

SERVICE DATE — JULY 9, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1272X

CENTRAL TEXAS & COLORADO RIVER RAILWAY, LLC—ABANDONMENT
EXEMPTION—IN MCCULLOCH, SAN SABA, MILLS, AND LAMPASAS COUNTIES,
TEX.

Decided: July 8, 2020

Digest:¹ The Board denies an appeal of a decision of the Director of the Office of Proceedings that extended the abeyance of this proceeding.

BACKGROUND

On August 9, 2019, Central Texas & Colorado River Railway, LLC (CTXR), a Class III rail carrier, filed with the Board a petition under 49 U.S.C. § 10502 for exemption from the prior approval requirements of 49 U.S.C. § 10903 to abandon a railroad line covering approximately 67.5 miles of track in McCulloch, San Saba, Mills, and Lampasas Counties, Tex. (the Line), which constitutes CTRX's entire railroad system. Notice of CTRX's petition was served and published in the Federal Register on August 29, 2019 (84 Fed. Reg. 45,618). According to CTRX, the Line was embargoed as of July 25, 2019, due to bridge problems and unsafe track conditions and has become a burden to CTRX and interstate commerce. (CTXR Pet. 2.)

On October 25, 2019, CTRX requested that the Board hold the abandonment proceeding in abeyance for 90 days because it was engaged in negotiations with multiple parties for the sale of the Line. (CTXR Request 1, Oct. 25, 2019.) The request for abeyance was approved on November 5, 2019, and CTRX was ordered to file a status report by January 23, 2020.

On January 23, 2020, CTRX submitted a status report and requested that the Board continue to hold this proceeding in abeyance, subject to subsequent updates, but CTRX did not request a specific period of time for the abeyance. (CTXR Status Report 1, Jan. 23, 2020.) CTRX stated that negotiations concerning the Line were actively progressing and that CTRX was pursuing terms that would allow it to withdraw its abandonment petition. (Id.) CTRX stated that the negotiations are governed by the terms of a non-disclosure agreement that bar it from revealing the entity (or entities) with which it is engaged or the terms that the parties have

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).

exchanged and are developing. (*Id.*) The Brady Line Shipper Group (Shipper Group)² filed two letters opposing any additional abeyance of the proceeding, noting that CTRX did not mention in its status report the embargo of the Line or the substantial harm the embargo was causing members of the Shipper Group. (Shipper Group Reply 1, Jan. 22, 2020; Shipper Group Reply 1, Jan. 24, 2020.) On February 14, 2020, the proceeding was held in abeyance until April 14, 2020, and CTRX was ordered to file a status report by April 14, 2020, describing in detail the progress of its negotiations.

CTRX filed its April 14 status report, stating that it had exchanged an unexecuted letter of intent and other transaction documents with a potential buyer, and that, separately, it was engaged in due diligence with prospective shipper interests to determine whether emerging traffic prospects would warrant withdrawing its abandonment petition. (CTRX Status Report 1, Apr. 14, 2020.) CTRX therefore requested that the Board continue to hold this proceeding in abeyance (again without requesting a specific period of time), “subject to a subsequent status update.” (*Id.*) In a May 4, 2020 letter, the Shipper Group opposed any further abeyance, arguing that CTRX had had ample time to complete a private sale of the Line and that the continued embargo was injuring the Shipper Group by preventing rail service over the Line.

On May 20, 2020, the Director of the Board’s Office of Proceedings (Director) issued an order continuing to hold this proceeding in abeyance (Director Order).³ The Director extended the abeyance period “[b]ecause it appears that CTRX’s negotiations to privately sell the Line are still actively progressing and CTRX is also engaged with prospective shipper interests whose potential traffic might warrant withdrawal of CTRX’s petition.” Director Order, AB 1272X, slip op. at 2. The Director also stated, however, that “in light of the ongoing embargo, the further abeyance will be limited to 60 days from the service date of this decision, after which CTRX will be directed to file a status report describing in specific detail the status of the two options CTRX is pursuing.” *Id.*

On May 21, 2020, the Shipper Group filed an appeal pursuant to 49 C.F.R. § 1011.6(b), arguing that the Director Order reflects both a clear error of judgment and manifest injustice. (Appeal 2.) The Shipper Group argues that the Director Order was issued over its opposition and its members are being “significantly harmed” by the embargo that has been in effect since July 25, 2019. (*Id.* at 1.) The Shipper Group also contends that “[t]he Director overlooked decisions that clearly hold that a continuing embargo of rail service cannot be justified on the ground that an applicant for abandonment is attempting to sell the rail line.” (*Id.* at 2 (citing La.

² The Shipper Group is an association of active users of the rail service provided by CTRX—specifically, The J.C. Smith Co.; P.W. Gillibrand Co. of Texas Inc.; and Jacoby and Jacoby, Inc. (Shipper Group Notice of Intent 2, Sept. 9, 2019.) On September 9, 2019, in response to CTRX’s petition, the Shipper Group and the North Central Railcorp, Inc., a noncarrier, filed formal expressions of intent to file offers of financial assistance. Both entities were deemed to be preliminarily financially responsible. See 49 C.F.R. § 1152.27(c)(1)(ii).

³ The November 5, 2019, February 14, 2020, and May 20, 2020 orders stayed the environmental assessment period.

Railcar, Inc. v. Mo. Pac. R.R., 5 I.C.C. 2d 542, 547 (1989)).) Therefore, the Shipper Group concludes that the Director “wrongfully prolonged [the embargo] . . . without adequate legal support.” (Id.)

CTXR argues on reply that the Shipper Group’s appeal must be denied as it fails to show any error in judgment or manifest injustice in the Director Order. (CTXR Reply 1, June 1, 2020.) CTXR contends that the Shipper Group’s reliance on Louisiana Railcar is misplaced and that this case is instead like Grenada Railway—Abandonment Exemption—in Montgomery, Carroll, Holmes, Yazoo, and Madison Counties, Miss., Docket No. AB 1087 (Sub-No. 1X) et al., where the Board permitted abeyance in an abandonment proceeding involving an embargoed line in order to facilitate efforts to avert abandonment through private line sale negotiations. (CTXR Reply 2-3, June 1, 2020 (citing Grenada Ry.—Aban. Exemption—in Montgomery, Carroll, Holmes, Yazoo, & Madison Ctys., Miss., AB 1087 (Sub-No. 1X) et al. (STB served Feb. 9, 2015) (holding proceeding in abeyance); Grenada Ry.—Aban. Exemption—in Montgomery, Carroll, Holmes, Yazoo, & Madison Ctys., Miss., AB 1087 (Sub-No. 1X) et al. (STB served Feb. 25, 2016) (dismissing proceeding following agreement for sale of line).)

DISCUSSION AND CONCLUSIONS

Under 49 C.F.R. § 1011.6(c)(3), the Chairman has delegated to the Director of the Office of Proceedings the authority to dispose of routine procedural matters. Appeals of those decisions are decided by the Board. 49 C.F.R. §§ 1011.6(b), 1115.1(c). Such appeals “are not favored” and “will be granted only in exceptional circumstances to correct a clear error of judgment or to prevent manifest injustice.” 49 C.F.R. §§ 1011.6(b), 1115.1(c).

Here, the Shipper Group has shown neither a clear error of judgment by the Director nor manifest injustice. The Director granted the request because CTXR’s negotiations to privately sell the Line appeared to be actively progressing and CTXR was also engaged with prospective shipper interests whose potential traffic might warrant withdrawal of CTXR’s petition. This decision comported with the Board’s longstanding preference for privately negotiated solutions. See, e.g., Grenada Ry.—Aban. Exemption—in Montgomery, Carroll, Holmes, Yazoo, & Madison Ctys., Miss., AB 1087 (Sub-No. 1X) et al., slip op. 2 (STB served Feb. 9, 2015) (“The Board favors the private resolution of disputes whenever possible.”) At the same time, the Director reasonably tailored the relief awarded given the circumstances, limiting the abeyance to 60 days “in light of the ongoing embargo” and directing CTXR to file a further (and now imminent) status report “describing in specific detail the status of the two options CTXR is pursuing.” Director Order, AB 1272X, slip op. at 2.

Moreover, Louisiana Railcar does not support the Shipper Group’s appeal. Unlike in Louisiana Railcar, no entity, including the Shipper Group, has contested the reasonableness or lawfulness of the Line’s embargo. The Shipper Group has stated that the continued “embargo will have a serious adverse impact” on its members. (Shipper Group Reply 1, Jan. 22, 2020; see also Shipper Group Reply 1, Jan. 24, 2020; Shipper Group Reply 1, May 4, 2020.) However, the Shipper Group has not filed a formal challenge to the embargo or even described in its present filings how the embargo has impacted its members, such as its members’ need for rail service or their continued requests for rail service. See La. Railcar, 5 I.C.C. 2d at 546. Nor has the Shipper

Group alleged that the cessation of service has become unlawful, that the embargo was unreasonable at the time it was issued, or that the continuation of the embargo is unreasonable.

In these circumstances, the record shows no clear error in judgment or manifest injustice. Therefore, the Shipper Group's appeal of the Director Order will be denied. However, if CTXR requests further abeyance, the Board expects CTXR to comply with the Director Order and provide detailed information regarding its ongoing efforts and progress made during the abeyance period, including, for example, the anticipated completion date for any proposed transaction and potential obstacles to moving forward with any remaining options, before the Board will be prepared to grant further abeyance.

It is ordered:

1. The Shipper Group's appeal of the Director's May 20, 2020 decision is denied.
2. This decision is effective on its service date.

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