

40810  
DO

SERVICE DATE – AUGUST 19, 2010

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1063

CERRO GORDO COUNTY, IOWA  
—ADVERSE ABANDONMENT—BACKTRACK, INC.

Decided: August 18, 2010

On April 26, 2010, Cerro Gordo County, Iowa (County) filed a petition for waiver of certain Board abandonment regulations and exemption from certain statutory provisions in connection with an adverse, or third-party, abandonment application it plans to file under 49 U.S.C. § 10903. The County stated that it intends to seek adverse abandonment of the section of railroad right-of-way owned by a corporate entity, Backtrack, Inc. (Backtrack),<sup>1</sup> that crosses Road B-20 located in the County. The County wants to realign Road B-20. The realignment would require the installation of a banked curve where the rail right-of-way intersects with Road B-20. To complete the realignment, it will be necessary to remove the railroad bed 150 feet from the centerline of the reconfigured Road B-20.

The County also requested that the Board issue and make effective its decision on the waiver/exemption petition on or before April 28, 2010. In a letter also filed on April 26, 2010, Backtrack opposed the expedited consideration request. In a decision served on April 29, 2010, the Board denied the County's request for expedited consideration and stated that replies to the waiver/exemption petition would be due no later than May 17, 2010.

On May 6, 2010, Backtrack filed a motion to reject the waiver/exemption petition or, alternatively, a reply in partial opposition. According to Backtrack, Iowa Traction Railroad Company (IATR) has the right to operate over the right-of-way<sup>2</sup> and is therefore a necessary party here. Backtrack asserts, however, that IATR has not been served with a copy of the County's petition.

Under 49 U.S.C. § 10903(d), the standard governing any application to abandon or discontinue service over a line of railroad, including an adverse abandonment or discontinuance, is whether the present or future public convenience and necessity require or permit the proposed abandonment or discontinuance. The Board has exclusive and plenary jurisdiction over rail line

---

<sup>1</sup> Backtrack is a noncarrier that owns the right-of-way as legal successor to Hermitage Homes, Inc.

<sup>2</sup> IATR was authorized to operate over the right-of-way in Iowa Traction Railroad Co.—Operation Exemption—Hermitage Homes, Inc., FD 31353, (ICC served Nov. 23, 1988).

abandonments and discontinuances of service to protect the public from unnecessary discontinuance, cessation, interruption, or obstruction of available rail service.<sup>3</sup> The Board, however, does not allow its jurisdiction to be used to shield a carrier from the legitimate processes of state law where there is no overriding interest in interstate commerce.<sup>4</sup> A decision permitting an adverse abandonment removes the Board's exclusive jurisdiction over the property and allows the applicant to pursue other legal remedies, if necessary, to force the carrier off the line.<sup>5</sup>

Here, however, Backtrack has never received authority from the Board or its predecessor and is not a licensed carrier. The only apparent carrier with a common carrier obligation on the line is IATR. Because IATR is an operator on--rather than an owner of--the line, it appears that any adverse application that the County would file would need to seek only discontinuance of service by IATR.

IATR was not named as a respondent and apparently was not served with a copy of the waiver petition. Therefore, if the County wishes to proceed with this matter, it needs to serve a copy of its waiver petition, together with a copy of this decision, on IATR, and certify to the Board that it has done so, by August 24, 2010. IATR shall file its response, if any, to the waiver petition no later than September 13, 2010.

Any other issues raised or relief sought by the parties is not relevant to the Board's reaching a determination here. Consequently, they will not be addressed.

It is ordered:

1. If the County wishes to proceed with this matter, it shall serve a copy of its waiver petition, together with a copy of this decision, on IATR, and certify to the Board that it has done so, by August 24, 2010. IATR shall file its response, if any, to the waiver petition no later than September 13, 2010.
2. Backtrack's motion to reject is dismissed as moot.
3. This decision is effective on its date of service.

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

---

<sup>3</sup> Modern Handcraft, Inc.—Abandonment—in Jackson County, Mo., 363 I.C.C. 969, 972 (1981).

<sup>4</sup> Id.

<sup>5</sup> Consol. Rail v. ICC, 29 F.3d 706, 709 (D.C. Cir. 1994); Modern Handcraft, 363 I.C.C. at 972.