

SERVICE DATE – JANUARY 6, 2017

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 34533 (Sub-No. 1)

SOUTHWESTERN RAILROAD, INC.—AMENDED LEASE AND OPERATION
EXEMPTION—BNSF RAILWAY COMPANY

Decided: January 5, 2017

On July 29, 2016, Southwestern Railroad, Inc. (SWRR), a Class III rail carrier, filed a verified notice of exemption under 49 C.F.R. § 1150.41 from the prior approval requirements of 49 U.S.C. § 10902 to continue to lease and operate approximately 227.6 miles of rail line, located in New Mexico, from BNSF Railway Company (BNSF).¹ Through this transaction, SWRR and BNSF seek to implement an amendment of the original lease they entered into in 2004. See Sw. R.R.—Lease & Operation Exemption—Burlington N. & Santa Fe Ry., FD 34533 (STB served Oct. 22, 2004). The amendment would change the termination date of the lease from December 31, 2023, to January 17, 2017. Notice of the exemption concerning the current transaction was served and published in the Federal Register on August 12, 2016 (81 Fed. Reg. 53,535), and the exemption became effective on August 28, 2016.

In August 2016, two SWRR employees filed letters asking that the Board impose the employee protective conditions in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho (Oregon Short Line), 360 I.C.C. 91 (1979). These requests were denied in Southwestern Railroad—Amended Lease & Operation Exemption—BNSF Railway, FD 34533 (Sub-No. 1) (STB served Aug. 26, 2016).

On October 3, 2016, and November 18, 2016, two additional employees filed letters also asking that the Board impose the Oregon Short Line protective conditions.² These two requests will be denied. As explained in the August 26 decision, the Oregon Short Line conditions cannot be imposed on a lease transaction of a Class III rail carrier (such as SWRR) under 49 U.S.C.

¹ The rail line (the Line) consists of: (1) the Carlsbad Subdivision between milepost 0.5 at Clovis and milepost 183.0 at Carlsbad; (2) the Carlsbad Yard; (3) the Carlsbad Industrial Spur between milepost 0.0 at Carlsbad and milepost 20.0 near Carlsbad; and (4) the Loving Industrial Spur between milepost 0.0 at Carlsbad and milepost 20.0 at Loving.

² The October 3 requestor had actually submitted his letter earlier, but only perfected his request by submitting a certificate of service on October 3. On November 10, 2016, that same employee submitted a further filing requesting that the Board consider his seniority should SWRR discontinue the service it provides under the lease and BNSF begin operations.

§ 10902, the statute SWRR has invoked in this case. See § 10902(d); Neb. Cent. R.R.—Lease & Operation Exemption—Lines of Union Pac. R.R., FD 32879 (STB served May 7, 1996). As noted in the August 26 decision, the case cited by the employees³ does not provide a basis for imposing employee protective conditions here because it is a different kind of case under a different statute. Employee protective conditions would be imposed, however, if SWRR were to obtain authority to discontinue service at some point in the future. See 49 U.S.C. § 10903(b)(2).

It is ordered:

1. The October 3 and November 18 requests to impose employee protective conditions on this transaction are denied.
2. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

³ Yellowstone Valley R.R.—Discontinuance of Lease & Trackage Rights Operations Exemption—in Richland, Sheridan, Roosevelt, & Daniels Ctys., Mont., & McKenzie Cty., N.D., AB 991 (Sub-No. 1X) (STB served May 10, 2013).