

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 659X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—
IN ALLEGANY COUNTY, MD

Decided: April 22, 2008

On January 14, 2008, James Riffin (Riffin) filed a motion to compel CSX Transportation, Inc. (CSXT), to issue to Riffin a deed to an 8.54-mile line of railroad between milepost BAI 27.0 near Morrison and milepost BAI 18.46 at the end of the track near Carlos, in Allegany County, MD (Line),¹ which CSXT already has deeded to Riffin’s corporate affiliate, WMS, LLC (WMS).² On February 4, 2008, CSXT filed a reply and Allegany County filed comments, opposing Riffin’s motion. For the reasons discussed below, the motion to compel will be denied.

BACKGROUND

CSXT filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon the Line, and notice of the exemption was served and published in the Federal Register on August 25, 2005 (70 FR 49974). On September 8, 2005, WMS late-filed a formal

¹ In a January 29, 2008 filing, Riffin also requests that the Board deny: (1) as late-filed what Riffin identifies as a January 17, 2008 request from Allegany County to participate as a party of record; and (2) Allegany County’s request to file comments. The Board has no record of a January 17, 2008 filing from Allegany County. Moreover, Allegany County is already a party of record in this proceeding, and has been since 2006. Therefore, Riffin’s requests will be denied as moot.

² In its OFA filings, WMS represented that it was a Maryland limited liability company, but Riffin, in his motion to compel, claims that WMS was intended to be Western Maryland Services, L.L.C. (Western Maryland), a West Virginia limited liability company, and that “WMS, LLC” did not exist as an organized entity in Maryland or West Virginia until Riffin chartered, as its sole owner, “WMS, L.L.C., a Maryland limited liability company,” on March 26, 2007. Beginning with its request to substitute Riffin as purchaser of the line, WMS also identified itself as Western Maryland. CSXT refers to WMS as “WMS, LLC,” without identifying which entity is represented by those acronyms. The Board was not made aware of any concerns about the entity’s proper name or existence until after CSXT transferred the deed to the Line to WMS. For the purposes of this decision, however, it is unnecessary for the Board to make a determination of which entity is WMS, as the discussion below will make clear.

expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(2). In a decision served on September 23, 2005, the Board accepted WMS's late-filed notice of intent to file an OFA and tolled the time for WMS to file an OFA.

On October 21, 2005, WMS filed an OFA to purchase the Line. In a decision in this proceeding served on October 26, 2005, the Board found WMS to be financially responsible and postponed the effective date of the abandonment. On November 21, 2005, WMS advised the Board that it had agreed to accept CSXT's purchase price for the Line. In a decision served on December 14, 2005, the Board authorized WMS to acquire and operate the Line and dismissed CSXT's notice of exemption to abandon the Line.

CSXT and WMS negotiated a purchase and sale agreement, which, according to CSXT, was executed on March 1, 2006. On June 14, 2006, WMS sought approval from the Board to substitute Riffin in the place of WMS as purchaser of the Line, to which CSXT and WMS agreed. However, before the Board could grant the substitution, CSXT issued a quitclaim deed to the Line to WMS, in accordance with the purchase and sale agreement, and filed a letter on July 10, 2006, notifying the Board that it had done so. In a decision served on August 18, 2006, the Board granted WMS's substitution request because Riffin was a corporate affiliate of WMS, and had demonstrated himself to be financially responsible. That decision allowed the parties to make adjustments to their transaction (if they agreed), but did not require them to do so because the substitution authority was permissive.

In his motion to compel, Riffin requests that the Board compel CSXT to reissue the deed to Riffin in his name as an individual, despite the fact that CSXT already had issued the deed to the Line to WMS. Riffin contends that there was a mistake concerning WMS throughout most of the OFA process. Riffin claims that the filings and negotiations in the name of WMS should have been in the name of Western Maryland, of which Riffin acquired 98% ownership in about February 2006. Riffin's argument appears to be that, because he notified CSXT of this mistake, on or about July 5, 2006, CSXT should have waited to issue the deed to the Line and, presumably, should have issued the deed to Riffin, once he was substituted in place of WMS.

CSXT replies that it issued the deed to the Line to WMS in good faith in reliance on: (1) the representations made to the Board that WMS existed; and (2) the Board's decisions accepting the OFA from WMS and authorizing the transfer of the Line to WMS.³ CSXT also states that it made the transfer without additional delay to end its liability for the Line and the costs incurred for its ownership, maintenance, and inspection of the Line. In its comments, Allegany County asserts that the Board has done all that was required under 49 CFR 1152.27 and argues that Riffin alone has the ability to transfer the Line to himself because he controls WMS.

³ CSXT also argues that Riffin's motion to compel is really a petition to reopen and that this matter is *res judicata*. However, Riffin does not seek reopening, nor does his motion meet the requirements of 49 CFR 1115.4. Moreover, for the reasons discussed herein, the Board does not need to address these arguments.

DISCUSSION AND CONCLUSIONS

The OFA process contemplates private negotiations between the parties to reach an agreement for continued rail service, where possible.⁴ Here, once the Board approved the purchase and operation of the Line and dismissed CSXT's notice of exemption, no additional Board approval was required for the parties to consummate the transfer of the Line. See 49 CFR 1152.27(f)(2). Any disputes relating to the validity of the purchase agreement or the transfer of the deed involve questions of state contract and property law. The Board is not the proper forum to resolve such disputes. Rather, these matters are best left for the state courts to decide. Indeed, Riffin has filed just such a lawsuit in the Allegany County Circuit Court. See Riffin v. Bd. of County Comm'rs of Allegany County Md., Case No. C-07-029061 (filed Oct. 4, 2007). Nothing before the Board in this proceeding would prevent that case from going forward. For these reasons, Riffin's motion to compel will be denied.

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

It is ordered:

1. Riffin's requests to deny participation and comments from Allegany County is denied.
2. Riffin's motion to compel is denied.
3. This decision is effective on its service date.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan
Acting Secretary

⁴ Under 49 U.S.C. 10904(e) and 49 CFR 1152.27(f)-(h), the Board sets the amount and terms of the purchase of a line (or subsidy) only when the parties have failed to reach agreement and one of the parties makes a formal request to the Board.