

SERVICE DATE – MAY 24, 2024

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1339X

WALKERSVILLE SOUTHERN RAILROAD, INC.—DISCONTINUANCE OF SERVICE
EXEMPTION—IN FREDERICK COUNTY, MD

Decided: May 24, 2024

On March 18, 2024, Walkersville Southern Railroad, Inc. (WSRR) filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments and Discontinuances of Service to discontinue service over an approximately 2.21-mile rail line known as the Frederick Secondary Track (the Line). The Line extends between milepost 65.17, valuation station 3442+61.4, and milepost 67.38, valuation station 3560+00, north of the City of Frederick, in Frederick County, Md. On the same day, Frederick County, Md. (the County), filed a request for issuance of a notice of interim trail use or abandonment (NITU) for the Line under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d). Also on March 18, 2024, the Maryland Transit Administration (MTA) filed a reply stating that it consents to the County's request for interim trail use. While the Board has jurisdiction and authority over WSRR's discontinuance of service for the reasons discussed below, the County's NITU request will be denied because the Line was previously abandoned and therefore the Board cannot issue a NITU for it.

According to WSRR, the MTA acquired the Line from the Penn Central Corporation (Penn Central) in 1982. (WSRR Verified Notice 1.) WSRR states that prior to that acquisition the Final System Plan¹ identified the Line as being the subject of an interim application for abandonment under Section 304(d) of the 3R Act. Although there is no record of consummation of the abandonment through notice to State and local governments, as provided under § 304(b) of the 3R Act, the Board's predecessor, the Interstate Commerce Commission, previously found that a rail line that encompasses the Line was abandoned. Walkersville S. R.R.—Operation Exemption—Line Owned by the State of Md., FD 32329, slip op. at 1 n.1 (ICC served Sept. 30, 1993) (finding that approximately 4.8 miles of rail line owned by the State of Maryland,

¹ In response to the bankruptcies of the Penn Central and several other northeastern railroads, Congress enacted the Regional Rail Reorganization Act of 1973 (3R Act), Pub. L. No. 93-236, 87 Stat. 985 (codified at 45 U.S.C. §§ 701-719). The 3R Act created the Consolidated Rail Corporation (Conrail) and established the United States Railway Association (USRA) to examine the bankrupt railroads' properties and identify those lines that would be retained in active service and consequently conveyed to Conrail. USRA's plan, known as the Final System Plan, was submitted to Congress on July 26, 1975, and implemented in the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210, 90 Stat. 31 (1976).

extending between valuation station 3316 + 02 at Walkersville and valuation station 3560 + 00 north of Frederick, Md., was abandoned). Subsequent to the Line's abandonment, WSRR received authority to operate over it. See id. at 1.

When authority to abandon a rail line is consummated, the line is removed from the national rail system and the Board's jurisdiction over the line terminates. See Hayfield N. R.R. v. Chi. & N.W. Transp. Co., 467 U.S. 622, 633-34 (1984) (consummation of abandonment terminates the [agency's] jurisdiction); Baros v. Tex. Mexican Ry., 400 F.3d 228, 234 (5th Cir. 2005) ("Once a rail carrier abandons a line, the line is no longer part of the national transportation system, and the [Board's] jurisdiction terminates.") (internal citation omitted). If a party that does not own the underlying right-of-way subsequently is authorized to operate over an abandoned line, the transportation service becomes subject to the Board's jurisdiction, but the underlying right-of-way does not return to the Board's jurisdiction. See Wis. Cent. Ltd. v. STB, 112 F.3d 881, 889-890 (7th Cir. 1997), pet. for partial reopening granted sub nom. Wis. & Mich. Ry.—Discontinuance of Serv. Exemption—in Ashland & Iron Cntys., Wis. & Gogebic Cnty., Mich., AB 440X (STB served Oct. 22, 1997); Iowa Traction Ry.—Discontinuance of Serv. Exemption—in Cerro Gordo Cnty., Iowa, AB 1269 (Sub-No. 1X), slip op. at 3 (STB served Apr. 6, 2020). Where the Board does not have jurisdiction over a rail line itself, it cannot issue a NITU under the Trails Act for that line. See, e.g., Iowa Traction, AB 1269 (Sub-No. 1X), slip op. at 3-5 (finding no jurisdiction to authorize interim trail use/rail banking over an abandoned line); Wis. & Mich. Ry., AB 440X, slip op. at 2-3 (same).

Because the Line has been abandoned and under the precedents discussed above, the Line remains outside the Board's jurisdiction despite WSRR's post-abandonment service over it. Because the Line itself remains outside the Board's jurisdiction, the Board cannot issue the NITU requested by the County, and the request therefore will be denied.

It is ordered:

1. The County's NITU request is denied.
2. This decision is effective on its service date.

By the Board, Mai T. Dinh, Director, Office of Proceedings.