

STB EX PARTE NO. 282 (SUB-NO. 20)

RAILROAD CONSOLIDATION PROCEDURES-EXEMPTION
FOR TEMPORARY TRACKAGE RIGHTS

Decided May 10, 2004

The Surface Transportation Board modifies its final decision in this proceeding to provide for the employee protective conditions set forth in *Oregon Short Line R.R. Co.- Abandonment-Goshen*, 360 I.C.C. 91 (1979), to protect employees affected by discontinuance of the temporary trackage rights authorized under the rule adopted in this proceeding, consistent with the decision of the United States Court of Appeals for the District of Columbia Circuit in *United Transportation Union-General Committee of Adjustment (GO-386) v. Surface Transportation Board*, 363 F.3d 465 (D.C. Cir. 2004).

BY THE BOARD:

In *Railroad Consolidation Procedures*, 6 S.T.B. 910 (2003), the Board amended its rules at 49 CFR part 1180 to adopt a new class exemption for trackage rights proposals that are limited to overhead operations and which expire on a date certain, not to exceed 1 year from the effective date of the exemption. This class exemption permits the creation of trackage rights which terminate automatically on the date specified. The carrier obtaining the rights need not obtain separate discontinuance authority to end service under the trackage rights upon expiration of the agreed-upon term. 49 CFR 1180.2(d)(8).

In the decision, *Railroad Consolidation Procedures*, 6 S.T.B. at 914, the Board stated that approval of temporary trackage rights agreements under 49 U.S.C. 11323 must include the employee protective conditions set forth in *Norfolk and Western Ry. Co.-Trackage Rights BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.-Lease and Operate*, 360 I.C.C. 653 (1980), *aff'd sub nom. Railway Labor Executives' Ass'n v. United States*, 675 F.2d 1248 (D.C. Cir. 1982) (*Norfolk and Western* conditions).

Upon reviewing the Board's decision adopting this new rule, the United States Court of Appeals for the District of Columbia Circuit in *United Transportation Union-General Committee of Adjustment (GO-386) v. Surface Transportation Board*, 363 F.3d 465 (D.C. Cir. 2004), remanded the matter to the Board for imposition of employee protective conditions that cover any employees affected by the discontinuance of the trackage rights conducted pursuant to authorization under 49 CFR 1180.2(d)(8). In accordance with the Court's decision, the Board now amends its final decision to require not only the imposition of the *Norfolk and Western* conditions on the acquisition of temporary trackage rights under the new rule but also the imposition of the employee protective conditions set forth in *Oregon Short Line R.R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979) (*Oregon Short Line* conditions), for the discontinuance component of temporary trackage rights authority.

7 S.T.B.

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

It is ordered:

1. The Board's decision in *Railroad Consolidation Procedures*, 6 S.T.B. 910 (2003), is amended to require the imposition of *Norfolk and Western* conditions to protect any employees affected by the acquisition of the temporary trackage rights and *Oregon Short Line* conditions to protect any employees affected by the discontinuance of the trackage rights.
2. Notice will be published in the *Federal Register* on May 17, 2004.
3. Petitions to reopen must be filed by June 7, 2004.
4. This decision is effective June 16, 2004.

By the Board, Chairman Nober.