

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1270

PORT OF BENTON, WASH.—ADVERSE DISCONTINUANCE OF RAIL SERVICE—
TRI-CITY RAILROAD COMPANY, LLC

Digest:¹ This decision waives the posting requirements set forth at 49 C.F.R. § 1152.20(a)(3) that normally must be satisfied when filing discontinuance and abandonment applications, but would be unnecessary, difficult, or impossible for the Port of Benton, Wash., to comply with should it file an application for adverse discontinuance.

Decided: February 21, 2019

On August 28, 2018, the Port of Benton, Wash. (the Port), filed a petition requesting waiver of certain Board regulations and exemption from related statutory provisions regarding its planned filing of a third-party, or “adverse,” discontinuance application. The Port stated that it intends to file an application for adverse discontinuance authority to terminate the operating authority held by Tri-City Railroad Company, LLC (Tri-City), over a rail line owned by the Port in Richland, Wash. In a decision served on October 31, 2018, the Board granted in part the Port’s waiver and exemption petition.

On February 6, 2019, the Port filed an emergency petition for an additional waiver of 49 C.F.R. § 1152.20(a)(3), which requires an applicant to post a copy of its notice of intent at each agency station and terminal on the line proposed to be abandoned or discontinued.² According to the Port, Tri-City informed the Port that any attempt to post station notices would violate the lease agreement between Tri-City and the Port, and that Tri-City did not give the Port permission to enter the leased property for the purpose of posting the notices. As such, the Port

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

² The Port does not specifically seek an exemption from the corresponding statutory requirement at 49 U.S.C. § 10903(a)(3)(B). However, given the Port’s requested waiver of the applicable regulation, the Board assumes the Port also intended to seek an exemption from the corresponding statutory provision.

states that it fears that Tri-City will remove the notices it has already posted and therefore now seeks a waiver of this requirement. On February 21, 2019, Tri-City filed a reply indicating that it does not oppose the Port's petition.

The Port's request for a waiver of § 1152.20(a)(3) is reasonable, and the Board will grant this request. See Town of N. Judson, Ind.—Adverse Discontinuance of Serv.—In LaPorte, Porter, & Starke Ctys., Ind., AB 1232, slip op. at 5 (STB served July 27, 2015) (granting a waiver of 49 C.F.R. § 1152.20(a)(3) due to the likelihood that the railroad would not permit the petitioner on the property to post the required notices); see also, Bos. & Me. Corp.—Adverse Discontinuance of Operating Auth.—Milford-Bennington R.R., AB 1256, slip op. at 5 (STB served June 23, 2017) (noting that “the posting requirements were designed for carriers proposing to voluntarily discontinue service over their own lines”). Similarly, the Board finds that application of 49 U.S.C. § 10903(a)(3)(B) to this transaction is not necessary to carry out the national rail transportation policy of 49 U.S.C. § 10101, or to protect shippers from an abuse of market power; therefore, the Board will grant an exemption from 49 U.S.C. § 10903(a)(3)(B). See 49 U.S.C. § 10502(a).

It is ordered:

1. The Port's emergency petition for waiver of 49 C.F.R. § 1152.20(a)(3) is granted as discussed above.
2. This transaction is exempted from 49 U.S.C. § 10903(a)(3)(B).
3. This decision is effective on the date of service.

By the Board, Board Members Begeman, Fuchs, and Oberman.