

SERVICE DATE – MARCH 2, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36377 (Sub-No. 7)

BNSF RAILWAY COMPANY—TRACKAGE RIGHTS EXEMPTION—UNION PACIFIC
RAILROAD COMPANY

Digest:¹ This decision authorizes the expiration of certain Board-approved rights by one carrier to operate over the lines of another carrier, even though such rights typically continue indefinitely.

Decided: February 24, 2023

By petition filed on December 13, 2022, BNSF Railway Company (BNSF) requests that the Board partially revoke the trackage rights exemption granted to it under 49 C.F.R. § 1180.2(d)(7) in Docket No. FD 36377 (Sub-No. 6), as necessary to permit that trackage rights arrangement to expire at midnight on December 31, 2023.

As explained by BNSF in its verified notice of exemption in Docket No. FD 36377 (Sub-No. 6), BNSF and Union Pacific Railroad Company (UP) entered into an agreement granting BNSF restricted, local trackage rights over two rail lines owned by UP between: (1) UP milepost 93.2 at Stockton, Cal., on UP's Oakland Subdivision, and UP milepost 219.4 at Elsey, Cal., on UP's Canyon Subdivision, a distance of 126.2 miles; and (2) UP milepost 219.4 at Elsey, and UP milepost 280.7 at Keddie, Cal., on UP's Canyon Subdivision, a distance of 61.3 miles (collectively, the Lines). BNSF Verified Notice of Exemption 2, BNSF Ry.—Trackage Rts. Exemption—Union Pac. R.R., FD 36377 (Sub-No. 6). BNSF further stated that the trackage rights arrangement is intended to permit BNSF to move empty and loaded unit ballast trains to and from the ballast pit located at Elsey. Id. According to BNSF, it filed its verified notice of exemption under the Board's class exemption procedures at 49 C.F.R. § 1180.2(d)(7), instead of 49 C.F.R. § 1180.2(d)(8), because the trackage rights covered by the notice are local rather than overhead rights. BNSF Verified Notice of Exemption 1 n.1, 2, BNSF Ry.—Trackage Rts. Exemption—Union Pac. R.R., FD 36377 (Sub-No. 6).

In its petition, BNSF asks the Board to partially revoke the exemption as necessary to permit the trackage rights to expire at midnight on December 31, 2023, pursuant to the parties' agreement. (See BNSF Pet. 1-2); see also BNSF Verified Notice of Exemption, Ex. B at 2, BNSF Ry.—Trackage Rts. Exemption—Union Pac. R.R., FD 36377 (Sub-No. 6). BNSF argues

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. See Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

that granting this petition will promote the rail transportation policy at 49 U.S.C. § 10101 and that the partial revocation would be consistent with the limited scope of the transaction and would not have an adverse effect on shippers. (BNSF Pet. 3.) In addition, BNSF asserts that the Board has granted similar petitions for partial revocation to permit temporary trackage rights to expire, including petitions involving prior iterations of the trackage rights agreement at issue here. (Id. at 3-4.)

DISCUSSION AND CONCLUSIONS

Although BNSF and UP have expressly agreed on the duration of the proposed trackage rights agreement, trackage rights approved under the class exemption at 49 C.F.R. § 1180.2(d)(7) typically remain effective indefinitely, regardless of any contract provisions. At times, however, the Board has partially revoked a trackage rights exemption to allow those rights to expire after a limited time period rather than lasting in perpetuity. See, e.g., BNSF Ry.—Trackage Rts. Exemption—Union Pac. R.R., FD 36377 (Sub-No. 5) (STB served Feb. 7, 2022) (granting a petition to partially revoke a trackage rights exemption involving the Lines at issue in this case); New Orleans Pub. Belt R.R.—Trackage Rts. Exemption—Ill. Cent. R.R., FD 36198 (Sub-No. 1) (STB served June 20, 2018).

Granting partial revocation in these circumstances to permit the trackage rights to expire at the end of 2023 would eliminate the need for BNSF to file a second pleading seeking discontinuance authority when the agreement expires, thereby promoting the aspects of the rail transportation policy at 49 U.S.C. § 10101(2), (7), and (15). Moreover, partially revoking the exemption to limit the term of the trackage rights would have no adverse impact on shippers because the trackage rights at issue are solely to allow BNSF to move empty and loaded unit ballast trains to and from the ballast pit in Elsey for use in BNSF's maintenance-of-way projects. (See BNSF Pet. 2.) Therefore, the Board will grant the petition and permit the trackage rights exempted in Docket No. FD 36377 (Sub-No. 6) to expire at midnight on December 31, 2023.

To provide the statutorily mandated protection to any employee adversely affected by the discontinuance of trackage rights, the Board will impose the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

This action is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c).

It is ordered:

1. The petition for partial revocation of the trackage rights class exemption is granted.
2. As discussed above, the trackage rights in Docket No. FD 36377 (Sub-No. 6) are permitted to expire at midnight on December 31, 2023, subject to the employee protective conditions set forth in Oregon Short Line.
3. Notice of this decision will be published in the Federal Register.

4. This decision is effective on April 1, 2023. Petitions for stay must be filed by March 13, 2023. Petitions for reconsideration must be filed by March 22, 2023.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.