

SERVICE DATE – OCTOBER 3, 2008

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 35176

GEORGIA SOUTHWESTERN RAILROAD, INC.—ACQUISITION EXEMPTION—CSX
TRANSPORTATION, INC.

[REQUEST FOR WAIVER OF 49 CFR 1150.42(e)]

Decided: September 25, 2008

We are granting the petition filed on September 10, 2008, by Georgia Southwestern Railroad, Inc. (GSWR), seeking a partial waiver of the regulation at 49 CFR 1150.42(e). That regulation requires that, in certain railroad acquisition proceedings, the applicant must give 60 days' advance notice of the transaction to potentially affected employees and to the national offices of the potentially affected employees' labor unions. GSWR seeks a waiver so that the acquisition it seeks to effectuate by exemption can become effective without GSWR providing the full 60-day advance notice.

BACKGROUND

Concurrently with the filing of the petition for waiver, GSWR, a Class III rail carrier, filed a verified notice of exemption under 49 CFR 1150.41 to acquire, by purchase pursuant to an agreement it anticipates entering into with CSX Transportation, Inc. (CSXT), 1.6 miles of rail lines, extending from milepost SLC-96.66 to the end of the lines, near Lynn, GA, and consisting of Tracks SV 4 (6,875 feet), SV 12 (1,360 feet), and SV 14 (400 feet), in Decatur County.¹ According to GSWR, GSWR and its predecessor, South Carolina Central Railroad Company, have leased, operated, and maintained the lines since 1989.² On September 2, 2008, GSWR certified to the Board that, on August 29, 2008, it posted a notice at the workplace of the employees on the affected lines pursuant to 49 CFR 1150.42(e).³

¹ Notice of the filing of the verified notice was served on September 26, 2008, and published in the Federal Register on that same date at 73 FR 55899.

² See South Carolina Central Railroad Company, Inc.—Purchase and Lease—CSX Transportation, Inc., Lines in Georgia and Alabama, Finance Docket No. 31360 (ICC served May 4, 1989). GSWR also states that it currently leases and operates the lines, and, after the acquisition, will continue to be the operator of the lines.

³ GSWR does not indicate that it sent the required notice of the transaction to the national and local offices of the labor unions with employees on the affected line, but according to GSWR, no employees working on the affected lines are members of a labor union.

GSWR is seeking waiver of the 60-day labor notice requirement to enable it to consummate the transaction on or shortly after what would be the effective date of the exemption under 49 CFR 1150.42(b) (30 days after the filing of the notice of exemption). GSWR points out that no purpose would be served by requiring the full 60-day labor notice because no employees of GSWR or CSXT would be affected by this transaction. GSWR states that CSXT's employees have not worked on the leased lines in nearly 20 years and that GSWR's employees have provided the service and performed the maintenance on the lines over that time period. GSWR states that, after purchase of the lines, it will continue to use its employees to provide the same service and perform the same maintenance as it did under the lease. GSWR also states that it does not plan to hire any additional employees as a result of the transaction. No opposition to the petition has been filed with the Board.

DISCUSSION AND CONCLUSIONS

The purpose of our notice requirements at 49 CFR 1150.42(e) is to ensure that rail labor unions and employees who would be affected by the transfer of a line are given sufficient notice of the transaction before consummation.⁴ The Board takes seriously the requirements of the rule, but it does not appear that the purpose behind the notice requirements will be thwarted if the requested waiver is granted in this case.

While we do not ordinarily grant waivers of the employee advance notice requirements, the record indicates that no employee of CSXT will be adversely affected by waiver of the requirements here, and that no employee of CSXT has worked on the subject lines for nearly 20 years. Thus, with respect to any CSXT employees, there is no apparent need for advance notice, which is designed to assist affected employees who are faced with possible displacement. Furthermore, the record indicates that no GSWR employees will be adversely affected by waiver of the requirements because the planned transaction will merely convert operation under lease to the same operation under GSWR's ownership. And, as noted, GSWR has certified that it posted a notice at the workplace of its employees on August 29, 2008. Because GSWR's employees—the only employees potentially affected by the proposed transaction—will have had over 30 days' notice of the proposed transaction by October 3, 2008, and, according to GSWR, will not be adversely affected by the proposed transaction, we will waive the 60-day requirement under 49 CFR 1150.42(e) to the extent necessary to permit the transaction to be consummated on or after October 3, 2008.

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

⁴ See Acq. of R. Lines Under 49 U.S.C. 10901 & 10902 – Advance Notice, 2 S.T.B. 592 (1997).

It is ordered:

1. GSWR's request for waiver is granted as set forth in this decision.
2. This decision is effective on its date of service.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan
Acting Secretary