STB DOCKET NO. 42053

THE TOWNSHIP OF WOODBRIDGE, NJ, *ET AL.*
v.
CONSOLIDATED RAIL CORPORATION, INC.

Decided November 28, 2000

The Board denies Conrail's motion to dismiss or to hold the disposition in abeyance the complaint filed by the Township of Woodbridge, NJ and the Department of Health and Human Services. The request for declaratory relief filed by Woodbridge is granted.

BY THE BOARD:

By complaint[1] filed on March 31, 2000, the Township of Woodbridge, NJ, and the Department of Health and Human Services of the Township of Woodbridge (collectively, Woodbridge or complainant) request the Board to declare: (1) that Consolidated Rail Corporation, Inc. (Conrail or defendant) is bound by its two agreements with Woodbridge concerning noise abatement, and (2) that Woodbridge may seek enforcement of the agreements in Federal or state courts.

On April 20, 2000, Conrail answered the complaint and also moved that the Board dismiss the complaint or hold its disposition in abeyance. Woodbridge replied to the motion on May 22, 2000. This decision denies defendant's motion and grants the relief complainant seeks.

BACKGROUND

Conrail operates a train yard, its Port Reading Yard, and tracks in Woodbridge, including a pair of tracks that run approximately 40 feet behind Rosewood Lane, a residential street. The two tracks are Track 236, a 1.5-mile long yard track that defendant uses to hold rail cars as part of its Port Reading Yard assembly and switching operations, and Main Track 210, which is used by through line-haul trains and by local trains moving into and out of Port Reading

[1] Although its pleading is styled a complaint, Woodbridge actually seeks a declaratory order regarding Board and court jurisdiction and Conrail's contractual obligations. Allegations of "unreasonable practices" amount to questions concerning the railroad's contractual obligations.

Yard. Over the years, residents along Rosewood Lane have complained about excessive noise from defendant's tracks. Specifically, the residents have complained that locomotives are left on the tracks with their engines idling throughout the late night and early morning hours.

In September 1995, Woodbridge filed suit in the Superior Court of New Jersey, Middlesex County, against Conrail on behalf of the Township's citizens.[2] The action was subsequently removed to Federal court. On May 2, 1996, complainant and defendant resolved the litigation by agreeing to a Stipulation and Order of Settlement, on the basis of which the U.S. District Court for the District of New Jersey dismissed Woodbridge's complaint.[3] In essence, Conrail agreed to curtail the idling of locomotives and the switching of rail cars behind Rosewood Lane between 10:00 p.m. and 6:00 a.m.

Even after the agreement, however, residents along Rosewood Lane complained about noise from idling trains. On July 30, 1999, Woodbridge filed a motion to enforce and/or clarify the settlement. Shortly thereafter, on August 16, 1999, the parties entered into a Consent Order.[4] The Consent Order incorporated and clarified the prior agreement and specified that, in the event of a future violation of the order, either party would be entitled to apply to the Federal court for a hearing at which injunctive relief and/or monetary sanctions could be requested.

Woodbridge filed a motion with the District Court for relief from alleged continued idling episodes on October 28, 1999. On January 10, 2000, the court entered an opinion stating that Conrail had violated the agreements and was in contempt of court.[5] The court indicated that an evidentiary hearing to determine a remedy would follow. On February 22, 2000, however, the court entered a decision finding that it did not have jurisdiction to provide a remedy in view of the broad preemption provision of the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (ICCTA).[6] The court dismissed Woodbridge's action

---

[2] Woodbridge based its suit upon a local ordinance that provides for prosecution of: "[a]ny matter, thing, condition, or act which is or may become an annoyance or interfere with the comfort or general well-being of the inhabitants of this municipality."

[3] *Woodbridge v. Consolidated Rail Corp.*, No. 95-5577(DRD) (D.N.J. May 2, 1996). The text of the agreement is set forth in the appendix to this decision.

[4] *Woodbridge v. Consolidated Rail Corp.*, No. 95-5577(DRD) (D.N.J. Aug. 16, 1999). The text of the Consent Order is set forth in the appendix.

[5] *Woodbridge v. Consolidated Rail Corp.*, No. 95-5577 (DRD) (D.N.J. Jan. 10, 2000).

[6] *Woodbridge v. Consolidated Rail Corp.*, No. 95-5577 (DRD) (D.N.J. Feb. 22, 2000), citing the preemption provision at 49 U.S.C. 10501(b) and the definition of "transportation" at 49 U.S.C. 10102(9).

without prejudice to its right to seek relief before the Board. Shortly thereafter, Woodbridge filed the pleading that is before us here.

POSITIONS OF THE PARTIES

Woodbridge states that it no longer seeks redress with respect to specific idling incidents. The township states, however, that it anticipates that similar incidents will occur in the future and it wants assurance that defendant will honor its agreements. Accordingly, Woodbridge asks us to declare that the two agreements between the parties are binding and enforceable, that we do not have exclusive jurisdiction over what is now a contract dispute, and that a state or Federal court has subject matter jurisdiction to enforce the contracts.

Woodbridge acknowledges that paragraph 4 of the Consent Order provides that "Conrail shall not be required to violate existing Federal operating and safety rules and regulations." However, Woodbridge maintains that, by operating efficiently, Conrail may honor its contractual obligations without violating Federal rules and regulations.[7]

Complainant emphasizes the voluntary nature of the agreements and asserts that a court can enforce a voluntary agreement between a rail carrier and another party. In this vein, Woodbridge contends that exclusive Board jurisdiction here would be at odds with the rail transportation policy of 49 U.S.C. 10101(2), which mandates minimizing the need for Federal regulatory control over the rail transportation system.

Conrail replies that it went to considerable lengths to accommodate Woodbridge's concerns, but that its initial cooperation should not bar it from asserting Federal preemption. Defendant emphasizes the changes in its operations necessitated by increased congestion at the Port Reading Yard following the acquisition of Conrail by two major railroads.[8] Defendant differentiates between noise emanating from its yard track prior to the acquisition and noise emanating from its main line track following the acquisition. Conrail states that it invoked Federal preemption only after the local authorities attempted to extend their common law "nuisance" regulation to its main line operations. Conrail contends that such regulation of interstate rail operations is

---

[7] According to Woodbridge, paragraph 4 excuses Conrail from honoring its noise abatement obligations only in bona fide emergency situations.

[8] *See CSX Corp. et al. — Control — Conrail Inc. et al.*, 3 S.T.B. 196 (1998) (*the acquisition proceeding*). The acquisition was implemented on June 1, 1999.

preempted by the provisions of 49 U.S.C. 11321(a) governing the scope of the Board's authority over carrier combinations.[9]

Conrail argues more broadly that complainant actually is seeking, in the guise of private contract enforcement, a general determination that it has public nuisance authority over railroad operations in the vicinity of the town. Conrail argues that it is incumbent on Woodbridge to demonstrate why such local nuisance regulation is not preempted.

Finally, Conrail asks that, if we do not dismiss Woodbridge's complaint, we hold this case in abeyance pending issuance of a final decision in the *Borough of Riverdale* proceeding.[10] In that case, which stems from the planned construction and operation of particular facilities, we are conducting a declaratory order proceeding to explore the nature and effect of the preemption in section 10501(b) as it relates to the appropriate role of state and local regulation. Conrail asserts that language in our preliminary *Borough of Riverdale* decision supports its position here.

Woodbridge responds that this proceeding is not about local ordinances. The township states that it merely seeks to have the railroad honor its contractual commitments. Woodbridge points out that Conrail agreed to the Consent Order more than 2 months after the acquisition was implemented. Complainant contends that defendant was aware of operational changes by the time it entered into that agreement and therefore should not be allowed to use the acquisition as an excuse for ignoring a subsequent agreement.

Finally, Woodbridge objects to this proceeding being held in abeyance pending a final Board decision in *Borough of Riverdale*. Complainant does not expect that proceeding to address factual issues analogous to those raised here.

DISCUSSION AND CONCLUSIONS

We have authority under 5 U.S.C. 554(e) and 49 U.S.C. 721 to issue a declaratory order decision to eliminate controversy and remove uncertainty, and we will exercise that authority here. We conclude that Conrail's own commitments (as reflected in the contracts that it entered into voluntarily) are not preempted. For that reason, we will deny Conrail's motion to dismiss. Moreover, because the issues here are different from those raised in *Borough of*

---

[9] That section, in brief, provides that a rail carrier is exempt from all law as necessary to let it carry out a transaction approved or exempted by the Board.

[10] *Borough of Riverdale — Petition for Declaratory Order*, 4 S.T.B. 380 (1999) (*Borough of Riverdale*).

Riverdale, we will deny Conrail's alternative request to hold this proceeding in abeyance.

As Woodbridge states, the issue before us here is whether, in the circumstances of this case, the carrier can be held to presumably valid and otherwise enforceable agreements that it entered into voluntarily or whether 49 U.S.C. 10501(b) shields it from its own commitments. We need not consider preemption issues that would have been involved had the parties never entered into the agreements, had they entered into both agreements prior to our approval of the acquisition, or had a court attempted to impose sanctions for violations of the agreements that are so onerous as to unreasonably interfere with railroad operations. None of these circumstances is present here.

Here, Conrail voluntarily entered into an agreement to resolve a dispute.[11] It then submitted the agreement to a court and had it memorialized in the form of a Stipulation and Order of Settlement and a later Consent Order. Significantly, the railroad then expressly reaffirmed and renewed the original agreement after the acquisition.[12] These voluntary agreements must be seen as reflecting the carrier's own determination and admission that the agreements would not unreasonably interfere with interstate commerce. Moreover, Conrail has not shown that enforcement of its commitments would unreasonably interfere with the railroad's operations. As we stated in *Borough of Riverdale*, at 386, we do not believe that all state and local regulations that affect railroads are necessarily preempted by 49 U.S.C. 10501(b). Rather, we believe that state and local regulation is permissible when it does not interfere with interstate rail operations.

It would be inappropriate for us to rule on the merits of the contract disputes in this case. Such matters are best addressed by the courts.[13] The courts can

---

[11] We reject Conrail's claim that Woodbridge is attempting to enforce a local public nuisance law here rather than a private contract. Because Conrail entered into voluntary agreements, case law that localities may not use common law nuisance law to interfere with operations of interstate railroads is inapposite.

[12] Section 11321(a) is of no help to Conrail here. The purpose of section 11321 is to permit acquisitions to be carried out and to overcome legal impediments, where necessary. But it is not intended to allow carriers whose mergers and acquisitions are approved to invalidate agreements that they entered into voluntarily after the acquisition was approved and implemented. Indeed, even pre-merger contracts not pertinent to the merger and acquisition are not exempted under 49 U.S.C. 11321. *See City of Palestine v. ICC*, 559 F.2d 408 (5th Cir. 1977), *cert. denied*, 435 U.S. 950 (1978).

[13] For instance, a court can resolve the matter of whether the intent of the parties was that the agreements apply only to operations on yard track or to operations on main line track as well.

fashion appropriate remedies, such as damage awards, when required. We encourage the parties to continue to pursue cooperative efforts.

We find:

The parties' Stipulation and Order of Settlement dated May 2, 1996, and Consent Order dated August 16, 1999, are valid and enforceable. In the event of a breach of the agreements, an aggrieved party may seek appropriate relief in a state or Federal court.

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

It is ordered:

1. Conrail's motion to dismiss the complaint or to hold its disposition in abeyance is denied.
2. Woodbridge's request for declaratory relief is granted as set forth above.
3. This decision is effective January 2, 2001.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

APPENDIX

Stipulation and Order of Settlement dated May 2, 1996:

In an effort to accomplish a subsidence of sound emanating from normal railroad operations in the Port Reading section of Woodbridge behind the homes on Rosewood Lane the parties have agreed to resolve the litigation without making any admissions of any kind and agree to the following:

1. Defendant Conrail agrees to remove the locomotives (which would otherwise idle) from trains which arrive on the track behind the homes on Rosewood Lane anytime between the hours of 10:00 p.m. to 6:00 a.m. and to send the locomotives to another location.
2. Defendant Conrail agrees to delay until after 6:00 a.m. the switching of cars contained in trains which have arrived on the track behind homes on Rosewood Lane between the hours of 10:00 p.m. and 6:00 am.
3. The Plaintiff, Township of Woodbridge, agrees to dismiss all claims in this matter against the defendant Consolidated Rail Corporation.
4. This Court retains jurisdiction for the purpose of hearing a motion and entering an order to enforce this Settlement Agreement.
5. The Court therefore dismisses this Complaint without costs to either party with the understanding that said dismissal is with prejudice except that a motion to enforce this settlement as agreed upon may be made by any party.

Consent Order dated August 16, 1999:

1. The prior Stipulation and Order of Settlement is incorporated by reference herein and shall continue to apply in all respects.

2. In the event Conrail is required to "send the locomotives to another location" pursuant to paragraph 1 of the Stipulation and Order of Settlement, that other location shall be Conrail's Port Reading rail yard.

3. The prohibition in paragraph 1 of the prior Stipulation and Order of Settlement with respect to the idling of locomotives "which arrive on the track behind the homes on Rosewood Lane anytime between the hours of 10:00 p.m. to 6:00 a.m." shall also apply to trains which arrive before 10:00 p.m., but continue to idle after that time. In such event Conrail will remove the locomotives to the Port Reading rail yard as soon as practicable and in no event longer than 60 minutes or 11:00 p.m.

4. It is expressly understood that Conrail shall not be required to violate existing federal operating and safety rules and regulations.

5. In the event of a future violation of this Consent Order, Woodbridge and/or Conrail shall be entitled to apply to this Court for a hearing at which both sides will present evidence and both sides can request further injunctive relief and/or such monetary sanctions as the Court shall deem appropriate.