

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35788

14500 LIMITED LLC—PETITION FOR DECLARATORY ORDER

Digest:¹ The Board denies the petition for a declaratory order and explains that it agrees with the referring court's conclusion that the petitioner's state common law claims conflict with federal law. Because of this conflict, the claims cannot proceed at the Board or in another forum.

Decided: June 4, 2014

Following referral by a federal district court, 14500 Limited LLC (14500) filed a petition seeking a declaratory order that it is the fee simple owner of a 0.44-acre parcel of land in the Collinwood Rail Yard of CSX Transportation, Inc. (CSXT) under Ohio common law of adverse possession or that 14500 has an exclusive prescriptive easement over that parcel. As we explain below, we will deny 14500's petition for a declaratory order, because the referring court properly held that 14500's claims are preempted by 49 U.S.C. § 10501(b). Therefore, the claims that 14500 brings under Ohio common law cannot proceed.

BACKGROUND

The petitioner, 14500, is a trucking company that owns property next to CSXT's Collinwood Rail Yard in Cleveland, Ohio. In a complaint filed against CSXT in Ohio state court, 14500 claimed that for more than 21 years, it or the previous owners of its property encroached upon a .44-acre parcel of the rail yard and that the use of CSXT's property was open, hostile, and continuous, as demonstrated by the fact that one of 14500's predecessors erected a fence around the CSXT property. According to 14500, use of the CSXT land is essential to 14500's operations. In the complaint, 14500 asked the Ohio state court to declare that it had an exclusive right to the property under state law through either a claim of adverse possession or a claim of an exclusive prescriptive easement.

The complaint was removed to the United States District Court, Northern District of Ohio, Eastern Division (District Court). In a decision issued March 14, 2013 (March Decision),²

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 CSXT Reply, Exhibit 4.

the District Court found that § 10501(b) preempts the adverse possession claim and ordered the parties to brief the issue of whether the action should be dismissed with prejudice. CSXT argued that the claims should be dismissed with prejudice, while 14500 did not file a brief. In a decision issued November 18, 2013 (November Decision),³ the District Court found that the exclusive prescriptive easement claim was also preempted. However, the District Court also found that CSXT had presented no precedent that specifically addressed how to proceed following the determination of preemption. The District Court therefore stayed the action and referred the matter to the Board.

On December 2, 2013, following the District Court's decision, 14500 filed its petition with the Board, requesting that the Board open a proceeding "to resolve the issues relating to the adverse possession of [CSXT's] property and claims of [14500] as they relate to [CSXT] . . . and the land" at issue. In its petition, 14500 asks for a declaration that it is the fee simple owner of the parcel or that it has an exclusive prescriptive easement over the parcel.

On January 8, 2014, CSXT filed a reply to the petition. CSXT argues in its reply that it is not necessary for the Board to institute a proceeding here. Instead, CSXT claims, the Board should explain that the District Court properly resolved the preemption issue and that therefore no remedies are available to 14500. CSXT asks that the Board explain that 14500's claims should be dismissed with prejudice.

On January 30, 2014, 14500 filed a reply to CSXT's reply.⁴ In its reply, 14500 argues that CSXT mischaracterizes the District Court's referral decision and that CSXT's argument would lead to dismissal with prejudice of any lawsuit mistakenly filed in state court, rather than at the Board. In addition, 14500 argues that the Board can properly address all of its state common law claims and that CSXT has made factually incorrect statements. CSXT responds that it did not mischaracterize the referral decision and that the effect of preemption is that 14500's claims are blocked by federal law and cannot proceed.

DISCUSSION AND CONCLUSIONS

The Board has discretionary authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 721 to issue a declaratory order to eliminate a controversy or remove uncertainty. However, issues involving the federal preemption provision contained in 49 U.S.C. § 10501(b) can be decided either by the Board or the courts in the first instance, as both the Board and courts have concurrent jurisdiction to determine preemption. See Mid-America Locomotive & Car Repair, Inc.—Pet. for Declaratory Order, FD 34599, slip op. at 3 (STB served June 6, 2005). Where the law is clear, the Board may decline to institute a proceeding and instead provide guidance to the referring court and parties, as we will do here. Id. We explain below that we agree with the

³ This decision is attached as an exhibit to 14500's petition.

⁴ On January 31, 2014, CSXT filed a letter in response to 14500's reply, stating that it would not object if the Board considers 14500's reply, although Board rules would not normally allow the reply. In the interest of compiling a complete record, and because CSXT does not object, we will accept 14500's January 30, 2014 filing and CSXT's reply to that filing.

District Court's conclusion that 14500's adverse possession and exclusive prescriptive easement claims are preempted, and we find that the effect of preemption in this case is that 14500's state common law claims cannot proceed.

The Interstate Commerce Act is "among the most pervasive and comprehensive of federal regulatory schemes." Chi. & N.W. Transp. Co. v. Kalo Brick & Tile Co., 450 U.S. 311, 318 (1981). For more than a century, the Supreme Court has made it clear that under the U.S. Constitution's Supremacy Clause (Art. VI, cl. 2), state laws or regulations that are inconsistent with the agency's plenary authority or with the Congressional policy reflected in the Interstate Commerce Act are preempted. See id.

In the ICC Termination Act of 1995, Congress further broadened the express preemption contained in the Interstate Commerce Act. See, e.g., Union Pac. R.R. v. Chi. Transit Auth. (Chicago Transit), 647 F.3d 675, 678 & n.1 (7th Cir. 2011); Green Mountain R.R. v. Vermont, 404 F.3d 638, 643 (2d Cir. 2005); City of Auburn v. STB, 154 F.3d 1025, 1029-31 (9th Cir. 1998). Section 10501(b) states that "the remedies provided under [49 U.S.C. §§ 10101-11908] with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State Law." Section 10501(b) thus preempts other regulation that would unreasonably interfere with railroad operations that come within the Board's jurisdiction, without regard to whether or not the Board actively regulates the particular activity involved. See Pace v. CSX Transp., Inc., 613 F.3d 1066, 1068-69 (11th Cir. 2010) (state law claims related to side track preempted); Port City Props. v. Union Pac. R.R., 518 F.3d 1186, 1188 (10th Cir. 2008) (state law claims preempted even though Board does not actively regulate spur and side track). The statute defines rail transportation expansively to encompass any property, facility, structure or equipment "related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use." 49 U.S.C. § 10102(9). Moreover, § 10102(6) defines "railroad" broadly to include "a switch, spur, track, terminal, terminal facility, [or] a freight depot, yard, [or] ground, used or necessary for transportation." The Board has interpreted state or local regulation to include state property law claims brought by non-governmental entities, where such claims would have the effect of interfering with railroad operations. Jie Ao & Xin Zhou—Pet. for Declaratory Order (Ao-Zhou), FD 35539, slip op. at 4-7 (STB served June 6, 2012); Mid-America, slip op. at 5.

While § 10501(b) is broad and far-reaching, there are, of course, limits. For example, § 10501(b) preemption does not apply to state or local actions under their retained police powers, as long as they do not unreasonably interfere with railroad operations or the Board's regulatory programs. See Green Mountain R.R., 404 F.3d at 643; N.Y. Susquehanna & W. Ry. v. Jackson, 500 F.3d 238, 252-54 (3d Cir. 2007); H.R. Rep. No. 104-311, at 95-96 (1995), reprinted in 1995 U.S.C.C.A.N. 793, 807-808; H.R. Conf. Rep. No. 104-422, at 167 (1995), reprinted in 1995 U.S.C.C.A.N. 793, 852.

Section 10501(b) preemption does, however, categorically prevent states or localities from intruding into matters that are directly regulated by the Board (e.g., railroad rates, services, construction, and abandonment). It also prevents states or localities from imposing requirements that, by their nature, could be used to deny a railroad's ability to conduct rail operations or proceed with activities that the Board has authorized, such as a construction or abandonment.

Thus, state or local permitting or preclearance requirements, including building permits, zoning ordinances, and environmental and land use permitting requirements, are categorically preempted. City of Auburn, 154 F.3d at 1029-31.⁵

The agency's broad and exclusive jurisdiction over railroad operations and activities prevents application of state law claims that would take rail property for another, conflicting use, including adverse possession claims that would interfere with rail use, present or future. E.g., City of Lincoln v. STB, 414 F.3d 858, 861 (8th Cir. 2005) (city's proposed use of eminent domain to acquire 20-foot strip of railroad right-of-way that might interfere with storage of materials by railroad on remainder of right-of-way preempted); Ao-Zhou, slip op. at 7 (adverse possession claim regarding rail-banked property preempted because such action could interfere with possible future reactivation and rail use). Of course, after railroad property has been lawfully abandoned, state condemnation or property laws can be applied, because the agency's regulatory mission has come to an end. Hayfield N. R.R. v. Chi. & N.W. Transp. Co., 467 U.S. 622, 632-33 (1984).

For state or local actions that are not categorically preempted, § 10501(b) preemption analysis requires a factual assessment of whether that action would have the effect of preventing or unreasonably interfering with rail transportation. See Franks Inv. Co. v. Union Pac. R.R., 593 F.3d 404, 414 (5th Cir. 2010) (en banc). Routine, non-conflicting uses of rail property by third parties, such as non-exclusive easements for at-grade crossings, are not preempted, as long as they would not impede rail operations or pose undue safety risks. E. Ala. Ry.—Pet. for Declaratory Order, FD 35583, slip op. at 4-7 (STB served Mar. 9, 2012); Maumee & W. R.R. & RMW Ventures, LLC—Pet. for Declaratory Order, FD 34354, slip op. at 2 (STB served Mar. 3, 2004).

We agree with the District Court's conclusion that 14500's adverse possession claim is preempted by § 10501(b). In the March Decision, the District Court examined the evidence offered by both parties, including a statement by CSXT's Director of Network Planning. That statement described the importance of the Collinwood Rail Yard to CSXT's network and the need to retain the land to accommodate projected traffic growth. The District Court concluded that CSXT needs the contested property to accommodate future rail transportation needs due to the potential for increased traffic at the Collinwood Rail Yard. The District Court discussed cases involving state law adverse possession claims against railroad property⁶ and held that the adverse possession claim was preempted by § 10501(b) because "the taking of [the parcel] would affect railroad transportation in the future."⁷ Given the District Court's finding that CSXT needs

⁵ Otherwise, state and local authorities could deny a railroad the right to construct or maintain its facilities or to conduct its operations, which would irreconcilably conflict with the Board's authorization of those facilities and operations. City of Auburn, 154 F.3d at 1031; CSX Transp., Inc.—Pet. for Declaratory Order, FD 34662, slip op. at 8-10 (STB served Mar. 14, 2005), pet. for recon. denied (STB served May 3, 2005).

⁶ The court cited Chicago Transit, B & S Holdings, LLC v. BNSF Railway, 889 F.Supp.2d 1252 (E.D. Wash. 2012), and Ao-Zhou.

⁷ March Decision at 9.

the property to accommodate growth and Board precedent concluding that adverse possession claims are preempted where they would affect future rail transportation, the District Court properly held that the adverse possession claim is preempted by § 10501(b).⁸ See Ao-Zhou, slip op. at 7.

We also agree with the District Court's conclusion that the exclusive prescriptive easement claim is preempted by § 10501(b) "because it seeks to deprive the railroad of its property" and the deprivation would affect rail transportation.⁹ The District Court recognized that the Board had found that a prescriptive easement claim in Ao-Zhou was not necessarily preempted, but explained that this case differs from Ao-Zhou because 14500 seeks to exclude CSXT from the property.¹⁰ The District Court therefore concluded that the easement claim has the same effect as an adverse possession claim and is therefore preempted.¹¹ We agree. In Ao-Zhou, the prescriptive easement claim was not necessarily preempted because the information before the Board showed that the easement could possibly coexist with rail operations. Ao-Zhou at 7-8. In those circumstances, the Board concluded that the state court could determine whether the petitioners in that proceeding would have a nonexclusive prescriptive easement under state property law, and if so, assess whether continued use of the easement would interfere with current or future rail purposes. Id. at 8. Here, in contrast, the District Court found that 14500's exclusive easement claim seeks to prevent CSXT from using the parcel for rail transportation and, thus, the easement and rail operations cannot co-exist. Therefore the District Court correctly concluded that the exclusive easement claim has the same effect as the adverse possession claim and is preempted by § 10501(b).

The effect of preemption in this case is to bar 14500's state common law claims from proceeding. Although § 10501(b) states that "the remedies provided under this part with respect to rail transportation are exclusive," that does not mean that a remedy must exist under the Interstate Commerce Act for all instances where a state or local law is preempted under § 10501(b). See CSX Transp., Inc. v. Ga. Pub. Serv. Comm'n, 944 F.Supp. 1573, 1581 (N.D. Ga. 1996) (explaining that § 10501(b) preemption of state claims is not limited to claims for which an alternative federal remedy is available). Moreover, while 14500 and the District Court mention 49 U.S.C. § 11704 as possibly providing a remedy, that section only states that parties may bring claims for violations of the Interstate Commerce Act. Here, no violation of the Interstate Commerce Act has been alleged. Indeed, the Interstate Commerce Act does not provide any rights or remedies related to adverse possession or exclusive prescriptive easements or otherwise address such state law property issues. Accordingly, upon a finding that the claims of adverse possession or an exclusive prescriptive easement are preempted, there is no further

⁸ We note that in its January 30, 2014 filing, 14500 takes issue with the truth of the statements made in the CSXT declaration that the District Court relied upon, but the District Court has examined and decided those factual issues, and the record supports the court's analysis.

⁹ November Decision at 4.

¹⁰ Id. at 3-4.

¹¹ Id.

action for the Board to take in this case. Therefore, referral to the Board for further adjudication is unnecessary. See Elam v. Kan. City S. Ry., 635 F.3d 796, 811-12 (5th Cir. 2011) (finding referral of preempted claim to the Board unnecessary where there was no claimed violation of the Interstate Commerce Act).

In addition, while a state or federal court is the proper forum to decide state common law property claims, in this case 14500's claims are preempted by 49 U.S.C. § 10501(b), and federal law does not provide 14500 with an alternative remedy that would allow it to possess CSXT's property. This result is consistent with "the strong federal policy in favor of retaining rail property in the national rail network, where possible." Ao-Zhou, slip op. at 7; see also 49 U.S.C. §§ 10904, 10907 and 16 U.S.C. § 1247(d). Therefore, the District Court should dismiss 14500's claims.

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

It is ordered:

1. The petition for declaratory order is denied.
2. Copies of this decision will be mailed to:

The Honorable Christopher A. Boyko
United States District Court, Northern District of Ohio, Eastern Division
Carl B. Stokes United States Courthouse
801 West Superior Avenue, Courtroom 15B
Cleveland, Ohio 44113

Re: Case No. 1:12CV1810

3. This decision is effective on the date of service.

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