

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35477

ALLIED INDUSTRIAL DEVELOPMENT CORPORATION—PETITION FOR
DECLARATORY ORDER

Digest:¹ The Board finds that tracks on a parcel in Youngstown, Ohio, are within the Board's jurisdiction. Having made that finding, the Board will return this case to the state court to determine whether there was a valid sale of the parcel under Ohio property law. After the state court has issued its findings, the parties should return to the Board and submit evidence and argument as to whether the track at issue is spur or mainline, whether it has been removed from the national rail system, and what, if any, regulatory authorization is required.

Decided: September 15, 2015

Allied Industrial Development Corporation (Allied), a noncarrier, has filed a petition for declaratory order arising out of a property dispute that is pending in state court. The state court stayed its proceeding and referred the matter to the Board for adjudication of all issues within the Board's primary jurisdiction. Allied Indus. Dev. Corp. v. Ohio & Pa. R.R., No. 09 CV 2835 (Ct. Com. Pl. Mahoning Cty., Ohio, Sept. 22, 2010).² The underlying question involves the validity of the conveyance of a parcel of land known as Lot No. 62188, which contains railroad tracks next to the Mahoning River in Youngstown, Ohio. A second parcel, Lot No. 62320, was also part of the conveyance, but there is no ownership dispute as to that parcel.

BACKGROUND

The controversy over Lot No. 62188 began in 2007, when a rail carrier, the Mahoning Valley Railway Company (MVRV),³ signed transfer agreements conveying the parcel, as well as

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 Allied Pet., Ex. L.

³ MVRV is part of the Ohio Central Railroad System (Ohio Central), which is an unincorporated and unregistered association of 11 railroads operating in Ohio and Pennsylvania. Summit View, Inc. (Summit View) is the corporate parent of the railroads in the Ohio Central; and Genesee & Wyoming, Inc. (G&W) is the corporate parent of Summit View. In this decision,
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Lot No. 62320, to Gearmar Properties, Inc. (Gearmar), a noncarrier. Gearmar then sold those two parcels to Allied on March 26, 2009. At that time, however, the parcels were still occupied by MVRV, which was using an office building on Lot No. 62188; storing rail cars, materials, and equipment on both parcels; and conducting limited rail operations over the tracks.

Allied asked MVRV to vacate both lots. When MVRV did not comply, on July 27, 2009, Allied filed a complaint against MVRV in Ohio state court, alleging that MVRV had no legal right to be on either parcel. In its state court lawsuit, Allied sought (1) to evict MVRV from both lots and (2) to recover damages from MVRV's alleged trespass on its property. Subsequently, the issues regarding Lot No. 62320 were resolved and MVRV vacated that parcel,⁴ leaving only the controversy over Lot No. 62188. In state court, MVRV filed a motion to dismiss or, in the alternative, to refer the matter to the Board. On September 22, 2010, the court granted the latter request, asking the Board to resolve all issues within its primary jurisdiction.

On March 24, 2011, Allied filed a petition for declaratory order asking that the Board send this matter back to the state court. MVRV filed a reply on April 13, 2011. The Board reserved its decision until it had resolved the issues in a contemporaneous Board proceeding that also involved Allied and MVRV, as well as tracks that connected to those on Lot No. 62188, because the findings there might have an impact in the instant case.

Related Proceeding. On December 20, 2013, the Board issued a decision in the contemporaneous proceeding, in which it concluded that MVRV had obtained regulatory authorization to operate over the tracks at issue there, referred to as the "LTV Tracks." Allied Erecting & Dismantling, Inc.—Pet. for Declaratory Order—Rail Easements in Mahoning Cty., Ohio (Allied Rail Easements), FD 35316 (STB served Dec. 20, 2013), appeal docketed sub nom. Allied Erecting & Dismantling, Inc. v. STB, No. 14-3094 (6th Cir. Feb. 4, 2014). In addition to petitioning for judicial review, Allied filed a petition to reopen the Board's December 2013 decision in Allied Rail Easements, arguing that the Board erred in concluding that MVRV had obtained the required regulatory authorization to operate the LTV Tracks.

On September 17, 2015, the Board issued a decision granting, in part, Allied's petition for reopening in Allied Rail Easements. In that decision, the Board found that the LTV Tracks are mainline⁵ but that no authority under 49 U.S.C. § 10901 to operate over the LTV Tracks had

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we will collectively refer to Summit View, G&W, and the six railroads in Ohio Central that have been joined here as MVRV.

⁴ MVRV indicates that it vacated Lot No. 62320 because of Allied's demands and because of MVRV's termination of a lease with its customers. (Reply at 3.)

⁵ Under the Interstate Commerce Act, the Board has exclusive jurisdiction over rail lines over which railroads provide point-to-point "common carrier" line-haul service to shippers (i.e., mainlines). See Suffolk & S. Rail Road LLC—Lease & Operation Exemption—Sills Road Realty, FD 35036, slip op. 1 (STB served Nov. 16, 2007). The federal government has licensed rail carrier entry and exit since 1920. Thus, the Board and its predecessor agency, the Interstate

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been sought or granted, thus depriving MVRVY's operations of federal preemption under 49 U.S.C. § 10501(b). Allied Erecting & Dismantling, Inc.—Pet. for Declaratory Order—Rail Easements in Mahoning Cty., Ohio, FD 35316, slip op. at 9-10 (STB served September 17, 2015). The Board also noted that MVRVY could now seek Board authorization in order to conduct mainline operations on the LTV Tracks. Id. at 10. Now that the Board has reached a final determination in that proceeding, we are able to issue a decision in the current proceeding.

Issues and Arguments in this Proceeding. In its petition for declaratory order here, Allied objects to the state court's referral to the Board. First, Allied claims that the Board lacks subject matter jurisdiction over this dispute. Allied states that the issue here is a property dispute, an area of law presumptively reserved for states to adjudicate and outside of the Board's expertise. Second, Allied asserts that the tracks on Lot No. 62188 are ancillary spur or industrial tracks under 49 U.S.C. § 10906, as opposed to mainline track, and claims that the tracks therefore are excepted from the Board's jurisdiction.⁶ Third, Allied argues that preemption only applies to state remedies that would unreasonably interfere with interstate rail operations, and that the relief Allied seeks in state court would not cause such unreasonable interference because only the enforcement of private property rights is involved here.

On April 13, 2011, MVRVY replied to Allied's petition, arguing that the Board should institute a declaratory order proceeding to resolve questions within its primary jurisdiction, as requested by the state court. According to MVRVY, Lot No. 62188 is currently being used for essential rail operations and, therefore, federal preemption applies to it. MVRVY also asks the Board to find that the sale of the property at issue here and in the court case is void. MVRVY claims that neither Gearmar nor Allied sought necessary Board approval for the acquisition of Lot No. 62188 and, therefore, good title to Lot No. 62188 was not conveyed to Gearmar or subsequently to Allied. MVRVY asserts that, in the absence of a conveyed good title and Board acquisition approval, the acquisition of Lot No. 62188 is void, and that the property legally remains with MVRVY.

On March 28, 2014 (after the Board issued its decision in Allied Rail Easements), Allied filed a motion seeking a ruling that none of its state law claims could be federally preempted. Allied raises similar arguments to those made in the related proceeding. Specifically, it claims that MVRVY never obtained regulatory authority to operate over the track on Lot No. 62188, and as a result, it is "private track" outside the Board's jurisdiction and federal preemption does not

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Commerce Commission (ICC), have long had exclusive jurisdiction and plenary authority over the construction, operation, and abandonment of mainlines. 49 U.S.C. §§ 10901, 10903.

⁶ Under 49 U.S.C. § 10906, the "construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching or side tracks" is statutorily excepted from the entry and exit licensing requirements of 49 U.S.C. §§ 10901-10905, as well as the sales and acquisition licensing requirements of 49 U.S.C. §§ 11321-11326. As discussed below, however, § 10906 track is part of the national rail system. Accordingly, while excepted from the Board's licensing requirements, § 10906 track is nevertheless subject to the Board's jurisdiction.

apply.⁷ Allied quotes Allied Rail Easements, slip op. at 10, where the Board stated that if Ohio Central (the larger association to which MVRV belongs) “never obtained the regulatory authority to operate over the tracks, then none of Allied’s state law claims against Ohio Central could be federally preempted.”⁸ Allied presents evidence and argument aimed at proving that the ICC never granted operating authority over the track at issue.

In a response filed April 17, 2014, MVRV argues that there are issues related to preemption that the Board should resolve before the matter is returned to state court. As such, it claims that the Board should establish a procedural schedule and receive evidence.

DISCUSSION AND CONCLUSIONS

Under 5 U.S.C. § 554(e) and 49 U.S.C. § 721, the Board may issue a declaratory order to terminate a controversy or remove uncertainty. See InterCity Transp. Co. v. United States, 737 F.2d 103 (D.C. Cir. 1984); Delegation of Auth.—Declaratory Order Proceedings, 5 I.C.C. 2d 675 (1989). Petitions for issuance of a declaratory order premised on a court referral are routinely accepted. Teck Metals Ltd.—Pet. for Declaratory Order—Practices of Wheeling & Lake Erie Ry., FD 35324, slip op. at 1 (STB served Jan. 22, 2010). Given that the state court has referred to the Board questions of our jurisdiction which (as discussed below) are within our purview, it is appropriate to issue a declaratory order addressing the court’s questions.

Board Jurisdiction. Allied argues that the tracks on Lot No. 62188 are not within the Board’s jurisdiction. In its March 24, 2011 pleading, Allied argues that the tracks at issue in this case are wholly ancillary spur track and that, under 49 U.S.C. § 10906, “[t]he Board does not have authority under this chapter over construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks.”⁹ According to Allied, this lack of licensing authority means that the Board has no jurisdiction of any kind over spur track and, therefore, has no role to play in this matter. In Allied’s second filing, however, it characterizes the tracks on Lot No. 62188 as “private track,” which is not within the Board’s jurisdiction.¹⁰

As an initial matter, Allied misinterprets § 10906 when it equates licensing authority with jurisdiction. While the Board does not have licensing authority over spur track under § 10906,

⁷ Private track is non-jurisdictional track that is owned, constructed, and maintained by a shipper to serve its own facility. A person operating private track makes no holding out to serve other shippers. Such track “is used exclusively by the track’s owner for movement of its own goods (either by utilizing its own equipment or by contracting for service) and for which there is no common carrier obligation to serve other shippers that might locate along the line.” B. Willis, C.P.A., Inc.—Pet. for Declaratory Order, 6 S.T.B. 280, 281 (2002), aff’d sub nom., B. Willis v. STB, 51 Fed. App’x 321 (D.C. Cir. 2002).

⁸ Pet’r’s Mot. 1, Mar. 28, 2014.

⁹ Allied Pet. 11, Mar. 24, 2011.

¹⁰ Pet’r’s Mot. 2, Mar. 28, 2014.

spur track is within the Board’s exclusive jurisdiction pursuant to § 10501(b)(2). Port City Props. v. Union Pac. R.R., 518 F.3d 1186, 1186-89 (10th Cir. 2008); Joseph R. Fox—Pet. for Declaratory Order, FD 35161, slip op. at 4 (STB served May 18, 2009) (“When sections 10501(b) and 10906 are read together, it is clear that Congress intended to occupy the field and preempt state jurisdiction over excepted track such as yard track, even though Congress allowed rail carriers to construct, operate, and remove such facilities without Board approval”). Thus, § 10906 track, while excepted “from the need to obtain Board authority for construction, abandonment, or operation, is nevertheless subject to the Board’s jurisdiction and is not subject to state or local regulation.” Id.; see also United Transp. Union, Ill. Legislative Bd. v. STB, 183 F.3d 606, 612 (7th Cir. 1999) (stating that “[t]he § 10906 no-authority language means no *authority*, not no *jurisdiction*.”).

Despite Allied’s misinterpretation of § 10906, we must nonetheless determine whether the track here is within the Board’s jurisdiction. In Allied’s first pleading, it presents evidence that the track at issue is spur track, which (as explained) would fall within the Board’s jurisdiction. Allied argues that “[t]he following evidence demonstrates that the tracks on Lot No. 62188 are industrial tracks.”¹¹ Allied explains that the track at issue has been used (1) to access MVRV’s locomotive shop, (2) for the staging and storage of railroad equipment, (3) for interchanging with Norfolk Southern Railway Co. (NSR), (4) for interchanging with CSXT Railroad (CSXT), and (5) by The Bloom Plastics Company (Bloom) to regularly transload plastic pellets.¹² Then, without withdrawing that argument, Allied’s second filing characterizes the track as private, which would fall outside of the Board’s jurisdiction. As noted, private track is used exclusively by the track’s owner for movement of its own goods, and the owner incurs no common carrier obligation. B. Willis, 6 S.T.B. at 281. Given Allied’s acknowledgment in its first pleading that MVRV used the track to carry goods belonging to Bloom, it is clear that the track on Lot No. 62188 is not private track. The track is therefore within the Board’s jurisdiction, either as ancillary or mainline track.

The State Court’s Adjudication. The current record lacks the evidence needed to determine whether the track is ancillary § 10906 track or mainline track. If the track is ancillary, it would be subject to Federal preemption under 49 U.S.C. § 10501(b). If the track is mainline, it would be subject to preemption under § 10501(b) unless MVRV has not received the necessary agency authorization to conduct mainline operations.¹³ However, even if Federal preemption is applicable, that fact does not bar the state court from deciding whether the sale of Lot No. 62188 was valid under Ohio law. Neither party has suggested that the Board should address the merits of that dispute here. In fact, the Board generally leaves questions of state property law to state courts because they have the necessary expertise. Allegheny Valley R.R.—Pet. for Declaratory

¹¹ Allied’s Pet. 13, Mar. 24, 2011.

¹² Id. at 14.

¹³ See Suffolk & S. Rail Road—Sills Road Realty, LLC, FD 35036, slip op. at 3 (STB served Aug. 28, 2008) (activities that require a Board license but do not come within the scope of a license issued by the agency are subject to the application of state and local laws and not entitled to preemption).

Order—William Fiore, FD 35388 (STB served Apr. 25, 2011) (denying a petition for declaratory order because the question posed was a property line dispute best adjudicated by the state court); CSX Transp.—Aban. Exemption—in Allegany Cty., Md., AB 55 (Sub-No. 659) (STB served Apr. 24, 2008) (holding that questions presented there involving an alleged error in the form of a deed transfer were matters best left for the state court to decide).

Accordingly, we will now return this proceeding to the state court so that it can determine the validity of the sale of Lot No. 62188. Knowing whether MVRVY validly sold Lot No. 62188 under state law would inform the Board’s determination of what regulatory approvals may be needed. Specifically, if the state court finds that there was no valid sale and the parcel is still owned by MVRVY, the Board still would need to clarify the status of the track on Lot No. 62188. If all or some of the tracks on Lot No. 62188 are mainline (as our finding in Allied Rail Easements suggests might be the case), MVRVY must show that it has the necessary agency authorization to conduct mainline operations on them. If MVRVY cannot make that showing, it must seek the appropriate authorization.

Conversely, if the state court finds that a valid sale of Lot No. 62188 did occur, both Allied and MVRVY must return to the Board to clarify the status of the track—that is, whether or not the tracks are spur or mainline (or a combination of the two). If the tracks are ancillary track, the parties must also explain whether their sale indicates that they were abandoned by MVRVY.¹⁴ If, on the other hand, the tracks are mainline, the parties must explain who has the common carrier obligation and whether any regulatory authority from the Board is necessary in connection with the sale.

We note that, to the extent that any Board licensing authority is necessary for the sale of Lot No. 62188 (which cannot be determined based on the information that is available at this time), lack of regulatory authority alone is not a basis to void the transaction. The Board has allowed parties to obtain after-the-fact licensing authority for a transaction when the failure to seek prior approval was done without malice and by mistake. Gen. Ry.—Exemption for Aquis. of R.R. Line—in Osceola & Dickinson Ctys., Iowa., FD 34867 (STB served June 15, 2007). But if the Board determines here that licensing authority for the transaction was necessary, and no after-the-fact authority is obtained, then the transaction would be void under federal law.

Once the state court makes its determination on whether there was a valid sale, the appropriate party or parties should return to the Board and address the issues identified above. Until an appropriate ruling from the Board is obtained, MVRVY cannot be forced to discontinue service on the Lot No. 62188 tracks. See 49 U.S.C. §§ 10501(b), 10903.

¹⁴ Section 10906 ancillary tracks are not necessarily abandoned when a carrier’s property right is extinguished. Pinelawn Cemetery—Pet. for Declaratory Order, FD 35468, slip op. at 11 (STB served Apr. 21, 2015), appeal docketed sub nom. Pinelawn Cemetery v. STB, No. 15-1919 (2d Cir. June 15, 2015) (“A rail carrier’s intent to abandon § 10906 track cannot be determined by a single act, or failure to act, when there is overwhelming evidence that a carrier intends the opposite outcome.”).

Filing Reimbursement Request. Allied requests that the Board require MVRV to reimburse Allied for its filing fee for the petition, as MVRV was the party that moved for the state court to refer the matter to the Board. The agency, however, generally does not award expenses. Springfield Terminal Ry.—Pet. for Declaratory Order—Reasonableness of Demurrage Charges, NOR 42108, slip. op. at 2 (STB served June 22, 2009). Moreover, given that the legal issues here involve the Board’s jurisdiction, MVRV reasonably decided to ask the state court to refer this matter to the Board. Accordingly, we will deny Allied’s request for reimbursement of filing fees.

It is ordered:

1. The petition for declaratory order is granted to the extent discussed above, and the case is returned to the state court for a determination of the validity under state law of the sale of Lot No. 62188.
2. Following the conclusion of the state court proceeding, the appropriate party or parties shall return to the Board and submit evidence and argument as to whether the track at issue is spur or mainline, whether it has been removed from the national rail system, and what, if any, regulatory authorization is required.
3. Allied’s request for reimbursement of filing fees from MVRV is denied.
4. A copy of this decision will be served on: The Honorable Maureen A. Sweeney, Court of Common Pleas, Mahoning County Court House, 120 Market Street, Youngstown, OH 44503, Re: Civil Action No. 09 CV 2835.
5. This decision is effective on its service date.

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