

SURFACE TRANSPORTATION BOARD

DECISION

STB Ex Parte No. 562

ACQUISITION OF RAIL LINES UNDER 49 U.S.C. 10901 AND 10902--ADVANCE NOTICE
OF PROPOSED TRANSACTIONS

AGENCY: Surface Transportation Board.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Surface Transportation Board, after reviewing public comments on labor protective requirements for line acquisitions by Class II railroads in *Wisconsin Central Ltd.--Acquisition Exemption--Lines of Union Pacific Railroad Company*, STB Finance Docket No. 33116 (STB served Apr. 17, 1997), proposes to establish a 60-day notice period for the benefit of rail employees who work on rail lines subject to, and to facilitate the implementation of, transactions: (1) under 49 U.S.C. 10902 by Class II rail carriers; (2) under 49 U.S.C. 10902 by Class III rail carriers to acquire or operate additional rail lines where the lines to be acquired or operated, together with the acquiring carrier's existing lines, would produce annual revenue exceeding \$5 million; and (3) under 49 U.S.C. 10901 by noncarriers to acquire or operate rail lines where the lines to be acquired or operated would produce annual revenue exceeding \$5 million.

DATES: Comments are due on June 2, 1997.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Ex Parte No. 562 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565-1600. [TDD for the hearing impaired: (202) 565-1695.]

SUPPLEMENTARY INFORMATION: We considered and recently granted the petition by Wisconsin Central Ltd. (WCL), a Class II carrier, for an exemption for its acquisition of two rail lines from Union Pacific Railroad Company in *Wisconsin Central Ltd.--Acquisition Exemption--Lines of Union Pacific Railroad Company*, STB Finance Docket No. 33116 (STB served Apr. 17, 1997) (*WCL Exemption*). By *Federal Register* notice published November 27, 1996 (61 FR 60320-21), we had described WCL's exemption request and its proposed employee protective arrangement, and had sought public comments on the issues of whether WCL's proposed labor protection met the statutory requirements of 49 U.S.C. 10902 and whether the Board should establish and/or oversee the procedural aspects of such arrangements in rail line acquisitions by Class II railroads. A number of comments were filed, including comments by WCL and the Transportation Trades Department of the AFL-CIO (TTD).

In *WCL Exemption*, we adopted standards for implementing the labor protection requirement of subsection 10902(d), other than for a specific notice period for the seller's employees to be affected by a line sale. While TTD had requested a 90-day notice period, we determined that affected employees on the line to be sold had been afforded at least that amount of notice. Rather than adopt a specific notice period in that proceeding, we announced that we would seek public comments on a proposed requirement that Class II railroads provide a minimum of 60 days' notice in future proceedings under § 10902. We also proposed to amend the existing class exemption rules so that a similar 60-day notice period is afforded in all transactions, involving acquisitions under § 10902 by Class III carriers or under 49 U.S.C. 10901 by noncarriers, that would result in the acquiring entity becoming a carrier with annual revenues in excess of \$5 million.

As preliminarily concluded in *WCL Exemption*, we are not proposing that individual employee notice be required. Rather, we believe that requiring the posting and submission of notice

to the national offices of the labor unions with employees on the affected line setting forth the terms of employment and principles of selection to be followed by the acquiring carrier should be sufficient.¹

Sixty days is the notice period for displaced workers adopted by the Worker Adjustment and Retraining Notification Act, Pub. L. No. 100-379 (August 4, 1988). That seems to be a reasonable period of time in which employees directly affected by the acquisitions of rail lines may be asked to make decisions or to take actions. By “directly affected employees,” we mean the employees who actually work on the line or lines to be acquired. These employees are faced at a minimum with having to decide whether to accept a position on the acquiring entity or to exercise seniority on the carrier that is selling, leasing or otherwise transferring the line. In either case employees are faced with significant changes in their work assignments. And one or more of these employees may be separated from employment altogether and will have to seek work elsewhere.

Employees who work on lines acquired under § 10901 have as much need for notice as do the employees working on lines acquired under § 10902. Although the Interstate Commerce Commission (ICC or the Commission) had discretionary authority to impose labor protective conditions in line sale cases, the Commission rarely exercised that authority. Nevertheless, new carriers buying or leasing lines often extended offers of employment to employees working on the lines acquired. We have no reason to believe that this practice will not continue. That being the case, employees affected by those transactions will often have to choose whether or not to accept employment with the new carrier. In addition, employees in § 10901 transactions will, in many instances, have to move to new positions on their present employer or may have to seek new employment altogether. Under the circumstances, we believe that some additional advance notice involving larger transactions would be beneficial to employees who must make adjustments and decisions and would facilitate the smooth implementation of these transactions.²

The acquisitions of larger lines under both §§ 10901 and 10902 are already subject to prior notice periods pursuant to our regulations at 49 CFR 1150.35 and 1150.45, respectively. In a number of those transactions, the ICC or the Board stayed the effect of the notices, thereby effectively providing for notice periods longer than those proposed here; *see New England Central Railroad, Inc.--Acquisition and Operation Exemption--Lines Between East Alburgh, VT and New London, CT*, Finance Docket No. 32432 (ICC served Dec. 9, 1994); *Indiana and Ohio Railway Company--Acquisition Exemption--Lines of the Grand Trunk Western Railroad, Inc.*, STB Finance Docket No. 33180 (STB served Feb. 3, 1997); and *I&M Rail Link, LLC--Acquisition and Operation Exemption--Certain Lines of Soo Line Railroad Company D/B/A Canadian Pacific Railway*, STB Finance Docket No. 33326 (STB served Apr. 2, 1997). The application of a 60-day notice period for these transactions would have little effect on the way they have been treated to date.

We propose to limit the 60-days’ notice requirement to transactions in which the acquiring carrier or noncarrier will earn annual revenues in excess of \$5 million as a result of the acquisition. More than 78 % of the total number of freight railroads have annual revenues under \$5 million but employ fewer than 3% of the total number of rail freight employees; see “Selected Statistics--U.S. Freight Railroads by Revenue Range”, *Profiles of U.S. Railroads - 1996 Edition* (Association of American Railroads). Thus, the majority of transactions involving the creation of, or purchases by, Class III railroads should not be affected by this notice requirement, but the \$5 million limit should embrace the transactions that affect significant numbers of rail freight employees.

¹ See 49 CFR 1150.35(b)(2), (c)(3); and 49 CFR 1150.45(b)(2), (c)(3), for current notice requirements in our class exemptions for larger transactions under 49 U.S.C. 10901 and 10902.

² We do not view this notice requirement as imposing labor protection which we are statutorily prohibited from imposing on Class III and noncarrier line acquisitions, but rather as establishing a procedural mechanism to ensure that transactions we have authorized will be implemented without disruption.

The Board invites comments on the proposed regulations. Written comments (an original and 10 copies) are due on June 2, 1997. The Board encourages that, in addition to submitting a paper original and copies, each commenter provide a copy of his comments on a 3.5-inch floppy diskette formatted for WordPerfect 7.0, or formatted so that it can be readily converted into WordPerfect 7.0.

Small Entities

The Board certifies that this rule, if adopted, would not have a significant effect on a substantial number of small entities. The proposed regulation, while marginally increasing the notice requirement of the acquiring carrier or entity, would benefit individuals and entities affected by line transfers by providing a standard notice period prior to consummation of the sale.

Environment

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

List of Subjects

49 CFR Part 1121

Administrative practice and procedures, Railroads

49 CFR Part 1150

Administrative practice and procedures, Railroads

Decided: April 21, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary

For the reasons set forth in the preamble, the Board proposes to amend title 49, chapter X, parts 1121 and 1150 of the Code of Federal Regulations, as follows:

PART 1121--RAIL EXEMPTION PROCEDURES

1. The authority citation for part 1121 continues to read as follows:

Authority: 5 U.S.C. 553; 49 U.S.C. 10502 and 10704.

2. Section 1121.4 is amended by adding a new paragraph (h) to read as follows:

§ 1121.4 Procedures.

* * * * *

(h) In transactions for the acquisition or operation of rail lines by Class II rail carriers under 49 U.S.C. 10902, the exemption may not become effective until 60 days after applicant certifies to the Board that it has posted at the workplace of the employees on the affected line(s) and served a notice of the transaction on the national offices of the labor unions with employees on the affected line(s), setting forth the terms of employment and principles of employee selection.

PART 1150--CERTIFICATE TO CONSTRUCT, ACQUIRE, OR OPERATE RAILROAD LINES

3. The authority citation for part 1150 continues to read as follows:

Authority: 5 U.S.C. 553 and 559; 49 U.S.C. 721(a), 10502, 10901 and 10902.

4. Section 1150.32 is amended by adding a new paragraph (e) to read as follows:

§ 1150.32 Procedures and relevant dates--transactions that involve creation of Class III carriers

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(e) If the projected annual revenue of the carrier to be created by an acquisition under this exemption exceeds \$5 million, applicant must, at least 60 days before the exemption becomes effective, post a notice of intent to undertake the proposed transaction at the workplace of the employees on the affected line(s) and serve a copy of the notice on the national offices of the labor unions with employees on the affected line(s), setting forth the terms of employment and principles of employee selection, and certify to the Board that it has done so.

5. Section 1150.35 is amended by revising paragraph (a) to read as follows:

§ 1150.35 Procedures and relevant dates--transactions that involve creation of Class I or Class II carriers.

(a) To qualify for this exemption, applicant must serve a notice of intent to file a notice of exemption no later than 14 days before the notice of exemption is filed with the Board, and applicant must comply with the notice requirement of § 1150.32(e).

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6. Section 1150.42 is amended by adding a new paragraph (e) to read as follows:

§ 1150.42 Procedures and relevant dates for small line acquisitions.

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(e) If the projected annual revenue of the rail lines to be acquired, together with the acquiring carrier's projected annual revenue, exceeds \$5 million, the applicant must, at least 60 days before the exemption becomes effective, post a notice of applicant's intent to undertake the proposed transaction at the workplace of the employees on the affected line(s) and serve a copy of the notice on the national offices of the labor unions with employees on the affected line(s), setting forth the terms of employment and principles of employee selection, and certify to the Board that it has done so.

7. Section 1150.45 is amended by revising paragraph (a) to read as follows:

§ 1150.45 Procedures and relevant dates-transactions under section 10902 that involve creation of Class I or II rail carriers.

(a) To qualify for this exemption, applicant must serve a notice of intent to file a notice of exemption no later than 14 days before the notice of exemption is filed with the Board, and applicant must comply with the notice requirement of § 1150.42(e).

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