

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35970

TOLEDO, LAKE ERIE & WESTERN RAILWAY AND MUSEUM, INC.—  
OPERATION EXEMPTION

Decided: March 23, 2018

On October 23, 2015, Toledo, Lake Erie & Western Railway And Museum, Inc. (Toledo), filed a verified notice of exemption under 49 C.F.R. § 1150.31 to operate a 10-mile rail line between a point of connection with Norfolk Southern Railway Company's (NSR) trackage at milepost 15 in Waterville, Ohio, and the end of the line at milepost 25 in Grand Rapids, Ohio (the Line). Toledo stated that Midwest Rail, LLC d/b/a Toledo, Lake Erie and Western Railway (TLEW) had ceased providing service and that Toledo sought to operate as a common carrier over the Line.<sup>1</sup>

By decision served on November 19, 2015, the Board held the proceeding in abeyance and directed Toledo to file supplemental information. That decision explained that NSR and TLEW had previously obtained discontinuance authority for a segment between milepost TS 13.2 near Maumee, Ohio, and milepost TS 15 at Waterville (Maumee Segment) in Norfolk Southern Railway—Discontinuance of Service Exemption—in Lucas County, Ohio, AB 290 (Sub-No. 377X) et al. (STB served June 1, 2015).<sup>2</sup> The Maumee Segment, however, appeared to be the Line's only connection to the interstate rail network.<sup>3</sup> Therefore, the Board requested information regarding how Toledo would interchange traffic or reach the interstate rail network to provide common carrier service and invited NSR to comment.

On December 3, 2015, NSR submitted its comment, also expressing concern that the Maumee Segment was the Line's only connection to the interstate rail network. NSR noted that it had no plans to reactivate the Maumee Segment and that no agreements had been reached that would allow Toledo to operate over that segment for interchange of traffic. NSR accordingly stated that it would be inappropriate to permit Toledo's exemption to take effect at that time.

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<sup>1</sup> Toledo, which owns the Line as a noncarrier, stated that service had been provided under a lease by TLEW, authorized by the Board in Midwest Rail—Lease & Operation Exemption—Toledo, Lake Erie & Western Railway & Museum, Inc., FD 35555 (STB served Oct. 14, 2011).

<sup>2</sup> NSR's and TLEW's discontinuance exemptions became effective on July 1, 2015.

<sup>3</sup> See Midwest Rail—Lease & Operation Exemption—Norfolk S. Ry., FD 35634, slip op. at 2 (STB served June 29, 2012).

On December 7, 2015, Toledo filed a request to continue to hold the proceeding in abeyance, stating that it was attempting to contact NSR officials to establish commercial arrangements for the interchange of traffic but had been unable to do so. Toledo indicated it hoped to have a resolution “within the next few weeks.” By decision served on December 23, 2015, the Board granted Toledo’s request.

The case has remained in abeyance since that time. In an effort to update the Board on the progress of matters in this proceeding, Toledo will be directed to file a status update no later than April 6, 2018. Toledo shall inform the Board whether it plans to pursue the transaction reflected in its notice of exemption, and if so, indicate the date it intends to file its supplemental information, or whether the Board should dismiss this proceeding.

It is ordered:

1. Toledo is directed to file an update as discussed in this decision by April 6, 2018.
2. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.