

SERVICE DATE - MAY 15, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub No. 618)

CSX TRANSPORTATION, INC. – DISCONTINUANCE –
AT MEMPHIS, IN SHELBY COUNTY, TN

Decided: May 9, 2003

By a decision served in this proceeding on October 28, 2002 (October decision), we granted the application of CSX Transportation, Inc. (CSXT) seeking authority to discontinue service over a 1.1-mile portion of its Midwest Region, Nashville Division, Memphis Terminal line between milepost ONI 224.0, at Memphis, TN, and milepost ONI 222.9, east of Memphis, in Shelby County, TN (the line). The discontinuance was scheduled to become effective on November 27, 2002. On November 12, 2002, the Bolen-Brunson-Bell Lumber Company, Inc. (BBB) timely filed a petition to reopen, along with a petition to stay, the October decision.¹ On November 15, 2002, CSXT replied, opposing the petition to reopen and petition to stay. A “housekeeping” stay was issued in a decision served on November 22, 2002, to permit orderly consideration of the arguments raised. After considering all of the arguments raised on appeal, we will vacate the stay and deny the petition to reopen.²

¹ In a letter filed December 12, 2002, the North American Wholesale Lumber Association supported BBB’s petition, stating that the lumber industry is highly dependent on rail transportation and that erosion of service is detrimental to efficient forest product distribution.

² In a separate proceeding docketed as Bolen-Brunson-Bell Lumber Company, Inc. v. CSX Transportation, Inc., STB Finance Docket No. 34236, BBB filed a formal complaint, alleging that CSXT, which has embargoed the line, has failed to provide transportation and service to it on reasonable request in violation of 49 U.S.C. 11101(a). In connection with that complaint, BBB simultaneously filed a petition under 49 U.S.C. 10502(d) for the partial revocation of the class exemption in Rail Exemption – Lumber or Wood Products, 7 I.C.C.2d 673 (1991). Those filings are considered and ruled upon in a separate decision issued at the same time as this decision.

BACKGROUND

On July 10, 2002, CSXT filed an application under 49 U.S.C. 10903 for authority to discontinue service over the line.³ CSXT claimed that the overriding factor warranting its discontinuance of service over the line was the cost to repair and rebuild the Cypress Creek Bridge (the bridge), located at milepost ONI 223.3. The bridge is over 80 years old and was damaged by arson.⁴ CSXT must travel over the bridge to reach BBB, which is located at milepost ONI 223.1. Due to the unsafe condition of the bridge, CSXT embargoed the line on March 1, 2001.

On August 26, 2002, BBB filed a protest in response to CSXT's application. BBB is the only active shipper on the line, where it operates a distribution facility and receives railcars of forest products consigned to retail dealers in the Memphis area. BBB unloads and stores the shipments for the retail dealers, who pick up their products from time to time in smaller loads, as needed. BBB also receives, to a lesser extent, forest products consigned to its own account. In the year 2000, BBB received 198 carloads at its distribution facility, 180 of which were for transload to local retail dealers and the rest for its own account. In the first two months of 2001, BBB received approximately 33 rail carloads.

Since imposition of the embargo, BBB can no longer receive rail shipments at its distribution facility and therefore can no longer provide transload services to its customers. Transload services are performed by other companies, however, at other locations (including CSXT's Leewood Yard, located in the Memphis area). BBB currently uses these companies, at an additional charge, to receive transloaded forest products for its own account and those of some of its customers.

³ CSXT had previously filed a petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a larger line that included this line segment, plus an additional 12.24 miles of rail line, extending from milepost ONI 224.00 near Memphis, to milepost ONI 210.66 near Cordova, TN. The petition was denied in CSX Transportation, Inc. – Abandonment Exemption – (Between Memphis and Cordova) in Shelby County, TN, STB Docket No. AB-55 (Sub-No. 590X) (STB served Dec. 12, 2001), based on CSXT's failure to support the data it had presented and on BBB's opposition in the case. Denial of the petition was without prejudice to CSXT's refiling an appropriate application or a petition for exemption that supports its case. On March 29, 2002, CSXT filed a petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to discontinue service over the 12.24-mile uncontested segment, excluding the 1.1-mile segment at issue here. The petition was granted in CSX Transportation, Inc. – Discontinuance Exemption – (Between East of Memphis and Cordova) in Shelby County, TN, STB Docket No. AB-55 (Sub-No. 615X) (STB served July 17, 2002).

⁴ The bridge is a 6-pile, creosote pine timber trestle bridge of approximately 120 linear feet in length, built in 1921.

In our October decision at 9, we determined that, if service on the line could be reinstituted without addressing the damage to the bridge that had prompted the embargo, the line would realize a profit from operation of \$40,371 in the forecast year. We then considered cost estimates for rehabilitating the bridge. CSXT provided evidence from its expert that all components except the pilings need replacement and that additional stringers would be necessary to bring the bridge up to current CSXT standards, resulting in a bridge rehabilitation estimate of \$214,500. CSXT also provided testimony that, even with this rehabilitation, the bridge would have to be replaced in 2012 at a cost of \$360,000 (in 2001 dollars). BBB offered a bridge repair estimate of \$77,186, based upon its expert's opinion that only limited repairs were needed to put the bridge back in service. BBB did not rebut CSXT's claim that the bridge would later need to be replaced.

We concluded that CSXT's inspection used a more reliable method to determine the extent of the damage — drilling into the bridge components. We also accepted CSXT's current design standards, which call for using 11 stringers per panel (up from the 8 stringers per panel presently on the bridge), and its claim that the bridge flooring would need to be removed to replace the damaged bridge components, and then replaced itself. After accounting for the bridge rehabilitation costs that would need to be incurred and the value of CSXT's investment in the line, we determined that, if CSXT were required to rehabilitate the bridge and reinstitute service on the line, it would incur a loss of \$182,610 in the first year. October decision at 9.

In deciding whether to grant the discontinuance application, we considered the fact that BBB has alternative transportation available. Indeed, BBB, which is located near Interstate Highways 40 and 240, has used truck service both before and since the embargo. Moreover, since the embargo, BBB has used alternative transload facilities in the Memphis area, including a facility located at CSXT's Leewood Yard that is operated by another company. We noted that CSXT had offered to make Leewood Yard available to BBB to relocate its transload business there. We recognized that BBB may experience increased costs in using alternative transportation. But given the limited traffic on the line and BBB's transportation alternatives, we concluded that the rehabilitation and subsequent replacement of the bridge would not be justified.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, we must determine whether the present and future public convenience and necessity permit the proposed discontinuance of rail service. In making this determination, we weigh the potential harm to affected shippers and communities from loss of the rail service against the present and future burden that continued operations would impose on the railroad and on interstate commerce. See Colorado v. United States, 271 U.S. 153, 168 (1926).

In its petition to reopen, BBB challenges our conclusion that the harm to it from the loss of this line would be outweighed by the harm to CSXT if we were to deny discontinuance authority. In particular, BBB argues that (1) in relying on CSXT's estimates, we overstated the costs associated with the bridge, and (2) in weighing the competing interests here, we placed too much significance on the bridge rehabilitation costs and did not properly assess the financial prospects for the line and the impact of service discontinuance on BBB. We will address BBB's contentions below.

Bridge Costs. BBB claims that we erred in accepting CSXT's inspection and estimate of bridge costs over BBB's. BBB first asserts that it would not be necessary to have 120 stringers on the bridge, because the bridge has always had only 84 stringers and CSXT admitted that only 36 require immediate replacement.

As CSXT has explained, however, the bridge was built over 80 years ago, when steam engines and 40-foot boxcars were used, and when the bridge carried loads of only 30 tons per axle. Shipments today are much heavier, with the use of modern diesel locomotives and with loads of 70 to 80 tons per axle. Thus, merely replicating the existing structure, designed to carry much lighter loads, would raise safety concerns. While CSXT's inspection classified 36 stringers as "rejects" (meaning that they are less than 50% effective), it also showed that the remaining stringers would be rejects within 10 years. Moreover, as CSXT also pointed out, an additional 36 stringers would be needed to bring the bridge up to its current standards. BBB argues that the bridge would not need this upgrading because each train would haul, on average, only 3 carloads. However, we consider the dramatically increased weight per axle to be more instructive than the number of cars per train in assessing the need to upgrade the bridge to current standards.

BBB also argues that the bridge deck would not require removal for replacement of the stringers and caps; it asserts that the deck could simply be raised during the replacement process. However, CSXT submitted evidence that, due to its age, decay, and fire-damaged timber, the flooring could not merely be lifted and then reattached, because it would be destroyed when disconnected from the remainder of the bridge. In our October decision at 6-7, we found that the inspection conducted by CSXT was superior to the one conducted by BBB because CSXT had drilled into support members, enabling it to better determine the internal condition of the bridge components. BBB has not shown that we should not have relied on CSXT's estimate.

Finally, BBB argues that we should not have considered CSXT's bridge replacement costs.⁵ BBB argues that the new bridge components would have useful lives of 40 to 50 years, which, it implies, is inconsistent with a 10-year useful life span for the bridge as a whole. CSXT, however,

⁵ As CSXT notes, BBB did not submit evidence regarding the bridge replacement time frame or costs.

presented un rebutted evidence that, even with rehabilitation of the other parts of the bridge, the pilings would surpass their useful life in 10 years and that the pilings could not be replaced without replacing the entire bridge. Thus, it was entirely proper for us to take into account the circumstance that the bridge would need to be replaced at that time.

Weighing of Interests. BBB contends that we should have amortized the costs of the bridge rehabilitation over a 10-year period, rather than assuming that all of the expense would need to be recouped in the first year. The decision whether or not to amortize expenses of this nature must be made on a case-by-case basis, based on the facts and circumstances of each case.⁶ In this case, we concluded that amortization would not be appropriate. As we explained in the October decision at 9 n.24, amortization of these costs assumes that BBB — the only source of revenue on the line — would continue to ship its pre-embargo annual number of carloads throughout the amortization period. However, CSXT is not BBB's only supplier of transportation services, and BBB could choose at any time to decrease or stop altogether its use of rail service over the line. CSXT would then be left to cover the remaining (unamortized) portion of the rehabilitation costs with no compensating revenue from the line, unless it had received specific guarantees from BBB protecting it from such a risk.

BBB asserts that we had no evidence upon which to assess its potential future use of this line, other than its own testimony that, if rail service were to be restored on the line, it would likely continue to receive 198 carloads per year. However, BBB does not dispute that it has transportation alternatives. Indeed, even before the embargo, it had received lumber from Savannah, GA, exclusively by truck.

BBB further argues that we did not give sufficient weight to the harm that it would experience from discontinuance of service over the line at issue here. However, BBB offered little evidence to quantify this harm. It submitted an invoice dated January 9, 2001, for \$500 for transload services provided to one of its customers, which it testified was typical for its business, and then multiplied that invoice amount by all 198 carloads (the number of shipments it received in 2000). Yet, as CSXT points out, BBB did not indicate whether the \$500 charge per car represents its gross or net revenues and, if it was gross revenues, what expenses (such as for its facility, equipment, or labor) should be deducted to produce its net income. BBB provided another invoice dated June 25, 2002, allegedly a \$500 bill to BBB for "unloading and delivery" of products, which it claims shows the extra charges it must pay to receive lumber by transload through Leewood Yard. However, this bill alone is an

⁶ As BBB points out, the agency has decided to amortize expenses in at least one case. In other cases, the agency has treated this kind of expense as a one-time, upfront cost. See Burlington N. R.R.—Abandonment—In Crawford and Labette Counties, KS, ICC Docket No. AB-6 (Sub-No. 300) (ICC served Feb. 9, 1989), at 6.

inadequate basis on which to determine the total extra charges, if any, that BBB would incur to use alternative transportation for all affected shipments.

Given the record before us, we were satisfied that the certain burden of the large expenditures required for CSXT to rehabilitate the bridge and reinstitute service over the line outweighed the uncertain, unsupported loss that BBB claims it would incur if service is not restored on this line. BBB has not shown that we erred in our weighing, nor has it submitted new evidence that would cause us to re-weigh these harms.

We note, however, that permanent loss of this rail service may yet be avoided. In its protest, BBB indicated a willingness to discuss a long-term transportation arrangement with CSXT to serve BBB on the line. Likewise, CSXT has stated that it would be willing to make a significant investment in the line and continue serving BBB if it were to receive a concomitant long-term commitment of traffic. We encourage the parties to work out a mutually satisfactory agreement, thereby avoiding the need for CSXT to exercise the discontinuance authority that we have granted to it.

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

It is ordered:

1. The housekeeping stay entered on November 22, 2002, is vacated.
2. The petition to reopen is denied.
3. This decision is effective on June 14, 2003.

By the Board, Chairman Nober and Commissioner Morgan.

Vernon A. Williams
Secretary