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SERVICE DATE – LATE RELEASE NOVEMBER 8, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-167 (Sub-No. 1185X)

CONSOLIDATED RAIL CORPORATION—ABANDONMENT EXEMPTION—
IN MERCER COUNTY, NJ

Decided: November 8, 2006

Consolidated Rail Corporation (Conrail) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a portion of a line of railroad known as the Robbinsville Industrial Track, between milepost 32.20± and milepost 37.90± in the cities of Hamilton Township and Washington Township, Mercer County, NJ, a distance of approximately 5.7 miles. Notice of the exemption was served and published in the Federal Register on July 3, 2006 (71 FR 37976-77). The exemption was scheduled to become effective on August 2, 2006. However, on July 13, 2006, a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(2) was filed by James Riffin to purchase the entire line. This filing automatically stayed the effective date of the exemption until August 12, 2006. Mr. Riffin simultaneously requested that Conrail provide him with the financial data and information prescribed in 49 CFR 1152.27(a). Under 49 CFR 1152.27(c)(2)(ii)(B), OFAs in this proceeding were due by August 2, 2006 (30 days after publication of notice of the exemption in the Federal Register). However, as of that date, the Board had no record of receiving either an OFA or a request to toll the time period for filing an OFA from either Mr. Riffin or Conrail.

In a decision served on August 10, 2006, the Board imposed a 180-day public use condition, pursuant to a request filed by C&A Trail Conservancy, and environmental conditions. On August 18, 2006, Mr. Riffin filed a motion for reconsideration of that decision, and a copy of a petition, pursuant to 49 CFR 1152.27(c)(2)(ii)(C), requesting that the time period for filing an OFA be tolled until 90 days after Conrail provides Mr. Riffin with the information required under 49 CFR 1152.27(a).

In his motion, Mr. Riffin stated that, on August 9, 2006, Conrail submitted some, but not all, of the information requested. On August 18, 2006, Mr. Riffin requested that Conrail provide him with additional information. Mr. Riffin further maintained that Norfolk Southern Railway Company (NSR) and CSX Transportation, Inc. (CSXT) must obtain discontinuance authority from the Board before Conrail's abandonment authority can be approved. In support of this contention, Mr. Riffin argued that the line that is the subject of this abandonment proceeding appears to be a part of Conrail's Retained Assets, within the North Jersey Shared Assets Area (NJSAA), as a result of the Board's decision

in CSX Corp. et al. – Control – Conrail Inc. et al., 3 S.T.B. 196 (1998), pursuant to which NSR and CSXT obtained Board authority to control Conrail and to operate over certain of Conrail's lines.

In a response filed on September 13, 2006, Conrail indicated that it took no position on whether the Board should reopen the August 10, 2006 decision, but urged that, if the proceeding is reopened, the Board limit the time period for Mr. Riffin to file his OFA to 10 days after Conrail notifies the Board that it has provided the additional information to Mr. Riffin. On September 19, 2006, Conrail notified the Board that it was providing the available, additional information to Mr. Riffin.

In its September 13, 2006 response, Conrail also asserted, in response to Mr. Riffin's position that CSXT and NSR need to obtain discontinuance authority before Conrail would be able to abandon this line, that it has not acted as an agent for CSXT and NSR in providing any common carrier service over this line as there has not been a demand for service (or any new service provided) over the line since the 1999 "split date" when CSXT and NSR took over many of the Conrail operations. Thus, Conrail maintained that CSXT and NSR have not provided common carrier service over the line that would require them to seek discontinuance authority.

Because Mr. Riffin had presented evidence of his timely filing of a petition to toll the due date for filing an OFA and because Conrail did not object to reopening to permit Mr. Riffin to file an OFA, the proceeding was reopened and the deadline tolled in a decision served October 20, 2006. However, because the record indicated that Mr. Riffin had sufficient information to formulate an OFA, OFAs were made due on October 30, 2006. As a result, the effective date of the exemption was extended until November 9, 2006.

Also in the October 20 decision, Mr. Riffin's request for a finding that NSR and CSXT require discontinuance authority was denied. The decision explained that there was no indication that either of those carriers began service over the line or that Conrail had provided any service over the line either on their behalf or on its own behalf since the "split date" in 1999.

On October 30, 2006, Mr. Riffin filed a petition for reconsideration of the October 20 decision. He argues that it was error not to require CSXT and NSR to file for discontinuance authority over the line. He claims, again, that because the line is in the NJSAA, NSR and CSXT each have active authority to operate over the line. Mr. Riffin argues that it was improper for the Board to rule on the discontinuance authority issue based on whether CSXT and NSR had provided service over the line since 1999 or whether they had requested that Conrail provide any service on the line on their behalf. Rather, he claims that the issue is whether NSR and CSXT have operating rights for the line, and, if so, they must file for discontinuance authority before the Board can grant the exemption or approve an OFA.

Furthermore, Mr. Riffin asks that the Board in essence extend the time for filing an OFA until 15 days after the Board rules on his petition for reconsideration regarding whether CSXT and NSR hold operating rights on the line that must be extinguished before the abandonment and OFA process may properly go forward. He explains that a determination of whether CSXT and NSR have such operating rights over the line affects the value of the line and raises questions as to whether the line can be subject to an OFA or later sold by a successful offeror. Conrail filed a reply in opposition on November 7, 2006.

Under the circumstances, the due date for filing an OFA will be extended while the Board considers the matters presented by Mr. Riffin. To accommodate this process, the effective date of the abandonment exemption will be tolled until further order of the Board. Once the Board rules on Mr. Riffin's petition for reconsideration, a due date for an OFA and the effective date for the abandonment exemption can be established, as appropriate.

It is ordered:

1. This proceeding is reopened.
2. The OFA due date is extended as discussed above, and the effective date of the abandonment exemption is tolled pending further order of the Board.
3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary