

**SURFACE TRANSPORTATION BOARD ANNOUNCES FAVORABLE APPEALS COURT RULING AFFIRMING NEW RAIL
EMPLOYEE NOTICE REQUIREMENT FOR CERTAIN LINE TRANSACTIONS**

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the United States Court of Appeals for the District of Columbia Circuit has issued a decision affirming in all respects the Board's decision [FOOTNOTE 1: In *Acquisition of Rail Lines Under 49 U.S.C. 10901 and 10902--Advance Notice of Proposed Transactions*, STB Ex Parte No. 562, issued to the public on September 9, 1997, in which Chairman Morgan commented in a separate expression.] establishing a 60-day notice requirement for certain line sales under its exemption procedures. Specifically, the 60-day notice requirement applies to transactions processed by the Board under its exemption authority involving rail line acquisitions (whether by purchase or lease or otherwise): (1) under 49 U.S.C. 10902 by Class II rail carriers; [FOOTNOTE 2: Generally, a rail carrier with annual operating revenues between \$20 million and \$250 million.] and (2) under 49 U.S.C. 10902 by Class III rail carriers [FOOTNOTE 3: Generally, a rail carrier with annual operating revenues less than \$20 million.] or under 49 U.S.C. 10901 by noncarriers, where the lines to be acquired or operated, together with any existing lines of the carrier, would produce annual revenue exceeding \$5 million. The new rule requires a buyer wishing to use the Board's exemption procedures to give notice of its general intentions in hiring a workforce 60 days before consummating the transaction.

The Board decided to adopt the notice requirement to make available more information to rail employees (and their local communities) who may be adversely affected by line sale transactions, and to give them more time to review the information and make the major decisions affecting their lives and livelihoods. In its decision adopting the requirement, the Board noted that its current exemption procedures permit line sales to be processed and consummated expeditiously. The Board explained that, while expedited exemptions have been beneficial in preserving rail service for shippers and communities, and jobs that might otherwise be lost, the additional notice to affected employees and their communities by those invoking the Board's exemption process is warranted and appropriate. The Board also noted that the informational notice requirement should facilitate the smooth implementation of line sale transactions that are in the public interest.

So as not to burden small businesses, the Board limited the notice requirement to transactions in which the acquiring Class III rail carrier or noncarrier will earn annual revenues in excess of \$5 million as a result of the acquisition. The Board reasoned that the \$5 million threshold for acquisitions by Class III rail carriers or noncarriers will exclude most small railroads and small transactions from application of the notice requirement, while it will include the transactions that affect the greatest number of rail employees and the communities in which they live.

The Association of American Railroads, American Short Line Railroad Association, and Regional Railroads of America appealed the Board's decision, challenging the Board's authority to impose the notice requirement and the Board's choice of a \$5 million threshold. The Court found the Board's notice requirement to be within the Board's power. It also found that the Board's choice of the \$5 million threshold "strikes a permissible compromise between those who would have the notice requirement apply to all transactions, and those who would have it apply to none."

The Court's decision was issued on November 17, 1998, in *Association of American Railroads, et al. v. Surface Transportation Board*, No. 97-1624 (D.C. Circuit), and is available on the court's website at www.cadc.uscourts.gov.

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