

SERVICE DATE – MARCH 11, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36377 (Sub-No. 1)

BNSF RAILWAY COMPANY—TRACKAGE RIGHTS EXEMPTION—UNION PACIFIC
RAILROAD COMPANY

Digest:¹ This decision authorizes the expiration of certain Board-approved rights by one carrier to operate over the lines of another carrier, even though such rights typically continue indefinitely.

Decided: March 5, 2020

By petition filed on December 27, 2019, BNSF Railway Company (BNSF) requests that the Board partially revoke the trackage rights exemption granted to it under 49 C.F.R. § 1180.2(d)(7) in Docket No. FD 36377, as necessary to permit that trackage rights arrangement to expire at midnight on December 31, 2020.

As explained by BNSF in its verified notice of exemption in Docket No. FD 36377, BNSF and Union Pacific Railroad Company (UP) entered into an agreement granting BNSF local trackage rights over two rail lines owned by UP between: (1) UP milepost 93.2 at Stockton, Cal., on UP's Oakland Subdivision, and UP milepost 219.4 at Elsey, Cal., on UP's Canyon Subdivision, a distance of 126.2 miles; and (2) UP milepost 219.4 at Elsey and UP milepost 280.7 at Keddie, Cal., on UP's Canyon Subdivision, a distance of 61.3 miles. BNSF Verified Notice of Exemption 2, BNSF Ry.—Trackage Rights Exemption—Union Pac. R.R., FD 36377. BNSF further stated that the trackage rights arrangement is intended to permit BNSF to move empty and loaded ballast trains to and from the ballast pit located at Elsey. (*Id.*) BNSF filed its verified notice of exemption under the Board's class exemption procedures at 49 C.F.R. § 1180.2(d)(7), explaining that, because the trackage rights covered by the notice in Docket No. FD 36377 are local rather than overhead rights, they do not qualify for the Board's class exemption for temporary trackage rights under 49 C.F.R. § 1180.2(d)(8). See BNSF Verified Notice of Exemption 1 n.1, BNSF Ry.—Trackage Rights Exemption—Union Pac. R.R., FD 36377.

In this sub-docket, BNSF has now filed a petition for partial revocation of the exemption as necessary to permit the trackage rights to expire at midnight on December 31, 2020, pursuant to the parties' agreement. (See BNSF Pet. 1-2); see also BNSF Verified Notice of Exemption

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

Ex. B at 2, BNSF Ry.—Trackage Rights Exemption—Union Pac. R.R., FD 36377. BNSF argues that granting this petition will promote the rail transportation policy. BNSF also argues that the revocation would be consistent with the limited scope of the transaction and would not have an adverse effect on shippers. (BNSF Pet. 3.)

DISCUSSION AND CONCLUSIONS

Although BNSF and UP have expressly agreed on the duration of the proposed trackage rights agreement, trackage rights approved under the class exemption at § 1180.2(d)(7) typically remain effective indefinitely, regardless of any contract provisions. Occasionally, however, the Board has partially revoked a trackage rights exemption to allow those rights to expire after a limited time period rather than lasting in perpetuity. See, e.g., New Orleans Pub. Belt R.R.—Trackage Rights Exemption—Ill. Cent. R.R., FD 36198 (Sub-No. 1) (STB served June 20, 2018); BNSF Ry.—Temp. Trackage Rights Exemption—Union Pac. R.R., FD 35963 (Sub-No. 1) (STB served Dec. 17, 2015) (granting a petition to partially revoke a trackage rights exemption involving the same lines at issue in this case).

Granting partial revocation in these circumstances to permit the trackage rights to expire at the end of 2020 would eliminate the need for BNSF to file a second pleading seeking discontinuance when the agreement expires, thereby promoting the rail transportation goals at 49 U.S.C. § 10101(2), (7) and (15). Moreover, partially revoking the exemption to limit the term of the trackage rights would have no adverse impact on shippers because the trackage rights at issue are solely to allow BNSF to move empty and loaded ballast trains to and from the ballast pit in Elsey for use in BNSF's maintenance-of-way projects. (See BNSF Pet. 2.) Therefore, the Board will grant the petition and permit the trackage rights exempted in Docket No. FD 36377 to expire at midnight on December 31, 2020.

To provide the statutorily mandated protection to any employee adversely affected by the discontinuance of trackage rights, the Board will impose the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

This action is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c).

It is ordered:

1. The petition for partial revocation of the trackage rights class exemption is granted.
2. As discussed above, the trackage rights in Docket No. FD 36377 are permitted to expire at midnight on December 31, 2020, subject to the employee protective conditions set forth in Oregon Short Line.
3. Notice of this decision will be published in the Federal Register.

4. This decision is effective on April 10, 2020. Petitions for stay must be filed by March 23, 2020. Petitions for reconsideration must be filed by March 31, 2020.

By the Board, Board Members Begeman, Fuchs, and Oberman.