

**Before the  
SURFACE TRANSPORTATION BOARD**

234259  
ENTERED

Office of Proceedings  
May 17, 2013  
Part of  
Public Record

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**Finance Docket No.: 35239**

**ALLEGHENY VALLEY RAILROAD COMPANY –  
PETITION FOR DECLARATORY ORDER**

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**OPPOSITION OF THE BUNCHER COMPANY  
TO PETITION OF  
ALLEGHENY VALLEY RAILROAD COMPANY FOR RECONSIDERATION**

Pursuant to 49 C.F.R. §§ 1115.3(b) and 1104.13(a), The Buncher Company (“Buncher”) files this Opposition to the Petition for Reconsideration filed by Allegheny Valley Railroad Company (“AVRR”) with respect to the Decision of the Surface Transportation Board (“Board”) issued on April 19, 2013 (“Decision”). Four years ago, AVRR filed a Petition for Declaratory Order (“Petition”) asking this Board “to terminate a controversy or remove uncertainty” with respect to “AVRR’s ownership of and continued right to use the permanent rail easement” it claimed it held across property owned by Buncher. (AVRR Petition dated April 16, 2009, p. 3). The Board’s Decision decides that matter and all that the Board did was answer the question that AVRR asked it to address. In a classic case of “buyer’s remorse,” now that the Board has ruled on AVRR’s request and given it an unfavorable answer, AVRR wants to edit the Board’s Decision and limit it so that AVRR can pursue the matter in another forum and continue rather than terminate the controversy and uncertainty. The truth is that AVRR knows that after exhaustive review (including independent investigation by the Board itself), the flaws in the theories it proffered have been exposed and the evidence fully supports the Board’s Decision.

The Board's Decision is sound, logical and fully supported by the evidence of record and applicable law. As required to decide AVRR's Petition, the Board considered and decided that an active line of railroad once crossed Buncher's property, that the February 1984 VIT Abandonment covered the active line that once crossed Buncher's property and that the abandonment was consummated by Conrail before its 1995 transaction with AVRR such that there was no railroad easement to convey to AVRR. The evidence thoroughly reviewed by the Board supports its conclusions and nothing in its Decision needs to be revised, deleted or amended. Nor does anything in the Board's Decision improperly encroach on matters of state law. The Board addressed the status of Conrail's easement, as AVRR requested it to do.

In the end, AVRR's request --- to selectively blue-line phrases or sentences from the Board's issued Decision --- is highly unorthodox and does not satisfy the grounds for a Petition for Reconsideration under 49 C.F.R. § 1115.3. Section 1115.3 provides that a petition will be granted only upon a showing of either: (1) new evidence or changed circumstances or (2) material error. Neither is present here. AVRR has adduced no new evidence or identified any changed circumstances. Nor is there material error. The portion of the Board's Decision that AVRR points to in its Petition for Reconsideration addressed the Board's examination of whether Conrail consummated its abandonment of the Valley Industrial Track --- an issue AVRR has always (up until now) argued was a necessary aspect of the Board's adjudication of its Petition.<sup>1</sup> AVRR is dissatisfied with the result, for which it has appeal rights, but there is nothing here for the Board to reconsider or revise.

We note that when Conrail filed the February 1984 VIT Abandonment Application, it stated that it "does not hold title to the underlying right-of-way." (Buncher's Reply to AVRR's

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<sup>1</sup> See, e.g., AVRR's Rebuttal to the Reply of the Buncher Company dated June 11, 2009, at p. 3, stating that even if abandonment is found, "the STB would retain jurisdiction over this disputed right of way" to decide consummation, and at p. 18, stating that the Board's jurisdiction is "plenary, pervasive and exclusive of state law."

Petition dated June 2, 2009, Ex. F, Conrail's Abandonment Application, ICC Finance Docket No. AB 167 (Sub No. 558N), ¶7 at p. 3). Conrail's February 1984 VIT Abandonment Application itself acknowledged that all Conrail had as of then was an easement for the Valley Industrial Track which was, as the Board concluded, subsequently abandoned and consummated such that there was no easement to convey to AVRR in 1995. The Board got it right. There is no reason for the Board to revise its issued Decision and the Petition for Reconsideration should be denied.

Dated: May 17, 2013

Respectfully submitted,



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Edward J. Fishman  
K&L Gates, LLP  
1601 K Street NW  
Washington, DC 20006-1600  
202-778-9000 (Phone)  
202-778-9100 (Fax)

Joseph F. McDonough  
Buchanan Ingersoll & Rooney P.C.  
One Oxford Centre  
301 Grant Street, 20<sup>th</sup> Floor  
Pittsburgh, PA 15219  
412-562-8847 (Phone)  
412-562-1041 (Fax)

**CERTIFICATE OF SERVICE**

I hereby certify that on May 17, 2013, a copy of the foregoing Reply was served by first class mail on the counsel of record for each of the parties to this matter as listed below:

Richard R. Wilson  
Richard R. Wilson, PC  
518 N. Center Street, Ste. 1  
Ebensburg, PA 15931

A handwritten signature in black ink, appearing to read 'E. Fishman', is written above a solid horizontal line.

Edward J. Fishman