

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

In the Matter of

BOSTON AND MAINE CORPORATION,

No. 70-250-M

Debtor

MEMORANDUM AND ORDER

on

Motion of Trustees of Debtor for Authority to Discontinue
Operations on a Segment of the Greenville Branch in Groton
and Townsend, Massachusetts

MURRAY, Senior District Judge

The motion of the Debtor's Trustees for an order authorizing the Trustees, pursuant to Rule 8-512(b) of the Bankruptcy Rules, to discontinue operations on a segment of railroad line known as the "Greenville Branch" came on to be heard on April 20, 1983, after the filing of the report of the Interstate Commerce Commission ("ICC") pursuant to Section 1170(b) of the Bankruptcy Act [11 U.S.C. § 1170(b)], and after notice of the time and place of the hearing to the persons, agencies, and entities specified in 11 U.S.C. § 1170(c). At the hearing, counsel for the Trustees called witnesses and presented evidence that was not controverted. No objections to the proposed discontinuance were raised.

The segment of the Greenville Branch on which the Trustees

propose to discontinue operations is a 5.75 mile segment of that branch extending from milepost B 41.10 in Groton to milepost B 46.85 in Townsend, all in Worcester County, Massachusetts. This segment is part of the property that was conveyed to the Massachusetts Bay Transportation Authority under deed of the Boston and Maine Corporation, dated December 24, 1976. The Trustees considered the question of this discontinuance at their meeting on December 28, 1982, upon presentation by Mr. Alan G. Dustin, president and chief operating officer of the railroad, of a memorandum to the effect that (1) there has been a precipitous decline of railroad operations over this segment of the Greenville Branch from 1976 through the first ten months of 1981, (2) this segment of the branch was operated at a loss of approximately \$ 17,000 from January 1, 1981 to October 31, 1981, (3) this segment of the branch was embargoed on October 31, 1981, (4) the cost of rehabilitating this segment of the branch to Federal Railroad Administration Class I level would be approximately \$ 603,000, and (5) all customers that formerly used the services of this segment of the branch are now taking delivery at rail facilities in other locations or, instead, have found adequate truck delivery alternatives. After considering the memorandum of Mr. Dustin, the Trustees voted unanimously to authorize appropriate application for discontinuance of operations.

At the hearing of April 20, 1983, the evidence presented to the court established that the former principal user of the segment of the branch in question, namely Bates Corrugated Box Co. ("Bates") has, since October 31, 1981, been using facilities of the Boston and

Maine Railroad ("B & M") at Nashua, New Hampshire in order to take advantage of a per-car delivery allowance, made by B & M, at its truck transfer facilities there. In addition, evidence established that another former user of this segment of rail line, namely Sterlite Corporation ("Sterlite"), a plastics manufacturer, has opened a plant in another location outside the geographic proximity of the segment, thus diverting much of Sterlite's rail traffic out of the area. And, according to further evidence, all remaining delivery needs of Sterlite within the area are at present adequately served by truck, as are all the delivery needs of all other former users of freight service over the segment of the branch in question. In this regard, it is important to note that there was evidence that rail service remains available at B & M's public delivery facilities at Ayer, Massachusetts, which lies approximately ten miles from the segment of the branch in question, and that adequate motor carrier service is available, and road conditions are generally good, throughout the geographic area that would be affected by the proposed discontinuance of operations.

Evidence was presented that the cost of restoring this segment of the Greenville Branch to Federal Railroad Administration Class I level would approximate \$ 603,292, and that there has been no activity in the geographic proximity of the segment that would lead to a belief that significant new demand for use of the segment will be created in the near future.

The Trustees made no contention that the proposed discontinuance of operations is essential to successful consummation of the

plan of reorganization of the Debtor that has been approved by the court by Order No. 708, entered December 30, 1982. Although avoidance of the cost of restoring the segment of the branch in question to Federal Railroad Administration Class I level, and avoidance of further losses to B & M such as those sustained in operating this segment from January 1 through October 31, 1981, would have a beneficial effect pro tanto on the Debtor's operating statements, the benefits would have little impact on the prospects for ultimate reorganization.

No shipper, nor any other party aside from the Trustees, asked to be heard on the issue of the proposed discontinuance of operations. And no requests have been filed with, or otherwise presented to, the court for imposition of employee protection conditions in the event that the court should authorize such discontinuance. Moreover, the report of the ICC concerning this discontinuance, which report was served upon the court on March 8, 1983, and thereafter duly filed, recommends that the court authorize the Trustees to effect this discontinuance.

The court, therefore, determines, from the record and from the evidence presented at the hearing of April 20, 1983, that the discontinuance of operations by the Debtor over the segment of the branch in question would be in the interest of the Debtor's estate and of the ultimate reorganization of the railroad, and would not adversely affect the public interest. Accordingly, it is hereby

ORDERED

That the Trustees are authorized to discontinue operations

on the 5.75 mile segment of the Greenville Branch that extends from milepost B 41.10 in Groton to milepost B 46.85 in Townsend, all in Worcester County, Massachusetts.

Dated April 28, 1983

Grant J. Runya
Senior District Judge