

SERVICE DATE – SEPTEMBER 21, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36719

RED RIVER VALLEY & WESTERN RAILROAD COMPANY—ACQUISITION AND
OPERATION EXEMPTION—RAIL LINE OF BNSF RAILWAY COMPANY

[REQUEST FOR WAIVER OF 49 C.F.R. § 1150.42(e)]

Digest:¹ The Board waives a 60-day advance notice requirement and sets the effective date for a notice of exemption for Red River Valley & Western Railroad Company to acquire and operate a 0.4-mile rail line in Casselton, N.D.

Decided: September 21, 2023

On August 23, 2023, the Red River Valley & Western Railroad Company (RRVW), a Class III rail carrier, filed a verified notice of exemption under 49 C.F.R. § 1150.41 to acquire and operate an approximately 0.4-mile rail line extending from milepost 54.55 to milepost 54.95 in Casselton, Cass County, N.D. (the Line).²

According to RRVW, it reached an agreement with BNSF in 2006 for acquisition and operation of the Line. (Verified Notice 4.) RRVW states that the parties' transaction was consummated in 2006 and that RRVW has been operating over the Line since that time.³ (Verified Notice 4.) RRVW states, however, that it recently discovered that it inadvertently neglected to seek acquisition and operation authority for the Line from the Board when it

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 Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² On September 1, 2023, RRVW filed an errata to its verified notice of exemption to note that the Line is approximately 0.4 miles in length, rather than 0.5 miles.

³ RRVW states that, in 1987, it received authority from the agency to acquire the tracks, physical assets, and common carrier obligation for 656 miles of various rail lines from BNSF. (Verified Notice 5); see also Red River Valley & W. R.R.—Acquis. & Operation Exemption—Certain Lines of Burlington N. R.R., FD 31071 (ICC served July 22, 1987). According to RRVW, the Line was not part of that original transaction but provides a connection from the lines acquired in 1987 to one of RRVW's customers, Tharaldson Ethanol. (Verified Notice 6.)

acquired the Line from BNSF.⁴ (*Id.*) RRVW states that it now seeks after-the-fact Board authorization for its prior acquisition and operation of the Line but that it is not seeking to have that authority be effective retroactively. (*Id.* at 4-5.)

Pursuant to 49 C.F.R. § 1150.42(e), if the projected annual revenue of the rail lines to be acquired or operated, together with the acquiring carrier's projected annual revenue, exceeds \$5 million, the applicant must, at least 60 days before the exemption becomes effective, post a notice of the applicant's intent to undertake the proposed transaction at the workplace of the employees on the affected lines, serve a copy of the notice on the national offices of the labor unions with employees on the affected lines, and certify to the Board that it has done so. However, concurrently with the filing of its verified notice, RRVW filed a petition for waiver of those notice requirements.

In its request for waiver, RRVW argues that the labor notice requirements are unnecessary because the proposed transaction would not result in elimination of any RRVW jobs, nor would there be any adverse changes in working conditions, rates of pay, or benefits of RRVW employees. (Pet. for Waiver 5-6.) According to RRVW, its employees have been operating on the Line since 2006 and those operations will remain unchanged. (*Id.* at 5.) Furthermore, RRVW states that, although BNSF's employees working on the Line in 2006 were replaced by RRVW employees, there were no negative impacts to BNSF's employees as those personnel continued to operate on BNSF lines located within the vicinity, and under the same working conditions, rates of pay, and benefits in existence before the transaction. (*Id.*) Accordingly, RRVW asserts that, as a result of the 2006 acquisition, no BNSF jobs were eliminated and there were no adverse changes to the working conditions of BNSF employees. (*Id.*) RRVW further adds that none of its employees working on the Line are represented by a labor organization and argues therefore that no purpose would be served by requiring strict compliance with the advance notice requirement. (*Id.*) No opposition to this waiver request has been filed.

Notice of RRVW's exemption was served and published in the Federal Register on September 8, 2023 (88 Fed. Reg. 62,140). The published notice announced that the Board would establish the effective date of the exemption in a separate decision on the waiver request.

DISCUSSION AND CONCLUSIONS

The purpose of the notice requirements at 49 C.F.R. § 1150.42(e) is to ensure that rail labor unions and employees who would be affected by the transfer of a line are given sufficient notice of the transaction before consummation.

⁴ While the Board does not condone RRVW's failure to seek authority prior to its acquisition of the Line, the Board has permitted parties to obtain after-the-fact licensing authority for a transaction when the failure to seek approval was done without malice and by mistake. See Allied Indus. Dev. Corp.—Pet. for Declaratory Order, FD 35477, slip op. at 6 (STB served Sept. 17, 2015) (citing Gen. Ry.—Exemption for Acquis. of R.R. Line—in Osceola & Dickinson Cntys., Iowa, FD 34867, slip op. at 5 (STB served June 15, 2007)).

Here, however, it does not appear that the purpose behind the requirements would be thwarted if the requested waiver is granted. The record indicates that no employees would be adversely affected by a waiver of the 60-day notice requirements. RRVW is the current operator of the Line and has been since 2006, and RRVW states that there would be no operational changes on the Line as a result of the exemption. Moreover, RRVW asserts that, while BNSF employees were replaced by RRVW employees as a result of the 2006 transaction, there were no negative impacts to BNSF's employees as those employees continued to operate on BNSF lines located within the vicinity, and under the same working conditions, rates of pay, and benefits in existence at that time. Further, no party has objected to the waiver request here.

Because no employees would be adversely affected by the requested waiver of the 60-day notice period, the Board will grant the waiver. Accordingly, RRVW's acquisition and operation exemption, unless stayed, will become effective on September 22, 2023, the effective date under the Board's rules absent the notice requirement. See, e.g., N.C. & Va. R.R., Chesapeake & Albemarle R.R. Div.—Lease Amend. & Operation Exemption Including Interchange Commitment—Norfolk S. Ry., FD 36252, slip op. at 2 n.3, 3 (STB served Dec. 14, 2018).

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

It is ordered:

1. RRVW's request for waiver is granted.
2. RRVW's exemption will be effective on September 22, 2023, unless stayed.
3. This decision is effective on its date of service.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.