

SERVICE DATE - OCTOBER 20, 1997

SURFACE TRANSPORTATION BOARD<sup>1</sup>

DECISION

Finance Docket No. 32158 (Sub-No. 2)

GATEWAY WESTERN RAILWAY COMPANY  
—CROSSING COMPENSATION—  
TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

Decided: October 16, 1997

This proceeding was instituted by decision served June 22, 1995, in response to a petition by Terminal Railroad Association of St. Louis (TRRA) seeking an expedited prescription of crossing compensation and other terms under 49 U.S.C. 10901(d)(2). The petition is an outgrowth of a decision authorizing Gateway Western Railway Company (GWRR) to cross a rail line belonging to TRRA in connection with the construction of a track (the Q Connection line). Gateway Western Railway Company—Petition Under 49 U.S.C. 10901(d), Finance Docket No. 32158 (Sub-No. 1) (ICC served Nov. 28, 1994).<sup>2</sup>

GWRR replied and simultaneously moved that the proceeding be held in abeyance pending a decision in the related contract and property rights dispute in Gateway Western Railway Company v. Terminal Railroad Association of St. Louis, No. 95-CV-429-PER (S.D. Ill. filed May 23, 1995, Temporary Restraining Order (TRO) issued May 31, 1995, converted to a preliminary injunction on June 12, 1995).<sup>3</sup> According to GWRR, there may be no need for this proceeding if the court determines, as GWRR requested, that an earlier contract governs the rights and duties of the parties. TRRA replied in opposition to the abeyance request but acknowledged that the amount of the crossing compensation payments would be affected if GWRR were to prevail in the pending court proceeding.

Because the last submission from the parties in this proceeding was a letter filed by GWRR on August 15, 1995, and it is not clear whether there has been a decision in the pending court proceeding or whether any negotiations between the parties have narrowed or resolved the issues between them, the parties will be directed, within 30 days after the service date of this decision, to provide an update regarding any further developments and the status of their interests in this proceeding, to enable the Board to assess whether there is a need to continue this proceeding and issue a decision on the merits.

---

<sup>1</sup> The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the ICCTA provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the ICCTA. This decision relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to section 10901(d)(2). Therefore, this decision applies the law in effect prior to the ICCTA, and citations are to the former section of the statute, unless otherwise indicated.

<sup>2</sup> GWRR is now controlled by Kansas City Southern Industries, Inc. (KCSI), a noncarrier holding company. See Kansas City Southern Industries, Inc., KCS Transportation Company, and The Kansas City Southern Railway Company—Control—Gateway Western Railway Company and Gateway Eastern Railway Company, STB Finance Docket No. 33311 (STB served May 1 and Aug. 13, 1997). KCSI is the parent of Kansas City Southern Railway, a Class I carrier.

<sup>3</sup> The preliminary injunction enjoins and restrains TRRA from refusing to allow GWRR to use its Q Connection line.

It is ordered:

1. Within 30 days after the service date of this decision, the parties shall: (a) report to the Board on the status of the court proceeding mentioned above (or any other pertinent court proceeding); (b) report to the Board on the status of any negotiations between the parties; and (c) state whether there is a need for a Board decision on the merits.

2. Should either party file a statement in response to this decision that is not joined in by the other party, that other party may file its reply within 50 days after the service date of this decision.

3. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams  
Secretary