

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34882

LONGVIEW SWITCHING COMPANY – TRackage RIGHTS EXEMPTION –  
BNSF RAILWAY COMPANY

Decided: June 30, 2006

On June 6, 2006, Longview Switching Company (LSC) filed a notice of exemption pursuant to 49 CFR 1180.2(d)(7) to acquire overhead trackage rights over a line of railroad of BNSF Railway Company (BNSF) between a point south of Longview Junction, WA, at milepost 104.0 and a point north of Kelso, WA, at milepost 96.0, a distance of approximately 8.0 miles on BNSF's Seattle Subdivision (Joint Trackage). According to LSC's notice, the proposed trackage rights would allow for the overhead movement of BNSF and Union Pacific Railroad Company (UP) cars being handled by LSC during switching operations in the vicinity of Longview Junction.<sup>1</sup> The exemption became effective on June 13, 2006.

On June 29, 2006, John D. Fitzgerald, for and on behalf of the United Transportation Union-General Committee of Adjustment (UTU/GO-386), filed a petition seeking a stay of the operation of the notice of exemption. UTU/GO-386 asserts that, despite the June 13, 2006 effectiveness of the exemption, a stay may be issued prior to the consummation of the transaction, and that consummation has been announced for July 1, 2006.

UTU/GO-386 asserts that LSC's notice should be stayed until UTU/GO-386's petition to reject/revoke is filed with the Board, and decided by the Board, and until any Board approvals or exemptions are determined for related notices involving BNSF/UP restructuring of operations in the area between Seattle, WA, and Eugene, OR. UTU/GO-386 argues that the trackage rights exemption is not appropriate here because LSC is a switching agent for BNSF and UP. It asserts that the transaction is not covered by 49 U.S.C. 11323(a)(6) and, therefore, that Board authorization is not necessary for LSC to perform switching operations on the Joint Trackage. UTU/GO-386 also argues that BNSF employees would be injured by the loss of switching work at Longview Junction and on the Joint Trackage and would not likely be compensated for losses sustained if UTU/GO-386 subsequently prevails. UTU/GO-386 further argues that LSC and BNSF would not be injured by a stay. Also, on June 29, 2006, the Brotherhood of Locomotive Engineers and Trainmen filed a pleading endorsing UTU/GO-386's position.

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<sup>1</sup> UP has trackage rights over the Joint Trackage pursuant to a trackage rights agreement dated July 1, 1909, as supplemented, between predecessors of BNSF and UP.

LSC filed a reply to the petition for stay on June 29, 2006. LSC urges rejection of the stay request in that the exemption is already effective and the 20-day notice period under the applicable employee protective conditions expired on June 20, 2006. LSC also argues that the stay should be denied as the criteria for granting a stay have not been met. LSC disputes UTU/GO-386's assertion that the transaction involves the joint use of switching tracks and thus would not require Board authorization by noting that the Joint Trackage is not switching track but is instead BNSF main line track.

#### DISCUSSION AND CONCLUSIONS

The standards governing a stay request are: (1) whether petitioner has a strong likelihood of prevailing on the merits; (2) whether petitioner will be irreparably harmed in the absence of a stay; (3) whether issuance of a stay would substantially harm other parties; and (4) whether issuance of a stay is in the public interest. Hilton v. Braunskill, 481 U.S. 770, 776 (1987); Washington Metropolitan Area Transit Comm. v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958).

UTU/GO-386 has failed to meet its burden of demonstrating that the stay criteria are satisfied. Based on the evidence presented, it appears that the transaction at issue does require Board authorization, but that is a matter that can be further pursued, if UTU/GO-386 wishes to do so, in a petition to reject or revoke the notice of exemption.

UTU/GO-386 has failed to demonstrate irreparable harm to affected employees absent a stay of the effectiveness of the exemption authorizing the trackage rights. Any BNSF employees adversely affected by the grant of trackage rights will be subject to the standard labor protective conditions imposed in this proceeding. Employees may attempt to show that those protections are insufficient to address the harm from this grant of trackage rights, but UTU/GO-386 has not made such a showing on this record.

Finally, staying the effectiveness of the exemption would delay the benefits associated with LSC's handling of BNSF and UP cars during switching operations in the vicinity of Longview Junction. Such action would harm LSC, BNSF, and UP and would not be in the public interest.

For these reasons, UTU/GO-386's petition for stay is denied.

It is ordered:

1. UTU/GO-386's petition for stay is denied.

2. This decision is effective on its service date.

By the Board, W. Douglas Buttrey, Chairman.

Vernon A. Williams  
Secretary