

SERVICE DATE – FEBRUARY 15, 2019

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 55 (Sub-No. 785X)

CSX TRANSPORTATION, INC.—DISCONTINUANCE OF SERVICE EXEMPTION—IN
VERMILION COUNTY, ILL.

Digest:¹ This decision denies the request by Vermilion Valley Railroad to reject, or, alternatively, to stay the effective date of, the verified notice of exemption filed by CSX Transportation, Inc.

Decided: February 14, 2019

On November 13, 2018, CSX Transportation, Inc. (CSXT), filed a verified notice of exemption under 49 C.F.R. Part 1152, Subpart F—Exempt Abandonments and Discontinuance of Service, to discontinue service over an approximately 3.6-mile rail line on its Woodlands Subdivision between milepost QSK 0.0 and milepost QSK 3.6, the end of the line, in Vermilion County, Ill. (the Line). Notice of the exemption was served and published in the Federal Register on December 3, 2018 (83 Fed. Reg. 62,398). On November 30, 2018, Vermilion Valley Railroad (VVRR) filed a petition to reject the notice of exemption or stay the effective date of the exemption. CSXT filed a response on December 17, 2018. The exemption became effective on January 2, 2019.²

In its petition to reject or stay, VVRR states that it would like to purchase the Line and the related yard to serve nearby potential customers and stage trains needed to serve those customers; it states that it has submitted several purchase proposals to CSXT. (VVRR Pet. 3.) In support of its petition to reject the notice, VVRR argues, first, that the notice contains materially false information, rendering the exemption void ab initio. (Id. at 5-6.) VVRR states that in October 2018, a CSXT contractor was observed removing track from the Line and the associated yard. (Id. at 4.) VVRR states that it notified Board staff, which contacted CSXT, and CSXT responded that it would restore a through track on the Line. (Id.) VVRR asserts that the Line, as restored, would not be able to hold a train. (Id.) VVRR argues that CSXT's actions

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

² The Board had not issued a decision addressing VVRR's petition before the partial Federal government shutdown (from December 22, 2018, through January 25, 2019).

conflict with what VVRR claims are CSXT's representations in the verified notice of exemption that the Line is intact or has recently been restored. (Id. at 5-6.)

VVRR also argues that the discontinuance is controversial and therefore not suitable for the notice of exemption process. (Id. at 8-9.) Relying on two recent Board proceedings,³ VVRR asserts that, due to the removal of track on the Line, CSXT should be required to file a petition for exemption or an application so that the Board has more time to consider CSXT's request to discontinue service. (VVRR Pet. 8.) Additionally, according to VVRR, permitting the discontinuance without allowing VVRR to purchase the track through an offer of financial assistance or through negotiations with CSXT is contrary to the statutory rail transportation policy at 49 U.S.C. § 10101, (VVRR Pet. 2), and violates the "spirit of Board policy if not the law itself," (id. at 9). Alternatively, VVRR asks that the Board stay the effective date of the exemption so that the Board can thoroughly examine the facts of this case. (Id. at 9-10.) VVRR also asks the Board to offer mediation to the parties. (Id. at 10.)

In reply, CSXT asserts that its verified notice contained no materially false allegations, that this proceeding is not controversial, and that VVRR is not entitled to a stay. CSXT explains that a contractor had mistakenly removed the rail that connected the Line through CSXT's Hillery Yard but notes that the track was replaced *before* CSXT filed its verified notice of exemption to discontinue service. (CSXT Reply 4-6.) Further, CSXT states that it "will not remove the track unless and until CSXT seeks and receives abandonment authority from the Board." (Id. at 6.) CSXT asserts that certain other track it has removed is yard track excepted from the Board's abandonment authority and that "VVRR cannot demand the yard track be restored because it wants to purchase CSXT's Yard." (Id. at 8.) CSXT also argues that this discontinuance is not controversial as the Line has not been used since at least 2001, VVRR has not shown any demand for service, and there are currently no potential shippers on the Line. (Id. at 7.) Finally, CSXT argues that VVRR has not met the standards for a stay and states that it is not willing to engage in mediation. (Id. at 9-11.)

DISCUSSION AND CONCLUSIONS

Under 49 C.F.R. § 1152.50(b), discontinuance of service over a rail line that has been out of service for at least two years is exempt from the prior approval requirements of 49 U.S.C. § 10903 if certain criteria are met. To qualify for the exemption, a carrier (after properly notifying appropriate agencies) must file a verified notice of exemption at least 50 days before it intends to discontinue service on a particular line, including the certifications required by

³ See Colo. Wheat Admin. Comm. v. V & S Ry., NOR 42140 (STB served May 7, 2015); V & S Ry.—Discontinuance Exemption—in Pueblo, Crowley, Kiowa, & Otero Cts., Colo. (V&S Discontinuance), AB 603 (Sub-No. 4X) (STB served Jan. 15, 2016).

49 C.F.R. § 1152.50(b). However, if the verified notice of exemption contains false or misleading information, the carrier's use of the exemption is void ab initio, and the Board will reject the notice. 49 C.F.R. § 1152.50(d)(3). Notices that raise significant unresolved issues or questions that require detailed scrutiny may also be rejected.⁴

Here, CSXT meets the requirements outlined above, thereby qualifying for a two-year out-of-service exemption. See CSX Transp., Inc.—Discontinuance of Serv. Exemption—in Vermilion Cty., Ill., AB 55 (Sub-No. 785X), slip op. at 1 (STB served Dec. 3, 2018). VVRR does not contest that CSXT meets the requirements for the exemption.

Additionally, the Board finds that VVRR's arguments—that CSXT's verified notice contains materially false or misleading information, rendering the exemption void ab initio, and that the transaction raises significant unresolved issues that require detailed scrutiny—lack merit. CSXT states in its notice that “[o]nce discontinuance is authorized, CSXT will remove the signals but leave the remaining infrastructure in place to preserve the corridor in case business returns,” and that it “is not salvaging the track and materials on the Line.” (CSXT Verified Notice 4-5.) While VVRR presents evidence that CSXT removed and later replaced part of the Line, CSXT explains in its reply that the track was mistakenly removed by a CSXT contractor and was replaced before CSXT filed its verified notice. CSXT also represents that the track will remain in place until abandonment authority is sought. Because the removed track was replaced before the verified notice was filed and there is no evidence that any track on the Line has been removed since then, VVRR has failed to show that CSXT's representations in its verified notice are materially false or misleading. The exemption, therefore, is not void ab initio.⁵

Moreover, the notice of exemption does not raise significant unresolved issues or questions that require detailed scrutiny, as VVRR claims. As the Board and its predecessor, the Interstate Commerce Commission (ICC), have long held, “[m]ere speculation about future traffic is not a sufficient basis upon which to deny or revoke an abandonment or discontinuance exemption.” CSX Transp., Inc.—Aban. Exemption—in Bell Cty., Ky., & Claiborne Cty., Tenn.,

⁴ See V&S Discontinuance, AB 603 (Sub-No. 4X), slip op. at 3-4; ABC & D Recycling, Inc.—Lease & Operation Exemption—a Line of R.R. in Ware, Mass., FD 35397, slip op. at 4 (STB served Jan. 20, 2011); FPN USA, Inc.—Operation Exemption—Tijuana-Tecate Shortline, FD 35155 (STB served Aug. 8, 2008); Pro-Go Corp.—Operation Exemption—in Suffolk Cty., N.Y., FD 35120 (STB served Mar. 13, 2008).

⁵ Furthermore, as the Board has explained, “[t]he focus of the inquiry under the Board's two-year out-of-service exemption regulations is whether there has been any service or request for service on the line in the last two years, not the condition of the track.” Norfolk S. Ry.—Aban. Exemption—in Aurora, Portage Cty., Ohio, AB 290 (Sub-No. 394X) et al., slip op. at 5 (STB served Mar. 30, 2018) (citation omitted).

AB 55 (Sub-No. 478X), slip op. at 2 (ICC served Aug. 5, 1994). There has been no traffic on the Line for at least 17 years, and although VVRR “sees a business opportunity . . . to develop new freight business,” (VVRR Pet. 8), no record evidence has been submitted demonstrating that shippers would request service on the Line if service continued to be offered. VVRR’s desire to purchase the Line and related yard⁶ in anticipation of possibly providing service does not alter these facts.

The cases VVRR relies on for support are significantly distinguishable. Although VVRR analogizes this case to the Board’s rejection of the amended notice of discontinuance in V&S Discontinuance, the Board in that case rejected the discontinuance because “the issues raised in the [related Colorado Wheat] complaint proceeding . . . would need to be resolved if V&S sought discontinuance authority rather than abandonment authority.” V&S Discontinuance, AB 603 (Sub-No. 4X), slip op. at 4. There is no related complaint proceeding here preventing the discontinuance from becoming effective. Moreover, in Colorado Wheat, the proceeding related to V&S Discontinuance, V&S was the subsidiary of a salvage company and intended to salvage 60 miles of track over which service had been discontinued, and V&S was contractually obligated to salvage the track. Colo. Wheat, NOR 42140, slip op. at 5. The facts of that case bear little resemblance to those here—CSXT’s contractor mistakenly removed track on a small portion of the Line, CSXT replaced the track to maintain continuity of the Line prior to filing its notice of discontinuance, and CSXT has stated that it would not remove the track unless and until it seeks and receives abandonment authority from the Board. (CSXT Reply 6.)

Because CSXT meets the two-year out-of-service exemption requirements and VVRR has not demonstrated that the notice should be rejected, VVRR’s petition to reject CSXT’s notice of exemption will be denied.

VVRR also requests, in the alternative, that the Board stay the effectiveness of the exemption. However, as noted, the exemption became effective on January 2, 2019. Additionally, the Board has already determined that the use of the two-year out-of-service exemption in this case is appropriate and that no further inquiry is necessary. Accordingly, the petition to stay is denied as moot.

Finally, VVRR requests that the Board offer mediation services to the parties. (VVRR Pet. 10.) However, CSXT has responded that it is not willing to engage in mediation. (CSXT

⁶ The yard track is not part of the Line for which CSXT seeks a discontinuance exemption. (See generally CSXT Verified Notice; see also CSXT Reply 4 (“Because this was yard track, CSXT did not seek authority for removal of the yard track from the Board.”).) Therefore, CSXT’s removal of the yard track does not provide a basis to reject CSXT’s notice of exemption or stay the effective date of the exemption.

Reply 11.) Should the parties reach an agreement to mediate issues regarding the Line, they should so inform the Board.

It is ordered:

1. VVRR's petition to reject and/or stay is denied.
2. This decision is effective on the date of service.

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