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SERVICE DATE - JUNE 17, 1998

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33420

RICHARD D. ROBESY, JUNIATA VALLEY RAILROAD COMPANY, ET AL.--  
PETITION FOR DECLARATORY ORDER--ALLEN J. LEVIN  
AND LEWISTOWN CENTRAL RAILROAD COMPANY

Decided: June 11, 1998

By petition filed June 18, 1997, Richard D. Robey (Robey), Juniata Valley Railroad Company (Juniata), Lycoming Valley Railroad Company (Lycoming), Nittany & Bald Eagle Railroad Company, and North Shore Railroad Company (collectively, petitioners) seek a declaratory order finding that the claims and remedies asserted by Allen J. Levin and his company, Lewistown Central Railroad Company (collectively, Levin), regarding the acquisition and operation of two former Consolidated Rail Corporation (Conrail) clusters of lines are within the Board's exclusive jurisdiction under 49 U.S.C. 10501.<sup>1</sup> Levin accuses Robey and SEDA-COG Joint Rail Authority (SEDA-COG) of having conspired to acquire and operate the two clusters of lines without opportunity for competitive bidding. As discussed below, we conclude that these claims are beyond our regulatory purview. However, any remedy which infringes upon our exclusive jurisdiction to regulate rail transportation is preempted by 49 U.S.C. 10501(b).

BACKGROUND

SEDA-COG is a tax exempt rail authority formed under Pennsylvania state law. It exists to preserve essential rail service to central Pennsylvania industries. SEDA-COG acquires, rehabilitates, and maintains rail lines and manages the rail property. SEDA-COG contracts with private companies to conduct the rail freight operations. SEDA-COG's two contract operators are Juniata and Lycoming, both of which are owned by Robey (who also owns other railroads).

In SEDA-COG Joint Rail Authority and Juniata Valley Railroad Company--Acquisition and Operation Exemption--Consolidated Rail Corporation, STB Finance Docket No. 33008 (STB served Aug. 30, 1996), we authorized (1) noncarrier SEDA-COG to acquire from Conrail 12.3

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<sup>1</sup> Although the petition was served upon Levin's counsel, Levin has not submitted a reply.

miles of rail line in Mifflin County, PA, known as the Lewistown Cluster, and (2) noncarrier Juniata to operate those lines. Upon consummation of the transaction, Juniata became a Class III carrier.<sup>2</sup>

In SEDA-COG Joint Rail Authority and Lycoming Valley Railroad Company--Acquisition and Operation Exemption--Consolidated Rail Corporation, STB Finance Docket No. 33010 (STB served Aug. 30, 1996), we authorized (1) SEDA-COG to acquire from Conrail 38.0 miles of track in the counties of Clinton and Lycoming, PA, known as the Williamsport Cluster, and (2) noncarrier Lycoming to operate the lines. Upon consummation of the transaction, Lycoming became a Class III carrier.<sup>3</sup>

On May 29, 1997, Levin filed a civil action in Pennsylvania state court, seeking damages and other relief, based upon a claim that petitioners and SEDA-COG committed fraud and violated the Pennsylvania Municipal Authorities Act and the federal Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961-68 (RICO). Levin, et al. v. SEDA-COG and Robey, et al., No. 97-581 (Pa. 17th Jud. Dist). On June 30, 1997, petitioners removed the state court action to federal court. Levin, et al. v. SEDA-COG and Robey, et al., No. 4-CV-97-997 (M.D. Pa. June 30, 1997). Petitioners also filed this declaratory order request with us, on June 18, 1997.

On December 10 and 11, 1997, the federal court granted petitioners' and SEDA-COG's motions to dismiss the complaint, finding that the court lacked subject matter jurisdiction over the claims presented because the rail transportation involved is within the exclusive jurisdiction of the Board. Levin appealed that ruling to the United States Court of Appeals for the Third Circuit. On April 27, 1998, in response to appellee's Joint Motion for Summary Affirmance and Brief in Support, which the court noted was unopposed, the motion was granted.

#### DISCUSSION AND CONCLUSIONS

As stated, Levin accuses SEDA-COG and Robey of conspiring to violate state laws limiting the powers of municipal authorities. Levin further argues that their actions constituted fraud and violated the federal RICO statute. Specifically, Levin contends that the subject lines were acquired illegally from Conrail because there was no competitive bidding for them, thus denying Levin his pursuit of legitimate business interests and causing him to suffer financial damages. He seeks both

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<sup>2</sup> Concurrently, we granted Robey, a noncarrier individual, authority to continue in control of Juniata and other nonconnecting Class III rail carriers owned by Robey upon Juniata's becoming a Class III carrier in Richard D. Robey--Continuance in Control Exemption--Juniata Valley Railroad Company, STB Finance Docket No. 33009 (STB served Aug. 30, 1996).

<sup>3</sup> Also concurrently, we granted Robey authority to continue in control of Lycoming and other nonconnecting Class III rail carriers owned by Robey upon Lycoming's becoming a Class III carrier in Richard D. Robey--Continuance in Control Exemption--Lycoming Valley Railroad Company, STB Finance Docket No. 33011 (STB served Aug. 30, 1996).

legal and equitable relief, including divestiture of all Robey-owned or -operated rail properties so that Levin may assume ownership of, and operate over, the lines.

Petitioners ask us to declare that all of the claims and issues raised by Levin fall within our exclusive jurisdiction. Petitioners rely on the following statement that appeared in the two notices authorizing (by exemption) the acquisition by SEDA-COG, and operation by the Robey-affiliate, of the lines involved: “Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time.” Petitioners contend that the only proper means for Levin to pursue his claims is by a petition to us seeking revocation of the exemptions through which we authorized the present ownership and operation of these lines.<sup>4</sup>

We do not agree. The alleged violations of municipal statutes and the federal RICO statute that were brought before the lower court do not come within our jurisdiction. Allegations that the exemption requests that we granted contained incorrect or misleading information, so as to have worked a fraud upon the Board that would void the exemptions ab initio, clearly would be subject to our jurisdiction. However, Levin makes no such suggestion of fraud in the exemption requests.

Accordingly, we conclude that we lack subject matter jurisdiction over the claims asserted by Levin and that those claims are properly addressed to the appropriate court. However, any remedy which infringes upon our exclusive jurisdiction to regulate rail transportation is preempted by section 10501(b). Thus, the remedial tools available to a court considering Levin’s claims are limited.<sup>5</sup> Moreover, any finding that a court might make with respect to fraud would not be conclusive as to the type of fraud necessary to void the authority we have issued with respect to these lines.

For these reasons, the declaratory relief sought by petitioners is denied. This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

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<sup>4</sup> Petitioners cite Burlington N. Santa Fe Corp. v. Anderson, 959 F. Supp. 1288 (D. Mont. 1997), and CSX Transp., Inc. v. Georgia Pub. Serv. Comm’n, 944 F. Supp. 1573 (N.D. Ga. 1996) for the proposition that the preemption of section 10501(b) is very broad.

<sup>5</sup> The divestiture remedy sought by Levin, for example, may not be accomplished without our approval.

It is ordered:

1. The petition for a declaratory order is denied.
2. This decision is effective on the service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams  
Secretary