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SERVICE DATE – SEPTEMBER 30, 2016

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36014

INGREDION INCORPORATED—
PETITION FOR DECLARATORY ORDER

Digest:¹ This decision denies a request by Ingredion Incorporated that the Board issue a declaratory order and instead provides guidance on the question of preemption.

Decided: September 29, 2016

On March 24, 2016, Ingredion Incorporated (Ingredion)² filed a petition seeking issuance of a declaratory order finding that certain relief sought by Coulas Viking Partners (Viking Partners) under Illinois state law is preempted by 49 U.S.C. § 10501(b).

Ingredion is a company that manufactures sweeteners, starches, and other ingredients from agricultural products such as corn, rice, and potatoes. (Pet., V.S. Waskiewicz 1.) Ingredion owns and operates a corn processing facility located near Chicago (Argo facility), which utilizes rail service for inbound and outbound shipments. The Argo facility tracks connect with the Belt Railway Company of Chicago (Belt Railway), which delivers inbound shipments of corn, and two other common carriers, Canadian National Railway (CN) and Indiana Harbor Belt Railroad (IHB). According to Ingredion, it relies heavily on Belt Railway to provide shipments of corn from Wisconsin. (*Id.* at 3.) To reach the Argo facility, Belt Railway operates over track that Ingredion calls the “spur line,”³ which passes near and/or over land owned by Viking Partners and leased to the Weldbend Corporation.

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 Ingredion Inc.—Pet. for Declaratory Order, FD 36014 (STB served May 17, 2016) (accepting Ingredion’s errata to its petition to correct its name).

³ In this decision, the Board uses the term “spur line” for consistency with the parties’ pleadings, but this phrasing does not reflect a finding as to whether or not the line is excepted spur track under the Board’s case law applying 49 U.S.C. § 10906. See, e.g., Allied Erecting & Dismantling, Inc.—Pet. for Declaratory Order—Rail Easements in Mahoning Cty., Ohio,

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Viking Partners filed a complaint in Illinois state court in 2013 against Belt Railway, asserting that it is the owner of the property on which Belt Railway operates the spur line and seeking to eject Belt Railway from the property.⁴ Viking Partners asserts that Belt Railway is currently operating the spur line without the permission of Viking Partners. (*Id.* at 4.) According to the complaint, the original easement agreement was violated because the easement was allegedly assigned without the landowner's consent, in contravention of the agreement's terms. (*Id.* at 5-6.) Viking Partners requests that the court enjoin Belt Railway from its continued trespass and remove all railway ties and any equipment from Viking Partners property. (*Id.* at 10-11.) Further, the complaint seeks damages and compensation for Belt Railway's alleged past wrongful use of the property on which the spur line is located. (*Id.* at 11-12.)

On February 23, 2016, Ingreption sought and obtained leave from the Illinois state court to intervene in Viking Partners' case against Belt Railway. On March 24, 2016, Ingreption filed a notice of removal, removing the case to the U.S. District Court for the Northern District of Illinois (District Court).⁵ Ingreption also asked the District Court to dismiss, or in the alternative, to stay the proceedings and refer the dispute to the Board.

Also on March 24, 2016, Ingreption filed with the Board its petition for declaratory order, which asserts that the relief sought by Viking Partners is federally preempted under 49 U.S.C. § 10501(b) because it would disrupt interstate commerce and unreasonably interfere with rail operations. Ingreption asserts that cessation of Belt Railway's rail service on the spur line would be extremely harmful to the operation of its Argo facility. Ingreption states that it could not use CN and IHB, nor truck transportation, as an effective substitute for Belt Railway's services. (Pet. 6.) Therefore, Ingreption requests that the Board issue a declaratory order stating that Belt Railway's rail operations are subject to the Board's exclusive jurisdiction and that the relief sought by Viking Partners in state court is preempted to the extent it would intrude upon matters under Board jurisdiction or unreasonably interfere with Belt Railway's service to Ingreption. (*Id.* at 1-2.) On April 29, 2016, Belt Railway filed a reply in support of Ingreption's petition.

On April 29, 2016, Viking Partners filed a motion with the Board to deny Ingreption's petition, or, in the alternative, to stay the proceedings unless and until there is a ruling by a court on the state law issues. Viking Partners argues that Ingreption does not have standing to bring its petition to the Board, that § 10501(b) does not preempt Viking Partners' lawsuit, and that a court should develop the factual record. Viking Partners also states that it filed a motion with the

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FD 35316, slip op. at 7-9 (STB served Sept. 17, 2015), pet. for review denied, Allied Erecting & Dismantling Co. v. STB, No. 14-3094 (6th Cir. Aug. 22, 2016).

⁴ Viking Partners' second amended complaint is attached as Exhibit 6 to Ingreption's petition.

⁵ U.S. District Court, N.D. Ill., Case No. 16-CV-3583.

District Court to remand its lawsuit back to the state court. On May 19, 2016, Ingredion and Belt Railway separately filed replies in opposition to Viking Partners' motion.

On July 20, 2016, Viking Partners filed a letter with the Board attaching a Memorandum Opinion and Order from the District Court. In that decision, the District Court remanded the case to state court, finding that complete preemption did not apply to Viking Partners' claims against Belt Railway, and that, therefore, removal from the state court had been improper. Ingredion and Belt Railway separately filed replies requesting that the Board issue the requested declaratory order, and noting that the District Court's order indicates that the relief sought by Viking Partners is "likely preempted."⁶

DISCUSSION AND CONCLUSIONS

The Board has discretionary authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321⁷ to issue a declaratory order to eliminate a controversy or remove uncertainty. However, issues involving federal preemption under 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, e.g., 14500 Ltd.—Pet. for Declaratory Order*, FD 35788, slip op. at 2 (STB served June 5, 2014); *CSX Transp., Inc.—Pet. for Declaratory Order*, FD 34662, slip op. at 8 (STB served May 3, 2005).

The Board will decline to exercise its discretionary authority to issue a declaratory order here. The issues in this case stem from a property dispute that originated in Illinois state court and is now back in the state court. Viking Partners' complaint is based on a claim that an easement agreement was violated, and thus primarily involves the application of state property law, which are questions that the state court should resolve. In addition, the state court is able to address any preemption arguments that may become relevant and has not referred any issues to the Board. Under these circumstances, we will deny the petition for declaratory order. However, to the extent that preemption under § 10501(b) is raised, we offer the following guidance to the court and the parties to assist in the resolution of this dispute.

The Interstate Commerce Act, as amended by the ICC Termination Act of 1995, provides that the Board's jurisdiction over "transportation by rail carriers" is "exclusive" and 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."

⁶ Memorandum Opinion and Order, Case No. 16-CV-3583, N.D. Ill., July 19, 2016, at 6.

⁷ The Surface Transportation Board Reauthorization Act of 2015, P.L. No. 114-110, recodified certain provisions of title 49, United States Code, redesignating 49 U.S.C. § 721 as § 1321.

49 U.S.C. § 10501(b).⁸ The purpose of this express federal preemption is to prevent a patchwork of local and state regulations from unreasonably interfering with interstate commerce. See Tubbs—Pet. for Declaratory Order, FD 35792, slip op. at 5 (STB served Oct. 31, 2014), aff'd 812 F.3d 1141 (8th Cir. 2015). Congress' intent to preempt state and local regulation of railroad transportation has been recognized as broad and sweeping. See City of Auburn v. U.S., 154 F.3d 1025, 1029-30 (9th Cir. 1998).

Under 49 U.S.C. § 10501(b), two broad categories of state regulation are categorically preempted with respect to transportation by rail carriers: (1) permitting or preclearance requirements that, by their nature, could be used to deny a railroad the right to conduct rail operations or proceed with activities the Board has authorized, and (2) attempts to intrude into matters that are regulated by the Board. Even if state actions are not categorically preempted, they may be preempted as applied—that is, if they would have the effect of unreasonably burdening or interfering with rail transportation, which involves a fact-specific determination. See Franks Inv. Co. v. Union Pac. R.R., 593 F.3d 404, 414 (5th Cir. 2010) (en banc); Borough of Riverdale—Pet. for Declaratory Order, FD 35299, slip op. at 2 (STB served Aug. 5, 2010).

The Board has explained that questions of property law generally are more appropriately decided by courts. See V&S Ry.—Pet. for Declaratory Order—R.R. Operations in Hutchinson, Kan., FD 35459, slip op. at 7 (STB served July 12, 2012) (stating that question about property rights should be decided by the district court applying state property and contract law); Allegheny Valley R.R.—Pet. for Declaratory Order—William Fiore, FD 35388, slip op. at 4 (STB served Apr. 25, 2011) (stating that questions concerning size, location, and nature of property rights are best addressed by a state court).

However, the Board and the courts have also held that suits concerning property rights can result in a finding that an action is preempted if the relief sought would amount to regulation and would unreasonably interfere with interstate commerce. For example, in Jie Ao—Petition for Declaratory Order, FD 35539 (STB served June 6, 2012), the Board held that an adverse possession claim regarding rail-banked property was preempted because such a seizure of railroad property could interfere with possible future reactivation and rail use. Further, in 14500 Ltd., slip op. at 4-5, the Board agreed with the court that claims of adverse possession and prescriptive easement were preempted when they would force a rail carrier off of property that it uses for transportation or when it would remove assets from the interstate rail network. Indeed, the Board has held that a party may not evict a rail carrier from yard track that was necessary for its operations without the Board's authorization to do so, even if the property lease had expired,

⁸ The statute defines “transportation” expansively to encompass a “yard, property, facility, instrumentality, or equipment of any kind related to the movement of . . . property . . . by rail, regardless of ownership or an agreement concerning use.” 49 U.S.C. § 10102(9). Moreover, “railroad” is defined broadly to include “a switch, spur, track, terminal, terminal facility, [or] a freight depot, yard [or] ground, used or necessary for transportation.” 49 U.S.C. § 10102(6).

because the track was still under the Board’s exclusive jurisdiction. See Pinelawn Cemetery—Pet. for Declaratory Order, FD 35468, slip op. 9-11 (STB served Apr. 21, 2015); see also, e.g., Thompson v. Tex. Mexican Ry., 328 U.S. 134, 144-145 (1946) (even if a contract for use of trackage were terminated, a rail carrier’s operations subject to the jurisdiction of the Board’s predecessor agency could not be abandoned without the agency’s authorization); Fillmore & W. Freight Serv., LLC—Emergency Pet. for Declaratory Order, FD 35813, slip op. at 3 (STB served Mar. 12, 2015) (“It is well settled that, without abandonment or discontinuance authority from the Board, the enforcement of a state or local order that would prevent operation over a railroad line is precluded [A]ny party seeking the abandonment of a rail line, or discontinuance of rail service, must first obtain appropriate authority from the Board . . . notwithstanding any contractual arrangement (or the termination thereof) between parties regarding cessation of rail service or use of a rail line”).

For these reasons, we deny Ingridion’s request for a declaratory order and provide guidance to the state court presiding over the parties’ litigation, as discussed above.⁹

It is ordered:

1. Ingridion’s petition for declaratory order is denied.
2. This proceeding is terminated.
3. Copies of this decision will be mailed to:

Circuit Court of Cook County
Richard J. Daley Center
50 West Washington St.
Chicago, IL 60602

Re: Case No. 13 CH 28409

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

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

⁹ Because this decision denies the petition for declaratory order, we need not address other issues raised by the parties, such as Viking Partners’ argument that Ingridion lacks standing.