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SERVICE DATE – JULY 25, 2014

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35745

NEW JERSEY ASSOCIATION OF RAILROAD PASSENGERS AND NATIONAL
ASSOCIATION OF RAILROAD PASSENGERS
—PETITION FOR DECLARATORY ORDER—
PRINCETON BRANCH

Digest:¹ This decision concludes that New Jersey Transit Corporation does not need the Board’s authority to remove certain track in Princeton, N.J.

Decided: July 24, 2014

New Jersey Transit Corporation (NJ Transit) operates passenger rail service—popularly known as “the Dinky”—over the Princeton Branch, a 2.9-mile segment of track in Princeton, N.J. The Princeton Branch, which begins at Princeton Junction and ends at Princeton Station on the campus of Princeton University near downtown Princeton, is a small part of the NJ Transit commuter system, which connects various points in New Jersey with New York City and Philadelphia.

Princeton University is developing an Arts and Transit complex in the area immediately around the existing station. The project involves, among other things, repurposing the existing station as a café, replacing it with a new station to be located along the track some 460 feet south of the existing station, and, as a consequence, removing the last 460 feet of track at the end of the Princeton Branch.

On June 24, 2013, the New Jersey Association of Railroad Passengers and the National Association of Railroad Passengers (collectively, Petitioners) filed a petition for declaratory order pursuant to 5 U.S.C. § 554(e) and 49 U.S.C. § 721, requesting that the Board declare that the Princeton Branch is a line of railroad subject to the Board’s jurisdiction and that any abandonment of all or part of the Princeton Branch, including the railroad station buildings located on it, must be authorized by the Board under 49 U.S.C. § 10903.

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).

On July 9, 2013, Save the Dinky, Inc. (SDKY), a New Jersey nonprofit corporation whose members include users of the Dinky and others interested in the historic preservation of the Princeton Branch, filed a comment and joined in the petition for declaratory order. On July 15, 2013, Christopher Hedges, a Princeton resident who uses the Dinky service, filed to join and intervene in support of the petition.

On the same day, NJ Transit filed a reply asking the Board to dismiss the petition because the Board has no jurisdiction over NJ Transit or the service it provides over the Princeton Branch.² In opposing the petition for declaratory order, NJ Transit asserts that construction of the Arts and Transit complex would not alter any facet of existing service on the Princeton Branch. NJ Transit also asserts that it is a local government authority providing mass transportation under 49 U.S.C. § 10501(c)(2)(A) and thus is not subject to the Board's jurisdiction.

Petitioners seek to invoke the Board's jurisdiction here in order to block the removal of 460 feet of track necessary to effect a minor change in the location of a commuter rail station platform, an action that would appear to have no national rail transportation significance or impact on interstate commerce. For the reasons discussed below, we conclude that the Princeton Branch and the service provided over it are not subject to the Board's jurisdiction. Therefore, the petition for declaratory order will be denied.

BACKGROUND

Prior to 1976, the Penn Central Transportation Company (Penn Central) operated both passenger and freight service over the Princeton Branch. In response to the bankruptcy of several midwestern and northeastern railroad companies, including Penn Central, Congress enacted the Regional Rail Reorganization Act of 1973, Pub. L. No. 93-236, 87 Stat. 985 (1974) (3R Act). The 3R Act established the United States Railway Association (USRA) and authorized USRA to prepare and implement a plan, known as the Final System Plan (FSP), for restructuring the railroads in reorganization into a financially viable, self-sustaining rail system that ultimately became Conrail. The FSP designated which rail properties would be retained in active service and transferred to Conrail and which rail properties could be abandoned. Under the FSP, the rail properties that were not designated for transfer to Conrail could be abandoned and service discontinued without further approval from the Board or its predecessor agency, the Interstate Commerce Commission (ICC), unless an offer to purchase the line was made under section 304(f) or a rail service continuation payment was offered under section 304(c).³

² NJ Transit also seeks leave to reply to SDKY's reply. Although replies to replies are not permitted under our rules, 49 C.F.R. § 1104.13(c), no party has objected. In the interest of a more complete record, we will accept NJ Transit's reply to SDKY's reply.

³ See section 304 of the 3R Act, as amended by the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210, 90 Stat. 127 (1976), codified at 45 U.S.C. § 744.

According to Petitioners, in 1976, Penn Central transferred the Princeton Branch to Conrail, which provided commuter service over the line until 1983 under an arrangement with the New Jersey Department of Transportation (NJ DOT). In 1983, NJ Transit took over Conrail's commuter rail operations over the Princeton Branch and, in 1984, Conrail conveyed the Princeton Branch to NJ DOT pursuant to § 206(c)(1)(D) of the 3R Act, under which rail properties could be purchased from Conrail by a state, local, or regional transportation authority "to meet the needs of commuter and intercity rail passenger service."⁴

Shortly thereafter, NJ Transit sold the real estate underlying the northernmost 1,000 feet of the Princeton Branch, including the station buildings, to Princeton University. NJ Transit retained an easement over the property for public transportation purposes.⁵ In 1987, pursuant to the terms of the sale agreement, Princeton University relocated the station facilities, and NJ Transit shifted the terminus of the Princeton Branch approximately 200 feet to the south to align the tracks to the new end of the station platform.

The University's current Arts and Transit project involves a further minor modification of the Princeton Branch. As noted above, the project calls for new station facilities to be located along the track some 460 feet south of the existing station (that is, 460 feet south from the current end of the track) and, accordingly, the last 460 feet of the Princeton Branch would be removed to align the end of the track with the new station platform. The existing station buildings would be adapted for re-use as a café and restaurant. Current street parking around the existing station would be replaced with parking around the new station, and bus and vehicle access to the new station would be enhanced.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10501(a)(2)(A), the Board has jurisdiction over transportation by rail carriers (1) between a place in a state and a place in another state, and (2) between a place in a state and another place in the same state, as long as that intrastate transportation is carried out as "part of the interstate rail network." See DesertXpress Enters., LLC—Pet. for Declaratory Order, FD 34914 (STB served May 7, 2010). However, under § 10501(c)(2)(A), the Board does not have jurisdiction over "mass transportation provided by a local government authority," a term that embraces commuter services.

In support of the petition for declaratory order, Petitioners assert that the Princeton Branch has long been subject to the jurisdiction of the Board and the ICC, and that freight and passenger traffic have been handled over the Princeton Branch since the 1860s. Petitioners state that the Princeton Branch was transferred, pursuant to the FSP, to Conrail, which provided

⁴ 87 Stat. 995-96.

⁵ In opposing the petition for declaratory order, NJ Transit argues that Princeton University was not required to obtain authority from the ICC to acquire the property interests in the last 1,000 feet of the Princeton Branch from NJ Transit in 1984.

commuter rail services under an arrangement with NJ DOT, until 1983 when NJ Transit took over commuter operations.

Petitioners argue that NJ Transit is a rail carrier and that the service it provides to and from the Princeton Station is interstate in nature or part of the interstate rail network. Petitioners state that service on the Princeton Branch connects with NJ Transit's Northeast Corridor, which connects to the National Railroad Passenger Corporation (Amtrak) at Princeton Junction, Trenton, N.J., and New York City. Petitioners further note that the Northeast Corridor also provides service to stations elsewhere in New York State, as well as connecting service to points in Pennsylvania and Delaware via the Southeastern Pennsylvania Transportation Authority.

Petitioners argue that the transfer by NJ Transit to Princeton University of a portion of the Princeton Branch and station did not divest the Board of jurisdiction and that the transfer required authorization by the ICC. Petitioners argue that, because the Princeton Branch is subject to the Board's jurisdiction, NJ Transit and Princeton University must now seek Board authority to abandon any portion of the Princeton Branch, including the Princeton Station buildings.

We conclude that the service that NJ Transit provides over the Princeton Branch (and over the rest of its system) is not subject to the Board's jurisdiction because it is mass transportation provided by a local government authority under § 10501(c)(2)(A). NJ Transit is a "local government authority." Section 10501(c)(1)(A)(i) uses the term "local governmental authority" as defined under 49 U.S.C. § 5302, which includes "a public corporation, board, or commission established under the laws of a State." 49 U.S.C. § 5302(10). As NJ Transit points out, and as the Board has recognized, NJ Transit is a public corporation formed by state statute in 1979. See, e.g., New Jersey Transit Corp.—Acquisition Exemption—Certain Assets of Consol. Rail Corp., FD 33786 (STB served Feb. 15, 2000).

Moreover, the Dinky passenger service that NJ Transit provides here is "mass transportation." Mass transportation means "transportation services described in [49 U.S.C. § 5302] that are provided by rail." 49 U.S.C. § 10501(c)(1)(B). The only type of transportation defined under 49 U.S.C. § 5302 is "public transportation," which includes (with some exceptions) "regular, continuing shared-ride surface transportation services that are open to the general public or open to a segment of the general public defined by age, disability, or low income."⁶ In creating the mass transportation exception under §10501(c)(2)(A), Congress

⁶ 49 U.S.C. § 5302(14). Prior to the Moving Ahead for Progress in the 21st Century Act, Pub. L. No. 112-141, 126 Stat. 405 (2012) (MAP-21), § 5302(a) expressly defined "mass transportation" as "public transportation," which in turn was defined as "transportation by a conveyance that provides regular and continuing general or special transportation to the public," with certain specified exceptions. MAP-21 § 20004 eliminated the definition of "mass transportation" from 49 U.S.C. § 5302 and amended the definition of "public transportation" to that shown in the text above. The MAP-21 amendments did not alter §10501(c)(2)(A) or the

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intended to specifically exclude “commuter passenger service” from this agency’s jurisdiction.⁷ The service NJ Transit provides over the Princeton Branch appears to be part of regularly scheduled commuter rail operations between points in New Jersey and New York City or Philadelphia.⁸ Indeed, Petitioners themselves refer to NJ Transit’s operations as “commuter rail services.”⁹ Because NJ Transit’s commuter rail operations on the Princeton Branch are mass transportation that is outside the Board’s jurisdiction, those operations provide no basis for requiring abandonment authority from the Board before the 460 feet of track at issue can be removed.¹⁰

Petitioners argue that NJ Transit’s commuter rail operations to and from the Princeton Station are, via through ticketing and connecting service options, interstate in nature, and that the Princeton Branch (and, by that logic, the entire NJ Transit system) is part of the interstate network. However, as the Board has found, excepted mass transportation under § 10501(c)(2)(A) is not subject to the Board’s jurisdiction even if it operates between two or more states. See Mass. Bay Commuter R.R.—Pet. for Declaratory Order, FD 34332 (STB served June 5, 2003).

Nor is excepted mass transportation over the Princeton Branch or the rest of the NJ Transit system subject to the Board’s jurisdiction, notwithstanding its interconnectivity with Amtrak’s interstate rail operations. The entire NJ Transit system, and many points on other transit systems, can connect with Amtrak, but that fact alone does not give the Board jurisdiction over all of these statutorily excepted mass transit operations. Congress carved out an exception to Title 49 for local mass transportation in 49 U.S.C. § 10501(c)(2)(A), and that exception applies here even though a party riding on the Princeton Branch can ultimately end up riding an Amtrak train on the Northeast Corridor.

Petitioners correctly note that in California High-Speed Rail Authority—Construction Exemption—in Merced, Madera & Fresno Counties, California, FD 35724 (STB served June 13, 2013), the Board found that the intrastate passenger rail operations at issue were part of the interstate rail network because of the system’s extensive interconnectivity with Amtrak, both in

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fundamental understanding of what constitutes mass transportation; and indeed, the parties here refer to the definitions found in the pre-MAP-21 version of § 5302.

⁷ See S. Rep. No. 94-595, at 237 (1976) (Conf. Rep.).

⁸ See NJ Transit Reply at 2. According to Petitioners, 84 trains operate over the Princeton Branch on weekdays, 58 per day on weekends and holidays.

⁹ Petition at 4.

¹⁰ We note that none of the local landowners or Dinky riders sought to block the 1987 action removing 200 feet of track to accommodate the needs of the University, nor did any of them claim that the action was subject to the agency’s jurisdiction.

having “preferred” station sites that would allow passengers to connect and access Amtrak, and in having Amtrak operate on the lines to be constructed. Such determinations, however, are inherently fact-bound. The passenger rail system at issue in that proceeding, when completed, would be a long-haul system designed to connect major population centers throughout California, not a short-haul system that would fall under the mass transportation exception in § 10501(c)(2)(A). In contrast, the service NJ Transit provides over the Princeton Branch appears to be part of a short-haul service with frequent, local stops serving primarily commuting passengers, and thus is mass transportation outside of the Board’s jurisdiction under § 10501(c)(2)(A). *See* 49 U.S.C. § 24102(3), (4) (analogous definitions distinguishing between “commuter rail passenger transportation” and “intercity rail passenger transportation”).

Petitioners interpret § 10501(c)(2)(A) as distinguishing mass transportation “services” from “facilities,” suggesting that only mass transportation services are exempt from the Board’s jurisdiction and that the Board retains jurisdiction over the facilities (*e.g.*, tracks, signals, rights-of-way, station buildings) used in mass transportation. Petitioners point out that, in defining mass transportation, § 10501(c)(1)(B) specifically refers to “mass transportation services.” That language, however, merely recognizes that mass transportation often takes place over lines subject to the Board’s jurisdiction and that, in such situations, the Board does not have jurisdiction over the mass transportation services despite having jurisdiction over the line on which it runs.¹¹ Here, the rail facilities involved are used exclusively for commuter rail operations, and thus both the mass transportation facilities and service are exempt from the Board’s jurisdiction.¹² Moreover, the Board’s jurisdiction over transportation provided by a local government authority like NJ Transit is limited only to authorizing joint use of terminal facilities, switch connections, and tracks under 49 U.S.C. §§ 11102 and 11103. 49 U.S.C. § 10501(c)(3)(B).

In addition, SDKY argues that the Princeton Branch is a freight rail line with a common carrier freight obligation and that no authority to abandon the freight obligation has been sought. SDKY cites section 304(e) of the 3R Act (codified at 45 U.S.C. § 744(g)), which authorized the ICC to give Conrail permission to abandon rail properties that were transferred to Conrail subject to the ICC’s (now the Board’s) abandonment authority after two years from the date of conveyance. SDKY contends that there is no indication that NJ DOT or NJ Transit ever sought abandonment authority from the ICC or the Board.

Contrary to SDKY’s assertion, we find that no freight rail obligation exists on the Princeton Branch. It is undisputed that, before Conrail was created, Penn Central and prior

¹¹ *See, e.g., Transit Solutions Grp., LLC—Operation Exemption—Nashville & E. R.R.*, FD 34832 (STB served March 3, 2006).

¹² *Cf. N. San Diego Transit Dev. Bd.—Pet. for Declaratory Order*, FD 34111, slip op. at 6 (STB served Aug. 21, 2002) (finding Board jurisdiction over the construction of a line to be used for both commuter rail and common carrier freight service).

carriers moved both freight and passengers over the Princeton Branch.¹³ It is also true that a rail freight line cannot lose its common carrier status through a mere change in use, but only upon abandonment authorized by this agency.¹⁴ However, in the 3R Act, Congress established a unique statutory regime that pertains to certain lines of carriers in reorganization, the status of which was to be determined by USRA. Here, both Petitioners and NJ Transit agree that the Princeton Branch was not identified for transfer to Conrail under the general designation of § 206(c)(1)(A) (which applied to freight operations), but rather was designated specifically as available for purchase or lease for commuter or intercity passenger service only, pursuant to § 206(c)(1)(D).¹⁵ As noted by the Petitioners and NJ Transit, property under this designation was transferred to Conrail first and then by Conrail to a governmental authority, but not for freight service.¹⁶ Thus, all that was conveyed to NJ DOT (via Conrail), and later to NJ Transit, were the commuter service functions described above. Accordingly, the abandonment provisions of 45 U.S.C. § 744(g), which apply to lines retained for active service in the Conrail system, do not apply to the freight operations previously conducted over the Princeton Branch. Because no common carrier freight obligation was conveyed (from Conrail to NJ DOT, and later to NJ Transit), no common carrier freight obligation to abandon currently exists.¹⁷

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

¹³ See Petition at 3; SDKY at 3.

¹⁴ See, e.g., Allegheny Valley R.R.—Pet. for Declaratory Order, FD 35239, slip op. at 9 (STB served June 15, 2010) (citing Atchison, Topeka & Santa Fe Ry.—Aban. Exemption—Lyon Cnty., Kan., AB-52 (Sub-No. 71X), slip op. at 3 (ICC served June 17, 1991)).

¹⁵ See Deed from Consolidated Rail Company to the State of New Jersey, dated June 15, 1984, effective as of April 1, 1975, attached to the Petition as Exhibit B; see also Petition at 3; NJ Transit Reply at 3.

¹⁶ See Petition at 3; Reply at 3.

¹⁷ Furthermore, because we conclude that the Princeton Branch and the service provided over it are not subject to the Board's jurisdiction, there is no merit to Petitioners' assertion that Princeton University was required to seek ICC authority to acquire a portion of the Princeton Branch from NJ Transit in 1984.

It is ordered:

1. The petition for declaratory order is denied.
2. NJ Transit's request for leave to file a reply to a reply is granted.
3. Mr. Hedges's petition to intervene is granted.
4. This decision is effective on its date of service.

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