

STB DOCKET NO. AB-556 (SUB-NO. 2X)

RAILROAD VENTURES, INC.
— ABANDONMENT EXEMPTION —
BETWEEN YOUNGSTOWN, OH, AND DARLINGTON, PA,
IN MAHONING AND COLUMBIANA COUNTIES, OH,
AND BEAVER COUNTY, PA

Decided January 16, 2001

The Board specifies the form of the deed and bill of sale to be utilized for the transfer of the rail line from Railroad Ventures, Inc., to Columbiana County Port Authority, pursuant to a forced sale under the offer of financial assistance procedures.

BY THE BOARD:

PERTINENT BACKGROUND

This case concerns a 35.7-mile railroad line between Youngstown, OH, and Darlington, PA, with a connecting 1-mile line segment near Negley, OH. The line was purchased by Railroad Ventures in late 1996 from the former Youngstown and Southern Railway Company (Y&S) without our authorization. Upon buying the line, RVI immediately canceled the lease of the operator, ending rail service for several shippers on the line. After our Office of Compliance and Enforcement (OCE) investigated the service failure, RVI restored the operator's lease and belatedly sought retroactive authority for its purchase of the line. We granted that authority, based upon Railroad Ventures' representation that it would provide for common carrier operations. *Railroad Ventures — Acquisition and Operation Exemption — Youngstown & Southern Railroad Company*, STB Finance Docket No. 33385 (STB served Apr. 24, 1997, and published at 62 Fed. Reg. 10,061 (1997)).

After about a week of service, however, washouts occurred that prevented operations under the restored lease. Notwithstanding its common carrier obligation for this line, RVI not only refused to pay for the needed repairs, but prevented restoration of service by interfering with repairs funded by public agencies and by inviting the State of Ohio to pave over the line at road crossings. Finally, under pressure from OCE to resume service to shippers on the line

absent abandonment authorization, RVI sought authority to abandon the line, which we granted in *Railroad Ventures, Inc. — Abandonment Exemption — Between Youngstown, OH, and Darlington, PA, in Mahoning and Columbiana Counties, OH, and Beaver County, PA*, STB Docket No. AB-556 (Sub-No. 2X) *et al.* (STB served Sept. 3, 1999).

The grant of the abandonment request allowed the Port Authority to file an OFA to purchase the line to provide rail service. That filing postponed the effectiveness of abandonment authority until the completion of the OFA process. Because the parties could not agree, the Port Authority asked us to set the terms of sale. In a decision served January 7, 2000, we set the terms and conditions, including a closing deadline of April 6, 2000. Since then, we have issued five further decisions designed to effect the transfer that we ordered over a year ago. These decisions have been necessitated largely by RVI's repeated actions to frustrate the OFA sale, including the attempted transfer of portions of the rail line (outside of the OFA process and without our knowledge) to an affiliated corporation or to third parties. Notwithstanding the tight statutory time frames of the OFA process, designed to promptly put on the line a new operator willing to provide service, the ordered closing has still not been completed.

COURT ACTION

In November 2000, the Port Authority filed with the United States Court of Appeals for the Sixth Circuit¹ a request for an injunction requiring RVI, its officers, and affiliates to cease interfering with the conveyance and to close the sale under the terms of our decisions ordering transfer of this rail line. We supported that request. In an order issued on January 5, 2001, the Sixth Circuit granted the request in part, by directing RVI "to comply with the * * * decisions of the Board requiring the transfer of the railroad right-of-way to [the Port Authority]." *Railroad Ventures, Inc. v. STB*, No. 00-3261 *et al.*, slip op. at 3. However, because "the parties are in disagreement as to the form of the deed and the bill of sale," *id.* at 2, and "[t]he Board appears to be in a better position than the court to resolve this dispute expeditiously," *id.*, the court remanded the case to us "for the limited purpose of specifying the form of the deed and bill of sale to be utilized for the transfer and scheduling a new date for the closing." *Id.* at 3.

¹ The Sixth Circuit has jurisdiction because RVI has sought judicial review of our decisions in that court.

THE PARTIES' POSITIONS

In a petition filed with us on December 29, 2000, Railroad Ventures submitted the quitclaim deeds and bill of sale that it proposes to use.² RVI's proposed deeds (one for each county in which the line is located) state in relevant part (emphasis added) that Railroad Ventures quitclaims to the Port Authority:

all right, title and interest to the real property comprising *a part or portion of* the premises heretofore conveyed to Railroad Ventures, Inc. by the Youngstown and Southern Railway Company by Deed dated November 8, 1996 and recorded on November 19, 1996 [in the Recorder's Office of the three counties involved].

The Port Authority filed a response objecting to the deeds proposed by Railroad Ventures on grounds that they use unacceptable language, present serious problems as to recordability, and would encourage further litigation (in other forums) as to the extent of the property transferred. The Port Authority has itself tendered deeds that use the specific language contained in the earlier deeds of conveyance from Y&S to Railroad Ventures, with only the exceptions specified in our earlier orders, and with a paragraph, which we earlier approved,³ making the conveyance subject to our orders and those of the Sixth Circuit.

Finally, on January 10, 2001, RVI filed a supplemental petition asking us to clarify that after the transfer of the rail line, RVI's affiliate, Venture Properties, will retain all right, title, and interest in and to the various third party agreements identified and valued by Mr. Rossi on behalf of CCPA, and that RVI's right to transfer those agreements to Venture Properties is unaffected by the sale of the remaining assets in this rail line to CCPA.

DISCUSSION AND CONCLUSIONS

In accordance with the court's order, and with a fervent hope that the statutory objective of transferring this line to a party willing to operate it will finally be achieved, we will specify (1) the form of the bill of sale and deeds for this conveyance, and (2) the date by which the parties must close this transaction.

² In its petition, RVI asked us to either (a) find that, by refusing to accept these documents, which were tendered to CCPA on December 19, 2000, CCPA forfeited its rights to obtain the property, or (b) direct the Port Authority to close this transaction immediately using these documents. We will deny these requests, as we find that CCPA's objections to the documents prepared by RVI were well taken.

³ See our decision in this at 5 S.T.B. 373 (2000).

Form of Deeds. We agree with the Port Authority that the deeds proposed by Railroad Ventures are inadequate and entirely inappropriate due to their use of undefined and inappropriate limiting language (the “a part or portion of” phrase). Moreover, we are concerned that anything less than a full (metes-and-bounds) legal description of the property would not be recordable, according to the neutral third party attorney agreed upon by the parties to serve as the closing officer and escrow agent.⁴ In contrast, the deeds proposed by Port Authority employ the legal description of the property contained in the Y&S deeds conveying this rail line to Railroad Ventures. Moreover, those deeds contain the reservations that we earlier approved in this case.⁵ Accordingly, we direct the parties to use the deeds tendered by the Port Authority, with one change, if needed, to reflect the correct state of incorporation of Railroad Ventures.⁶

Form of Bill of Sale. Similarly, the bill of sale proposed by the Port Authority is clearer and thus more appropriate than the bill of sale proposed by Railroad Ventures. RVI’s proposed bill of sale is ambiguous, as it merely states that it transfers RVI’s right and title in the personal property in this rail line without mentioning the personal property located at the Negley shops, the North Lima station, and the Columbiana station. In contrast, the bill of sale tendered by the Port Authority specifically refers to the property at these locations, which

⁴ See Reply to Petitioner’s Memorandum in Opposition to Emergency Motion for Injunctive Relief of Intervenor, Columbiana County Port Authority and Central Columbiana & Pennsylvania Railroad Company, at 4, filed December 14, 2000, in *Railroad Ventures, Inc. v. STB*, No. 00-3261, *et al.* (6th Cir.).

⁵ *E.g.*, Mahoning County Quit Claim Deed at 12 (excepting an easement to Ohio Edison Company), and the Instrument of Assignment (Transfer) from Railroad Ventures to Venture Properties of the income from various crossings and licenses regarding this rail line, for which we adjusted the purchase price in our decision served January 7, 2000, in this proceeding.

⁶ Railroad Ventures’ proposed deeds state that it is incorporated in the Commonwealth of Pennsylvania, whereas the Port Authority’s tendered deeds state that Railroad Ventures is a Corporation of the State of Ohio. In correspondence between the parties, the Port Authority offered to change the reference to the state of incorporation if Railroad Ventures confirmed that it is incorporated in that state. Railroad Ventures is in the best position to know its own state of incorporation, and therefore — assuming that Railroad Ventures is in fact incorporated in Pennsylvania — the parties should change the reference in the Port Authority’s tendered quitclaim deeds (and in the bill of sale) from “a Corporation of the State of Ohio” to “a Corporation of the Commonwealth of Pennsylvania.” Should the reference to incorporation in Pennsylvania be incorrect, Railroad Ventures is directed to notify us and the Port Authority, by facsimile, within 48 hours after the issuance of this decision, of the correct state of its incorporation.

we consider to be part of the rail line.⁷ The Port Authority's bill of sale also includes its correct mailing address.

We note that the Port Authority's bill of sale indicates that the personal property — rail, track materials, ballast, mainline and sidings (including turnout and sign flashers), ties, joint bars and other track facilities (including signals, flashers, and gates) — is conveyed as is, with an exception “for restoration of paved over track and signals as required by” our earlier order.⁸ We will require the inclusion of this language, which is not included in Railroad Ventures' bill of sale but which properly reflects the \$375,000 escrow amount that we ordered to be withheld from the proceeds of sale to restore paved over track and disconnected/destroyed signals.

For these reasons, we will prescribe the use of the bill of sale tendered by the Port Authority, with a change, if needed, to reflect the correct state of incorporation of Railroad Ventures, *see supra* note 6.

New Closing Deadline. We will require closing by January 23, 2001. This deadline reflects the fact that time is of the essence to both parties. *See* RVI Petition at 4; CCPA Reply to Petition at 3.

Other Matters. The parties reached agreement on various details concerning the closing. These details include, but are not limited to, agreement that Attorney James Davis will serve as closing officer and escrow agent for both parties and that the closing will take place at Mr. Davis' Youngstown, OH office. We expect and order the parties to comply with each and every detail of closing to which they previously have agreed (to the extent not superseded by a later mutual agreement).

Finally, we are granting RVI's January 10 request, and we clarify that Venture Properties will retain all right, title, and interest in and to the various third party agreements (licenses, crossing, etc.) identified and valued by Mr. Rossi on behalf of CCPA and that RVI's right to transfer those agreements to Venture Properties is unaffected by the sale of this rail line to CCPA. The deeds we have prescribed make this clear in the exception for the “Instrument of Assignment” clause, *see supra* note 5.

⁷ *See* RVI's Petition for Exemption for Abandonment, filed June 1, 1999, Exhibit 7 (Railroad Ventures, Inc. and The Ohio & Pennsylvania Railroad Company Environmental and Historical Reports), Photographs of Structures.

⁸ *See* our decision at 5 S.T.B. 283 (2000).

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

It is ordered:

1. RVI's petition filed December 29, 2000, is denied.
2. RVI's supplemental petition filed January 10, 2001, is granted to the extent described in this decision.
3. RVI is directed to comply with our decisions requiring the transfer of this rail line.
4. The parties are directed to use the form of deeds and bill of sale described in this decision.
5. If Railroad Ventures, Inc. is not a Corporation of the Commonwealth of Pennsylvania, it shall inform us and Columbiana County Port Authority of the correct state of incorporation of Railroad Ventures, Inc. by facsimile, within 48 hours of the issuance of this decision.
6. If Railroad Ventures, Inc., makes a notification required under paragraph 5 above, the parties shall use the corrected state of incorporation for Railroad Ventures in the bill of sale and deeds that we have prescribed.
7. The parties are directed to comply with each and every agreement they have reached concerning the closing of the ordered transfer (to the extent not superseded by a later mutual agreement).
8. The transfer shall be completed on or before January 23, 2001.
9. This decision is effective January 17, 2001.

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