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SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-459 (Sub-No. 2X)

CENTRAL RAILROAD COMPANY OF INDIANA--ABANDONMENT EXEMPTION--
IN DEARBORN, DECATUR, FRANKLIN, RIPLEY, AND SHELBY COUNTIES, IN

Decided: April 1, 1998

This decision denies a motion by protestants in this matter that we exempt ourselves from the statutory deadline mandated by Congress and that we compel certain types of discovery.

BACKGROUND

On January 14, 1998, Central Railroad Company of Indiana (CIND) filed a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad known as the Shelbyville Line, extending from approximately milepost 23.0, near Thatcher station and the town of Greendale, to approximately milepost 81.0, near Shelbyville, a distance of approximately 58 miles in Dearborn, Decatur, Franklin, Ripley, and Shelby Counties, IN. Notice of the petition was served and published (63 FR 5418) on February 2, 1998.

On February 19, 1998, CIND filed a motion seeking an order denying discovery requests filed by certain persons who ship goods over the line or who otherwise have an interest in the proceeding, and who purportedly intend to oppose the petition (hereafter "protestants"). These persons are the complainants in a pending related proceeding in STB Finance Docket No. 33386, Decatur County Commissioners, et al. v. Central Railroad Company of Indiana (the complaint proceeding).

In a decision served February 27, 1998, the Board's Secretary denied the motion as a premature, overbroad request that is inconsistent with the Board's rules of procedure. The Secretary indicated that, rather than attempting to "preempt" discovery, as here, a party may object to discovery requests, leaving the party seeking discovery the option of applying for an order compelling replies under the procedures set forth at 49 CFR 1114.31. The Secretary added, however, that, in an abandonment exemption proceeding, discovery is generally dilatory, typically not productive, and consequently disfavored.

Thereafter, on March 6, 1998, protestants[1] filed a motion (1) to compel the production of workpapers and the taking of depositions, and (2) for "adjustment" of the May 4, 1998 deadline date for issuance of a decision on the merits. CIND replied to the motion on March 13, 1998.[2] The motion will be denied.

POSITIONS OF THE PARTIES

Protestants argue that the Board should compel CIND to produce the workpapers and documentation related to each section of its exemption petition and exhibits, if such materials exist. Protestants also would have CIND specifically identify relevant workpapers or documentation the railroad believes it already produced in connection with the complaint proceeding, and to produce such materials if protestants do not have them. In support of their requests, protestants note that the Board's regulation at 49 CFR 1121.3(a) requires that: "A party filing a petition for exemption shall provide its case-in-chief, along with its supporting evidence, workpapers, and related documents at the time it files its petition." Protestants' position is that CIND has failed to comply with this requirement. Protestants assert that they are unable to determine which of the documents they received in the complaint proceeding are documents upon which CIND intends to rely here.

Protestants also want to depose Richard H. McDonald, who prepared CIND's evidence regarding the costs of rehabilitating and maintaining the subject line, and R. Scott Morgan, who prepared CIND's avoidable cost study and financial statements. Protestants question whether Mr. McDonald personally performed the track, roadbed, and bridge inspection underlying his testimony, and they argue that examining Mr. McDonald is the best, if not the only, method available for probing the issue. Protestants assert that Mr. Morgan's study contains "highly unusual numbers" and that his revenue figures raise "puzzling questions" and involve missing facts. Protestants argue, therefore, that Mr. Morgan's variable cost study rests on certain factual assumptions and assertions as to which only Mr. Morgan or CIND can provide explanations.

Protestants contend that the Board should not allow its May 4, 1998, decisional deadline in this proceeding to interfere with CIND's production of relevant data. They suggest that the Board grant an exemption, under 49 U.S.C. 10502, from the statutory deadlines.

In reply, CIND avers that protestants' demand for workpapers is premature and unnecessary, as the railroad has informed protestants that it would respond to their request for document

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[1] One entity named on the signature line of the motion, Consolidated Grain & Barge Co., is not a complainant in the complaint proceeding.

[2] On March 17, 1998, protestants filed a letter stating that (1) they are amenable to postponing and renewing their request to take depositions, and (2) they believe that CIND does not oppose their extension request. The letter does not warrant any conclusions different from those subsequently reached in this decision, and thus will not be discussed further.

production by March 17, 1998. Also, petitioner complains that protestants' document requests are unduly broad as the motion does not specifically identify the documents protestants seek.

CIND replies, further, that protestants have failed to advance any plausible reason why it would be necessary to depose Mr. McDonald.[3] CIND argues that, in any event, Mr. McDonald's estimates of maintenance costs and net liquidation value (NLV) are not essential elements of the petition since (1) revenue from the line cannot support even normalized maintenance, and (2) the avoidable expenses of the line are sufficient to justify the abandonment. As such, CIND argues, reliance on the line's opportunity cost, which includes calculation of NLV, is unnecessary. The railroad adds that protestants' three consultants, who contradicted Mr. McDonald's testimony in the complaint proceeding, are able to rebut disputed conclusions in this proceeding.

Finally, CIND argues that the responses to protestants' discovery requests that the railroad has promised to provide by March 17 may obviate the asserted need to depose Mr. Morgan. In any event, the railroad adds, the high level of detail in Mr. Morgan's cost study enables protestants easily to identify the assertions and assumptions upon which the analysis is based and to dispute them if desired.

DISCUSSION AND CONCLUSIONS

Protestants note that in our Federal Register notice published on February 2, 1998, we set a deadline of May 4, 1998, to issue a decision in this case, and they have asked us to "adjust" that deadline. Although protestants describe this as a "self-imposed" deadline, it is mandated by 49 U.S.C. 10904(c). That section provides, in relevant part, that "[w]ithin 4 months after an application is filed under section 10903, any person may offer to subsidize or purchase the railroad line that is the subject of such application." Because the Board cannot know whether to process an offer of financial assistance until we have decided the application or petition to abandon the line, section 10904(c) requires that we decide all requests to abandon rail lines within 4 months. The Board therefore decides all abandonment cases within 110 days, to give 10 days' notice to anyone filing an offer to purchase or subsidize a line 120 days after the date on which an application or petition to abandon a line is filed. See Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 U.S.C. 10903, STB EX Parte No. 537 (STB served Dec. 24, 1996).

Protestants assert that we have used our authority to exempt ourselves from the requirement that we meet this statutory deadline. But the only case cited by the protestants fails to support their argument.[4] Congress imposed strict deadlines in abandonment cases so that we would decide them

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[3] CIND describes how, contrary to protestants' insinuations, it was possible for Mr. McDonald physically to inspect the subject line in a 2-day period.

[4] Protestants' reliance on Norfolk Southern Railway Company--Abandonment Exemption--

(continued...)

promptly. We do not think that Congress expected that we would use an exemption authority granted to simplify and expedite the regulatory process to circumvent deadlines which the Congress set. We recognize the hardships that the abandonment proceedings deadlines place on the parties to those proceedings, as well as on the Board, but we will not "adjust" the statutory deadline to decide this case.

As we noted in our decision served in this case on February 27, 1998, discovery in an abandonment case is typically disfavored. This is due not only to the strict time constraints imposed by Congress, but also because only rarely can discovery be justified in an abandonment proceeding. The railroad does not need discovery against protestants, because the carrier has the information it needs to make its case. The issue in an abandonment is whether the line is a burden on interstate commerce, i.e., whether the revenues or benefits derived from the service on the line exceed the cost or other burdens of providing that service. As part of the process, the railroad has the burden of identifying and supporting the revenues from the service and the costs of providing the service.

The protestant does not have the burden of proof, but need only challenge the evidence and arguments made by the railroad. If the carrier fails to sufficiently support its case in the face of the challenges made by the protestant, the carrier loses. In those circumstances, the Board will deny the application or petition and the carrier will have to file a new application. Boston and Maine Corporation--Abandonment Exemption--In Hartford and New Haven Counties, CT, STB Docket No. AB-32 (Sub-No. 75X) (STB served Dec. 31, 1996). The Board recently reiterated this point in Tulare Valley Railroad Company--Abandonment and Discontinuance Exemption--In Tulare and Kern Counties, CA, STB Docket No. AB-397 (Sub-No. 5X) (STB served Mar. 16, 1998).

Protestants have failed to cite a single precedent where the Board or its predecessor agency has granted a motion to compel discovery in an abandonment case. Protestants have failed to cite any specific need for discovery here. They have simply moved that we compel CIND to comply with protestants' broad brush discovery requests, none of which the protestants have shown is necessary to present their case. Some of the discovery request, such as the evidence on CIND's finances, we have already noted to be irrelevant. The nature of abandonment cases and the need to decide them promptly have led us to require that discovery requests be sharply focused and clearly justified. That is not the case here. Under the circumstances, we will deny protestants' motion to compel.

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[4](...continued)
In Fayette County, AL, STB Docket No. AB-290 (Sub-No. 190X) (STB served Feb. 12. 1998), is misplaced. The Board did not extend the deadline for deciding the abandonment petition in that case. After the Board had decided the petition on day 110 and an offeror had filed an offer of financial assistance on day 120, the Board granted a joint request for an extension of the 30-day period for the parties to negotiate a sale price for the line.

Protestants have not yet filed an opposition statement in this proceeding. If they wish to do so, they must file their protest by April 10, 1998.

It is ordered:

1. Protestants' motion is denied.

2. Protestants' opposition statement is due April 10, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary