

SERVICE DATE – AUGUST 4, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 167 (Sub-No. 1195X)

CONSOLIDATED RAIL CORPORATION—ABANDONMENT EXEMPTION—IN
SCHUYLKILL & CARBON COUNTIES, PA.

Digest:¹ The Board permits the verified notice of exemption in this proceeding to become effective.

Decided: July 29, 2022

On November 12, 2021, Consolidated Rail Corporation (Conrail) filed a verified notice of exemption under 49 C.F.R. part 1152 subpart F—Exempt Abandonments to abandon a railroad line known as the Tresckow Branch, which runs between milepost 0.0 and milepost 7.7 in the Township of Kline in Schuylkill County, Pa., and the Townships of Packer and Banks in Carbon County, Pa. (the Line). Because the status of the Line was unclear and it was uncertain whether the Board’s abandonment authority was necessary, by decision served on December 2, 2021, the effective date of the exemption was postponed pending further Board order. As discussed below, the notice of exemption will now be published in the Federal Register and allowed to become effective September 3, 2022.

According to Conrail’s verified notice and its Combined Environmental and Historic Report, Lehigh Coal & Navigation Company (Lehigh) leased the Line, which was part of the Lehigh & Susquehanna Railroad System (L & S System), in 1871 to Central Railroad Company of New Jersey (CNJ) for 999 years. (Verified Notice, Ex. D at 9.) In 1963, according to Conrail, the Interstate Commerce Commission (ICC) authorized Reading Company to purchase the L & S System from Lehigh, subject to CNJ’s rights,² and in 1971, the ICC authorized CNJ to abandon the Line.³ (Verified Notice, Ex. D at 9.) Conrail further states that the Line “was apparently taken over” by the Lehigh Valley Railroad Company (Lehigh Valley) in 1972 and “was not designated for transfer to Conrail in the [United States Railway Association]’s Final System

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² See Reading Co.—Purchase—Lehigh & Susquehanna R.R., 317 I.C.C. 633 (1963).

³ The ICC decision states that the Line had been out of service since 1970. See R.D. Timpany, Tr. of the Prop. of the Cent. R.R. of N.J. Aban. of Its Tresckow Branch, in Carbon Cnty., Pa., FD 26659 (Sub-No. 7) (ICC served Aug. 24, 1971).

Plan.”⁴ (Verified Notice 2, Ex. D at 10.) Conrail states that in 1976, it acquired the property associated with the Line from the trustees of the property of Reading Company. (Id., Ex. D at 10.)

The agency’s December decision directed Conrail to file supplemental information addressing the status of the Line, including any evidence of whether CNJ exercised the abandonment authority that the ICC apparently granted it in 1971. Consol. Rail Corp.—Aban. Exemption—in Schuylkill & Carbon Cntys., Pa., AB 167 (Sub-No. 1195X) (STB served Dec. 2, 2021).

On January 18, 2022, Conrail filed a supplement stating that it acquired the Line in 1976 through a deed pursuant to an order of the Special United States District Court (Special Court) established by the 3R Act and that the Line was identified as “Line Code 0523 in the records of the [USRA].” (Conrail Suppl. 1-2; id. at Attach. A at 22.) According to Conrail, Line Code 0523 was not included among the lines designated for transfer to Conrail, and thus, Conrail argues that it did not acquire any common carrier obligation with respect to the Line. (Conrail Suppl. 2; id. at Attach. B.) Conrail states that it did not locate any relevant records indicating whether CNJ exercised the abandonment authority granted by the ICC or any documents addressing whether Lehigh Valley ever operated or formally abandoned the Line. (Conrail Suppl. 5.) Further, Conrail states it “has not located any documents confirming Reading Company ever formally abandoned its common carrier obligation as owner of the Line.” (Id. at 6.)

On January 21, 2022, Reading Blue Mountain & Northern Railroad Company (RBMN) filed a letter stating that the Tresckow Branch crosses RBMN’s Shimer Running Track.⁵ (RBMN Letter 1, Jan. 21, 2022.) RBMN requests that the proceeding be held in abeyance until RBMN can confirm that its property interests and operating rights would not be affected by the proposed abandonment. (Id. at 1-2, Jan. 21, 2022.) According to RBMN, it contacted Conrail, and Conrail agreed to look into RBMN’s concerns. (Id. at 1.)

On January 27, 2022, Conrail filed a supplemental reply and response to RBMN. Conrail states that it does not have any property interest associated with the Line in Carbon County, where RBMN’s Shimer Running Track crosses the Line. (Conrail Suppl. Reply 1.) In support,

⁴ Congress created the United States Railway Association (USRA) pursuant to the Regional Rail Reorganization Act of 1973 (3R Act), Pub. L. No. 93-236, 87 Stat. 985 (codified at 45 U.S.C. §§ 701-719). The USRA was charged with examining lines owned by certain bankrupt railroads and determining which lines would be retained in active service through transfer to Conrail, and which lines would be allowed to be abandoned under the Final System Plan (FSP). The FSP was submitted to Congress on July 26, 1975, and was approved in § 601(e) of the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210, 90 Stat. 31 (1976).

⁵ RBMN states that it acquired the Shimer Running Track in 1992. (RBMN Letter 1, Jan. 21, 2022 (citing Reading Blue Mountain & N. R.R.—Acquis. & Operation Exemption—Schuylkill Cnty. Rail Transp. Auth., FD 32075 (ICC served July 15, 1992)).)

Conrail submitted the deed conveying Reading Company's rights to real property in Carbon County to Conrail, which, Conrail asserts, shows that the portion of the deed relating to Line Code 0523 was deleted. (*Id.*, Ex. B at 26.) According to Conrail, "that [it] was never conveyed an interest in all Reading Company's property relating to the Line further suggests Conrail never acquired any common carrier obligation with regard to the Line." (Conrail Suppl. Reply 2.) Conrail further claims that regardless of any common carrier obligation, authorizing abandonment of the Line would not allow Conrail to take any action that would have an adverse effect on the Shimer Running Track. (*Id.*) Conrail requests that the Board dismiss this proceeding on the basis that it never acquired a common carrier obligation with respect to the Line, or, in the alternative, authorize Conrail's abandonment to the extent that Conrail acquired a common carrier obligation. (*Id.*)

On April 12, 2022, the Kline Township Board of Supervisors filed a letter supporting abandonment and explaining that new water and sewer lines are planned on the portion of the Line in Kline Township. On May 13, 2022, and May 17, 2022, U.S. Representative Dan Meuser and U.S. Senator Patrick Toomey, respectively, filed letters supporting abandonment, stating that the planned infrastructure development is critical for Kline Township and will benefit the Villages of Haddock and Lofty.

On May 20, 2022, RBMN filed another letter stating that it has located property records showing that Conrail conveyed property relating to Line Code 0523 to Norfolk Southern Railway Company (NSR). (RBMN Letter 1, May 20, 2022.) RBMN states that it has requested that Conrail correct the deed to NSR to remove the property in Carbon County, which Conrail acknowledges it never acquired. (*Id.*)

DISCUSSION AND CONCLUSIONS

When a railroad exercises, or "consummates," the abandonment authority granted by the Board (or its predecessor, the ICC), the line is removed from the interstate rail network, and the agency's jurisdiction over the line terminates. Hayfield N. R.R. v. Chi. & N.W. Transp. Co., 467 U.S. 622, 633-34 (1984) (consummation of abandonment terminates the agency's jurisdiction); Baros v. Tex. Mexican Ry., 400 F.3d 228, 234 (5th Cir. 2005) ("Once a rail carrier abandons a line, the line is no longer part of the national transportation system, and the [Board's] jurisdiction terminates."). Prior to 1996, to determine whether a railroad had consummated an abandonment, the agency employed a case-by-case evaluation of all the facts and circumstances to determine whether the railroad showed a clear intention to remove the line from the interstate rail network, or if instead the record indicated an intent to preserve the right-of-way for rail service.⁶ Ill. Cent. Gulf R.R.—Aban.—in Dewitt & Piatt Cntys., Ill., 5 I.C.C.2d 1054, 1061 (1988).

⁶ Since 1996, the Board has required a rail carrier wishing to exercise its abandonment authority to file a notice of consummation with the Board. 49 C.F.R. § 1152.29(e)(2). This consummation notice is now the only definitive, legally recognizable way for a rail carrier to consummate an abandonment. Honey Creek R.R.—Pet. for Declaratory Ord., FD 34869 et al., slip op. at 4-5 (STB served June 4, 2008).

The record here does not confirm that the Line has been abandoned and is outside the Board's jurisdiction. Although the ICC authorized abandonment in 1971, it is unclear from the record whether CNJ consummated the abandonment by exercising that authority.⁷ In addition, while Conrail suggests that Line Code 0523 was not designated for transfer to it in the FSP, even if that were the case, that would not establish that the Line was formally abandoned. As Conrail acknowledges, while 45 U.S.C. § 744 sets out a procedure for abandonment of lines excluded from transfer to Conrail, there is no evidence confirming that the process was exercised for the Line. (See Conrail Suppl. 5-6.) Conrail's assertion that it did not acquire a common carrier obligation and the evidence it submitted are not sufficient to allow the Board to determine that the Line was abandoned. Therefore, the Board will not dismiss this proceeding but instead will authorize Conrail to abandon the line.

Allowing the Line to be removed from the interstate rail network would not impact RBMN's operating rights on its Shimer Running Track. The Line here merely crosses RBMN's Shimer Running Track, and RBMN would retain its federal right to operate on the Shimer Running Track even if the Line were removed from the interstate rail network. In addition, any dispute with Conrail, or any other entity, concerning deeds and property ownership is a matter of state law more appropriately resolved by a court. The Board has consistently held that disputes concerning state contract and property law should be decided by the appropriate courts with expertise in those matters, rather than by the Board. See V&S Ry.—Pet. for Declaratory Ord.—R.R. Operations in Hutchinson, Kan., FD 35459, slip op. at 6-7 (STB served July 12, 2012) (declining to address state property law issue because property interest dispute should be decided by a court applying state law).⁸

Given the questions about the Line's status, it is appropriate to allow the verified notice of exemption to become effective to remove that uncertainty. Accordingly, the notice of the

⁷ The record suggests the possibility that Lehigh Valley may have operated on the Line after the abandonment authority was issued. However, even if Lehigh Valley later operated over it, operations by a non-owning carrier over an abandoned line would not restore the underlying right-of-way to the Board's jurisdiction. See Iowa Traction Ry.—Discontinuance of Serv. Exemption—in Cerro Gordo Cnty., Iowa, AB 1269 (Sub-No. 1X), slip op. at 3 (STB served Apr. 2, 2020) (citing Wisc. Cent. Ltd. v. STB, 112 F.3d 881, 890 (7th Cir. 1997), pet. for partial reopening granted sub nom. Wisc. & Mich. Ry.—Discontinuance of Serv. Exemption—in Ashland & Iron Cntys., Wisc. & Gogebic Cntys., Mich., AB 440X (STB served Oct. 22, 1997)).

⁸ RBMN suggests that Conrail conveyed certain property relating to Line Code 0523 to NSR. (RBMN Letter 1, May 20, 2022.) The Board notes that if such a conveyance did take place, Board authority may have been required. However, as noted above, any questions relating to the property interests in the Line, including questions concerning what was conveyed to Conrail in 1976 in Carbon County or any correction to any deeds are questions of state property law and should be addressed by an appropriate court, and not the Board. See CSX Transp., Inc.—Aban. Exemption—in Allegany Cnty., Md., AB-55 (Sub-No. 659X), slip op. at 3 (STB served Apr. 24, 2008) (declining party's request to order revision to property deed, as such a matter involves questions of state contract and property law best left to the state courts).

exemption will be published in the Federal Register and will become effective September 3, 2022.

It is ordered:

1. The notice of exemption in this docket will be published in the Federal Register and will become effective September 3, 2022.

2. This decision is effective on its service date.

By the Board, Board Members, Fuchs, Hedlund, Oberman, Primus, and Schultz.