

ENTERED
Office of Proceedings
March 20, 2024
Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 35729 (SUB-NO. 1)

ANN ARBOR RAILROAD, INC.
— LEASE RENEWAL AND OPERATION EXEMPTION WITH
INTERCHANGE COMMITMENT—
NORFOLK SOUTHERN RAILWAY COMPANY

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

Robert A. Wimbish
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 800
Chicago, Illinois 60606
(312) 252-1500
rwimbish@fletcher-sippel.com

**ATTORNEY FOR ANN ARBOR
RAILROAD, INC.**

Dated: March 20, 2024

BEFORE THE
SURFACE TRANSPORTATION BOARD

FD 35729 (SUB-NO. 1)

ANN ARBOR RAILROAD, L.L.C.
— LEASE RENEWAL AND OPERATION EXEMPTION WITH
INTERCHANGE COMMITMENT—
NORFOLK SOUTHERN RAILWAY COMPANY

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

Ann Arbor Railroad, Inc. (“AARR”) hereby petitions the Surface Transportation Board (the “Board”) for a waiver of the 60-day notice requirements set forth at 49 C.F.R. § 1150.42(e) in connection with the lease transaction that is the subject of the above-captioned class exemption proceeding.

Since 2013, AARR has been the leasehold operator of the lines that are the subject of *Ann Arbor Railroad, Inc. — Lease Exemption — Norfolk Southern Railway Company*, FD 35729 (STB served July 12, 2013). AARR recently has reached an agreement with Norfolk Southern Railway Company (“NSR”) whereby the AARR will, among other things, continue to lease and operate the Lines under an amended agreement that extends the leasehold beyond its initial term. Accordingly, AARR has invoked the Board’s class exemption procedures to authorize its continued operations under the new lease terms. AARR’s anticipated annual operating revenue is expected to continue to exceed \$5 million.

The Board’s rules provide that when the annual revenue of the acquiring Class III carrier exceeds – or as a consequence of the transaction before the Board would exceed – \$5

million, the Class III acquirer must arrange to post advance notice of the transaction (the “Labor Notice”) at the workplace of the transferor railroad’s employees on the affected lines, and to serve the Labor Notice on the national office of each labor union representing the transferor carrier’s affected employees. 49 C.F.R. § 1150.42(e). Barring a waiver such as the one requested here, a notice of exemption involving both a transaction that qualifies for a class exemption and an acquiring Class III carrier with operating revenues over \$5 million will not become effective until 60 days after the acquirer has certified to the Board its compliance with the foregoing Labor Notice requirements. *Id.*

The purpose of the Labor Notice is to permit – (1) the acquiring carrier to “give notice of its general intentions in hiring a work force[;]” and (2) affected railroad employees to make informed decisions about the future of their employment and whether to seek employment from the acquiring carrier. *Acq. of R. Lines Under 49 U.S.C. 10901 & 10902 — Advance Notice*, 2 S.T.B. 592, 597 (1997). In adopting the rule, the Board indicated that it would entertain waivers of the Labor Notice requirement in appropriate circumstances. *Id.* at 601.

The Board customarily has waived the 60-day notice requirement where the transaction extends a prior Board-authorized arrangement, the effect of which would be to continue the operational and rail labor *status quo*. See, e.g., *Dakota, Missouri Valley and Western Railroad, Inc. — Lease and Operation Exemption — Soo Line Railroad Company*, FD 34904 (STB served Jul. 24, 2006) (“*DMV&W*”). To be granted, the waiver request must also be “reasonable.” See *Portland and Western Railroad — Lease and Operation Exemption — Port of Tillamook Bay*, FD 33734 (STB served May 10, 2009). For example, in *DMV&W*, the Board granted the requesting carrier a waiver where the subject notice of exemption covered the renewal of an existing lease. In doing so, the Board observed that, “Here, no employees [of the

transferor carrier] will be affected because no employees [of the transferor carrier] are currently working on the lines and no [transferor carrier] jobs will become available, abolished or relocated as a result of the proposed transaction.” *DMV&W* at 2.

In the present matter, the proposed transaction maintains the operational *status quo* in effect since the commencement of AARR’s operations in 2013. Continued AARR operations will not affect AARR employees or those of the lessor, NSR. No AARR or NSR jobs will be “abolished or relocated as a result of the proposed transaction” (*DMV&W* at 2), and the captioned matter would have no effect on NSR employees, as there have been no NSR-staffed operations, track maintenance, or dispatching on the Lines, since 2013. Consequently, a waiver of the 60-day notice requirements at 49 C.F.R. § 1150.42(e) is reasonable and consistent with Board precedent, such as *Wisconsin & Southern R., L.L.C. — Acquisition and Operation Exemption — Soo Line R. Company*, FD 36452 (STB served Dec. 14, 2020), 3; *Arkansas-Oklahoma Railroad Company — Lease and Operation Exemption including Interchange Commitment — Union Pacific Railroad Company*, FD 36411 (STB served Jul. 31, 2020), 2; *Hainesport Industrial Railroad — Lease and Operation Exemption — Hainesport Secondary, LLC*, FD 36185 (STB served Jul. 3, 2018), 3.

WHEREFORE, AARR respectfully requests for purposes of the current class exemption proceeding that the Board waive the application of the 60-day advance notice period set forth at 49 C.F.R. § 1150.42(e).

Respectfully submitted,

R. A. Wimbish

Robert A. Wimbish

Fletcher & Sippel LLC

29 North Wacker Drive, Suite 800

Chicago, Illinois 60606

(312) 252-1500

rwimbish@fletcher-sippel.com

**ATTORNEY FOR ANN ARBOR
RAILROAD, INC.**

Dated: March 20, 2024