

SERVICE DATE – JUNE 7, 2018

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36179

LAKE STATE RAILWAY COMPANY—LEASE EXEMPTION—
LINE OF GRAND TRUNK WESTERN RAILROAD COMPANY

Digest:¹ This decision denies a petition to stay the effectiveness of Lake State Railway Company's notice of exemption to lease from Grand Trunk Western Railroad Company and to operate a line of railroad in Port Huron, Mich.

Decided: June 6, 2018

BACKGROUND

On May 10, 2018, Lake State Railway Company (LSRC) filed a verified notice of exemption under 49 C.F.R. § 1150.41 to lease from Grand Trunk Western Railroad Company (GTW), and to operate approximately 3.9 miles of rail line in Port Huron, Mich. On May 11, 2018, the Brotherhood of Locomotive Engineers and Trainmen, a Division of the Rail Conference of the International Brotherhood of Teamsters (BLET), filed a petition to stay the effectiveness of the notice of exemption. According to BLET, LSRC has not met the requirements for use of the class exemption process because LSRC fails to show proof of annual revenues in excess of \$5 million. BLET further states that the proposed transaction/lease will result in the elimination of the "L-524 'HR' assignment,"² which will negatively impact the public interest by virtue of using "less qualified," non-union employees, instead of highly qualified GTW employees. (LSRC Pet. at 4-5.)

On May 31, 2018, LSRC filed a response to BLET's petition to stay, arguing that BLET failed to address the relevant stay criteria or demonstrate that LSRC's invocation of the class exemption at 49 C.F.R. § 1150.41 is improper. LSRC confirms that its revenues do in fact

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. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² On June 4, 2018, BLET filed an addendum to its petition to stay, alleging an apparent confusion between LSRC's use of the term "PH Track" in its notice of exemption and the term "HR Track" in "current timetable instructions." LSRC filed a letter in response to BLET's addendum on June 4, 2018, and, on June 5, 2018, BLET filed a second addendum in response to LSRC's letter.

exceed the \$5 million threshold and that it has met the notice requirements for those carriers whose annual revenues exceed that threshold. Finally, LSRC rejects BLET's assertion that LSRC's non-union employees are less skilled, qualified, or safe because they are not members of BLET's union, stating that LSRC is committed to the operation of a safe, professional railroad.

Notice of the exemption was served and published in the Federal Register on May 25, 2018 (83 Fed. Reg. 24,384). The exemption is scheduled to become effective on June 11, 2018.

DISCUSSION AND CONCLUSIONS

The standards governing the disposition of a petition for stay are: (1) whether petitioner is likely to prevail on the merits; (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. Wash. Metro. Area Transit Comm. v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977); Va. Petroleum Jobbers Ass'n 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 the stay. Canal Auth. of Fla. v. Callaway, 489 F.2d 567, 573 (5th Cir. 1974). The Board typically does not grant a stay unless it is necessary to prevent irreparable harm. See, e.g., Eighteen Thirty Group, LLC—Acquis. Exemption—in Allegany Cty., Md., FD 35438 et al. (STB served Nov. 17, 2010).

BLET has failed to demonstrate that it meets the elements for a stay, including that it will be irreparably harmed if the notice goes into effect under the circumstances present here. BLET merely suggests that the transaction would have a negative impact on the public interest for the sole reason that LSRC would employ non-union labor, and it does not address the other criteria for a stay in its petition.³ It should also be noted that, although not specifically requested by BLET, labor protective conditions cannot be imposed on a lease transaction of a Class III rail carrier (such as LSRC) under 49 U.S.C. § 10902(d). See also Neb. Cent. R.R.—Lease & Operation Exemption—Lines of Union Pac. R.R., FD 32879 (STB served May 7, 1996). As BLET has not shown that the criteria for a stay are met here, the Board will permit the notice to become effective.

³ Despite BLET's claim, there is no requirement that a carrier must show proof of annual revenues in excess of \$5 million to obtain authority for acquisition or operation of a rail line. Rather, under 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 line, and serve a copy of the notice on the national offices of the labor unions with employees on the affected line. Here, LSRC certified to the Board that it complied with 49 C.F.R. § 1150.42(e) and filed a copy of its 60-day advance notice with the Board on April 12, 2018.

It is ordered:

1. BLET's petition to stay is denied.
2. This decision is effective on its date of service.

By the Board, Board Members Begeman and Miller.