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SERVICE DATE – DECEMBER 10, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36460

MICHAEL WILLIAMS—CONTROL EXEMPTION—
S&S SHORTLINE LEASING, LLC

Docket No. FD 36461¹

S&S SHORTLINE LEASING, LLC—ACQUISITION EXEMPTION—CITY OF ELY AND
NEVADA NORTHERN RAILWAY FOUNDATION

Decided: December 10, 2020

On November 13, 2020, S&S Shortline Leasing, LLC (S&S), a class III rail carrier, filed a verified notice of exemption (Acquisition Notice) under 49 C.F.R. § 1150.41 in Docket No. FD 36461 to acquire from the City of Ely (the City) and the Nevada Northern Railway Foundation (the Foundation) approximately 127 miles of rail line extending from milepost 0.0 at or near Cobre in Elko County, Nev., to milepost 127.0 at or near McGill Junction in White Pine County, Nev. (the Line).² On November 13, 2020, Michael Williams (Williams), a noncarrier individual, filed a verified notice of exemption (Control Notice) under 49 C.F.R. § 1180.2(d)(2) in Docket No. FD 36460 to control S&S.

The Control Notice raises several issues that must be addressed before the Board can determine how to proceed. First, the Control Notice states that, after S&S received authorization to operate over the Line and the 0.9-mile segment in 2009, “Williams subsequently purchased the stock of S&S.” (Control Notice 1 n.1.) It thus appears that Williams acquired control of S&S at some point during or after 2009 without first obtaining the requisite Board authorization,

¹ These proceedings are not consolidated. A single decision is being issued for administrative convenience.

² S&S was previously authorized to operate over the Line and an additional 0.9-mile section from milepost 127.0 to milepost 127.9. See S&S Shortline Leasing, LLC—Operation Exemption—City of Ely, Nev., et al., FD 35284 (STB served Aug. 14, 2009). On November 13, 2020, Great Basin and Northern Railroad filed a verified notice of exemption pursuant to 49 C.F.R. § 1150.41 to assume operations over the 0.9-mile line, which is scheduled to become effective on December 13, 2020. See Great Basin & N. R.R.—Change in Operators Exemption—City of Ely, et al., FD 36459 (STB served Nov. 27, 2020).

despite controlling other rail carriers at the time,³ and that Williams is now seeking that authority.⁴ The Control Notice states that “[t]he line did not have shippers at the time of [Williams’] acquisition,” (Control Notice 2), but it is not clear what relevance this has. The statute requires Board authorization for “[a]cquisition of control of a rail carrier by a person that is not a rail carrier but that controls any number of rail carriers.” See 49 U.S.C. § 11323(a)(5).

This is not the first time Williams has apparently acquired a rail carrier without the proper Board authorization. For example, Williams previously acquired the stock of Dakota Southern Railway Company (Dakota Southern) through a holding company without seeking and obtaining Board authorization for over six years. See Williams—Control Exemption—SDR Holding Co., FD 35957, slip op. at 1 (STB served Oct. 14, 2015). In that proceeding, the Board noted that Williams had stated in April 2010, in another docket, that he “expects shortly to file a notice of exemption to acquire the stock of” Dakota Southern—a transaction that had already been consummated without authorization in September 2009—and yet he did not file that verified notice of exemption until September 2015. See id.; Verified Notice of Exemption 3, Apr. 12, 2010, Williams—Control Exemption—St. Maries River R.R., FD 35365.

Furthermore, although Williams is aware of the need for Board authority to control railroads,⁵ the list of the other railroads Williams states that he owns or controls includes three

³ It is unclear whether S&S is the first rail carrier over which Williams acquired control. Because 49 U.S.C. § 11323(a)(5) applies to “[a]cquisition of control of a rail carrier by a person that is not a rail carrier but that *controls* any number of rail carriers,” Williams’ first acquisition of control of a rail carrier did not require Board authorization. See 49 U.S.C. § 11323(a)(5) (emphasis added). However, if Williams’ first acquisition of control included more than one rail carrier, then authorization was required. See 49 U.S.C. § 11323(a)(4) (requiring Board authorization for “[a]cquisition of control of at least 2 rail carriers by a person that is not a rail carrier.”).

⁴ The Control Notice does not acknowledge that Williams is seeking after-the-fact control and does not adequately describe or provide information related to the actual *control* transaction for which authority is apparently sought, as discussed below. Moreover, although the Control Notice describes the transaction as a continuance in control, that does not appear to be the case. A continuance in control typically occurs when “a person already in control of an existing carrier or carriers creates a new noncarrier subsidiary that subsequently achieves carrier status by acquiring a nonconnecting line and the parent then continues in control of the subsidiary.” Rail Consol. Procedures—Continuance in Control of a Nonconnecting Carrier, 2 I.C.C.2d 677, 678 (1986); see also, e.g., Watco Holdings, Inc.—Continuance in Control Exemption—Elwood Joliet & S. R.R., FD 36438 (STB served Oct. 14, 2020) (exemption to continue in control of a noncarrier subsidiary upon the subsidiary’s becoming a rail carrier). Here, by contrast, no entity would become a rail carrier through the transaction. Rather, an existing rail carrier (S&S) seeks to acquire an additional line through the Acquisition Notice in Docket No. FD 36461 and, as described in this decision, Williams apparently seeks control of S&S.

⁵ Williams has obtained Board authorization to control three rail carriers: St. Maries River Railroad, Boot Hill & Western Railway Holding Company, and Dakota Southern. See Williams—Control Exemption—St. Maries River R.R., FD 35365 (STB served Apr. 28, 2010);

railroads for which Williams does not cite control authorization from the Board—BG & CM Railroad (BG & CM), Ozark Valley Railroad (Ozark), and McCloud Railway (McCloud). With respect to McCloud, Williams stated in 2015 that he would “retain counsel to undertake appropriate filings at the Board in connection with acquisition of McCloud that may be triggered by the unabandoned common carrier obligation.” Williams Suppl. 4 n.1, Nov. 3, 2015, Williams—Control Exemption—SDR Holding Co., FD 35957. Williams has not since filed in connection with his acquisition of control of McCloud.

Finally, the Control Notice fails to provide the information required under 49 C.F.R. part 1180. Rather than providing information related to the control transaction, the information provided in the Control Notice focuses on S&S’s acquisition of the Line from the City and the Foundation.⁶ The Control Notice fails to describe the transaction wherein Williams purchased the stock of S&S, including identifying the entity from whom Williams purchased the stock. Further, the sale agreement attached at Exhibit B appears to list Williams, Tammy Williams (Williams’ spouse), and an individual named Avery Beggs on behalf of S&S without explaining their relationship to S&S. (See Control Notice, Ex. B.) In a prior proceeding, Williams stated that he and Tammy Williams owned SDR Holding Company, which acquired control of Dakota Southern. Williams—Control Exemption—SDR Holding Co., FD 35957, slip op. at 1 (STB served Oct. 14, 2015).

Given the issues raised by the Control Notice, Williams will be directed to provide the following:

- Clarification as to whether the control which is being sought is in fact after-the-fact authority for the unauthorized acquisition of stock that occurred during or after 2009, and all information required under 49 C.F.R. part 1180 pertaining to that transaction.
- Clarification as to Avery Beggs’ and Tammy Williams’ relationship to S&S and the other rail carriers owned or controlled by Williams.
- A comprehensive list of all rail carriers owned or controlled by Williams (including rail carriers owned or controlled through holding companies or other entities), including but not limited to S&S, BG & CM, Ozark, and McCloud. For each rail carrier, Williams will be directed to state: (1) the date of his acquisition of control of the rail carrier; (2) the entity from whom he acquired control of the rail carrier; (3) whether he first obtained

Williams—Continuance in Control Exemption—Boot Hill & W. Ry. Holding Co., FD 35925 (STB served June 3, 2015); Williams—Control Exemption—SDR Holding Co., FD 35957 (STB served Dec. 15, 2015).

⁶ For example, a verified notice of exemption under § 1180.2(d)(2) is required to include the proposed time schedule for consummation of the proposed transaction. The Control Notice provides the expected consummation date of S&S’s acquisition. (Control Notice 4.) Similarly, a verified notice under § 1180.2(d)(2) is required to include “a copy of any contract or other written instrument entered into . . . pertaining to the proposed transaction.” 49 C.F.R. § 1180.6(a)(7)(ii). Rather than including any relevant agreement related to Williams’ purchase of the stock of S&S, for example, the Control Notice includes the agreement by which the City and Foundation propose to sell the Line to S&S. (Control Notice 5, Ex. B.)

Board authorization to control the rail carrier; (4) a citation to the Board's authorization, if any; and (5) if no authorization was sought and obtained, an explanation as to why not.⁷

Williams will be directed to file a verified supplement addressing these issues by December 30, 2020. In the meantime, this proceeding and the related Acquisition Notice in Docket No. FD 36461 will be held in abeyance and the effective dates postponed until further order of the Board.

It is ordered:

1. The Control Notice in Docket No. FD 36460 and the Acquisition Notice in Docket No. FD 36461 are held in abeyance and the effective dates of those exemptions are postponed until further order of the Board.
2. Williams is directed to file a verified supplement addressing the information described above by December 30, 2020.
3. This decision is effective on its service date.

By the Board, Allison C. Davis, Director, Office of Proceedings.

⁷ See supra note 3.