

SURFACE TRANSPORTATION BOARD ISSUES POLICY STATEMENT CONCERNING OBLIGATIONS OF RAILROADS OPERATING OVER "EXCEPTED" TRACK

Surface Transportation Board (Board) Chairman Linda J. Morgan announced today that the Board has issued a policy statement declaring that it will continue the current practice of evaluating railroad service obligations on a case-by-case basis.

In a recent notice of proposed rulemaking (NPR), the Board sought comments on the circumstances under which it should require a railroad to operate over excepted track that does not meet Federal Railroad Administration (FRA) Class 1 track safety standards. The FRA has established a hierarchy under which track meeting different criteria can accommodate different traffic and/or operating speeds. See Part 213 of Title 49, Code of Federal Regulations (49 CFR Part 213). Class 6 track meets the most exacting standards, and permits the highest speeds. Class 1 track meets the FRA's lowest standards, and permits speeds of only 10 miles per hour for freight. Another category of track that track owners may designate--"excepted" track--does not meet Class 1 standards. Nevertheless, railroads may provide service over excepted track under specified conditions designed to ensure safety. See 49 CFR 213.4 and that the operating railroad deems to be unsafe.

The NPR was issued in response to claims that the Board's fact-specific decision in a recent proceeding *GS Roofing Products Company, Inc., Beazer West, Inc., D/B/A Gifford Hill & Company, Bean Lumber Company and Curt Bean Lumber Company v. Arkansas Midland Railroad and Pinsky Railroad Company, Inc.*, Docket No. 41230 (STB served Mar. 11, 1997) (*GS Roofing*), petition for review pending, *GS Roofing Products Company, Inc., et al. v. Surface*

Transportation Board, No. 97-107 (8th Cir.) finding that a railroad did not act unlawfully in issuing an embargo for a short time, while it decided how to address damage caused by heavy rains and flooding, established a general rule that railroads can, as a matter of course, avoid their common carrier obligation (the statutory obligation to offer transportation services to the public) simply by declaring their track to be excepted track. Consistent with recommendations received in public comments filed in response to the NPR, and with the Board's past practice, the Board declared that a railroad's obligation to provide service applies equally to excepted track and to other track and that, as a result, a railroad's obligation to restore service on inoperable track applies equally to excepted track and other track.

The Board held that:

[I]nsofar as the common carrier obligation is concerned, excepted track is no different from other track. A railroad must provide service over it upon reasonable request. A railroad may embargo excepted track (like other track) when, in its opinion, a disability or interruption exists that temporarily prevents the carrier from providing service. However, as with other track, a carrier's principal obligation is to restore safe and adequate service, within a reasonable time, regardless of the class of the track involved.

Because a railroad's common carrier obligation is the same for

excepted track as for other track, it would be inappropriate to adopt special rules for excepted track. . . . Although complaints alleging improper embargoes are rare, we will continue to take them seriously, as we have in the past. And when safety is placed in issue in assessing the reasonableness of an embargo, we will continue to be guided by advice from the FRA [and, consistent with the recommendation of the Secretary of Transportation, will continue to secure an appropriate inspection by an FRA-certified inspector before directing restoration of service over a line embargoed for safety reasons]. We conclude that the issuance of rules would be inappropriate. We will continue to address issues such as these on a case-by-case basis.

The Board's decision was issued today in *Service Obligations Over Excepted Track*, STB Ex Parte No. 564.

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