

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34133

S.D. WARREN COMPANY D/B/A SAPPI FINE PAPER NORTH AMERICA–  
ACQUISITION AND OPERATION EXEMPTION–MAINE CENTRAL  
RAILROAD COMPANY AND THE SPRINGFIELD TERMINAL  
RAILWAY COMPANY

Decided: September 25, 2002

On July 3, 2002, S.D. Warren Company d.b.a. Sappi Fine Paper North America (Sappi), a noncarrier, filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Maine Central Railroad Company and the Springfield Terminal Railway Company (collectively, Guilford) certain joint operating rights over a portion of the Guilford main line of railroad between milepost 8.55 and milepost 9.80 in Skowhegan, ME, a distance of approximately 1.25 miles. Notice of the exemption was served and published in the Federal Register on August 1, 2002 (67 FR 49979).

Concurrently with the filing of its notice of exemption, Sappi filed a motion to dismiss the notice on jurisdictional grounds. We have considered the notice and the motion and conclude that the notice should be dismissed and the exemption vacated.

BACKGROUND

Sappi, a manufacturer of pulp and paper, is Guilford's only customer on the line. Guilford's service consists of moving empty and loaded cars daily between its Waterville, ME yard and Sappi's facility in Skowhegan, Somerset County, ME (the Somerset Facility). Pursuant to an agreement between Sappi and Guilford,<sup>1</sup> Sappi will acquire joint operating rights over the line for the sole purpose of performing two distinct operations. First, after Guilford's trains deliver cars inbound to Sappi at a designated location on the line, Sappi will have access to the line to move those cars into its Somerset Facility. Second, Sappi will have access to the line to deliver cars outbound to Guilford for movement to its Waterville yard, where the cars will be incorporated into Guilford's through train service.<sup>2</sup> In

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<sup>1</sup> A copy of the agreement was attached to Sappi's notice of exemption.

<sup>2</sup> Currently, Sappi has an agreement with a third party contractor to conduct these switching  
(continued...)

addition, under the agreement, Sappi will maintain control of the line by means of a derail or similar device, which Sappi could lock to isolate the line from the remainder of Guilford's track.<sup>3</sup>

Sappi states that it seeks these joint operating rights to improve the speed and efficiency with which it moves cars into and out of its Somerset Facility. Petitioner adds that it hopes to decrease the overall dwell and transit times and demurrage charges for its traffic by eliminating the necessity of Guilford having to operate on the line to serve its facility.

Sappi asserts that its operations over the line will consist only of the movement of its own traffic, that the common carrier rights and obligations on the line will remain with Guilford, and that Sappi will not interfere with those rights and obligations. Sappi adds that it does not intend to become or hold itself out as a common carrier, and that it will receive no compensation under the parties' agreement. Sappi asserts that, under 49 U.S.C. 10906, the acquisition of operating rights for switching purposes only, as here, does not require Board approval. For these reasons, Sappi argues that the Board should dismiss the notice.

#### DISCUSSION AND CONCLUSIONS

Our review of the record leads us to conclude that the Board lacks jurisdiction over this transaction. We conclude that Sappi's operations (via a third party contractor) on the line will be in the nature of private carriage – operations beyond the scope of Board jurisdiction.<sup>4</sup> Specifically, Sappi will handle only its own traffic and will not offer to provide for-hire transportation for anyone. Moreover, it is clear from the terms of the parties' agreement that Guilford retains the right and the ability to carry out its common carrier obligations on the line. For these reasons, we will grant the motion to dismiss and vacate the notice of exemption.

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<sup>2</sup>(...continued)

operations. Although Sappi's contractor will conduct the actual switching, Sappi is acquiring the joint operating rights, and Sappi does not intend to transfer those rights to the contractor.

<sup>3</sup> To prevent its operations from interfering with any operations that Guilford may need to perform to carry out its common carrier obligation in connection with the line, Sappi has agreed to remove the blocking device at Guilford's request.

<sup>4</sup> A person is not a rail carrier for purposes of the Interstate Commerce Act, 49 U.S.C. Subtitle IV, and therefore is not subject to the Board's jurisdiction, unless it holds itself out to provide rail service to others. See 49 U.S.C. 10102(5) ("rail carrier" means a person providing common carrier railroad transportation for compensation"); 49 U.S.C. 10501(a) ("the Board has jurisdiction over transportation by rail carrier").

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

It is ordered:

1. The motion to dismiss the notice of exemption is granted.
2. The exemption is vacated.
3. This decision is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams  
Secretary