

Surface Transportation Board Revokes Authorization for Line Sale from "RailAmerica" Subsidiary to "SF&L," an Affiliate of A&K Materials

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has issued a decision revoking the exemptions from regulation that allowed SF&L Railway, Inc. (SF&L), to buy a 71.5-mile segment of a rail line between La Harpe and Peoria, Illinois (the La Harpe Line or Line), from the Toledo, Peoria and Western Railway Corporation (TP&W). SF&L is an affiliate of A&K Materials (A&K), whose owners describe it as the Nation's leading supplier of new and used rail, ties and track materials. TP&W is controlled by RailAmerica, Inc., a holding company controlling 25 small and medium-sized railroads. The Board directed the purchase to be undone after finding that SF&L and its owners abused the Board's processes designed to maintain railroad service by using those processes to acquire track they really intended to sell for salvage, rather than operate.

Background. In January 2000, RailAmerica incurred substantial debt as a result of its acquisition of several new railroad properties. To reduce debt, it then began disposing of them. Pioneer Railcorp (Pioneer), which controls several small railroads, offered to purchase a substantial portion of TP&W's track connecting with Keokuk Junction Railway Co. (KJRY), one of Pioneer's subsidiaries. Pioneer and RailAmerica, however, did not reach an agreement and, on December 21, 2000, RailAmerica began negotiating to sell the bulk of the involved track to the owners of A&K. A deal between RailAmerica and A&K for the purchase of the La Harpe Line was closed within eight days, on December 29, 2000. A&K paid for the Line on that same date and received for security a note from SF&L, which, like other A&K affiliates, has bought and then liquidated rail properties in the past. Ownership of the track, ties and certain improvements on the Line and a permanent operating easement over the Line were transferred to SF&L, although ownership of the underlying real estate was kept by TP&W.

KJRY asked the Board for revocation of the exemptions to ensure its continued connection at La Harpe giving it access to several other railroads. KJRY expressed to the Board its concern that SF&L had acquired the La Harpe Line not with the intent to continue rail service, but with the intent to downgrade service and increase rates, and then to obtain abandonment authority from the Board so that it could salvage the track, ties and other materials on the Line.

The Board's Decision. In its decision today, the Board found that SF&L and A&K had abused the agency's processes because they had bought the Line to scrap it rather than to operate it as a going concern. The Board relied on a combination of factors to reach this conclusion. First, the Board found that the deal had been intentionally structured to make the La Harpe Line unprofitable to operate, so as to facilitate abandonment of the Line which, in turn, would permit A&K to salvage the Line's track, ties and other materials. The Board noted that, although TP&W's entire line west of Peoria was for sale, SF&L had limited its purchase to a line segment ending just a mile short of the connection to KJRY's line, thereby preventing a direct interchange of traffic between KJRY and SF&L, and producing rate increases making shipments over the La Harpe Line much more expensive. The Board found that SF&L and A&K knew, or should have known, that this action would play an important role in causing shipments over the La Harpe Line to cease.

Additionally, the Board noted that SF&L-A&K did not want to buy any of the bridges, trestles, and culverts associated with running the Line, and that they conducted no inspections and engaged in no studies, reports, or other research into the profitability potential of the Line before purchasing it, but instead simply obtained information on the Line's salvage value. A purchaser intent on operating rather than salvaging the Line, the Board found, would have exercised more diligence about the operational aspects of the Line before buying it.

Although it downgraded service, TP&W continued to operate the Line for nearly a year after the sale. The Board found that, if SF&L had really wanted to acquire the Line as an ongoing business venture, it would not have paid for it in

December 2000, obtained the necessary authority in January 2001, and then allowed TP&W to continue operating it for TP&W's own account (and not as a contract service provider) through December 2001. Such actions, the agency concluded, would make sense only if SF&L's real intent had been abandonment and salvage of the line. Indeed, the Board noted that SF&L, as part of the deal, had an understanding that TP&W and RailAmerica would support the future abandonment of the Line; and SF&L, which had no apparent source of income other than revenues from the Line, could have repaid A&K only by abandoning the Line and then using the track, ties, and other improvements on the Line to extinguish its debt.

For these reasons, and in light of the prior record of A&K and its affiliates of buying rail lines under the Board's processes, then abandoning and salvaging them, the Board found that exemptions permitting the line sale should be revoked, and that SF&L should be required to return the La Harpe Line to TP&W. The Board stated that the particular process under which this sale was conducted:

"is designed to facilitate continued service to shippers and continued maintenance of the transportation network. The integrity of that process is undermined by, and must be protected from, tactics such as those employed by [SF&L/A&K] in these cases, which have been detrimental to the shippers on the Line. We will not allow our . . . processes to be abused by sales of active rail lines to persons whose intent is to degrade, abandon, and salvage those lines. Nor should the persons who engage in such abuses be allowed to profit from them. Accordingly, we revoke the exemptions granted in these cases."

The Board issued its decision today in the case entitled *SF&L Railway, Inc.--Acquisition and Operation Exemption--Toledo Peoria and Western Railway Corporation Between La Harpe and Peoria, IL*, STB Finance Docket No. 33995 et al. A printed copy of the decision is available for a fee by contacting **D~ 2 D~ Legal Copy Service, Suite 405, 1925 K Street, N.W., Washington, DC 20006, telephone (202) 293-7776**, or via **da2dalegal@earthlink.net**. The decision also is available for viewing and downloading via the Board's website at <http://www.stb.dot.gov>.

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