

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 167 (Sub-No. 623N)

CONSOLIDATED RAIL CORPORATION—ABANDONMENT—IN LEHIGH COUNTY, PA.

Digest:¹ This decision denies James Riffin’s motion to strike the notice of abandonment consummation filed by Conrail.

Decided: March 11, 2016

On October 13, 2015, Consolidated Rail Corporation (Conrail) notified the Board that it had consummated its abandonment of a portion of the Lehigh Secondary Track between milepost 96.709 and 98.0 (Catasauqua Segment) as of September 18, 2015.² On November 2, 2015, James Riffin (Riffin) filed a motion to strike and a notice of intent to participate in this proceeding. Riffin argued (James Riffin’s Motion to Strike in AB 167 (Sub-No. 623N), at 4-7) that Norfolk Southern Railway Company (NSR) is the only carrier that has legal authority to consummate abandonment of the Catasauqua Segment because the line was conveyed from Conrail to NSR in the June 16, 1999 “Conrail Split.” See CSX Corp.—Control—Conrail Inc., 3 S.T.B. 196 (1998). Specifically, Riffin claimed that Conrail was divided into two parts, the “NYC” and “PRR” assignments, and that “the PRR lines of railroad would be operated by [NSR].” (Riffin Motion at 5.) Riffin concluded that since the Catasauqua Segment was included in the “PRR lines of railroad,” it was therefore conveyed from Conrail to NSR. (Riffin Motion at 5-6.)

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² The Board’s predecessor, the Interstate Commerce Commission, authorized Conrail to abandon the Catasauqua Segment under the Northeast Rail Service Act of 1981 (NERSA). See 45 U.S.C. § 748; Consol. Rail Corp.—Aban.—in Lehigh Cty, Pa., AB 167 (Sub-No. 623N) (ICC served July 19, 1984). Because the Delaware & Hudson Railway Company, Inc. (D&H) held trackage rights over the Catasauqua Segment at the time, Conrail’s abandonment could not be consummated until those trackage rights were discontinued. See R.J. Corman R.R.—Aban. Exemption—in Lehigh Cty, Pa., AB 550 (Sub-No. 3X) (STB served Aug. 20, 2015). On September 22, 2015, D&H notified the Board that on September 18, 2015, it fully exercised the authority granted by the Board to discontinue trackage rights of 670 miles of rail line, including the Catasauqua Segment. See Del. & Hudson Ry.—Discontinuance of Trackage Rights Exemption—in Broome Cty., N.Y., AB 156 (Sub-No. 27X) (STB served July 10, 2015). Conrail then sent its October 2015 consummation letter to the Board.

Conrail and NSR both submitted replies on November 17, 2015, disputing Riffin's claims that the Catsauqua Segment was transferred to NSR and that Conrail was not the proper party to consummate the abandonment. Conrail explained, as it had in its consummation letter, that the Catsauqua Segment was not included in the segments that were conveyed to either CSX or NSR in the Conrail Split. NSR asserted that Riffin failed to provide any evidence to substantiate his claim that Conrail's common carrier obligation over the Catsauqua Segment was transferred to NSR at any time. NSR included in its reply a Verification from its Vice President of Strategic Planning confirming that NSR had not acquired ownership of the Catsauqua Segment or the common carrier obligation over it.

Riffin's motion to strike will be denied. Riffin's evidence does not support the claim that ownership of the line segment or the common carrier obligation over it was transferred to NSR. Conrail and NSR have demonstrated that NSR did not acquire the line (or the common carrier obligation over it) from Conrail. (See, e.g., NSR Reply 2 & V.S. Friedmann; Conrail Letter n.1; Conrail Reply 9.) The Board agrees with Conrail's conclusion that the Catsauqua Segment was not included in either the "NYC" or "PRR" assignments. (Conrail Letter n.1; Conrail Reply 9.) Additionally, the Board, in reviewing its decision in the Conrail Split, has not found any indication that the Catsauqua Segment was conveyed to NSR in that transaction. Therefore, there is no basis for Riffin's argument that Conrail was the wrong party to consummate the abandonment of the Catsauqua Segment. Pursuant to Conrail's October 2015 letter, the abandonment of the Catsauqua Segment has been consummated.

It is ordered:

1. Riffin's motion to strike is denied.
2. This decision is effective on its service date.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.