SERVICE DATE – APRIL 21, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36548

JAMES RIFFIN—ACQUISITION AND OPERATION EXEMPTION—
IN YORK COUNTY, PA.

Digest:[1] The Board rejects a notice of exemption filed by James Riffin seeking authority to acquire and operate an approximately 5.53-mile rail line and an approximately 0.034-mile rail line in York County, Pa.

Decided: April 20, 2022

On October 7, 2021, James Riffin (Riffin) filed a verified notice of exemption under 49 C.F.R. § 1150.31[2] to acquire and operate approximately 5.53 miles of rail line between milepost 7.53 and milepost 2.0, in Hellam Township, Pa., which he identifies as part of the York Branch, and approximately 180 feet of rail line between milepost 0.034 and milepost 0.0 in New Freedom, Pa. The regulations at 49 C.F.R. § 1150.31 apply to, among other things, acquisitions of railroad lines by non-carriers that would, if not exempted, be subject to the provisions of 49 U.S.C. § 10901. The bases for Riffin's acquisitions are two state court actions in which he has been declared the owner, or seeks to be declared the owner, of property on which he claims rail lines under the Board's jurisdiction are situated. For the reasons discussed below, the verified notice will be rejected.

DISCUSSION AND CONCLUSIONS

The notice-of-exemption process is an expedited means of obtaining Board authorization in certain classes of transactions, as defined by the Board's regulations, that ordinarily require minimal regulatory scrutiny. See Class Exemption for the Acquis. & Operation of Rail Lines Under 49 U.S.C. 10901 (Class Exemption), 1 I.C.C.2d 810, 811 (1985) (class exemption is "designed to meet the need for expeditious handling of a large number of requests that are rarely opposed"). A notice that raises unresolved issues or questions that require considerable scrutiny may be rejected. See ABC & D Recycling, Inc.—Lease & Operation Exemption—A Line of R.R. in Ware, Mass., FD 35397, slip op. at 4 (STB served Jan. 20, 2011); see also Riffin—

[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] The class exemption under 49 C.F.R. § 1150.31 applies to acquisitions and operations by noncarriers under 49 U.S.C. § 10901.

Acquis. & Operation Exemption—in Rio Grande & Min. Cntys., Colo., FD 35705, slip op. at 2 (STB served Jan. 11, 2013) ("In cases that require information beyond that provided through simplified notice procedures, or that are controversial, the Board has rejected notices of exemption."). The verified notice here does not appear to fit within the class exemption; it raises several unresolved issues and questions, as described below; and it requires more scrutiny than the notice of exemption process affords. Accordingly, the notice will be rejected.

York Branch. The entire York Branch, according to Riffin, is a rail line that extends from milepost 12.8 in York, Pa., to milepost 0.0 at Wrightsville, Pa. Riffin claims to have acquired a 5.53-mile section of the York Branch, from milepost 7.53 to milepost 2.0, through a quiet title action against Pennsylvania Lines LLC (Pennsylvania Lines) in the York County Court of Common Pleas.

Riffin claims that a segment of the York Branch from milepost 12.0 to milepost 7.0 (Western Segment) was part of the Final System Plan[3] and, as such, was conveyed from Penn Central to Conrail in 1976 as an active line of railroad. (Notice, App. ¶¶ 11, 26.) Riffin describes, but does not include in his filing, the deed for this transaction. According to Riffin, the 1976 deed divided the York Branch into two segments: the Western Segment and the Eastern Segment, which runs from milepost 7.0 to milepost 0.0. (Id. at ¶¶ 5-6.) Riffin states that the "cut line" dividing the Western and Eastern Segments is described in the deed as being "at Station 370+00, more or less, and along the westerly line of Campbell road." (Id. at ¶¶ 6-7.) Riffin states that Station 370+00 equates to milepost 7.0. (Id. at ¶ 8.)

Riffin claims that, after the 1976 transfer to Conrail, the Western Segment was then transferred to Pennsylvania Lines, a Norfolk Southern Railway Company (NSR) subsidiary, as part of the sale of Conrail to NSR and CSX Corporation,[4] and that Pennsylvania Lines was eventually merged into NSR in 2004. (Id. at ¶¶ 11, 12.) NSR has since leased the Western Segment from milepost 12.70 to milepost 7.50 to East Penn Railroad LLC (ESPN), pursuant to

[3] The Pennsylvania Railroad Company merged into the Penn Central Transportation Company (Penn Central) in 1968. Penn Central and six other northeastern railroads declared bankruptcy in 1970. In response to these bankruptcies, Congress enacted 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), under which the bankrupt railroads were merged into a new entity: Consolidated Rail Corporation, or Conrail for short. The United States Railway Association was created by the 3R Act to examine the bankrupt railroads' properties and identify those lines that would be retained in active service and consequently conveyed to Conrail. This plan identifying the rail properties to be conveyed to Conrail was known as the Final System Plan. The Final System Plan 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).

[4] CSX Corp.—Control & Operating Leases/Agreements—Conrail, Inc., 3 S.T.B. 196 (1998).

authority issued in East Penn Railroad—Lease & Operation Exemption—Norfolk Southern Railway, FD 35533 (STB served July 15, 2011).[5]

Riffin claims that the Eastern Segment was not part of the Final System Plan but that it was conveyed to the successor of the Penn Central, Penn Central Corporation, as part of the Penn Central bankruptcy proceeding. (Notice, App. ¶¶ 6, 14, 29.)[6] Riffin claims that such non-Final System Plan lines were designated for abandonment. He claims, however, that Penn Central and its successors held only an easement, so the fact that the line did not revert back to the original property owners is evidence that abandonment authority was not consummated. (Id. at ¶¶ 33-34.) Riffin claims that the successors to the Penn Central Corporation—Penn Central Properties, Inc. and American Premium Underwriters, Inc.—conveyed the Eastern Segment from milepost 2.0 to milepost 0.0 to Kline's Quarry[7] and the remainder of the Eastern Segment to Lydon and Lydon, Inc. (Lydon & Lydon). (Id. at ¶ 15, 32.)

Riffin states that he purchased Lydon & Lydon's portion of the Eastern Segment on February 22, 2019. (Id. at ¶ 17.) He states that after the purchase he filed a quiet title action against Pennsylvania Lines in the York County Court of Common Pleas, which entered a consent order on August 9, 2021, holding that Riffin owns the railroad right-of-way that "lies Easterly of the Western boundary line of the Campbell Road right-of-way" (York Branch Order). (Id. at ¶ 18-19 (a copy of the court's order is attached to Riffin's notice).) In addition, as described further below, Riffin claims, based on his interpretation of a railroad valuation map and the York Branch Order, that he acquired not only the portion of the Eastern Segment from milepost 7.0 to milepost 2.0, but also 0.53 miles of the Western Segment, extending from milepost 7.0 to milepost 7.53.

York Branch – Segment 7.0 to 2.0. If a rail line has been abandoned, and the abandonment has been consummated, the remaining property is no longer subject to Board jurisdiction and the Board cannot grant acquisition and operation authority. See Presault v. ICC, 494 U.S. 1, 5 n.3 (1990); Birt v. STB, 90 F.3d 580, 585 (D.C. Cir. 1996); Passaic St. Props., LLC—Acquis. & Operation Exemption—N.Y. & Greenwood Lake Ry., FD 36187, slip op. at 2 (STB served July 18, 2018). The Board may reject a notice seeking to acquire a rail line due to questions regarding the Board's jurisdiction over the line. See Passaic St. Props., LLC, FD 36187, slip op. at 2.

[5] The decision there states that the line is called the York Industrial track and refers to the segment from milepost 12.31 to 12.70 as a "wye track."

[6] The Board has previously explained: "The bankruptcy estate of the Penn Central continued to survive as a non-railroad in possession of real estate holdings and rail lines that were not transferred to Conrail. In 1978, the non-railroad company emerged from bankruptcy and was renamed the 'Penn Central Corporation.' In 1994, the company changed its name to 'American Premier Underwriters, Inc.'" Pa. R.R.—Merger—N.Y. Cent. R.R., FD 21989 (Sub-No. 4), slip op. at 3 (STB served Jan. 10, 2011).

[7] Riffin does not seek authority to acquire or operate the two-mile portion of the Eastern Segment conveyed to Kline's Quarry.

Here, Riffin's verified notice raises significant questions about whether the property that is the subject of the York Branch Order is a rail line still under the Board's jurisdiction. The Board's records indicate that the Eastern Segment of the York Branch may have been abandoned in 1967 in Docket No. FD 24738, a proceeding in which the Pennsylvania Railroad Company sought authority to abandon the line from milepost 7.0 at Hellam to milepost 1.2.

Further, there is no evidence to support Riffin's claim that this property was an active rail line that was conveyed to the Penn Central Corporation during the Penn Central bankruptcy. The Final System Plan describes the York Branch (referred to there as the York Industrial Track) as "extending from *Hellam* (Milepost 7.0) to *York, Pa*. (Milepost 12.8), a distance of *5.8 miles* in York County, Pa." U.S. Ry. Ass'n, Final System Plan, Vol. II, Part II, 393-94 (July 26, 1975). The Final System Plan then describes the other lines with which the York Branch connects at York, but it does not mention any connections at Hellam. Id. The map of the York Branch that is included in the Final System Plan also does not indicate that the line extended beyond Hellam. Id. Riffin states that since this segment was not mentioned, it was designated for abandonment. (Notice, App. ¶ 29.) But the Final System Plan discussed the carrier assets that were part of the railroad reorganization, including those assets that were not designated for transfer to Conrail, and this segment of the York Branch is not mentioned. U.S. Ry. Ass'n, Final System Plan, Vol. II, Part II, Section D (July 26, 1975).[8] Therefore, it appears far more likely that the Eastern Segment of the York Branch was abandoned earlier.

York Branch – Segment 7.53 to 7.0. Under 49 C.F.R. § 1150.33(c), a non-railroad applicant acquiring a line of railroad from another person/carrier must include in its notice "[a] statement that an agreement has been reached or details about when an agreement will be reached." Riffin's verified notice states that "[a]n agreement has been reached," (Notice 1), and provides no additional details.

Riffin appears to base his claim that he owns this portion of the Western Segment on an unsubmitted valuation map that purportedly shows the western edge of Campbell Road—the point at which the state court ruled his property interest begins—as being located at milepost 7.53, not at milepost 7.0. (Notice, App. ¶¶ 8-9.)[9] However, the state court's decision merely says that the right-of-way "lies Easterly of the Western boundary line of the Campbell Road right-of-way." The state court never states that this point corresponds to milepost 7.53; Riffin appears merely to make that assumption based on the valuation map, even though by his own admission, the 1976 deed, which he does not provide, describes this point as being at milepost 7.0. (Id. at ¶¶ 7-8.) Even assuming the valuation map were to show this point as being

[8] Riffin claims that the segment from milepost 7.0 to milepost 2.0 is still an active rail line because if it were not, then it would have reverted to its original owners, and would not have been sold by Penn Central's successors to Lydon & Lydon. However, if the line has in fact been abandoned (as appears to be the case), whether there was a reversionary interest and, if so, whether such interest should have vested, would be issues outside of the Board's jurisdiction. See Preseault v. ICC, 494 U.S. 1, 8 (1990) ("[S]tate law generally governs the disposition of reversionary interests.").

[9] Riffin provides a copy of a map, but it does not appear to be the Railroad Valuation Map upon which he bases his claim.

at milepost 7.53, it may merely be a technical error in the map. Given the basis upon which Riffin is claiming to have acquired this segment—a discrepancy between a map and a deed—his attestation that there is an agreement for him to acquire this segment is questionable at best. It is difficult to assess Riffin's claims without supporting documentation, which for this segment would need to include both the 1976 deed and the valuation map, and possibly further clarification of the circumstances and meaning of the York Branch Order (including whether the court understood the western edge of Campbell Road to be at milepost 7.53 or milepost 7.0).

Further, Riffin claims that, as the purported owner of the York Branch from milepost 7.53 to milepost 7.0, he owns a short portion of the rail line that NSR leased to ESPN as of 2011. See E. Penn R.R., FD 35533, slip op. at 1. Riffin does not indicate, however, whether ESPN's interest has been transferred to him, or whether he has a lease agreement with ESPN, or even whether NSR and ESPN are aware of his claims, beyond the bare assertion that "[a]n agreement has been reached." (See Notice 1.)

Stewartstown Railroad Segment. Riffin states that he has also acquired property adjacent to what he claims is a 180-foot segment of rail line that currently belongs to the Stewartstown Railroad Company (SRC) in New Freedom and that he is entitled to ownership of the rail line due to his ownership of the adjacent property. According to Riffin, the property on which the 180-foot segment runs—which he calls "Lot 1"—was sold by SRC in 1997 to an individual named Larry LaMotte, who operated a restaurant adjacent to Lot 1. (Notice, App. ¶ 41.) Riffin states that LaMotte used Lot 1 for off-street parking for his restaurant. (Id.) Riffin claims that, after the restaurant closed, LaMotte sold Lot 1 to Franklin Land Investment LLC (FLI), (id. at ¶ 42), while Riffin acquired the parcel on which LaMotte's restaurant was located, (id. at ¶ 43). However, Riffin claims that there was a "restrictive note" attached to Lot 1 that prohibited it from being sold separately from the rest of LaMotte's property. (Id. at ¶ 41.) Riffin explains that he has filed a quiet title action in the York County Court of Common Pleas (Stewartstown Action) in which he seeks to void the sale of Lot 1 from LaMotte to FLI and that he expects the court to grant him title. (Id. at ¶¶ 44-45.) He is seeking acquisition authority for Lot 1 (which runs from milepost 0.0 to approximately milepost 0.034) before the state court acts.

The circumstances regarding Riffin's attempt to acquire this segment are far from usual or routine. First, it is not clear if SRC is even aware that Riffin is seeking to become the owner of a portion of SRC's rail line, much less whether "[a]n agreement has been reached," as required for notices of exemption under 49 C.F.R. § 1150.31. Moreover, if the facts asserted by Riffin are accurate, unanswered questions remain regarding SRC's sale of this segment to Mr. LaMotte and whether that transaction would have required Board authority. Finally, there are also facts that call into question Riffin's intent in seeking to acquire this rail line. The length of property is only 180 feet, which is unlikely to be enough room to perform rail operations. See Union Pac. R.R.—Aban. & Discontinuance of Trackage Rts. Exemption—in L.A. Cnty., Cal., AB 33 (Sub-No. 265X) (STB served May 7, 2008) (rejecting Riffin's proposal to purchase rail line pursuant to offer of financial assistance procedure because of the line's unsuitability for rail service, due in part to the length (.08 miles) and width (33 feet) of the line). Additionally, this 180-foot segment appears to be located at the tail end of SRC's line, and it appears that (at least as of 2012) SRC had not provided freight rail service since 1992. See Stewartstown R.R.—Adverse Aban.—in York Cnty., Pa., AB 1071, slip op. at 5 (STB served Nov. 16, 2012). These facts raise questions as to whether Riffin is actually seeking to acquire the segment for rail operations. (Notice, App. ¶ 41); see ABC & D Recycling, Inc., FD 35397, slip op. at 4 (rejecting applicant's notice to lease and operate due to questions about its ability and intent to act as a common carrier); James Riffin—Pet. for Declaratory Ord., FD 35245, slip op. at 5 (STB served Sept. 15, 2009) (stating that "for an entity to qualify as a rail carrier, it must (1) hold itself out as a common carrier for hire, and (2) have the ability to carry for hire.").

Given the questions raised by Riffin's filing, the verified notice will be rejected. See Passaic St. Props., LLC, FD 36187, slip op. at 3; ABC & D Recycling, Inc., FD 35397, slip op. at 4; see also Riffin, FD 35705, slip op. at 2. For one thing, it is not clear that either parcel is in fact a line of railroad to which the statutory provisions of 49 U.S.C. § 10901 or the regulations at 49 C.F.R. § 1150.31 would apply. And even if the regulations did apply, 49 C.F.R. § 1150.33 requires an applicant to provide a statement that an agreement has been reached or details about when an agreement will be reached. Although Riffin's notice, (Notice, App. ¶ 1), asserts that "[a]n agreement has been reached," the rest of the notice calls that assertion into question. It appears that, under Riffin's approach, simply obtaining a deed to the underlying property would amount to an agreement; but in many cases the owner of the underlying property is not the owner of a rail line on the property, and here, it is unclear if the owners of the rail lines (if in fact these properties are even rail lines subject to the Board's jurisdiction) have agreed to the conveyance of the lines or are even aware of Riffin's ownership claims to the property under these lines. For these reasons, the verified notice, on its face, does not appear to fit within or to comply with the class exemption. Moreover, even if the verified notice could be viewed as complying nominally with the requirements of the class exemption, it raises issues that require a more detailed examination of the proposed transaction than is afforded under the expedited notice of exemption process. Under the Rail Transportation Policy (RTP), the Board must "ensure the development and continuation of a sound rail transportation system . . . to meet the needs of the public and the national defense," 49 U.S.C. § 10101(4), "foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers and other modes," 49 U.S.C. § 10101(5), and "encourage honest and efficient management of railroads," 49 U.S.C. § 10101(9). While those findings were made, in Class Exemption, as to routine acquisitions of known rail lines by non-carriers, the record here raises questions as to whether the proposed transaction before us is consistent with the RTP.

Indeed, Riffin's attempt here to become a rail carrier by acquiring disjointed pieces of property, which may not even contain rail lines subject to the Board's jurisdiction, through quiet-title actions is fundamentally at odds with the agency's purpose for establishing the notice-of-exemption procedures in the first place: to provide an expedited means of securing authority in routine and non-controversial transactions. If Riffin seeks authority to acquire these segments in the future, he would need to file a petition for exemption or a full application that clarifies the status of the lines and fully substantiates his claims of contractual and property rights to these lines. See Norfolk S. Ry.—Aban. Exemption—in Norfolk & Va. Beach, Va., AB 290 (Sub-No. 293X) (STB served Nov. 6, 2007) (concluding, based on strong evidence that Riffin had filed in bad faith, that "we will closely scrutinize any future filings by Mr. Riffin . . . and we strongly admonish Mr. Riffin that abuse of the Board's processes will not be tolerated"), appeal dismissed sub nom. Riffin v. STB, 331 F. App'x 751 (D.C. Cir. 2009); see also Norfolk S. Ry.—Acquis. & Operation—Certain Rail Lines of the Del. & Hudson Ry., FD 35873 et al., slip op. at 2 (STB served Mar. 24, 2016). Riffin would also need to serve a copy of any further filing in this matter on the carriers whose lines he claims to be acquiring.

The notice of exemption will be rejected.

It is ordered:

1. The verified notice of exemption is rejected.

2. This decision is effective on its service date.

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