

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36772

LIBERTY HARBOR HOLDING LLC—PETITION FOR DECLARATORY ORDER

Digest:¹ This decision concludes that a parcel of land acquired by Liberty Harbor Holding LLC in 2001 is excepted from the Board’s regulations under 49 U.S.C. § 10906.

Decided: October 3, 2024

On April 29, 2024, Liberty Harbor Holding LLC (Liberty) filed a petition for declaratory order asking the Board to find that a 5.61-acre parcel of land (Triangle Parcel) that Liberty acquired from Consolidated Rail Corporation (Conrail) in 2001 was “excepted” spur track under 49 U.S.C. § 10906 and does not require abandonment authority from the Board. No comments were filed in response to the petition. For the reasons explained below, the Board concludes that the tracks at issue are governed by 49 U.S.C. § 10906.

BACKGROUND

According to Liberty, the tracks that had existed on the Triangle Parcel branched off from a former rail line known as the Jersey Avenue Branch and contained only spur tracks, storage facilities, and freight-moving equipment ancillary to that line. (Pet. 2.) The Jersey Avenue Branch was transferred from Central Railroad of New Jersey (CRNJ) to Conrail as part of the Final System Plan,² and in 1982, Conrail received authority from the Board’s predecessor, the Interstate Commerce Commission (ICC), to abandon the Jersey Avenue Branch. Conrail Aban. Between Communipaw Ave., N.J., & End of Track, AB 167 (Sub-No. 327N) (ICC served

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 In response to the bankruptcies of the Penn Central and several other northeastern railroads, 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). The 3R Act created Conrail and established the United States Railway Association (USRA) to examine the bankrupt railroads’ properties and identify those lines that would be retained in active service and consequently conveyed to Conrail. USRA’s plan, known as the Final System Plan, was submitted to Congress in 1975 and implemented in the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210, 90 Stat. 31 (1976).

Mar. 11, 1982).³ Liberty contends that the Triangle Parcel constituted “excepted tracks” under federal law and fell outside the agency’s licensing authority and was therefore unaffected by the abandonment of the Jersey Avenue Branch. (Pet. 2.)

In June 2001, Liberty purchased the Triangle Parcel from Conrail, subject to an easement over the western boundary of the Triangle Parcel that Conrail sold to New Jersey Transit to construct a portion of the Hudson/Bergen light rail line. (Id. at 10-11.) Liberty states that the light rail line is operational today and traverses over the western boundary of the property. (Id. at 11.)

Liberty is currently under contract with C.O.S. Properties LLC (C.O.S.) under which Liberty will transfer a portion of the Triangle Parcel to C.O.S. in exchange for two parcels of land owned by C.O.S. (Id. at 3.) C.O.S.’s title insurance company has raised questions as to whether the Triangle Parcel was part of the main line of the railroad or excepted spur and side track. (Id.)

For the reasons discussed below, the Board finds that the tracks that previously existed on the Triangle Parcel were excepted tracks governed by § 10906.

DISCUSSION AND CONCLUSIONS

The Board has discretionary authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321 to issue a declaratory order to eliminate controversy or remove uncertainty. See Bos. & Me. Corp. v. Town of Ayer, 330 F.3d 12, 14 n.2 (1st Cir. 2003); Delegation of Auth.—Declaratory Ord. Proc., 5 I.C.C.2d 675 (1989). To assist the parties to the pending real estate transaction, the Board will issue a declaratory order here to remove any uncertainty with respect to whether the tracks previously located on the Triangle Parcel were excepted track governed by § 10906.

Section 10906 states that “[t]he Board does not have authority . . . over the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks.” Such track is often referred to as excepted track or ancillary track. While excepted track is subject to the Board’s jurisdiction, Board authority is not required for the construction, acquisition, operation, abandonment, or discontinuance of excepted track. See, e.g., Tri-City R.R.—Pet. for Declaratory Ord., FD 36037, slip op. at 4 (STB served June 1, 2017).

In determining whether a particular track is rail line subject to the Board’s licensing authority or excepted track under § 10906, the Board has adopted a case-by-case approach that examines factors such as the track’s intended use, physical characteristics, relationship to the rail system, and history. See, e.g., Oakland Glob. Rail Enter.—Pet. for Declaratory Ord., FD 36168, slip op. at 8 (STB Served Mar. 15, 2019), pet. for recon. denied (STB served June 20, 2019); Tri-City R.R., FD 36037, slip op. at 4. With respect to “intended use,” the Board has considered whether the track will be used for certain ancillary operations (e.g., switching, loading, and

³ Liberty states that Conrail sold the property on which the Jersey Avenue Branch was located to Jersey City, N.J., in August 1988. (See Pet. 10; see also id., Ex. 33 (Aug. 24, 1988 Deed from Conrail to Jersey City).)

unloading); whether it serves more than one shipper; whether the shipper is located at the end of the track; whether there are stations on the track; whether there is regularly scheduled service; who owns and maintains the track; and the volume of traffic moving over the track. See Oakland Glob. Rail Enter., FD 36168, slip op. at 8. With respect to physical characteristics, the Board has considered the length of the track; whether it is stub-ended; and whether the track was constructed with light-weight rail. Id. With respect to relationship to the rail system the Board typically has considered whether the track was built to penetrate new markets or territory. See, e.g., Tri-City R.R., FD 36037, slip op. at 4-5. The Board considers and weighs the various indicia, as appropriate, in light of the particular evidence and circumstances of each case. Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp., FD 32760, slip op. at 12 (STB served Jan. 31, 2018); cf. Norfolk S. Ry.—Pet. for Exemption—in Balt. City & Balt. Cnty., Md., AB 290 (Sub-No. 311X), slip op. at 10 (STB served Jan. 27, 2012) (discussing the Board’s discretion in weighing evidence submitted by the parties). Given the typical connection between the track’s relationship to the rail system, its physical characteristics, and its intended use, the various indicia generally relate to one another, and evidence regarding some indicia may be sufficient for the Board to make a determination on the overall legal status of the track without evidence to analyze all potential indicia. See Oakland Glob. Rail Enter., FD 36168, slip op. at 8.

Liberty asserts that, at the time of the abandonment of the Jersey Avenue Branch, the Triangle Parcel contained nothing but ancillary tracks and equipment. (Pet. 15 (citing representations made by Conrail to the New Jersey Department of Transportation that the Triangle Parcel “was never used as an operating rail line”).) Liberty states that the Triangle Parcel tracks were short-run and stub-ended and, based on the tracks’ locations, configuration, and short length, built to facilitate the movement of rail traffic in and around the Jersey Avenue Yard rather than to be part of the mainline or through route or to allow for the penetration of new markets. (Id. at 15-16.) Liberty asserts that there is no evidence of any regular service on any of the tracks in the Triangle Parcel, as there were no stations on the property or evidence of any mile markers. (Id. at 17.) Liberty notes that New Jersey had historically categorized the Triangle Parcel as “Second Class” railroad property, a state property classification distinct from “Class I” or “Main Stem,” which was intended to identify “the principal tracks of the railroad.” (Id. at 5-9, 16.) Liberty further notes that portions of the Triangle Parcel had been leased to a metals processor, and that these transactions did not require abandonment “because the properties contained spur and side tracks and storage facilities, which Conrail and its predecessors understood to be ancillary to railroad operations and outside the abandonment jurisdiction of federal railroad regulation.” (Id. at 9.)

Based on the record, the Board finds that the tracks formerly on the Triangle Parcel consisted entirely of excepted track not subject to the Board’s licensing authority.⁴ The track’s physical characteristics and relationship to the rail system, as shown in various maps and descriptions submitted by Liberty, indicate that the tracks were short, stub-ended spur tracks that

⁴ The Board’s findings pertain only to the 5.61-acre triangular parcel, (see, e.g., Pet., Exs. 2, 6, & 10), and do not extend to “the rectangular extension at the northern end of the Triangle Parcel” that was formerly part of the Lehigh Valley Railroad Company, (see Pet. 10 n.4).

were not constructed to penetrate new markets or territories or accommodate overhead service.⁵ (See, e.g., Pet., Ex. 17 (1963 appraisal and map of the CRNJ Jersey Avenue Branch that describes and shows stub-ended spur tracks in the Triangle Parcel); Ex. 20 (1936 State Tax Department map of CRNJ's Jersey Ave. Branch/Henderson St. Branch that shows stub-ended spur tracks on the Triangle Parcel).) Rather, the tracks were likely intended for operations ancillary to the Jersey Avenue Branch, such as the storage and moving of freight equipment. (See, e.g., Pet., Ex. 17 (1963 appraisal describing the Triangle Parcel as being "used as a terminal yard, with a freight house, tracks, and stone block pavement," and attached map showing stub-ended spur tracks and a freight depot building located at the edge of the property, adjacent to the mainline).)⁶

For these reasons, the Board finds that the tracks previously located on the Triangle Parcel were excepted track under § 10906, and the petition for declaratory order will be granted.

It is ordered:

1. The petition for declaratory order is granted as discussed above.
2. This decision is effective on its service date.

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

⁵ Although the exact lengths of the tracks contained in the Triangle Parcel are not clear, the Triangle Parcel is described as 950 feet on its eastern side, 890 feet on its southeastern side, and 310 feet at its base. (See Pet., Ex. 17, 1963 Appraisal (and Map) of Triangle Parcel.) None of the tracks on the Triangle Parcel appear to have exceeded the length of the parcel's longer sides, i.e., no longer than 890 feet. (*Id.*); see, e.g., *Tri-City R.R.*, FD 36037, slip op. at 5 (finding that the length of the track was indicative of spur because it was "less than two miles in length").

⁶ Moreover, when the Jersey Avenue Branch was conveyed to Conrail under the Final System Plan, it was described as terminating at the Jersey Avenue Yard and did not appear to include any portion of the Triangle Parcel. (See Pet., Ex. 31, Final System Plan, Vol. II (excerpt describing CRNJ's Jersey Avenue Branch).) This history of the Jersey Avenue Branch is consistent with the finding that the tracks on the Triangle Parcel historically had been considered ancillary to the mainline.