

FILED
JUN 30 2004
SURFACE
TRANSPORTATION BOARD
LOUIS E. GITOMER
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June 30, 2004

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Suite 700
Washington, DC 20423

211470

RE: Finance Docket No. 34508, *Central Railroad Company of Indianapolis--
Lease and Operation Exemption--CSX Transportation, Inc.*

Dear Secretary Williams:

Enclosed for filing are the original and ten copies of a Petition for Waiver of 49 CFR § 1150.42(e), a check for the \$400 filing fee, and three diskettes with the file Petition.doc. Please time and date stamp the extra copy of this letter and the Petition and return them with our messenger.

If you have any questions, please contact me.

Sincerely yours,

Louis E. Gitomer
Attorney for Central Railroad Company of
Indianapolis

Enclosures

cc: CSX Transportation, Inc.
Norfolk Southern Railway Company
American Train Dispatchers

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Office of Proceedings
JUN 30 2004
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Public Record

FEE RECEIVED

JUN 30 2004

TRANSPORTATION BOARD

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Office of Proceedings

JUN 30 2004

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Public Record

BEFORE THE

SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34508



CENTRAL RAILROAD COMPANY OF INDIANAPOLIS—LEASE AND OPERATION
EXEMPTION—CSX TRANSPORTATION, INC.

PETITION FOR WAIVER OF 49 C.F.R. § 1150.42(e)

211470

EXPEDITED HANDLING REQUESTED

FILED

JUN 30 2004

SURFACE
TRANSPORTATION BOARD

Gary A. Laakso, Esq.
Vice President Regulatory Counsel
Central Railroad Company of Indianapolis
5300 Broken Sound Boulevard N.W.
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(561) 994-6015

Louis E. Gitomer, Esq.
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(312) 252-1503

FEE RECEIVED

JUN 30 2004

SURFACE
TRANSPORTATION BOARD

Attorneys for: Central Railroad Company of
Indianapolis

Dated: June 30, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34508



CENTRAL RAILROAD COMPANY OF INDIANAPOLIS—LEASE AND OPERATION
EXEMPTION—CSX TRANSPORTATION, INC.

PETITION FOR WAIVER OF 49 C.F.R. § 1150.42(e)

The Central Railroad Company of Indianapolis, Chicago, Ft. Wayne & Eastern Railroad Division (“CFER”), a Class III carrier, files this Petition for Waiver of the requirements of 49 C.F.R. § 1150.42(e) that CFER,

at least 60 days before the exemption becomes effective, post a notice of applicant's intent to undertake the proposed transaction at the workplace of the employees on the affected line(s) and serve a copy of the notice on the national offices of the labor unions with employees on the affected line(s), setting forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and the lines that are to be transferred, and certify to the Board that it has done so.

Specifically, CFER seeks waiver of any requirement for posting notice at the Norfolk Southern Railway Company's (“NS”) Pittsburgh office where the line is currently dispatched, pursuant to an agreement between CSX Transportation, Inc. (“CSXT”) and NS. CFER has been advised that up to four dispatchers may be affected by the proposed transaction.

CFER plans to lease and operate about 276 miles of railroad from CSXT. The line consists of: (1) the Fort Wayne line between Adams, IN, milepost QF 314.0, and Crestline, OH, milepost QF 191.3; (2) the Fort Wayne Secondary between Tolleston, IN, milepost QF 441.8, and Adams, IN, milepost QF 314.0; (3) the Decatur Second between Adams, IN, milepost QFD

86.6, and Decatur, IN, milepost QFD 70.4; and (4) the Spore Industrial Track between Bucyrus, OH, milepost QFS 69.32, and Spore, OH, milepost QFS 62.85 (the "Line"). Closing on the transaction is scheduled for August 1, 2004.

Since CFER will file a notice of exemption under 49 C.F.R. § 1150.41, and the annual revenue of CFER will exceed \$5 million, CFER intended to comply with the prefiling notice requirements of 49 C.F.R. § 1150.42(e). In accordance with the procedures of section 1150.42(e), on May 18, 2004, CFER, in cooperation with CSXT, posted a Notice (Attachment 1) at the workplace of CSXT employees on the Line and served a copy of the Notice on the national offices of the labor unions (Attachment 2). CFER certified to the Board compliance with the requirements of section 49 C.F.R. § 1150.42(e) in a letter dated May 19, 2004 and received by the Board on May 20, 2004 (Attachment 3). Based on the May 20, 2004 filing of the certification of Notice, CFER believed it had fully notified all employees of the lessor on the Line and started the 60-day notice period, so that it could consummate the lease on August 1, 2004.

On about June 15, 2004 representatives of the American Train Dispatchers Division of the Brotherhood of Locomotive Engineers ("ATDA") national office contacted CSXT officers to inquire about the proposed transaction and to request duplicate copies of the Notice. Duplicate notices were sent to ATDA. Because of the expressed labor interest, CFER attempted to notify the NS dispatch employees in Pittsburgh, PA of the proposed transaction, even though section 1150.42(e) only requires posting of notice for "employees on the affected line."

On June 21, 2004, CFER requested NS to post the same Notice at its Pittsburgh dispatching office that CSXT had posted at workplaces on the Line. NS advised CFER on or about June 26, 2004 that it will not post the notice.

CFER had no reason to expect the lease of some 276 miles of lightly used track and the assumption of dispatching duties by CFER might affect any dispatchers, and CFER is surprised that NS believes up to four NS dispatchers may be affected. CFER does not need to hire dispatchers to dispatch the Line. CFER has not offered dispatching jobs in the Notice given to CSXT employees or the Notice prepared for NS employees and submitted to NS for posting.

In proposing the 60-day notice in 49 C.F.R. § 1150.32(e), the Board stated, “These employees are faced at a minimum with having to decide whether to accept a position on the acquiring entity or to exercise seniority on the carrier that is selling, leasing or otherwise transferring the line. In either case employees are faced with significant changes in their work assignments.” *Acquisition of Rail Lines under 49 U.S.C. 10901 and 10902—Advance Notice of Proposed Transactions*, STB Ex Parte No. 562 (STB served May 1, 1997). When the Board adopted the 60-day notice, it reasoned that “employees on the lines that have been sold are forced to make career choices – such as whether they will accept employment on the new carrier or retain whatever rights they have to exercise seniority or later be reemployed on the seller's lines – in a very short period of time.” *Acq. Of R. Lines Under 49 U.S.C. 10901 & 10902—Advance Notice*, 2 S.T.B. 592, 597 (1997). Another rationale advanced by the Board in adopting the 60-day notice was that,

new carriers buying or leasing lines often extend offers of employment to employees working on the lines acquired, and we have no reason to believe that this practice will not continue. Employees affected by those transactions will often have to choose whether or not to accept employment with the new carrier. In addition, employees in section 10901 transactions will, in many instances, have to move to new positions on their present employer or may have to seek new employment altogether. Under the circumstances, to facilitate the implementation of these transactions, we find that 60-days' advance notice involving larger transactions would assist employees who are confronted with major adjustments and decisions relating to their livelihoods. We

believe that, especially since employees are not accorded any statutory protection from the effects of the transaction except where the purchase is by a Class II carrier, 60 days' notice is a reasonable period of time in which directly affected employees may be asked to make decisions or take actions.

Id., at 599.

With respect to CSXT employees ("employees on the affected line"), CFER has fully complied with the 60-day notice requirements of section 1150.42(e). CFER posted the Notice on May 18, 2004 "at the workplace of the employees on the affected line(s)" as required by section 1150.42(e). In addition, that day CFER served copies of the Notice on the national offices of all the major unions, including the ATDA. However, notice was not posted at the NS dispatchers' workplace, because the NS dispatchers are not located on the affected line.

CFER believes that it is not required to notify the NS dispatchers under section 1150.42(e). However, in an abundance of caution, and to avoid unnecessary delay to this transaction, CFER respectfully requests waiver of the 60-day notice requirement of 49 C.F.R. § 1150.42(e) only with respect to posting the Notice at the NS dispatchers' worksite. CFER contends that this is the type of situation the Board contemplated when it said, "We recognize that exceptional situations may occur necessitating acquirer requests for waiver of the 60-day notice provision and we will consider such requests at the appropriate time." *Id.*, at 601. See *Patapsco & Back Rivers Railroad Company LLC--Acquisition and Operation Exemption--Patapsco & Back Rivers Railroad Company [Request for Waiver of 49 CFR 1150.32(e)]*, STB Finance Docket No. 34159 (STB served December 27, 2001); *Keystone Railroad LLC--Acquisition and Operation Exemption--Keystone Railroad, Inc. [Request for Waiver of 49 CFR 1150.32(e)]*, STB Finance Docket No. 34157 (STB served December 27, 2001); and *Lake Michigan & Indiana Railroad Company LLC--Acquisition and Operation Exemption--Keystone Railroad, Inc. [Request for Waiver of 49 CFR 1150.32(e)]*, STB Finance Docket No. 34140

(STB served December 27, 2001).

49 C.F.R. § 1150.42(e) does not by its terms require Notice to be posted at the NS dispatching facility in Pittsburgh because that office is not "on the affected line." In addition, because NS is not the lessor, the NS dispatchers are employees of a third party, not employees of a party to this transaction.

CFER and CSXT have taken every reasonable step to notify the individual NS dispatchers who might be affected. After learning of ATDA's interest in the proposed transaction, CFER attempted to provide posted notice to the NS employees by requesting NS to post the Notice. Unfortunately, NS has demonstrated that a third party, not involved in the transaction, has little incentive to post notice; NS has declined to permit posting for reasons CFER can only speculate about. To the extent that off-line posting were required, neither CFER nor CSXT can lawfully comply with the notice requirement without trespassing.

In addition, the lack of posting is not likely to have a serious impact on the NS dispatchers. CFER timely notified the dispatchers' national union of the transaction, and presumably the union has communicated with its potentially affected members in Pittsburgh pursuant to its representational duties. In fact, CFER believes that the potentially affected employees in the NS dispatching office have had actual notice of the transaction since about June 15, 2004.

CFER plans to start operations on August 1, 2004, and has begun arranging for locomotives and rail cars to be available on August 1 so that it will be able to serve the customers on the Line. A delay in starting operations will cause CFER to incur substantial costs, which it will not be able to recoup. CFER has also begun discussions with shippers to provide service and to ensure a smooth transition of operations on August 1. Delay in the start-up of

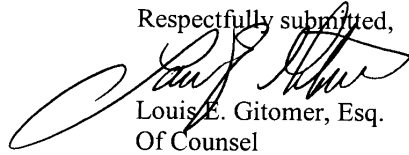
operations beyond August 1 will harm CFER's reputation with its customers and make for a difficult transition.

Preventing or delaying this transaction because a notice was not posted in Pittsburgh would not provide the four potentially affected NS dispatchers any significant benefit. Indeed, CFER will never be able to post such a notice unless NS agrees to do the posting. Because the union representative of those employees was served with the 60-day notice and because CFER has done everything it lawfully can to comply with the Board's regulations, CFER requests the Board to waive any further requirement to comply with section 1150.42(e).

CFER respectfully requests that the Board waive the 60-day notice requirement of 49 C.F.R. § 1150.42(e) with respect to posting the Notice at the NS dispatching office in Pittsburgh, so that any such requirement will not prevent or delay consummation of CFER's lease and operation of the Line on August 1, 2004.

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

Respectfully submitted,



Louis E. Gitomer, Esq.
Of Counsel
BALL JANIK LLP
1455 F Street, N.W., Suite 225
Washington, D.C. 20005
(202) 638-3307

Gary A. Laakso, Esq.
Vice President Regulatory Counsel
Central Railroad Company of Indianapolis
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Boca Raton, FL 33487
(561) 994-6015

Ronald A. Lane, Esq.
Fletcher & Sippel LLC
29 N. Wacker Dr., Suite 920
Chicago, IL 60606
(312) 252-1503

Attorneys for: Central Railroad Company of
Indianapolis

Dated: June 30, 2004

ATTACHMENT 1

May 19, 2004

**Chicago, Ft. Wayne & Eastern Railroad (CFER),
a division of
Central Railroad Company of Indianapolis**

NOTICE TO CSXT EMPLOYEES

Pursuant to Surface Transportation Board regulations at 49 C.F.R. §§ 1150.42(e), the Central Railroad Company of Indianapolis ("CERA"), hereby provides notice to the employees of CSX Transportation Inc. ("CSXT") that it intends to lease and operate as a separate division, called the Chicago, Ft. Wayne & Eastern Railroad ("CFER"), approximately 276 miles of CSXT's line of railroad:

1. Fort Wayne Secondary, Tolleston, IN, MP QF 441.8 to MP QF 314.0 at Adams, IN;
2. Fort Wayne Line, Adams, IN, MP QF 314.0 to Crestline, OH, MP QF 191.3 (excluding Crestline Yard);
3. Decatur Second, Adams, IN, MP QFD 86.6 to Decatur, IN, MP QFD 70.4 and
4. Spore Industrial Track, Bucyrus, OH, MP QFS 69.32 to Spore, OH, MP QFS 62.85.

Collectively referred to as "the Ft. Wayne Line," effective August 1, 2004. CSXT will retain ownership of the track, as well as the underlying and appurtenant real estate, and will lease that real estate and trackage to Central Railroad Company of Indianapolis.

As a result of the lease, CERA expects to hire approximately twenty-four (24) operating employees, one (1) carman, two (2) locomotive mechanics and two (2) track inspectors. This estimate is preliminary and is subject to modification prior to commencing operations. Employees will be provided wages and benefits comparable to those at other RailAmerica railroads. CERA will select employees on the basis of skills and aptitudes required for each position. The most qualified candidates will be selected from the available pool of applicants without regard to race, creed, color, religion, national origin, sex, age, marital status or disability. Successful candidates must have a stable work record and demonstrate a commitment to safety and customer service. The ability to work in a team environment is critical. Successful applicants will be required to pass a pre-employment drug and alcohol screen, background check and complete a medical questionnaire, and may be required to take a physical exam.

CSXT employees interested in seeking employment with CERA should contact Mr. Mick Burkhardt at (513) 860-1000, ext. 111.

ATTACHMENT 2

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2875

Phone: (312) 252-1500
Fax: (312) 252-2400
www.fletcher-sippel.com

RONALD A. LANE
(312) 252-1503
rlane@fletcher-sippel.com

May 19, 2004

Mr. F.L. McCann
President
American Train Dispatchers' Department
AFL-CIO and TTD-Rail Division
1370 Ontario Street, Suite 1040
Cleveland, OH 44113-1701

Re: Finance Docket No. 34508
Central Railroad Company of Indianapolis -- Acquisition
Exemption -- Lines of CSX Transportation, Inc.

Dear Sir:

Please find attached a copy of the Notice to CSXT employees on its "Fort Wayne Corridor" between Crestline, Ohio and Tolleston, Indiana.

This Notice was posted May 18, 2004 and was issued by Chicago, Ft. Wayne & Eastern Railroad, a division of Central Railroad Company of Indianapolis. A copy is being supplied to you in conformance with 49 C.F.R. § 1150.42(e).

Very truly yours,



Ronald A. Lane

RAL:dg
Enclosure

FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2875

RONALD A. LANE
(312) 252-1503
rlane@fletcher-sippel.com

Phone: (312) 252-1500
Fax: (312) 252-2400
www.fletcher-sippel.com

May 19, 2004

Mr. R. Roach, Jr.
General Vice President-Transportation
International Association of Machinists and
Aerospace Workers
9000 Machinists Place
Upper Marlboro, MD 20772-2687

Re: Finance Docket No. 34508
Central Railroad Company of Indianapolis -- Acquisition
Exemption -- Lines of CSX Transportation, Inc.

Dear Sir:

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Very truly yours,



Ronald A. Lane

RAL:dg
Enclosure

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Chicago, Illinois 60606-2875

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www.fletcher-sippel.com

RONALD A. LANE
(312) 252-1503
rlane@fletcher-sippel.com

May 19, 2004

Mr. W.D. Pickett
President
Brotherhood of Railroad Signalmen
601 West Golf Road, Box U
Mt. Prospect, IL 60056-4276

Re: Finance Docket No. 34508
Central Railroad Company of Indianapolis -- Acquisition
Exemption -- Lines of CSX Transportation, Inc.

Dear Sir:

Please find attached a copy of the Notice to CSXT employees on its "Fort Wayne Corridor" between Crestline, Ohio and Tolleston, Indiana.

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Very truly yours,



Ronald A. Lane

RAL:dg
Enclosure

FLETCHER & SIPPEL LLC

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Suite 920
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rlane@fletcher-sippel.com

Phone: (312) 252-1500
Fax: (312) 252-2400
www.fletcher-sippel.com

May 19, 2004

Mr. R.A. Johnson
General President
Brotherhood of Railway Carmen
Division of Transportation Communications Union
3 Research Place
Rockville, MD 20854

Re: Finance Docket No. 34508
Central Railroad Company of Indianapolis -- Acquisition
Exemption -- Lines of CSX Transportation, Inc.

Dear Sir:

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Very truly yours,



Ronald A. Lane

RAL:dg
Enclosure

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Fax: (312) 252-2400
www.fletcher-sippel.com

May 19, 2004

Mr. J.J. Barry
International President
International Brotherhood of Electrical Workers
1125 15th Street, N.W., Suite 1201
Washington, D.C. 20005

Re: Finance Docket No. 34508
Central Railroad Company of Indianapolis -- Acquisition
Exemption -- Lines of CSX Transportation, Inc.

Dear Sir:

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Very truly yours,



Ronald A. Lane

RAL:dg
Enclosure

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www.fletcher-sippel.com

May 19, 2004

Mr. R.A. Scardelletti
International President
Transportation Communications Union
3 Research Place
Rockville, MD 20854

Re: Finance Docket No. 34508
Central Railroad Company of Indianapolis -- Acquisition
Exemption -- Lines of CSX Transportation, Inc.

Dear Sir:

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Very truly yours,



Ronald A. Lane

RAL:dg
Enclosure

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rlane@fletcher-sippel.com

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Fax: (312) 252-2400
www.fletcher-sippel.com

May 19, 2004

Mr. Paul C. Thompson
International President
United Transportation Union
14600 Detroit Avenue
Cleveland, OH 44107-4250

Re: Finance Docket No. 34508
Central Railroad Company of Indianapolis -- Acquisition
Exemption -- Lines of CSX Transportation, Inc.

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Very truly yours,



Ronald A. Lane

RAL:dg
Enclosure

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May 19, 2004

Mr. M.A. Fleming
President
Brotherhood of Maintenance of Way Employees
20300 Civic Center Drive, Suite 320
Southfield, MI 48076-4169

Re: Finance Docket No. 34508
Central Railroad Company of Indianapolis -- Acquisition
Exemption -- Lines of CSX Transportation, Inc.

Dear Sir:

Please find attached a copy of the Notice to CSXT employees on its "Fort Wayne Corridor" between Crestline, Ohio and Tolleston, Indiana.

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Very truly yours,



Ronald A. Lane

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Enclosure

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May 19, 2004

Mr. D.M. Hahs
International President
Brotherhood of Locomotive Engineers
Standard Building
1370 Ontario Street
Cleveland, OH 44113

Re: Finance Docket No. 34508
Central Railroad Company of Indianapolis -- Acquisition
Exemption -- Lines of CSX Transportation, Inc.

Dear Sir:

Please find attached a copy of the Notice to CSXT employees on its "Fort Wayne Corridor" between Crestline, Ohio and Tolleston, Indiana.

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Ronald A. Lane

RAL:dg
Enclosure

ATTACHMENT 3

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ATTORNEYS AT LAW

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May 19, 2004

VIA FEDERAL EXPRESS

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 700
Washington, DC 20006

Re: **Finance Docket No. 34508**
Central Railroad Company of Indianapolis -- Acquisition
Exemption -- Lines of CSX Transportation, Inc.

Dear Secretary Williams:

Pursuant to 49 C.F.R. § 1150.42(e), Central Railroad Company of Indianapolis ("CERA") hereby certifies that on May 18, 2004, the attached Notice was posted at the workplace of the employees on the rail lines that CERA proposes to acquire in the above-captioned proceedings, and that on May 18, 2004 a copy of the Notice was served on the national offices of the labor unions with employees on those rail lines.

Ten copies of this letter, with attachment, are enclosed for filing at the Board. One extra copy also is enclosed, and I would request that you date-stamp that copy to show receipt of this filing and return it to me in the provided envelope. Thank you for your assistance on this matter.

Respectfully submitted,



Ronald A. Lane
Attorney for Central Railroad Company of
Indianapolis

RAL

Attachment