

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35316

ALLIED ERECTING AND DISMANTLING, INC.,
AND ALLIED INDUSTRIAL DEVELOPMENT CORPORATION
—PETITION FOR DECLARATORY ORDER—
RAIL EASEMENTS IN MAHONING COUNTY, OHIO

Decided: August 5, 2014

By petition filed on November 2, 2009, Allied Erecting and Dismantling, Inc. and Allied Industrial Development Corporation (collectively, Allied) requested that the Board institute a declaratory order proceeding to address certain questions. Allied had filed a lawsuit before the Court of Common Pleas of Mahoning County, Ohio, against six rail carriers that are members of the Ohio Central Railroad System (collectively, Ohio Central)¹ to prevent those carriers from stopping, storing, and staging rail cars on tracks that traverse Allied's property, allegedly in violation of two easement agreements. In a decision served on December 20, 2013 (December 2013 Decision), the Board addressed the questions before it.

By petition filed on February 20, 2014, Allied now seeks to reopen and supplement the record pursuant to 49 U.S.C. § 722(c) and 49 C.F.R. § 1115.4, arguing that the Board misconstrued certain evidence before it and asking the Board to consider a new verified statement that allegedly corroborates Allied's reading of the evidence. On March 12, 2014, Ohio Central filed a reply arguing that Allied had not met the standards for reopening. Ohio Central's reply does not address the substantive arguments presented by Allied.²

¹ The "Ohio Central Railroad System" is a trade name used for limited business purposes by 11 commonly controlled railroads.

² Ohio Central specifically notes with respect to the evidence presented that "[i]t is not addressing the accuracy of the information or the implications Allied has asserted based on that information" and that it "reserve[s] the right to investigate and challenge any or all of the information." (Ohio Central Reply 8.)

One of the questions addressed in the December 2013 Decision involved whether a 1982 decision by the Interstate Commerce Commission (ICC) granted the Mahoning Valley Railway Company (MVRV) authority to operate over the tracks underlying one of the easement agreements at issue. The ICC decision itself does not resolve the question, and the Board could not locate MVRV's original application—which might have resolved the question—either in the official file the Board inherited from the ICC or from other sources. The Board, however, was able to locate certain other documents in the original ICC files pertaining to MVRV, including MVRV's Articles of Incorporation and a "Return to Questionnaire," which was a document required by then-existing ICC regulations.³

In its December 2013 Decision, the Board concluded that "[i]n these circumstances, . . . the LTV Tracks are encompassed within the ICC's grant of operating authority that MVRV received in 1982." Slip op. at 13. The Board also noted the unique circumstances of this case, stating that "[i]t is unclear whether the parties were told that [the Return to Questionnaire] was not in the official case file located in the Board's library, or whether they simply were not aware of its existence, given that the agency has not required this type of document since 1981," but that "[i]n either event, the Return to Questionnaire is available to the public in the official case file located in the Board's library." Slip op. at 12 n.65.

The unique circumstances of this proceeding warrant a substantive response to Allied's arguments to aid the Board in determining whether reopening is appropriate in this case. Ohio Central is therefore directed to complete its reply in accordance with this decision by September 5, 2014.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Ohio Central is directed to complete its reply in accordance with this decision by September 5, 2014.
2. This decision is effective on the date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

³ 49 C.F.R. § 1120.5 & 1120.6 (1981).