



ASSOCIATION OF
AMERICAN RAILROADS

Law Department
Dennis J. Starks
Senior Commerce Counsel

210439



March 31, 2004

BY HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

ENTERED
Office of Proceedings

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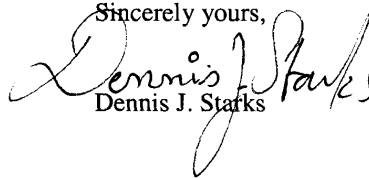
Re: Finance Docket No. 34487 - - Greenville County Economic Development
Corporation - - Petition For Declaratory Order

Dear Secretary Williams:

Please find enclosed an original and ten (10) copies of the Comments of the Association of American Railroads, for filing in the proceeding referenced above.

Please date-stamp the extra copy of the Comments and this Letter, provided for that purpose, and return the same to the undersigned via the Messenger hand delivering them.

Sincerely yours,


Dennis J. Starks

Enclosures

THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET No. 34487

GREENVILLE COUNTY ECONOMIC DEVELOPMENT CORPORATION
PETITION FOR DECLARATORY ORDER

COMMENTS OF THE
ASSOCIATION OF AMERICAN RAILROADS

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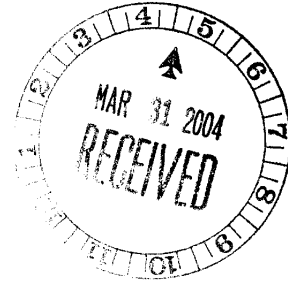
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COMMENTS OF THE
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By decision served March 22, 2004, the Surface Transportation Board (Board) instituted a declaratory order proceeding and requested comments on the following question: Whether the preemption provisions of 49 U.S.C. § 10501(b)(2) preclude a state court from hearing a lawsuit alleging that a railroad has failed to carry out its common carrier obligation to provide service. For the reasons discussed below, the Association of American Railroads (AAR)¹ respectfully submits that the Interstate Commerce Act precludes a state court from hearing such a lawsuit.

I. BACKGROUND

The AAR understands the facts to be as follows. On June 30, 2003, in Docket No. AB-490X, *Greenville County Economic Development Corporation - Discontinuance of Service Exemption – in Greenville County, SC*, the Greenville County Economic Development Corporation (GCEDC), sought to use the Board's class exemption procedures to obtain

¹ The AAR is non-profit trade association representing the major freight railroads in North America, as well as Amtrak, accounting for more than 96% of intercity rail freight service in the country. Overwhelmingly privately owned and operated, railroads move 42% of our nation's freight (measured in ton-miles) and connect businesses with each other across the country and with markets overseas. Railroads contribute billions of dollars each year to the economy through infrastructure investments, wages, purchases, and taxes. The AAR has a substantial interest in safeguarding railroads' ability to undertake activities consistent with federal requirements free from frustration by competing local interests – an essential ingredient to continuation of a healthy rail network providing transportation in interstate commerce.

authorization to discontinue service over a line of railroad that it had acquired in 1999. In response, Lee Groome and Groome & Associates, Inc. (Groomes) indicated to the Board that it had unsuccessfully sought service over the line, and that it was pursuing an action against GCEDC in a South Carolina State Court. In a decision served January 24, 2004, the Board dismissed the notice of exemption, finding that Groomes raised sufficient concerns to make it inappropriate for GCEDC to use the class exemption, and informed GCEDC that it would have to petition for an individual exemption or apply for abandonment. The Board did not address the state court proceeding, other than to note that its existence indicated that the discontinuance matter was controversial.

By letter to the Board dated March 11, 2004, GCEDC's counsel raised questions about the state court's jurisdiction in light of 49 U.S.C. § 10501(b). Specifically, counsel furnished the Board with a copy of a recent decision issued in the state court proceeding that rejected GCEDC's argument that the state court lacked jurisdiction to hear claims for damages resulting from failure to provide service.

The Board treated the March 11 letter as a petition for declaratory order and instituted this proceeding.

II. ARGUMENT

The Interstate Commerce Act's language and legislative history demonstrate Congress's intent to preclude state courts from adjudicating a claim that a railroad has failed to carry out its common carrier obligation to provide service. The Act precludes state court litigation regarding a railroad's common carrier obligation, regardless of whether the plaintiff asserts a violation of state or federal law.

A. The Act Precludes Claims Based On State Law

The Interstate Commerce Act precludes a state court (or a federal court) from hearing a lawsuit alleging that a railroad has failed to carry out common carrier obligations arising under state law. Section 10501(b)(2) states in relevant part:

The jurisdiction of the Board over . . . transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service interchange, and other operating rules), practices, routes, **services**, and facilities of such carriers; and . . . the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one state, is exclusive. **Except as otherwise provided under this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.** (*Emphasis added*)

Courts have uniformly interpreted this provision to preempt state law remedies, except where the Act expressly provides otherwise. *See, e.g., Pejepscot Indus. Park v. Maine Cent. R.R.*, 215 F.3d 195, 204 (1st Cir. 2000) (Act preempts state law and remedies relating to common carrier obligations); *South Dakota R.R. Auth., v. Burlington N. & Santa Fe Ry.*, 280 F. Supp. 2d 919, 934-35 (D.S.D. 2003) (Act preempts state law claims for punitive damages and tortious interference); *Cedarapids, Inc. v. Chicago, Cent. & Pac. R.R.*, 265 F. Supp. 2d 1005, 1014-15 (N.D. Ia. 2003) (Act preempts state law claims that would force a railroad to abandon tracks); *Rushing v. Kansas City S. Ry.*, 194 F. Supp. 2d 493, 500-01 (S.D. Miss. 2001) (Act preempts state law nuisance and negligence claims); *Guckenberg v. Wisconsin Cent. Ltd.*, 178 F. Supp. 2d 954, 958 (E.D. Wis. 2001) (Act preempts state law nuisance claim); *CSX Transp., Inc. v. Georgia Pub. Serv. Comm'n*, 944 F. Supp. 1573, 1581 (N.D. Ga. 1996) (Act preempts state regulation of railroad agency closings). Indeed, as one court has observed, “[i]t is difficult to imagine a broader statement of Congress’s intent to preempt state regulatory authority over

railroad operations.” *CSX Transp.*, 944 F. Supp. at 1581. These judicial decisions are fully consistent with the Act’s legislative history, which reveals that Congress eliminated a statutory provision preserving state law and common law remedies when it enacted the ICC Termination Act in 1995. *See* Former 49 U.S.C. § 10103 (“Except as otherwise provided in this subtitle, the remedies provided under this subtitle are in addition to remedies existing under another law or at common law.”).

The Act does not authorize state law remedies for violations of a railroad’s common carrier obligation to provide service, and thus it preempts claims based on violations of state law.

B. The Act Precludes State Adjudication of Claims Based On Federal Law

The Interstate Commerce Act also precludes a state court from adjudicating a claim that a carrier has violated its common carrier obligation to provide service under 49 U.S.C. § 11101(a). Allowing state courts to adjudicate claims involving the federal common carrier obligation would be inconsistent with Congress’s intent in enacting the ICC Termination Act. In the ICC Termination Act, Congress explicitly sought to federalize regulation of railroads by granting the Board broad, exclusive jurisdiction over transportation by rail carriers. *See* 49 U.S.C. § 10501(b)(1). Congress also intended to limit the states’ role in regulating rail transportation in order to promote uniform, federal standards. *See, e.g.*, H.R. Rep. No. 104-311, at 95, *reprinted in* 1995 U.S.C.C.A.N. 793, 807 (“The bill is intended to standardize all economic regulation (and deregulation) of rail transportation under Federal law, without the [previous regime of] optional delegation of administrative authority to State agencies to enforce Federal standards.”). Consistent with Congress’s intent, the Act specifically identifies the few situations in which a plaintiff may bring a state court action to enforce the Act, and those situations are limited to non-policy matters involving enforcement of Board orders requiring the payment of damages or

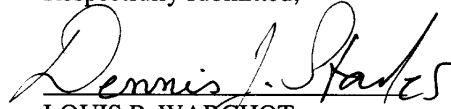
resolution of basic commercial disputes within the competence of state courts. *See, e.g.*, 49 U.S.C. § 11704(d)(1) (granting federal and state courts jurisdiction to enforce a Board order requiring payment of money); *id.* § 11706(d)(1) (granting federal and state courts jurisdiction over claims for freight loss or damage).

The few judicial decisions touching upon state court authority in the wake of the ICC Termination Act indicate that state courts lack that authority to adjudicate federal claims. For example, the Nebraska Supreme Court concluded that, as a result of the ICC Termination Act, “State courts no longer have jurisdiction to consider the practices, routes, services, and facilities of interstate rail carriers.” *In re Burlington N.R.R.*, 545 N.W.2d 749, 823-24 (Neb. 1996) The court explained that the ICC Termination Act “vests exclusive jurisdiction in the federal government for interstate rail matters affecting practices, routes, services, and facilities of rail carriers.” *Id.* at 822 (dismissing appeal for lack of subject matter jurisdiction). Similarly, in a case addressing Section 11101(a)’s requirement that carriers provide service upon reasonable request, the United States Court of Appeals for the First Circuit recognized Congress’s efforts in the ICC Termination Act “to federalize these disputes.” *Pejepscot*, 215 F.3d at 204.

III. CONCLUSION

For the reasons discussed above, the Board should declare that state courts are precluded from hearing a lawsuit alleging that a railroad has failed to carry out its common carrier obligation to provide service.

Respectfully submitted,



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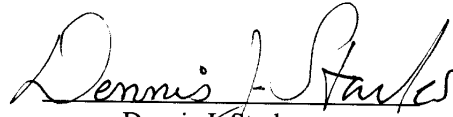
Union Pacific Railroad Company

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of March, 2004, I served a copy of the foregoing
comments by overnight mail on:

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