

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35388

ALLEGHENY VALLEY RAILROAD COMPANY—PETITION FOR DECLARATORY
ORDER—WILLIAM FIORE

Decided: April 21, 2011

Digest:¹ Allegheny Valley Railroad Company submitted a petition asking the Board to open a proceeding to examine the effect of federal law upon a dispute over the ownership and use of property in Pennsylvania. This dispute is currently the subject of a complaint in state court in Pennsylvania. We are denying this petition, as the controversy here involves legal questions of state property law that are best handled by the state court.

On July 9, 2010, the Allegheny Valley Railroad Company (AVRR) petitioned the Board to institute a declaratory order proceeding, pursuant to 5 U.S.C. § 554(e) and 49 U.S.C. § 721, to terminate a controversy or remove uncertainty with respect to AVRR's possession and right to use a portion of its railroad right-of-way (AVRR right-of-way), which is the subject of a property line dispute between William Fiore (Fiore) and AVRR. AVRR seeks a declaratory order from the Board that the state law claims and the remedies sought in the lawsuit brought by Fiore in the Court of Common Pleas of Allegheny County, Pennsylvania (Pennsylvania State Court)² against AVRR on January 27, 2010, are preempted by 49 U.S.C. § 10501(b). Fiore filed a reply on July 19, 2010, and AVRR filed a reply to Fiore's reply on July 28, 2010.³

In this decision, we deny AVRR's request for institution of a declaratory order proceeding.

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 On June 21, 2010, the Pennsylvania State Court directed AVRR to petition the Board for a determination of whether 49 U.S.C. § 10501(b) or any other law preempts the subject matter and/or personal jurisdiction of the Pennsylvania State Court in Fiore's lawsuit.

³ The Board's rules generally do not permit the filing of a reply to a reply. However, in the interest of compiling a more complete record, AVRR's reply will be accepted into the record.

BACKGROUND

On August 5, 1997, Fiore bought a parcel of land known as Lot 4B in Allegheny County, Pennsylvania, subject to the AVRR right-of-way permitting railroad use. Conrail had owned and operated the AVRR right-of-way until October 27, 1995, when Conrail conveyed the AVRR right-of-way and other land to AVRR by a quitclaim deed.

AVRR claims that it informed Fiore in early 1997 or 1998 that his business operations would encroach upon the AVRR right-of-way, and additionally filed a letter with the city of Penn Hills, Pennsylvania in October 1998, claiming that Fiore's business operations would encroach upon an Allegheny County Sanitary Authority (ALCOSAN) vault located on the AVRR right-of-way. Fiore disputed AVRR's claims, and ultimately signed an agreement with ALCOSAN in March 2008, granting ALCOSAN an easement over Lot 4B.

In August 2009, Fiore entered into an agreement to sell Lot 4B for \$350,000. Fiore claims that this sale agreement was terminated by the potential buyers because of the parties' dispute involving the AVRR right-of-way. Fiore states that on September 2, 2009, AVRR claimed that it owned in fee simple a portion of Lot 4B. On October 6, 2009, AVRR threatened to construct a fence on Lot 4B enclosing that portion. AVRR claims to have a general warranty deed describing the AVRR right-of-way and conveying fee simple title to land upon which Fiore is purportedly encroaching. While attempting to resolve their dispute, Fiore and AVRR entered into a "standstill" agreement in November 2009, which expired in December 2009. On January 4, 2010, AVRR stated that it would immediately construct a fence enclosing what it claims is its portion of the property. However, pursuant to Fiore's complaint in Pennsylvania State Court filed shortly thereafter, the parties have stipulated to maintain the status quo while litigation of the state court action proceeds.

In its petition, AVRR argues that under 49 U.S.C. § 10501(b), the Board has exclusive jurisdiction to determine the scope of federal preemption with respect to railroad property acquired and operated under exemptions issued pursuant to 49 U.S.C. § 10502 from the requirements of 49 U.S.C. § 10901. Because it acquired the AVRR right-of-way pursuant to regulatory authorization issued in Allegheny Valley Railroad Company—Acquisition and Operation Exemption—Certain Lines of Consolidated Rail Corporation, FD 32783 (ICC served Nov. 17, 1995), AVRR claims that any issues regarding the use of the AVRR right-of-way are subject to the Board's exclusive jurisdiction under § 10501(b). In its reply to Fiore's reply, AVRR additionally argues that, because the parties did not have an opportunity to compile a thorough factual record regarding AVRR's rail operations adjacent to Fiore's parcel, the Board should institute a declaratory order proceeding so that each party would have a full opportunity to submit evidence, testimony, and legal argument regarding railroad operations on the AVRR right-of-way, as well as the alleged interference of Fiore's business operations.

In his reply, Fiore claims that he properly is in possession of Lot 4B and that AVRR can and does operate within the AVRR right-of-way, as both property interests are allegedly delineated on the deeds and subdivision plans of public record. Fiore also asserts that both he and AVRR have used, and operated on, their respective properties without obstructing or interfering with each other for the past 10 years. In addition, Fiore claims that AVRR's

arguments regarding alleged obstruction or interference with railroad operations concern the possible future use of the AVRR right-of-way for a private passenger rail venture. Fiore states that he seeks a determination under Pennsylvania law as to the width and location of the property rights of Fiore and AVRR, as well as due process and appropriate damages under the Eminent Domain Code of Pennsylvania if the Pennsylvania State Court finds that AVRR has taken or must take property that currently belongs to Fiore, resulting in a de facto taking or inverse condemnation. Fiore additionally states that he does not dispute or challenge AVRR's current or future railroad use within AVRR's lawful property lines, whether for freight or passenger rail service. Fiore claims that the AVRR petition presumes that AVRR holds lawful title to the disputed property, although that is the subject of the case that is currently pending in Pennsylvania State Court. Fiore further states that his lawsuit contains only state property law claims against AVRR, and therefore does not require the expertise of the Board.

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. Institution of a declaratory order proceeding here to determine whether the claims in Fiore's suit in the Pennsylvania State Court are preempted by federal law is not warranted. Rather, as discussed below, we find that the claims presented in Fiore's suit appear to involve questions of state property law that are best handled by local state courts.

There are a variety of circumstances where state law claims against a railroad subject to our jurisdiction are preempted by federal law. In the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995), Congress granted the Board exclusive jurisdiction over all rail transportation and rail facilities that are part of the interstate rail network. 49 U.S.C. § 10501(b)(1). Section 10501(b) thus shields railroad operations that are subject to the Board's jurisdiction from state or local laws or regulations that would unreasonably interfere with or discriminate against rail operations. See Green Mountain R.R. v. Vermont, 404 F.3d 638, 643 (2d Cir. 2005) (environmental and land use permit processes categorically preempted); City of Auburn v. STB, 154 F.3d 1025, 1029-31 (9th Cir. 1998). But state or local authorities may take action when it only incidentally affects railroad property. See, e.g., N.Y. Susquehanna & W. Ry. v. Jackson, 500 F.3d 238, 252-54 (3d Cir. 2007) (§ 10501(b) preempts "all state laws that may reasonably be said to have the effect of managing or governing rail transportation, while permitting the continued application of laws having a more remote or incidental effect on rail transportation) (quotation omitted). In addition, localities retain certain police powers to protect public health and safety. See Green Mountain, 404 F.3d at 643 (noting that generally applicable, non-discriminatory regulations, such as electrical, plumbing, and fire codes "withstand preemption").

The Board has previously found, however, that the size and extent of a railroad easement is a matter of state property law and best addressed by state courts. Allegheny Valley Railroad Company—Petition for Declaratory Order, FD 35239, slip op. at 9 (STB served June 15, 2010), presented a similar controversy over the width of an easement held by the railroad. There the Board concluded that the question of the width of the easement was a matter "better settled by a Pennsylvania state court . . . [as it entails] a question of property law, and it should be handled by

a tribunal that frequently addresses such matters.” Id. See also PCS Phosphate Co. v. Norfolk S. Corp., 559 F.3d 212, 214, 218-222 (4th Cir. 2009) (finding interpretation and enforcement of covenants in deeds of easement not preempted under § 10501(b)).

We find that a similar situation exists here. In his complaint, Fiore seeks a determination under Pennsylvania law as to the width and location of the property claimed by Fiore and by AVRR, and a determination of whether AVRR owns the property in fee simple or has only an easement.⁴ Both AVRR and Fiore acknowledge that a railroad right-of-way exists over part of Lot 4B, and both parties acknowledge that AVRR filed a notice of exemption in Docket No. FD 32783 and has the right to conduct rail operations within the AVRR right-of-way. The primary dispute here, therefore, involves the size, location, and nature of property rights for the AVRR right-of-way and Lot 4B. These disputes involve the application of state property law and properly are before the state court. Accordingly, AVRR’s request for institution of a declaratory order proceeding will be denied.⁵

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

It is ordered:

1. AVRR’s request for a declaratory order proceeding is denied and this proceeding is discontinued.

⁴ Proof of ownership by AVRR cannot be inferred from our approval to acquire and operate the rail line in Docket No. FD 32783. As the Board explained in MVC Transportation, LLC— Acquisition Exemption—P&LE Properties Inc., FD 34462 et al., slip op. at 6 (STB served Oct. 20, 2004), the Board’s grant of authority to acquire property is permissive, not mandatory, and cannot be viewed as conveying property rights to an applicant, as property ownership rights are determined by state law. Thus, in MVC Transportation, the Board held that the Pennsylvania court should resolve the dispute over ownership of certain yard track assets, because the dispute boiled down to questions of local property law, contract law, and mortgages, which typically are not issues for the Board to decide.

⁵ While AVRR has argued that the Board should institute a declaratory order proceeding so that the parties can present more-detailed evidence and argument regarding the potential interference with AVRR’s rail operations from the use of Fiore’s property, such evidence is not relevant to the determination of the size, location, and nature of the property interests under state law, which AVRR has acquired in the AVRR right-of-way.

2. Copies of this decision will be mailed to:

The Honorable Ronald Folino
Court of Common Pleas
700 City-County Building
414 Grant Street
Pittsburgh, PA 15219
Re: Civil Division No. GD-10-001721

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

By the Board, Chairman Elliott and Commissioner Mulvey.