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December 13, 2019
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Before the
SURFACE TRANSPORTATION BOARD

AB 1242 (Sub-No. 1)

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

THE GREAT WALTON RAILROAD COMPANY
PETITION FOR LEAVE TO FILE A
REPLY TO A REPLY

EXPEDITED HANDLING REQUESTED

Great Walton Railroad Company (GWRC), pursuant to Rules 1100.3 and 1110.9, hereby requests the Board to waive Rule 1104.13(c) and permit GWRC to file a reply to the reply filed by Hartwell First United Methodist Church (HFUMC). By its Petition filed November 20, 2019, GWRC, a small Class III railroad, requested the Board to clarify that its decision in AB-1242, *Hartwell First United Methodist Church-Adverse Abandonment and Discontinuance-The Great Walton Railroad Company, Inc., in Hart County, GA.*, applies to GWRC's runaround track because that track is a line of railroad subject to the Board's exclusive jurisdiction under 49 U.S.C. § 10501(b).¹ To establish the need for

¹ In its reply, HFUMC notes that GWRC's counsel did not serve a copy prior to filing. However, after determining that the petition had been posted on the Board's revised website, counsel immediately informed opposing counsel via email of GWRC's petition which, due to the size of the initial filing, counsel had been unable to email the filing. See Attachment A hereto.

expedited handling by the Board, GWRC also introduced documentary evidence that reveals the collateral attack that has been waged by HFUMC against the Board's decision that denied its adverse abandonment application.

In its reply, HFUMC not only insists that it has not collaterally attacked the Board's decision,² it also suggests that "[t]he Board should strike or ignore facts included by GWRC that are outside the record in AB-1242." According to HFUMC, the Board "did not address the former runaround track or make any findings regarding whether the former runaround track was a line of railroad or excepted track."³

However, in denying HFUMC's adverse abandonment application, the Board pointedly noted that GWRC "intends to use the Line as part of a runaround track."⁴ This comment unquestionably demonstrates that "the Line" is but one part of the runaround track and that the two parts must be viewed in tandem.

As the Board further noted:

GWRC claims that the runaround track is needed to make service to a customer, Quality Holdings, LLC (Quality), safer and more economical.* Specifically, GWRC states that it would use the runaround to reposition locomotives for the return trip to Bowersville.* GWRC asserts that, without the ability to reposition, it has to push empty cars back to Bowersville with the locomotive at the rear of the train.* If the locomotive is at the rear of the train, GWRC states that the Federal Railroad Administration (FRA) rules require GWRC to stop and flag each of the

² HFUMC Reply at 4, n3.

³ *Id.* at 4.

⁴ Decision at 2.

45 crossings along the way, and the conductor must hang off the grab bar on the side of the car for most of the trip, a more cumbersome and less safe process.*⁵

The foregoing factors were unquestionably considered by the Board in denying HFUMC's application. Moreover, by requiring GWRC to submit status reports "describing its progress with respect to rehabilitation and utilization of the Line every six months," the Board unquestionably anticipated that both parts of the runaround track would be reconstructed.

The need for expedited consideration in this new proceeding is demonstrated by the adverse decisions that have deliberately prevented GWRC from completing the reconstruction of the runaround track. This was done even though the reviewing court recognized that "[t]he STB denied the abandonment based on railroad's proposal to rehabilitate the line ... [and] required the railroad to implement its proposal."⁶ According to the court, "[i]mplementation would require the construction of a new north spur."⁷ However, there is nothing in the Board's decision that requires the construction of a "new north spur." Instead, the Board required "GWRC to submit status reports describing its progress with respect to *rehabilitation and utilization of the Line*".

⁵ *Id.* at 2 (*citations omitted). To require GWRC's employees to hang onto the grab bar for the return trip to Bowersville is inconsistent with the rail transportation policy "to encourage fair wages and safe and suitable working conditions in the railroad industry." 49 U.S.C.A. § 10101(11).

⁶ *Order Affirming the Denial of the Petition for Approval to Acquire Real Estate by Condemnation as Ordered by the Georgia Public Service Commission*, EFILED November 1, 2019, slip op. at 8-9. GWRC Exhibit 8

⁷ *Id.* at 9.

While the present proceeding is unquestionably linked to the previous proceeding in which the Board denied HFUMC's adverse abandonment application, this proceeding clearly involves an expanded evidentiary record, which involves the significant impact of the state proceedings on GWRC's interstate rail operations and the need to preempt state orders that openly clash with the Board's exclusive jurisdiction. Hence, the Board should summarily deny HFUMC's request that "it should not consider facts raised in the Petition that are not in the record."⁸

Without question, HFUMC's attacks have been based on the misleading claim that the abandonment of the former spur is governed by 49 U.S.C. § 10906 because that segment of the runaround track is a mere ancillary track. However, as HFUMC has been forced to concede, "a connection to the main line was constructed to create a runaround."⁹ As HFUMC has also admitted, "[o]nce connected back to the main, the railroad likely also used the track as a runaround for its locomotives, as GWRC claims."¹⁰ In this case, the use made by the former railroad is largely irrelevant. The only relevant matter involves GWRC's past and future use of the runaround track.

HFUMC then argues, without support, that the use of the tracks by the locomotives to begin the trip to Bowersville with the locomotive at the head is "an ancillary function and does not change the status of the track to a 'line of

⁸ HFUMC Reply at 4.

⁹ *Id.* at 6.

¹⁰ *Id.* at 7.

railroad.”¹¹ Regardless of the label that HFUMC seeks to apply to the movement of the locomotives, that movement is an integral component of GWRC’s linehaul operations that are conducted over a part of the interstate rail network. As such, GWRC’s tracks and the movements over them are subject to the Board’s *exclusive* jurisdiction over transportation by a rail carrier pursuant to 49 U.S.C. § 10501(b).

Having been converted into an integral segment of runaround track that has been used as part of the interstate rail network, GWRC would require prior approval from the Board to abandon the former spur. Hence, the former spur can no longer be treated as an industrial spur that is subject to section 10906. In this respect, GWRC notes that “runaround tracks” are not specifically mentioned in either section 10501(b)(2) or section 10906. In any event, the various tracks that are mentioned in section 10906 are subject to the Board’s exclusive jurisdiction under 10501(b).

HFUMC’s suggestion that GWRC’s predecessor did not possess the right “at that time to build the connection to its main line” is baseless and must be rejected.¹² Because the connection to the main line and resultant creation of a runaround track did not extend the railroad’s line and operation into new territory, no prior authority from the Interstate Commerce Commission was required to make that connection. *Texas & Pac. Ry. v. Gulf, Colo. & Santa Fe Ry.*, 270 U.S. 266, 278 (1926).

¹¹ *Id.*

¹² *Id.*

The Board should also reject the suggestion that the platform that is adjacent to the runaround prevented the railroad from using the track as a runaround.¹³ That suggestion is unsupported by any evidence. In any event, the platform has never interfered with GWRC's use of the track to reposition its locomotives.

Consistent with its denial of HFUMC's adverse abandonment application, the Board should clarify that the entirety of the runaround track is subject to its exclusive jurisdiction. Therefore, GWRC would require the Board's prior approval to abandon any portion of the runaround track. Finally, the Board should clarify that GWRC cannot be barred from reconstructing and operating over all segments of its runaround track and that the attempts to prevent it from doing so are preempted.

In reaching its decision, the Board is asked to consider the fact that GWRC has been financially harmed by having to defend itself from HFUMC's continuing attempt to force the abandonment of its Line. By expeditiously clarifying that the runaround track includes both the former spur and the original mainline, and was covered by its denial of HFUMC's application, the Board will effectively prevent HFUMC from continuing its audacious and highly misleading argument that "the former runaround track, and its component parts (the north spur and the Clinkscals industrial track) were excepted track under 49 USC 10906, and were not a line of railroad."¹⁴ The Board should

¹³ *Id.*

¹⁴ HFUMC Reply at 8

make it clear that even if those component parts may have been excepted tracks prior to their connection with the “main line,” that connection permanently transformed their purpose and their identity into a line of railroad that is part of the interstate rail network over which the Board has exclusive jurisdiction.

Conclusion

For all the above stated reasons, the Board should facilitate GWRC’s ongoing efforts to reconstruct its runaround track in the identical location that it was previously constructed by granting the requested relief in an expedited fashion.

Respectfully submitted,

/s/ Richard H. Streeter

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The Great Walton Railroad Company

December 13, 2019

Certificate of Service

I hereby certify that on this 13th day of December, 2019, I served a copy of the foregoing Reply on the following individual by the method indicated:

By email:

Eric M. Hocky
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Two Commerce Square
2001 Market Street, Suite 2620
Philadelphia, PA 19103
ehocky@clarkhill.com

/s/ Richard H. Streeter

Richard H. Streeter

AB 1242(Sub-No. 1)
GWRC Reply to Reply
Attachment A

Richard Streeter

From: Richard Streeter <rhstreeter@gmail.com>
Sent: Thursday, November 21, 2019 4:52 PM
To: 'Hocky, Eric M.'
Subject: RE: Petition seeking declaratory order

I specifically asked whether a certificate of service was needed and was told it was not. Plus, my system would not allow me to send it via email. So I waited until I saw it on line for the first time to call it to your attention.

From: Hocky, Eric M. <ehocky@clarkhill.com>
Sent: Thursday, November 21, 2019 4:44 PM
To: Richard Streeter <rhstreeter@gmail.com>
Subject: RE: Petition seeking declaratory order

I saw the filing today. I was surprised to not see a certificate of service, or to be provided with a copy yesterday when the filing was made.

Eric

Eric M. Hocky

CLARK HILL PLC

Direct Dial: 215.640.8523 | Fax: 215.640.8501

From: Richard Streeter [<mailto:rhstreeter@gmail.com>]
Sent: Thursday, November 21, 2019 4:29 PM
To: Hocky, Eric M.
Subject: Petition seeking declaratory order

rhstreeter@gmail.com

Eric, I filed a petition with the STB late yesterday that has finally been posted. Under the new webpage, look for "recent filings" and click. Regards, Richard

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