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SERVICE DATE - LATE RELEASE JANUARY 8, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33990

C & C RAILROAD, INC. – OPERATION EXEMPTION –
CENTERPOINT PROPERTIES, L.L.C.

Decided: January 8, 2001

This decision denies a petition to stay the effectiveness of the exemption in this proceeding.

BACKGROUND

By notice filed on January 2, 2001, C & C Railroad, Inc. (C&C), a noncarrier, invoked the class exemption of 49 CFR 1150.31 et seq. to operate eight rail lines owned by Centerpoint Properties, L.L.C., and leased to The Custom Companies, Inc. (previously Custom Cartage, Inc.). The lines total about 1.71 miles and they connect with track located in the Union Pacific Global Two Intermodal Yard, near Union Pacific Milepost 3.0. The lines are located in an office, warehouse, and dock facility at 317 West Lake Street in Northlake, IL.

By petition filed on January 8, 2001, Joseph C. Szabo, on behalf of the United Transportation Union-Illinois Legislative Board (UTU-IL), requests that the Board stay operation of the exemption pending the filing and disposition of a petition to reject or to revoke it.

DISCUSSION AND CONCLUSION

The standards governing disposition of a petition for stay are: (1) whether petitioner is likely to prevail on the merits of a request for rejection or revocation; (2) whether petitioner will be irreparably harmed in the absence of a stay; (3) whether issuance of a stay would substantially harm other parties; and (4) whether issuance of a stay would be in the public interest. Washington Metropolitan Area Transit Comm. v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977); and Virginia Petroleum Jobbers Association v. FPC, 259 F.2d 921 (D.C. Cir. 1958). The party seeking a stay carries the burden of persuasion on all of the elements required for stay. Canal Authority of Fla. v. Callaway, 489 F.2d 567, 573 (5th Cir. 1974).

Under this standard, UTU-IL's request for stay must be denied because it has not shown that it would be irreparably harmed absent issuance of a stay and it has not shown that it is likely to prevail on the merits of a petition for rejection or revocation of the exemption.

According to UTU-IL, C&C's operation over the track with its own employees would result in the displacement of, or lack of work for, employees of the Union Pacific Railroad Company (UP). UTU-IL does not demonstrate, or even claim, that UP employees are currently working on the line. Thus, permitting the exemption to become effective would disadvantage no one. Moreover, if UTU-IL is correct that the Board lacks jurisdiction, then C&C may conduct operations in lieu of UP in any event, and granting UTU-IL the relief it seeks would do nothing to prevent the harm it asserts will occur.

Nor is there any merit to UTU-IL's argument that C&C's commencement of operations would cause UP employees to lose work because C&C would be able to operate beyond its own tracks and would displace union labor at other locations. This exemption would not give C&C the right to operate beyond its own tracks.

UTU-IL also argues that it is likely to prevail on the merits of its argument that the Board lacks jurisdiction over the trackage because it is exempt side track under 49 U.S.C. 10906. The issue of whether trackage is exempt under 49 U.S.C. 10906 is a fact-bound issue focusing on many factors. See Battaglia Distributing Co. Inc. v. Burlington Northern, 2 S.T.B. 323 (1977). Here, UTU-IL has not provided sufficient evidence of the nature and character of C&C's operation for the Board to conclude that UTU-IL is likely to be able to show that the track is exempt under section 10906. This issue is best reserved for disposition in connection with consideration of a petition to revoke the exemption, where a more complete record may be analyzed.

Nor has UTU-IL shown that it is likely to prevail on the merits of any environmental issues. Board practice in this situation is generally to allow exemptions to take effect and to revoke or to condition them later to comply with environmental requirements, not to stay exemptions pending the analysis. UTU-IL has not shown that any different treatment is warranted here.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. UTU-IL's petition for stay is denied.

2. This decision is effective on its date of service.

By the Board, Linda J. Morgan, Chairman.

Vernon A. Williams
Secretary