

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 156 (Sub-No. 27X)

DELAWARE AND HUDSON RAILWAY COMPANY, INC.—DISCONTINUANCE OF TRACKAGE RIGHTS EXEMPTION—IN BROOME COUNTY, N.Y.; MIDDLESEX, ESSEX, UNION, SOMERSET, HUNTERDON, AND WARREN COUNTIES, N.J.; CUMBERLAND, CHESTER, LUZERNE, PERRY, YORK, LANCASTER, NORTHAMPTON, LEHIGH, CARBON, BERKS, MONTGOMERY, NORTHUMBERLAND, DAUPHIN, LEBANON, AND PHILADELPHIA COUNTIES, PA.; CECIL, HARFORD, BALTIMORE, ANNE ARUNDEL, AND PRINCE GEORGE’S COUNTIES, AND BALTIMORE CITY, MD.; THE DISTRICT OF COLUMBIA; AND ARLINGTON COUNTY, AND THE CITY OF ALEXANDRIA, VA.

Digest:¹ This decision denies a motion to compel discovery related to a verified notice of exemption filed by the Delaware and Hudson Railway Company, Inc., to discontinue trackage rights over approximately 670 miles of rail line.

Decided: August 6, 2015

BACKGROUND

On March 19, 2015, Delaware and Hudson Railway Company, Inc. (D&H), submitted a verified notice of exemption under 49 C.F.R. § 1152.50 to discontinue overhead and local trackage rights on approximately 670 miles of rail line in New York, New Jersey, Pennsylvania, Maryland, the District of Columbia, and Virginia. Notice of this exemption was served and published in the Federal Register on April 8, 2015 (80 Fed. Reg. 18,937).

On April 16 and April 20, 2015, James Riffin (Riffin) served discovery requests on D&H and submitted copies of those requests to the Board.² After receiving no response to these

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 Also on April 20, 2015, Riffin filed a petition to revoke, to which D&H replied on May 8, 2015. Riffin filed a reply to D&H’s reply to his petition to revoke on May 12, 2015.

On May 13, 2015, the Board placed this proceeding into abeyance and ordered D&H to supplement its March 19 verified notice of exemption with additional information that was omitted from its March 19 notice, including Zip Codes and counties. On June 15, 2015, D&H amended its March 19 verified notice of exemption, providing corrected information and stating

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requests from D&H, on June 8, 2015, Riffin filed a motion to compel the discovery sought in his discovery requests.³ D&H replied to Riffin's motion to compel on June 29, 2015.

Riffin's motion to compel discovery will be denied. As discussed below, Riffin has not shown that the documents he requests are relevant or necessary to the arguments he seeks to present in this proceeding.

DISCUSSION AND CONCLUSIONS

In Board proceedings, parties generally are entitled to discovery "regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding." 49 C.F.R. § 1114.21(a)(1). Further, it "is not grounds for objection that the information sought will be inadmissible as evidence if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." 49 C.F.R. § 1114.21(a)(2). However, parties seeking discovery in abandonments and discontinuances must demonstrate relevance and need. See Consol. Rail Corp.—Aban. Exemption—in Hudson Cnty, N.J., AB 167 (Sub-No. 1189X) et al., slip op. at 4 (STB served May 22, 2015). In particular, "[t]he nature of abandonment cases and the need to decide them promptly have led us to require that discovery requests be sharply focused and clearly justified." Cent. R.R. of Ind.—Aban. Exemption—in Dearborn, Decatur, Franklin, Ripley, & Shelby Cntys., Ind., AB 459 (Sub-No. 2X), slip op. at 4 (STB served Apr. 1, 1998).

In his April 16, 2015 discovery request, Riffin seeks copies of six of the trackage rights agreements that pertain to trackage subject to D&H's discontinuance notice; documents listing the number of trains per month that operated over the rail lines subject to the notice for the two years preceding D&H's filing of its notice of exemption, along with various details about those trains, including the routes of each train, origin/destination information of each car, and shipper information; and interchange information at various points along the rail lines.

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that it was republishing newspaper notices and providing corrected notices to the governmental agencies to which notice is required under 49 C.F.R. § 1152.50(d)(1). The Board served and published the corrected verified notice of exemption in the Federal Register on July 2, 2015 (80 Fed. Reg. 38,273).

By decision served on July 10, 2015, the Board denied Riffin's petition to revoke.

On July 15, 2015, Riffin filed a second petition to revoke. The Board will address that petition in a separate decision, as well as the petition for stay filed by Riffin on July 13, 2015.

³ Riffin's motion to compel refers to two discovery requests dated April 20 and May 1, 2015. The Board believes Riffin's reference to a May 1, 2015, discovery request is in error, as the Board has only received copies of April 16 and April 20, 2015, discovery requests. In its reply to the motion to compel, D&H indicates it also received discovery requests from Riffin only on those dates. Accordingly, this decision addresses Riffin's April 16 and April 20, 2015, discovery requests.

In his April 20, 2015 discovery request, Riffin seeks copies of yard rights agreements that grant D&H the right to operate in five rail yards on or near the lines at issue in this proceeding; a copy of the switching agreement or conveyance order associated with switching between Conrail and D&H in the Elizabethport and Perth Amboy, N.J. area; and a copy of the Final System Plan map compendium. Riffin also requests information regarding shippers served at those five yards, including dates of service and number of rail cars involved, from the time when D&H acquired its rights in those yards through April 20, 2015.

Riffin's motion to compel does not provide any argument as to why the information he requests is relevant or necessary. In other filings in this proceeding, Riffin has argued that he intends to challenge D&H's ability to use the notice of exemption process here on grounds that it is not clear whether there is local traffic on the lines,⁴ and that he believes D&H is using this proceeding to discontinue or abandon trackage rights in several yards not included in D&H's notice.⁵

D&H opposes Riffin's motion to compel, arguing that Riffin has not shown either relevance or need for the requested information. D&H argues that whether or not it is entitled to use a notice of exemption for discontinuance authority here "is not genuinely in dispute,"⁶ noting that "660 of the 670 miles of the subject trackage rights are overhead only, and many have not been used in a decade or more."⁷ D&H further argues that Riffin's discovery requests "far exceed" his stated purpose of "test[ing] the veracity of the representations in D&H's Notice of Exemption," as he requests six of the eleven trackage rights agreements that pertain to the trackage subject to the notice and documents detailing traffic over lines and at yards not subject to this proceeding.⁸

Riffin has not demonstrated that the information he requests is relevant or necessary for the arguments he has made, or could make, in this notice of exemption proceeding. Riffin does not present any argument to support his motion to compel discovery other than that he requested the information and did not receive it within 30 days in accordance with 49 C.F.R. § 1121.2. As noted, Riffin argues in his other pleadings in this proceeding that he believes there may be local traffic on the lines and that he believes D&H will be using this proceeding to abandon or discontinue trackage rights in yards not at issue in this proceeding.⁹ However, for the reasons discussed below, this is not sufficient to show why production of the documents requested is needed to present his case or is otherwise appropriate here.

⁴ Riffin Reply to D&H Reply to Riffin Pet. to Revoke 7, 8.

⁵ Riffin Pet. to Revoke 4, Apr. 20, 2015.

⁶ Reply to Mot. to Compel Disc. Responses 4.

⁷ Id. at 5.

⁸ Id. at 5-6.

⁹ See supra nn.4-5 and related discussion.

April 16, 2015 Discovery Request. With regard to Riffin’s request for copies of trackage rights agreements and detailed information regarding freight traffic on the lines for which discontinuance authority is sought, Riffin has not presented any evidence beyond his own speculation to support his belief that there may be some local traffic on these lines. In his reply to D&H’s reply to his petition to revoke,¹⁰ Riffin speculates that D&H may have some local traffic on the lines—which would disqualify it from obtaining an exemption under 49 C.F.R. § 1152.50(b)—because the record in this proceeding does not indicate D&H has the right to interchange cars at any intermediate points along its trackage rights on two segments of the lines subject to this proceeding (between Sunbury, Pa., and Alexandria, Va., and between Dupont, Pa., and Oak Island, N.J.), and because D&H has stated that it continues to operate over portions of those trackage rights segments (between Harrisburg, Pa., and Sunbury, Pa., and between Dupont, Pa., and Allentown, Pa.).¹¹ However, D&H has certified that there is no local traffic on the lines, and has stated in response to Riffin’s motion to compel that “660 of the 670 miles of the subject trackage rights are overhead only, and many have not been used in a decade or more.”¹² The source of Riffin’s speculation regarding continued local traffic on the lines—i.e., the fact that the record does not specifically describe certain interchange points and that D&H states that it continues to use trackage rights on other lines in Pennsylvania—is not sufficiently concrete or specific to justify delaying this discontinuance proceeding and requiring D&H to produce the documentation Riffin seeks. Thus, Riffin’s request will be denied.

April 20, 2015 Discovery Request. The information Riffin seeks in this discovery request—yard rights agreements and shipper documentation for activity at yards not subject to D&H’s notice—is outside the scope of this proceeding. D&H’s original and supplemented verified notices of exemption would permit discontinuance of only the 670 miles of trackage rights specifically listed therein. Activity on rail lines or in rail yards not subject to D&H’s verified notice of exemption is not relevant and is not reasonably calculated to lead to the discovery of admissible evidence in this proceeding. In addition, much of the information Riffin seeks in this request is excessively broad,¹³ and his request is unsupported by any explanation of why this information should be produced to allow Riffin to make his case in this matter.

For the foregoing reasons, Riffin’s motion to compel discovery will be denied.

It is ordered:

1. Riffin’s May 12, 2015 reply to D&H’s reply to Riffin’s April 20, 2015 petition to revoke is accepted into the record.

¹⁰ Riffin Reply to D&H Reply to Riffin Pet. to Revoke 7, 8.

¹¹ Id. at 6.

¹² Reply to Mot. to Compel Disc. Responses 5.

¹³ For example, Riffin requests detailed shipper documentation for shippers served at the five rail yards he mentions in his request, from the time D&H acquired its rights through April 20, 2015.

2. Riffin's motion to compel discovery is denied.
3. This decision is effective on its service date.

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