

**Before the
SURFACE TRANSPORTATION BOARD**

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December 17, 2024
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Public Record

STB Docket No. AB 1242 (Sub-No. 1)

**HARTWELL FIRST UNITED METHODIST CHURCH
--ADVERSE ABANDONMENT AND DISCONTINUANCE--
THE GREAT WALTON RAILROAD COMPANY, INC., IN
HART COUNTY. GA**

**GREAT WALTON RAILROAD COMPANY, INC.
SUR REBUTTAL**

Comes now The Great Walton Railroad Company, Inc. ("GWRC") and files its objections to the "Rebuttal" filed November 27, 2024, by Hartwell First Methodist Church ("the Church"). Although the Church's filing is labeled as a "Rebuttal," it is actually an untimely reply to a reply for which there is no justification under the Board's Rules. 49 C.F.R. 1104.13(a). In essence the Church's position, which brings nothing new to the table, is based on the nonsensical claim that the Great Walton Railroad, Inc. ("GWRC") is seeking to relitigate state court issues finding the Church has fee title to the so-called "north spur."¹ Without question, the Board will decide whether the courts'

¹ The track that remains at issue is a segment of the ancillary runaround track that is a critical component of GRWC's operations that has long allowed GWRC to move inbound trains into Hartwell over its mainline (which is immediately adject to the south of the runaround track's southern right of way) and, after uncoupling the locomotive, to use the runaround track to reposition the locomotive at the front of the train for the return to Bowersville. Unlike the remainder of the real property that the Church acquired in 2003 from The Hartwell Mills, the parcel of real property on which the runaround track is located was never owned by The Hartwell Mills.

findings and conclusions are preempted. Hence, GWRC has the absolute right to litigate all issues before the Board that adversely impact its operations in any fashion.

I. GWRC is not seeking to relitigate any state court finding that does not interfere with its ability to use track that is the subject of the Board's exclusive review.

GWRC has no basis or reason to relitigate the issue of whether The Hartwell Mills acquired the so-called "Perfect Pea Picker" lot, as described in the deed to the property that The Hartwell Mills acquired in 1937, and which the Church acquired in 2003. That lot was ***never a part of the interstate rail system***. Therefore, neither the Interstate Commerce Commission ("ICC") nor the Board has ever had any jurisdiction over the Perfect Pea Picker lot; its purchase in 1937 by The Hartwell Mills; or its acquisition by the Church in 2003 via multiple quit claim deeds from The Hartwell Mills so long as it is understood that the lot did not extend beyond the northernmost boundary of the right-of-way of the runaround track. Clearly, and contrary to the zealous claims of the Church via Mr. Whittemore, the real property within the runaround track's right-of-way had never been abandoned, it was, and continues to this day, to be subject to the Board's jurisdiction. Hence, any acquisition of the property would be subject to the provisions of 49 U.S.C. §10501(b)(2), and/or §10901 and §10903.

The incontestable fact of the matter is that the 10-foot wide parcel of real property that underlies the runaround tracks was unquestionably located adjacent to and north of the Hartwell Railway's mainline track and immediately

south of what would be known as The Hartwell Mills' lot.² Furthermore, any funds that would have been used to buy the real property from the Farmers Union would have had to have been approved by the Southern Railway's management, which easily accounts for the use of "Southern Railway" to clearly distinguish it from the Hartwell Railway, which built the original mainline rail in 1879.

In its decision, the Superior Court of Hart County, Georgia insists that courses and distance in a legal description are given low priority when there are monuments or surveys to utilize. In this proceeding before the Board that would, however, require one to ignore the fact that the 90-foot distance along Webb Street was not challenged by either The Perfect Pea Picker Company or any of the later owners, including The Hartwell Mills. As an aside, it is noted that due to direct access to Webb Street, there was no need to cross over two sets of tracks to reach the real property that is located to the south of the Hartwell's mainline track as Webb Street allows you access.

The ten-foot gap controversy cannot be ignored. While the courts failed to consider the 1978 plat, which, establishes the northern boundary of The Hartwell Mills' lot, there is no avoiding the conclusion that the 90 foot measurement along Webb Street causes The Hartwell Mills' lot to only reach the northern right-of-way of the spur track, whether it is referred to as the

² That conclusion is clearly supported by the Field Notes of the Interstate Commerce Commission's Valuation Division.

“Southern Railway” track or any other name. Plainly, The Hartwell Mills lot did not reach the northern right-of-way, of the Hartwell Railway’s mainline.

The Board should note that neither the Superior Court nor the Court of Appeals mention the 1978 Page Estate Deed and Plat. Moreover, the Church’s attorney, at page 9 of the Church’s *Response in Opposition to Petition for Writ of Certiorari* filed by GWRC, took the absurd position that the “***northern boundary is immaterial.***” GWRC respectfully disagrees.

Not only does the Plat establish the northern boundary of The Hartwell Mills’ lot, but it also demolishes the Church’s claim that the “ten-foot gap” is located at the northern boundary of The Hartwell Mills’ lot. Plainly the 10-foot gap lies between the northern right-of-way of the Hartwell Railroad and The Hartwell Mills’ lot.

Furthermore, the 1978 plat reveals the error in the 1990 Teasley plat, which clearly and erroneously includes the square feet of the property that underlies the spur track. Whatever that figure may be, it must be subtracted from the 0.564 acre total reflected on the Teasley plat. In sum, because it is mathematically and geographically impossible for The Hartwell Mills’ lot to reach the mainline track as drawn on the Teasley Plat, the Board must reject the courts’ conclusion.

Given the controversy surrounding the issue of the 10-foot gap, the materiality of the northern boundary of The Hartwell Mills cannot be denied and must be resolved by the Board, which has the exclusive jurisdiction in this matter, not the Georgia courts. Because the Church’s alleged ownership of the

segment of the runaround track has already delayed GWRC's reconstruction of the entire runaround track for over eight (8) full years, which has plainly disrupted and interfered with GWRC's railroad operations, as well as the safety of GWRC's operations, the courts' conclusion that the Church holds any ownership of the "spur," whether fee or by adverse possession, is preempted under 49 U.S.C. 10501(b).³

The Church's argument that it acquired the railroad right-of-way when it acquired The Hartwell Mill's lot raises serious questions as to whether GWRC was made aware that the sale and acquisition of the lot would somehow include a segment of its runaround track. Simply stated, the absence of any statement that an agreement had been reached or details about when an agreement would be reached with GWRC regarding the sale of a segment of its runaround track must be preempted by the Board and condemned as being little more than a theft of real property by the Board. *See James Riffen—Acquisition and Operation Exemption—In York County, PA*, F.D. 36584, slip op at 5-6 (STB served April 21, 2022).

II. GWRC Whole Heartedly Agrees with The Court of Appeals of Georgia's conclusion that, because the Board has exclusive jurisdiction over the issue of whether GWRC's removal in October 2008 of a segment of the ancillary track removed that segment from the Interstate Rail System, it was Necessary to Vacate the Portion of the Superior Court's Order That Required GWRC to Remove the Tracks That had been Reconstructed in November 2016.

³ To the extent that the Georgia courts found that the Church "already holds fee title to the property," that holding had to assume that the "Southern Railway track" was simultaneously the "Hartwell Railway" track. Given the continued rail operations since 1913, the Board should find that there is no way that the Church could have ever owned the property.

GWRC applauds the Court of Appeal's decision that vacated the superior court's finding that, ***had it not been vacated***, would have required GWRC to remove the track that it was in the final stage of rehabilitating on November 28 2016. By preventing GWRC from finalizing the reconstructing of the track, the superior court not only violated the provisions of 49 U.S.C. 10501 that bestow exclusive jurisdiction on the Board over the operation of spur tracks, it also deprived GWRC of the statutory authority and power granted every operating railroad in Georgia to ***reconstruct*** its tracks. Ga. Code § 46-8-120.

GWRC also agrees with the Court of Appeals' rejection of the superior court's unsupported and erroneous statements, which were spoon fed to it by the Church's Counsel,⁴ that:

Ordinarily, it is the Surface Transportation Board ... that must authorize the abandonment of a "line of railroad, and thus no STB authority was required before the Defendant abandoned the North Spur." However, the STB has specifically determined that the North Spur is not part of the Defendant's' line of railroad, and thus, no STB authority was required before the Defendant abandoned the North Spur.

The Board's decision obviously drew a clear distinction between the main line track and the ancillary runaround track. However, it did not rule on the merits of whether the runaround track had been abandoned in 2008 when Mr. Anderson temporarily removed the rail in order to facilitate the Church's efforts to expand its campus. Nevertheless, as is reflected by the Superior Court's decision, the Church seized the opportunity to claim that its alleged efforts to

⁴ As earlier noted, the superior court simply adopted the Church's draft decision and did not make a single change.

landscape the entire area resulted in the “complete exclusion of Defendants as a railroad.” Moreover, by “exclusively control[ing] and occupy[ing] the subject property,”⁵ the Church satisfied “all of the requirements of O.C.G.A. §§ 44-5-161 and 164 for prescriptive title by adverse possession as established by the Whittemore Affidavit from 2008 until [GWRC] reentered the property in 2016--more than the requisite seven years under color of title.”⁶

Given the fact that it has never determined that GWRC actually abandoned its runaround track, the Board, which has retained jurisdiction over GWRC’s rail properties, will make the final determination as to whether the runaround track is part of the interstate rail system. As has been recognized by the Supreme Court of the United States, the Board retains jurisdiction over rail operations until abandonment authority has been consummated. *See Hayfield N. R.R. Co. v N. W. Transp. Co.*, 467 U.S. 622, 633-34 (1984). Hence, even if it were true that the church landscaped the entire area, that would not result in the abandonment of the runaround track.

Obviously recognizing that Board precedents support a conclusion that the Church’s adverse possession claims are preempted, the Church alternatively claims that “[w]hether adverse possession was correctly found by the Superior Court is irrelevant given the findings that the Church established fee title to the property and did not need adverse possession to acquire title.”⁷

⁵ Superior Court decision at 9.

⁶ *Id.*

⁷ Rebuttal at 10.

As argued above, the court's determination that the Church acquired fee title by acquiring The Hartwell Mill's lot is baseless. Hence, the Church's alternative approach to claim title also fails.

III. GWRC respectfully submits that the remaining matters that were raised by the Church's Rebuttal do not merit a further response.

While there is a distinction between the main line and the ancillary runaround track, the Church cannot avoid the fact that the STB has exclusive jurisdiction over both the line and the ancillary track. Furthermore, having denied the Church's adverse abandonment case that involved only the mainline, there is no rational reason for the Board to grant the Church's request that it somehow find that GWRC should be foreclosed from restoring its runaround track which obviously complements GWRC's mainline operations in multiple ways that need not be repeated once again.

Despite the Church's claims that GWRC has failed to provide meaningful rail service over the spur track even before 2008, that alone does not carry the day. As reflected by the Board's prior decisions in *Norfolk Southern Railway Company—Adverse Abandonment—St. Joseph*, STB Abandonment Docket No. 34960, (served Feb. 14, 1980), on November 21, 2006, the City of South Bend, IN ("the City"), and two religious orders ("the Orders")—the Brothers of Holy Cross, Inc. ("the Brothers"), and the Sisters of the Holy Cross ("the Sisters") filed an adverse abandonment application seeking to have the Board find that the public convenience and necessity ("PC&N") required the adverse abandonment of two Norfolk Southern Railway Company ("NSR") rail lines ("Lines") in St. Joseph County, IN. As is the situation here, there had been no

rail service on the Lines since the mid-1900's when the University of Notre Dame, in August 2006, announced its intention to use truck service to receive coal at its power plant.⁸

In support of their adverse abandonment application, the parties argued that because there had been no rail service on the Lines or requests for rail service for at least 10 years, there was “no demonstrable need for future rail service.” They also argued that the University had publicly stated that “it [had] no intention of receiving coal by rail.”

The Brothers and Sisters also argued that “keeping the Lines in place impeded the Orders from achieving their missions.”⁹ In response, the Board noted that the Orders had conducted their educational and other beneficial activities for many years, notwithstanding the presence of, and in years past, operations over the Lines.”¹⁰

As the Board also noted, “[w]hile the Orders might prefer to annex the rights-of-way the same could be true for any property owner carrying on activities adjacent to rail properties.”¹¹ The Board then concluded with the statement, which applies herein, that “[t]he purpose of our statutory power is to prevent interstate commerce from being unreasonably interfered with, and to

⁸ However, just prior to the City's filing, the Chicago, Lake Shore and South Bend Railway Company (“CLS&SB”) filed a verified notice to acquire from NSR and operate 3.2 miles of the Lines. The CLS&SB expressed an intent to run trolley cars between Notre Dame and the South Bend airport.

⁹ Slip op. at 7

¹⁰ *Id.*

¹¹ *Id.*

shield useful rail properties from annexation for the benefit of local interests.”¹² To support its reasoning, the Board directed attention to *City of Lincoln v. STB*, 414 F.3d 858, 862 (8th Cir. 2005).

In its decision that affirmed the Board’s decision to deny the adverse abandonment filed by the City and the Orders,¹³ the D. C. Circuit also noted that “[b]ecause reassembling a right-of-way may be difficult if not impractical, the Board must, before authorizing an abandonment, give weight to its ‘statutory duty to preserve and promote continued rail service.’ *N.Y. Cross Harbor R.R. v. STB*, 374 F.3d 1177, 1187 (D.C.ir. 2004).” It is noted that this was one of the reasons that Mr. Anderson declined to abandon the line and its runaround track.¹⁴

Because the situation in the instant matter cannot be distinguished in any material manner, the Board is respectfully requested to give this matter its immediate attention by finding that the decision of the Superior Court of Hart County, as well as those of all other courts, that would sustain the injunction that has been in place since November 28, 2016, are preempted. There is absolutely no reason to delay the issuance of an order terminating that

¹² *Id.*

¹³ *City of South Bend, IN and Brothers of Holy Cross, Inc. v. Surface Transportation Board*, 566 F.3ed 1166, 1168 (D.C. Cir. 2009).

¹⁴ While it is true that the Board ultimately approved the adverse abandonment application in April 17, 2020, the applicants conclusively demonstrated that there was no present need for rail service on the Lines and that there was no potential for future renewed rail operations. *Norfolk Southern Railroad Company—Adverse Abandonment—St. Joseph County, IND*, STB Docket No. AB290(Sub-No. 286) slip op at 4 (STB April 17, 2012).

injunction or to “handle the proceeding under its modified procedures pursuant to 49 C.F.R. Part 1112.” Nor is there any basis for delaying this matter one more minute to issue a schedule so that the Church can further stymie the reconstruction of the runaround track.

Conclusion

GWRC respectfully submits that the Board should grant GWRC’s request for a declaratory order and should declare that all of the Church’s claims of ownership of any real property underlying GWRC’s runaround track are, based on the foregoing and the record as a whole, preempted.

In particular, the Board should grant GWRC’s request for a declaratory order based on the following:

(1) Whereas the Board has previously denied the adverse abandonment of GWRC’s mainline track, and because the Board has never authorized the abandonment of GWRC’s runaround track, the runaround track is, and always has been, within the national rail network system and has not been abandoned. As a result, GWRC’s petition for declaratory order should be granted;

(2) Because the findings and holdings of the various Georgia Courts, which are based on state property law, have actively interfered for a period of eight (8) years with GRWC’s efforts to reconstruct its runaround track and threaten to impact its future operations over both GWRC’s mainline track and its runaround track, the courts’ decisions are preempted pursuant to 49 U.S.C. §10501(b);

(3) The courts' rulings that have determined that the Church acquired fee ownership of the runaround track by virtue of the Church's alleged acquisition of the runaround track by adverse possession and by prescriptive easement are contrary to the provisions of 49 U.S.C. §10501(b) that explicitly provide the Board with exclusive jurisdiction over the acquisition of spur tracks, as such the courts' rulings are preempted;

(4) The court's ruling that GRWC's claim of ownership by prescriptive title is moot due to the Church's alleged occupancy and exclusive control of the subject property from 2008 until 2016 that, pursuant to O.C.G.A. §§ 44-5-161 and 164, caused the Church to acquire prescriptive title by adverse possession is preempted by the provisions of 49 U.S.C. §10501(b); and that

(5) The court's further ruling that GWRC's prescriptive easement claims are also moot, pursuant to O.C.G.A. § 44-9-6, which states that "an easement may be lost by abandonment or forfeited by nonuse if the abandonment or nonuse continues for a term sufficient to raise the presumption of release of abandonment" is preempted by the provisions of 49 U.S.C. §10501(b).

Moreover, the Board should find that the Church's purported acquisition in 2002 of fee title to the real property that underlies the runaround track by virtue of quit claim deeds from the successors in interest of The Hartwell Mills, based on the plat prepared by Dean H. Teasley, is preempted on the grounds that the Teasley Plat failed to account for the property that underlies the runaround track and, therefore, if not corrected, distorts the boundaries of the

runaround track and potentially unreasonably interferes with railroad transportation.

The Board should also find that the Church's continuing efforts to prevent the rehabilitation of GWRC's runaround track are deliberately interfering with GWRC's efforts to provide safe, economical and efficient rail service to Redline Plastics 2, LLC, which has filed a Verified Statement in support of GWRC's position. Moreover, the Board should reject the Church's cynical and self-serving argument that the rehabilitation of the runaround track is not necessary for GWRC to provide service for a single shipper when the shoving of empty covered hopper cars back to Bowersville "proves" there is no need to rehabilitate the runaround track.

Respectfully submitted,

/s/ Richard H. Streeter

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December 17, 2024

Certificate of Service

I, Richard H. Streeter, do hereby certify that a true copy of the foregoing Response and all Attachments thereto, has been electronically served this 17th day of December, 2014, on Eric M. Hockey at ehockey@clarkhill.com and on Justin J. Marks at jmarks@clarkhill.com.

/s/ Richard H. Streeter