

SURFACE TRANSPORTATION BOARD GRANTS "BMWE" COMPLAINT, FINDS THAT "SOO LINE" & "WISCONSIN CENTRAL" ENTERED LEASE AGREEMENT WITHOUT PRIOR AGENCY APPROVAL

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has granted a complaint filed by the Brotherhood of Maintenance of Way Employees and the Soo Line System Division--Brotherhood of Maintenance of Way Employees (collectively, "BMWE") requesting a Board finding that the Soo Line Railroad Company, doing business as the CP Rail System (Soo), and Wisconsin Central Ltd. (WCL) had entered into a lease transaction covering tracks in Soo's Schiller Park, Illinois, rail yard and intermodal facility (Schiller Park yard) without obtaining prior approval or an exemption from the former Interstate Commerce Commission (ICC) in violation of former 49 U.S.C. 11343 [FOOTNOTE 1: That section required ICC approval and authorization for a purchase, lease or contract to operate property of another carrier by any number of carriers.].

Prior to the October 5, 1995, lease agreement, WCL had operated, as part of its main line, a portion of track known as the Gauntlet Track along the west side of the Schiller Park yard. That year, however, an agreement was negotiated between WCL and the Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation doing business as Metra, allowing Metra to begin a commuter rail service on WCL's line between Chicago and Antioch, IL, including the Gauntlet Track. As a result of the agreement, WCL needed to construct a second main line parallel to the Gauntlet Track. Because the second main line could not be constructed before Metra's service was to begin, WCL entered into an agreement with Soo allowing WCL to lease two Soo tracks in the Schiller Park yard, together with lead tracks and connections, and to upgrade them to perform temporarily the main line function of the Gauntlet Track. This WCL-Soo agreement was the focus of BMWE's complaint.

Citing ICC precedent, the Board stated in its decision that, although Soo had used the track as exempt yard track, the tenant's use is the controlling factor in determining the character of the track. The Board accordingly held that, because WCL had used the tracks as a main line to operate its freight trains running through the yard, WCL and Soo should have obtained ICC approval for the temporary lease under 49 U.S.C. 11343-45.

The Board determined that, because the WCL-Soo lease has apparently already expired under its own terms and WCL's failure to obtain prior approval appeared to be inadvertent, there was no need to require WCL and Soo to file an application or exemption request for the temporary lease at this time. However, to avoid further delay regarding any possible relief for employees that may have been adversely affected by the transaction, the Board, on its own motion, granted WCL an exemption from the provisions of 49 U.S.C. 11343-45. The exemption is subject to the employee protective conditions in *Mendocino Coast Ry., Inc.-Lease and Operate*, 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980). The Board instructed the parties to determine which, if any, employees have been adversely affected by the transaction and what "protection" in the form of compensation is warranted, with any disputes to be resolved through arbitration.

The Board issued its decision on December 22, 1998, in the cases entitled *Brotherhood of Maintenance of Way Employees and Soo System Division, Brotherhood of Maintenance of Way Employees, v. Soo Line Railroad Company and Wisconsin Central, Ltd.*, STB Finance Docket No. 32964, and *Wisconsin Central Ltd.-Lease Exemption-Soo Line Railroad Company d/b/a CP Rail System*, STB Finance Docket No. 32964 (Sub-No. 1X).

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