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SERVICE DATE - DECEMBER 13, 1999

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33797

KEYSTONE RAILROAD, INC. D/B/A LAKE MICHIGAN AND INDIANA RAILROAD
COMPANY—LEASE AND OPERATION EXEMPTION—BETHLEHEM STEEL
CORPORATION

Decided: December 8, 1999

On September 8, 1999, Keystone Railroad, Inc. (Keystone) d/b/a Lake Michigan and Indiana Railroad Company, a Class III rail carrier, filed a verified notice of exemption (notice) under the Board's class exemption procedures at 49 CFR 1150.31 from the requirements of 49 U.S.C. 10901 to lease and operate approximately 66 miles of rail line (line) in the State of Indiana owned by Bethlehem Steel Corporation, a noncarrier. Notice of the exemption was served and published in the Federal Register (64 FR 51573) on September 23, 1999.

On September 29, 1999, the United Transportation Union (UTU) filed a protest, urging the Board to reject the notice or require labor protection under 49 U.S.C. 11326. UTU's protest maintained that, as Keystone appeared to be an existing carrier, it was not appropriate for it to file for an exemption from 49 U.S.C. 10901. Keystone replied on October 4, 1999.

UTU is correct in noting that Keystone is an existing carrier—a fact Keystone included in its verified notice. Based on Keystone's understanding that the line, which is owned by a noncarrier, had been used as exempt switching and/or yard tracks, however, Keystone filed for an exemption to lease and operate the line under 49 U.S.C. 10901. Under those circumstances, use of the exemption at 49 CFR 1150.31 from the requirements of 49 U.S.C. 10901 is appropriate, as section 10901 covers transactions in which an existing carrier seeks to acquire, or operate over, noncarrier property.¹ Because the notice was properly filed, the request to reject the notice will be denied.

No labor protection can be imposed for this transaction under section 11326. That section requires employee protective conditions for transactions under 49 U.S.C. 11324 and 11325.

¹ As noted in footnote 2 of the notice, Keystone alternatively requested that, should the Board determine that the lease and operation was of an existing line, the Board consider the notice as being filed under 49 CFR 1150.41 seeking an exemption from the requirements of 49 U.S.C. 10902.

Because this is a transaction under section 10901, however, the Board has no authority to impose labor protection conditions. See 49 U.S.C. 10901(c).²

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

It is ordered:

1. Upon consideration of the issues raised in the protest, the request to reject the notice or to impose labor protection is denied.

2. This decision is effective on its service date.

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

Vernon A. Williams
Secretary

² Even if the Board had determined that the line included trackage that was not exempt yard or switching trackage and that the transaction was thus governed by section 10902 instead of section 10901, it similarly would have had no authority to impose labor protection because Keystone is a Class III rail carrier. See 49 U.S.C. 10902(c) and (d).