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Public Record

Before the
Surface Transportation Board

JR - 26

STB DOCKET NO. AB-167 (Sub-No. 1189X)

**CONSOLIDATED RAIL CORPORATION – ABANDONMENT EXEMPTION –
IN HUDSON COUNTY, NJ**

STB DOCKET NO. AB-55 (Sub-No. 686X)

**CSX TRANSPORTATION, INC. – DISCONTINUANCE OF SERVICE EXEMPTION –
IN HUDSON COUNTY, NJ**

STB DOCKET NO. AB-290 (Sub-No. 306X)

**NORFOLK SOUTHERN RAILWAY COMPANY – DISCONTINUANCE OF SERVICE
EXEMPTION – IN HUDSON COUNTY, NJ**

RIFFIN’S OBSERVATIONS REGARDING HIS

APPEAL OF ALJ DRING’S OCTOBER 26, 2016 SERVED DECISION

1. Comes now James Riffin, (“**Riffin**”) who herewith respectfully provides the Surface Transportation Board (“**STB**”) with his observations regarding his November 14, 2016 filed Appeal (JR-24) of ALJ Dring’s October 26, 2016 Served Decision.

2. ALJ Dring’s August 24, 2016 Order, Appx 50, directed Riffin to provide to City et al., and to Conrail, a copy of whatever e-mails remained in Riffin’s e-mail account between Riffin and “**the LLCs.**”

3. City et al. , in its Request for Documents, Appx 212, **Defined the term “LLCs” as follows:**

“The LLCs” shall mean one, more or all of 212 Marin Boulevard, LLC, 247 Manila Avenue, LLC, 280 Erie Street, LLC, 317 Jersey Avenue, LLC, 354 Coles Street, LLC, 389 Monmouth Street, LLC, 415 Brunswick Street, LLC, 446 Newark Avenue, LLC, and NZ Funding, LLC.”

4. In City et al.’s Motion to Compel, and Motion for Sanctions, City et al. **Did not Complain or note any ‘deficiencies’** regarding any e-mails between Riffin and the LLCs, **as defined by City et al. in City et al.’s Request for Documents.**

5. City et al.’s “Complaint” involved e-mails between Riffin and: (A) Steve Hyman; (B) Bruce Nagel; (C) The owners / developers of the Metro Plaza parcel (Greg Wasser, Forest City); (D) A ‘surveyor;’ (E) Any other ‘agents or representatives’ of the LLCs.

6. Basic contract law says: (A) Any ambiguity in a contract will be construed against the party writing the contract; (B) Oral testimony cannot be used to alter the express terms of the contract.

7. While City et al.’s Request for documents’ is not a ‘contract,’ the principals that apply to contract interpretation should be equally applicable to the interpretation of City et al.’s Request for Documents.

8. There is ample evidence that ALJ Dring’s October 26, 2016 Served Order suffers from ‘material error.’

9. 49 CFR 1152.25(e) is quite clear: ‘Appeals’ in abandonment proceedings may only be filed in a U.S. Circuit Court.

10. Riffin has not requested the STB ‘reopen’ ALJ Dring’s proceeding. [‘Reopening’ is the only remedy available under 49 CFR 1152.25(e).]

11. 49 U.S.C. 10502 grants the STB authority to exempt “a person” from ‘any provision’ of the regulations / statutes that the STB administers.

12. So while Riffin may not have the ‘right’ to appeal ALJ Dring’s Order to the full Board, there is nothing that would prevent the STB from actually hearing, and ruling upon, ALJ Dring’s Order.

13. So the real question before the STB is:

A. Does the STB want ALJ Dring’s Order to remain in effect? If so, the STB need only rule that Riffin’s remedies lie exclusively with a U.S. Court of Appeals.

B. If the STB desires to vacate ALJ Dring’s Order, it has the authority to do that.

14. In effect, the STB can do whatever it desires to do.

15. Keeping ALJ Dring’s Order in effect, keeps Riffin out of the 1189X proceeding. (At least for the time being.) And deprives Riffin of the opportunity of using his OFA rights as the basis for standing in a U.S. District Court. [Such as the one in Newark, and the one in D.C. (sitting as the Special Court).]

16. Riffin’s standing in the Newark District Court is no longer an issue. (It might become an issue some time in the future though.)

17. Riffin’s standing to file a complaint in the Special Court may become an issue.

18. But, Riffin is not dependent upon his OFA rights to file a Complaint in the Special Court. Riffin would argue that he already has sufficient standing to file a complaint in the Special Court: Riffin needs to know if the Hudson Street Industrial Track (“**HSIT**”) is a line of railroad, **before** he goes to the expense of acquiring a property adjacent to the HSIT.

19. If Riffin successfully acquires a property interest in a parcel adjacent to the HSIT, that will bolster his standing argument.

20. If the real goal is to deprive Riffin of Article III standing, affirming ALJ Dring’s Order is not likely to result in the attainment of that goal. (Riffin would argue that it is rather obvious that the real goal is to deprive Riffin of Article III standing.)

21. Riffin has made it clear: Riffin believes that the best way to resolve this mess, is for the parties to convene a settlement conference, then work out a settlement agreement.

22. Recently, one of the Board members voiced her opinion that the STB needs to utilize the STB’s mediation powers more frequently. Riffin suggests that this proceeding is in dire need of mediation.

23. Riffin suggests that the STB make it known: Parties: You need to convene a settlement conference. If you are unable to reach a settlement, the STB, upon a request, will dictate the terms and conditions of a settlement. Sort of like the OFA process: If the parties are unable to reach an agreement, and if one party asks the STB to set terms and conditions, the STB will set terms and conditions.

24. This could be done by the STB issuing a Show Cause Order directing the parties to show cause why the STB should not institute a mediation proceeding.

25. Riffin reiterates: Conrail, the LLCs, Jersey City, and the Forest City parties, have all violated the STB’s rules. All have contributed to the mess they presently find themselves in.

None of them have 'clean hands.'

26. Riffin leaves it to the STB to determine how it will resolve this mess. If the STB elects to keep Riffin out of the 1189X proceeding / elects not to address the HSIT issues, then Riffin will ask the courts to resolve the issues.

Respectfully,

James Riffin
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CERTIFICATE OF SERVICE

I hereby certify that on the 9th Day of December, 2016, a copy of the foregoing Riffin's Observations, was served on all of the parties in this proceeding, either via e-mail, or via U.S. Postal Service, postage prepaid. A copy was also served on all of the parties in the FD 36078 proceeding.

James Riffin