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SERVICE DATE – LATE RELEASE MARCH 22, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34487

GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION--
PETITION FOR DECLARATORY ORDER

AGENCY: Surface Transportation Board.

ACTION: Institution of declaratory order proceeding; request for comments.

SUMMARY: The Surface Transportation Board is instituting a declaratory order proceeding and requesting comments on the following question: whether the preemption provisions of 49 U.S.C. 10501(b)(2) preclude a state court from hearing a lawsuit alleging that a railroad has failed to carry out its common carrier obligation to provide service.

DATES: Any interested person may file with the Board written comments concerning this issue by March 31, 2004. Replies will be due on April 7, 2004.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Finance Docket No. 34487 to: Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, send one copy of any comments to: Andrew J. White, Jr., Haynsworth Sinkler Boyd, PA, 75 Beattie Place, 11th Floor, P.O. Box 2048, Greenville, SC 29602 (counsel for Greenville County Economic Development Corporation); and Jason Elliott, Law Offices of John S. Simmons, LLC, 1711 Pickens Street, P.O. Box 5, Columbia, SC 29202 (counsel for Groome & Associates, Inc.).

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565-1600. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877-8339.]

SUPPLEMENTAL INFORMATION: In Finance Docket No. 33752, Greenville County Economic Development Corporation--Acquisition Exemption--South Carolina Central Railroad Company, Inc., Carolina Piedmont Division, the Greenville County Economic Development Corporation (GCEDC) acquired an 11.8 mile unabandoned rail line between Greenville and Travelers Rest, S.C. (Served June 3, 1999). On June 30, 2003, in Docket No. AB-490X, Greenville County Economic Development Corporation - Discontinuance of Service Exemption - in Greenville County, SC, GCEDC sought to use the Board's class exemption procedures to obtain authorization to discontinue service

over a line of railroad that it had acquired in 1999. In response, Lee Groome and Groome & Associates, Inc. (Groome), indicated that it had unsuccessfully sought service over the line, and that it was pursuing an action against GCEDC in South Carolina state court. Finding that Groome had raised sufficient concerns to make it inappropriate for GCEDC to use the expedited class exemption procedures — which are reserved for routine, noncontroversial matters — in a decision issued January 29, 2004, the Board dismissed the notice of exemption. The Board held that, to obtain discontinuance authority, GCEDC would have to proceed by filing a petition for an individual exemption under 49 U.S.C. 10502 or a full application under 49 U.S.C. 10903, either of which would permit the issues to be examined more fully on a more thoroughly developed record.

The Board in its decision did not address the state court proceeding other than to note that it provided an indication that the discontinuance matter was not uncontroversial. Subsequently, however, in a letter dated March 11, 2004, Andrew J. White, Jr., counsel for GCEDC, did raise questions about the state court’s jurisdiction in light of the Federal preemption of state law embodied in 49 U.S.C. 10501(b). Among other things, Mr. White furnished the agency with a recent decision issued in the Greenville County Court of Common Pleas in Groome & Associates, Inc., and Lee Groome v. Greenville County Economic Development Corporation, Civil Case No. 01-CP-23-2351 (filed Feb. 13, 2004). In that decision, the court rejected GCEDC’s argument that the court lacks jurisdiction to hear claims for damages resulting from failure to provide service (Id. at 4); cited various provisions of the South Carolina Code as support for its authority to act (Id.); found it “significant that the STB has made [its] ruling dismissing the carrier’s action with full knowledge of the pending state court litigation,” which, the court concluded, indicates that the Board “does not find the state court litigation to be offensive and apparently does not intend to preempt the jurisdiction of the state court in this matter” (id. at 5); and determined that it “is for a jury to determine whether the defendant had fully complied with [its] common carrier obligations to provide rail service on the contested line.” Id.

Mr. White’s letter will be treated as a petition for declaratory order and placed in the docket and on the Board’s website, and a declaratory order proceeding will be instituted. It should be noted that, in disallowing use of the class exemption for the sought discontinuance, the Board has not addressed the merits of either the service dispute or the discontinuance. In this proceeding, however, the Board will not address any merits issues, but rather will look at a single question, which was not expressly or impliedly addressed in the decision on the discontinuance: whether the preemption provisions of 49 U.S.C. 10501(b)(2) preclude a state court from hearing a lawsuit alleging that a railroad has failed to carry out its common carrier obligation to provide service.

Under 49 U.S.C. 10501(b), the Board has exclusive jurisdiction over “transportation by rail carriers,” and the remedies provided in the Interstate Commerce Act (IC Act), which the Board administers, “preempt [other] remedies provided under Federal or State law.” Several courts have interpreted this provision and have found that it is extremely broad. See, e.g., CSX Transp., Inc. v.

Georgia Public Service Commission, 944 F. Supp 1573, 1581 (N.D. Ga. 1996); Friberg v. Kansas City S. Ry., 267 F.3d 439, 443 (5th Cir. 2001). The Board has interpreted it in a variety of cases as well. See, e.g., Joint Petition for Decl. Order—Boston & Maine Corp. & Town of Ayer, MA, STB Finance Docket No. 33971 (STB served May 1, 2001) (Ayer),¹ 2001 STB LEXIS 435 (collecting court cases). But although at least one federal court of appeals has addressed the preemptive effect of section 10501(b) on state court actions in cases involving the common carrier obligation — see Pejepscot Industrial Park v. Maine Central Railroad, 215 F.3d 195, 204-05 (1st Cir. 2000) (“Congress intended only to preempt state law and remedies,” but did not intend to oust concurrent federal district court jurisdiction over common carrier obligation claims under the IC Act) — the matter has never been formally brought before the Board, and so the Board has never ruled on it.

Accordingly, by this notice, the Board is requesting comments on this matter.

Board decisions and notices are available on our website at “WWW.STB.DOT.GOV.”

Decided: March 22, 2004.

By the Board, Chairman Nober.

Vernon A. Williams
Secretary

¹ Aff’d, Boston & Maine Corp. v. Town of Ayer, 206 F. Supp. 2d 128 (D. Mass. 2002), rev’d solely on attorneys’ fee issue, 330 F.3d 12 (1st Cir. 2003).