees, transportation charges, and interest. CRL states that it seeks to have the September 11 Supplement rejected because Midwest may attempt to use the Board’s exemption process to delay or thwart CRL’s efforts to remove Midwest from the CRL tracks.

When a party files a verified notice of exemption under 49 C.F.R. pt. 1150 Subpart D, § 1150.33(c) requires “[a] statement that an agreement has been reached or details about when such an agreement will be reached.” This rule contemplates that the party seeking authority to operate as a common carrier over the subject line either has, or is in the process of acquiring, an agreement with the underlying owner to provide that service. A transaction would not qualify for an exemption under Subpart D without either an agreement or a plan to reach an agreement. See Rail Switching Servs., Inc.—Operation Exemption—Pemiscot Cnty. Port Auth., FD 35685 et al. (STB served Jan. 8, 2013). While Midwest asserts that it is negotiating for a continuation of that agreement, CRL states that the agreement was terminated on September 11, 2014. It is clear that there is no current agreement, and Midwest has not provided “details of when an agreement will be reached” as required by the regulations. On that basis, the Board will reject the Notice of Exemption and the September 11 and September 17 Supplements. See, e.g., Winamac S. Ry.—Trackage Rights Exemption—A. & R. Line, Inc., FD 35208 (STB served Jan. 9, 2009) (rejecting a trackage rights notice of exemption because the successor to the original granting carrier was actively opposed to the transaction and asserted the agreement was no longer in effect).

Because the Notice of Exemption as supplemented will be rejected for failure to comply with the regulatory requirements, the Board need not reach CRL’s additional arguments for

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<sup>3</sup> September 17, 2014, will be considered the filing date for purposes of calculating the effective date of the Notice of Exemption.

<sup>4</sup> CRL treated the Notice of Exemption as effectively withdrawn and directed its motion to reject at the September 11 Supplement. Accordingly, the Board considers CRL’s filing as a motion to reject the Notice of Exemption and September 11 Supplement.

rejection. Midwest is not authorized to provide the services contemplated by the Notice of Exemption and supplements thereto.

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

It is ordered:

1. CRL's motion to reject is granted.
2. The Notice of Exemption and September 11 and September 17 Supplements are rejected.
3. This decision is effective on its date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.