

28734
CO

SERVICE DATE - DECEMBER 16, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33516

ILLINOIS RAILNET, INC.—ACQUISITION AND OPERATION EXEMPTION—
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Decided: December, 15, 1997

BACKGROUND

On December 2, 1997, Illinois Railnet, Inc. (IR) filed a notice of exemption under 49 CFR 1150.31 to acquire from The Burlington Northern and Santa Fe Railway Company (BNSF) and to operate approximately 56.67 miles of rail line between milepost 40.73, near Montgomery, and milepost 97.40, at Streator, in Kendall and LaSalle Counties, IL. In addition, IR would acquire for a 99-year period incidental overhead trackage rights from BNSF between milepost 40.73, near Montgomery, and milepost 33.4, near Eola, including operations over tracks 1, 2, and 3 in the Sheep Yard near milepost 40.0, in the vicinity of Montgomery, and over all tracks in the Eola rail yard.

On December 11, 1997, Joseph C. Szabo, on behalf of United Transportation Union-Illinois Legislative Board (UTU-IL), filed a petition to stay operation of the exemption. On December 12, 1997, IR filed a reply to UTU-IL's petition for stay.

DISCUSSION AND CONCLUSIONS

UTU-IL argues that the exemption should be stayed pending its filing, and the Board's disposition, of a forthcoming petition to reject the notice of exemption or to revoke the exemption. UTU-IL argues that IR's notice of exemption contained false and misleading information as it asserted that no employees would be adversely affected. UTU-IL suggests that BNSF employees will suffer irreparable injury unless the transaction is stayed as there is no provision under 49 U.S.C. 10901 to impose employee protection conditions and employees assertedly "cannot be made whole in the usual manner by prospective or retroactive conditions." In its reply, IR maintains that, while positions on the line will be abolished within BNSF, no BNSF employees will be adversely affected as they will continue employment with BNSF at either Eola or on pool trains operating in the area.

UTU-IL further argues that the exemption should be stayed as IR has failed to provide them with a copy of the agreement between IR and BNSF. In reply, IR disputes that failure to make a copy of the agreement available provides a basis for granting a stay.

Finally, UTU-IL argues that the public interest supports granting a stay, that neither the public nor IR would be injured by a stay, and that anticipated injury to BNSF employees outweighs any injury to IR. IR maintains in reply that a delay in closing the transaction would cause it to incur

costs that could not be offset by revenues if it cannot begin operations. As noted previously, IR also asserts that BNSF employees will not be adversely affected.

The stay request will be denied. The record does not support issuance of a stay. There is no basis to conclude that the notice of exemption contains false or misleading information. UTU-IL has made no showing of irreparable harm under the applicable stay criteria. See Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977). Moreover, there is no requirement under 49 CFR 1150, Subpart D—Exempt Transactions Under 49 U.S.C. 10901, that, in order to qualify for an exemption, an applicant must file or disclose agreements between the parties.

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

It is ordered:

1. The petition for stay is denied.
2. This decision is effective on its service date.

By the Board, Linda J. Morgan, Chairman.

Vernon A. Williams
Secretary

28734
CO

SERVICE DATE - DECEMBER 16, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33516

ILLINOIS RAILNET, INC.—ACQUISITION AND OPERATION EXEMPTION—
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Decided: December, 15, 1997

BACKGROUND

On December 2, 1997, Illinois Railnet, Inc. (IR) filed a notice of exemption under 49 CFR 1150.31 to acquire from The Burlington Northern and Santa Fe Railway Company (BNSF) and to operate approximately 56.67 miles of rail line between milepost 40.73, near Montgomery, and milepost 97.40, at Streator, in Kendall and LaSalle Counties, IL. In addition, IR would acquire for a 99-year period incidental overhead trackage rights from BNSF between milepost 40.73, near Montgomery, and milepost 33.4, near Eola, including operations over tracks 1, 2, and 3 in the Sheep Yard near milepost 40.0, in the vicinity of Montgomery, and over all tracks in the Eola rail yard.

On December 11, 1997, Joseph C. Szabo, on behalf of United Transportation Union-Illinois Legislative Board (UTU-IL), filed a petition to stay operation of the exemption. On December 12, 1997, IR filed a reply to UTU-IL's petition for stay.

DISCUSSION AND CONCLUSIONS

UTU-IL argues that the exemption should be stayed pending its filing, and the Board's disposition, of a forthcoming petition to reject the notice of exemption or to revoke the exemption. UTU-IL argues that IR's notice of exemption contained false and misleading information as it asserted that no employees would be adversely affected. UTU-IL suggests that BNSF employees will suffer irreparable injury unless the transaction is stayed as there is no provision under 49 U.S.C. 10901 to impose employee protection conditions and employees assertedly "cannot be made whole in the usual manner by prospective or retroactive conditions." In its reply, IR maintains that, while positions on the line will be abolished within BNSF, no BNSF employees will be adversely affected as they will continue employment with BNSF at either Eola or on pool trains operating in the area.

UTU-IL further argues that the exemption should be stayed as IR has failed to provide them with a copy of the agreement between IR and BNSF. In reply, IR disputes that failure to make a copy of the agreement available provides a basis for granting a stay.

Finally, UTU-IL argues that the public interest supports granting a stay, that neither the public nor IR would be injured by a stay, and that anticipated injury to BNSF employees outweighs any injury to IR. IR maintains in reply that a delay in closing the transaction would cause it to incur

costs that could not be offset by revenues if it cannot begin operations. As noted previously, IR also asserts that BNSF employees will not be adversely affected.

The stay request will be denied. The record does not support issuance of a stay. There is no basis to conclude that the notice of exemption contains false or misleading information. UTU-IL has made no showing of irreparable harm under the applicable stay criteria. See Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977). Moreover, there is no requirement under 49 CFR 1150, Subpart D—Exempt Transactions Under 49 U.S.C. 10901, that, in order to qualify for an exemption, an applicant must file or disclose agreements between the parties.

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

It is ordered:

1. The petition for stay is denied.
2. This decision is effective on its service date.

By the Board, Linda J. Morgan, Chairman.

Vernon A. Williams
Secretary

28734
CO

SERVICE DATE - DECEMBER 16, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33516

ILLINOIS RAILNET, INC.—ACQUISITION AND OPERATION EXEMPTION—
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Decided: December, 15, 1997

BACKGROUND

On December 2, 1997, Illinois Railnet, Inc. (IR) filed a notice of exemption under 49 CFR 1150.31 to acquire from The Burlington Northern and Santa Fe Railway Company (BNSF) and to operate approximately 56.67 miles of rail line between milepost 40.73, near Montgomery, and milepost 97.40, at Streator, in Kendall and LaSalle Counties, IL. In addition, IR would acquire for a 99-year period incidental overhead trackage rights from BNSF between milepost 40.73, near Montgomery, and milepost 33.4, near Eola, including operations over tracks 1, 2, and 3 in the Sheep Yard near milepost 40.0, in the vicinity of Montgomery, and over all tracks in the Eola rail yard.

On December 11, 1997, Joseph C. Szabo, on behalf of United Transportation Union-Illinois Legislative Board (UTU-IL), filed a petition to stay operation of the exemption. On December 12, 1997, IR filed a reply to UTU-IL's petition for stay.

DISCUSSION AND CONCLUSIONS

UTU-IL argues that the exemption should be stayed pending its filing, and the Board's disposition, of a forthcoming petition to reject the notice of exemption or to revoke the exemption. UTU-IL argues that IR's notice of exemption contained false and misleading information as it asserted that no employees would be adversely affected. UTU-IL suggests that BNSF employees will suffer irreparable injury unless the transaction is stayed as there is no provision under 49 U.S.C. 10901 to impose employee protection conditions and employees assertedly "cannot be made whole in the usual manner by prospective or retroactive conditions." In its reply, IR maintains that, while positions on the line will be abolished within BNSF, no BNSF employees will be adversely affected as they will continue employment with BNSF at either Eola or on pool trains operating in the area.

UTU-IL further argues that the exemption should be stayed as IR has failed to provide them with a copy of the agreement between IR and BNSF. In reply, IR disputes that failure to make a copy of the agreement available provides a basis for granting a stay.

Finally, UTU-IL argues that the public interest supports granting a stay, that neither the public nor IR would be injured by a stay, and that anticipated injury to BNSF employees outweighs any injury to IR. IR maintains in reply that a delay in closing the transaction would cause it to incur

costs that could not be offset by revenues if it cannot begin operations. As noted previously, IR also asserts that BNSF employees will not be adversely affected.

The stay request will be denied. The record does not support issuance of a stay. There is no basis to conclude that the notice of exemption contains false or misleading information. UTU-IL has made no showing of irreparable harm under the applicable stay criteria. See Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977). Moreover, there is no requirement under 49 CFR 1150, Subpart D—Exempt Transactions Under 49 U.S.C. 10901, that, in order to qualify for an exemption, an applicant must file or disclose agreements between the parties.

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

It is ordered:

1. The petition for stay is denied.
2. This decision is effective on its service date.

By the Board, Linda J. Morgan, Chairman.

Vernon A. Williams
Secretary