

SERVICE DATE – APRIL 15, 2024

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35729 (Sub-No. 1)

ANN ARBOR RAILROAD, INC.
— LEASE RENEWAL AND OPERATION EXEMPTION WITH INTERCHANGE
COMMITMENT—
NORFOLK SOUTHERN RAILWAY COMPANY

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

Digest:¹ This decision waives the 60-day advance notice requirement with respect to Ann Arbor Railroad, Inc.'s, exemption to enter into an amended lease agreement for approximately 3.69 miles of rail line in Toledo, Ohio, and allows the exemption to take effect on April 19, 2024.

Decided: April 15, 2024

On March 20, 2024, Ann Arbor Railroad, Inc. (AARR), a Class III rail carrier, filed a verified notice of exemption under 49 C.F.R. § 1150.43 to renew its lease with Norfolk Southern Railway Company (NSR) of approximately 3.69 miles of rail line in Toledo, Ohio. The rail line consists of the following segments: (1) between milepost CS 1.26 and milepost CS 2.65 in Toledo, Ohio, and (2) between milepost GY 85.40 and GY 87.70 in Toledo (collectively, the Line).

AARR states that it has been the leasehold operator of the NSR-owned Line since 2013. (Verified Notice 2); see also Ann Arbor R.R.—Lease Exemption—Norfolk S. Ry., FD 35729 (STB served Jul. 12, 2013). Further, in its verified notice, AARR certifies that its revenues currently exceed \$5 million. (Verified Notice 4.) Accordingly, unless waived, 49 C.F.R. § 1150.42(e) would require AARR to post a notice of its intent to undertake the proposed transaction setting forth certain information 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. The regulation would also require AARR to fulfill the notice requirements at least 60 days before the exemption becomes effective. However, concurrently with the filing of its verified notice, AARR simultaneously petitioned for a waiver of those notice requirements. (See Verified Notice 4; Pet. 1.)

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).

In its request for waiver, AARR argues that the labor notice requirements are unnecessary because the proposed transaction would result in no changes for any employees working on the Line. (Pet. 3.) According to AARR, it has been the operator over the Line since at least 2013, and there will be no changes for any employees working on the Line resulting from this transaction. (Id. at 3.) Furthermore, AARR states that there have been no NSR-staffed operations, track maintenance, or dispatching on the Lines since 2013, and therefore NSR has no employees who will be affected by this transaction. (Id.) Thus, AARR states, a waiver would be reasonable and consistent with Board precedent. (Id.) No opposition to this waiver request has been filed.

Notice of AARR's exemption was served and published in the Federal Register on April 5, 2024 (89 Fed. Reg. 24,085). 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.

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. AARR is the current operator of the Line and has been since 2013, and AARR states that there would be no changes for any AARR employees working on the Line as a result of the proposed transaction. Moreover, AARR indicates that NSR has no employees who will be affected by the transaction.

Because no employees would be adversely affected by the requested waiver of the 60-day notice period, the Board will grant the waiver. AARR's acquisition and operation exemption will become effective on April 19, 2024, the day the exemption otherwise would take effect absent the notice requirement.

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

It is ordered:

1. AARR's request for waiver is granted.
2. AARR's exemption will be effective on April 19, 2024.
3. This decision is effective on its date of service.

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