

SERVICE DATE – APRIL 5, 2011

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35466 (Sub-No. 1)

BNSF RAILWAY COMPANY
–TEMPORARY TRACKAGE RIGHTS EXEMPTION–
UNION PACIFIC RAILROAD COMPANY

Decided: March 30, 2011

Digest:¹ This decision grants partial revocation of a Board-approved exemption to permit rights granted by one railroad to another railroad to operate over certain of its lines to expire at midnight on December 10, 2011.

By petition filed on February 8, 2011, BNSF Railway Company (BNSF) requests that the Board partially revoke the class exemption to permit the trackage rights arrangement exempted in Docket No. FD 35466² to expire at midnight on December 10, 2011.

BNSF states that the trackage rights arrangement exempted in Docket No. FD 35466 is necessary to permit BNSF to move empty and loaded ballast trains to and from the ballast pit at Elsey, Cal., which is adjacent to the UP rail line, for use in the maintenance of BNSF's tracks. But BNSF is only seeking, and UP is only willing to grant, temporary operating rights over UP's trackage until midnight on December 10, 2011.

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 In that docket, on February 8, 2011, BNSF filed a verified notice of exemption under the Board's class exemption procedures at 49 C.F.R. § 1180.2(d)(7). The notice covered the agreement by Union Pacific Railroad Company (UP) to grant local trackage rights to BNSF over UP's lines extending between: (1) UP milepost 93.2 at Stockton, Cal., on UP's Oakland Subdivision, and UP milepost 219.4 at Elsey, Cal., on UP's Canyon Subdivision, a distance of approximately 126.2 miles; and (2) UP milepost 219.4 at Elsey, Cal., and UP milepost 280.7 at Keddie, Cal., on UP's Canyon Subdivision, a distance of 61.3 miles. BNSF states that the trackage rights are only temporary rights, but, because they are "local" rather than "overhead" rights, they do not qualify for the Board's class exemption for temporary trackage rights at 49 C.F.R. § 1180.2(d)(8). See BNSF Ry.–Temporary Trackage Rights Exemption–Union Pac. R.R., FD 35466 (STB served Feb. 24, 2011).

DISCUSSION AND CONCLUSION

Although BNSF and UP have expressly agreed on the duration of the proposed temporary trackage rights arrangement, trackage rights approved under the class exemption at 49 C.F.R. § 1180.2(d)(7) typically remain effective indefinitely, regardless of any contract provisions. Occasionally, trackage rights exemptions have been granted for a limited time period rather than in perpetuity. See Union Pac. R.R.—Trackage Rights Exemption—The Burlington N. and Santa Fe Ry., FD 34242 (Sub-No. 1) (STB served Oct. 7, 2002).

Under 49 U.S.C. § 10502, the Board may exempt a person, class of persons, or a transaction or service, in whole or in part, when it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either the transaction or service is of limited scope, or regulation is not necessary to protect shippers from the abuse of market power.

BNSF's temporary trackage rights already have been authorized under the class exemption at 49 C.F.R. § 1180.2(d)(7). See R.R. Consolidation Procedures, 1 I.C.C.2d 270 (1985). Granting partial revocation in these circumstances will promote the rail transportation policy by eliminating the need to file a second pleading seeking discontinuance when the arrangement expires, thereby promoting rail transportation policy goals at 49 U.S.C. § 10101(2), (4), (5), (7), and (15). Moreover, limiting the term of the trackage rights is consistent with the limited scope of the transaction previously exempted and will have no adverse impact on shippers on the line because the trackage rights that are the subject of the exemption are solely for the movement of empty and loaded ballast trains for use in the maintenance of BNSF's tracks. Therefore, we will grant the petition and permit the trackage rights exempted in Docket No. FD 35466 to expire at midnight on December 10, 2011.

In order to provide the statutorily mandated protection to any employee adversely affected by the discontinuance of trackage rights, we will impose the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

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

It is ordered:

1. The petition for partial revocation is granted.
2. Under 49 U.S.C. § 10502, the trackage rights described in Docket No. FD 35466 are exempted, as discussed above, to permit the trackage rights to expire at midnight on December 10, 2011, subject to the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).
3. Notice will be published in the Federal Register on April 5, 2011.

4. This decision is effective on May 5, 2011. Petitions to stay must be filed by April 15, 2011. Petitions for reconsideration must be filed by April 25, 2011.

By the Board, Chairman Elliott and Commissioner Mulvey.