

SERVICE DATE – JANUARY 17, 2020

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42166

ALONZO BENTON v. CSX TRANSPORTATION, INC.

Digest:¹ This decision grants CSX Transportation, Inc.’s motion to dismiss Alonzo Benton’s complaint for failure to state a claim and denies Benton’s request to hold this proceeding in abeyance.

Decided: January 16, 2020

On August 22, 2019, Alonzo Benton (Benton) filed with the Board a complaint against CSX Transportation, Inc. (CSXT), under 49 U.S.C. § 10101(8),² alleging that CSXT failed to properly maintain a pedestrian crosswalk over a railroad track in Philadelphia, Pa., causing Benton to sustain injuries from a slip and fall on August 29, 2017. (Compl. 1, 4.) In his complaint before the Board, Benton states that he has also filed a complaint, which is currently pending, against CSXT involving the same matter in the U.S. District Court for the Eastern District of Pennsylvania. (*Id.* at 1); see Benton v. CSX Transp., No. 19-0109 (E.D. Pa.). According to Benton, he filed his complaint with the Board because CSXT had filed a motion to dismiss in the federal court case, arguing that his personal injury/tort case must first be filed with the Board. (Compl. 1.) Benton seeks judgment against CSXT for compensatory and incidental damages in excess of \$300,000 plus interest, attorney’s fees, costs, and any other relief the Board deems proper. (*Id.* at 9.)

On September 11, 2019, CSXT filed an answer and a motion to dismiss the complaint before the Board. In its motion to dismiss, CSXT requests that the Board dismiss this proceeding because it does not state a cause of action under the Interstate Commerce Act, as amended by the ICC Termination Act of 1995 (ICCTA), upon which relief can be granted. (Mot. to Dismiss 3.) CSXT contends that Benton has not alleged a statutory violation under ICCTA for his injuries and that the rail transportation policy (RTP) does not create a cause of action. (*Id.* at 4.) CSXT

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 Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² Section 10101 states that “[i]n regulating the railroad industry, it is the policy of the United States Government . . . (8) to operate transportation facilities and equipment without detriment to the public health and safety.”

further argues that Benton’s claim is not actionable under 49 U.S.C. § 11704(b)³ because Benton does not identify a specific provision of ICCTA or the Board’s regulations that CSXT allegedly violated. (See Mot. to Dismiss 5.) CSXT requests that the Board (1) conclude that CSXT has not violated ICCTA; (2) dismiss the complaint; (3) discontinue the proceeding; and (4) award CSXT such other relief to which it may be entitled. (Id. at 6.)

On October 1, 2019, Benton filed in opposition to CSXT’s motion to dismiss. Benton asserts that if the Board grants CSXT’s motion to dismiss, it would leave him with no available remedy, as CSXT is contending that the Board has exclusive jurisdiction over his claims.⁴ (See Benton Reply 2, Oct. 1, 2019.) Benton further requests that the Board stay this proceeding pending the conclusion of the litigation in the federal district court. (Id. at 2, 3.)⁵

DISCUSSION AND CONCLUSIONS

The Board may dismiss a complaint if it “does not state reasonable grounds for investigation and action.” 49 U.S.C. § 11701(b). Motions to dismiss are generally disfavored. Cent. Valley Ag Grinding, Inc. v. Modesto & Empire Traction Co., NOR 42159, slip op. at 4 (STB served July 25, 2018). While reviewing a motion to dismiss, the Board will view the alleged facts in the light most favorable to the complainant. Id. (citing Consumers Energy Co. v. CSX Transp. Inc., NOR 42142, slip op. at 1 (STB served June 15, 2015) (Decision ID 44521); Montana v. BNSF Ry., NOR 42124, slip op. at 3 (STB served Feb. 16, 2011)).

³ Section 11704(b) states in relevant part that “[a] rail carrier providing transportation subject to the jurisdiction of the Board under this part is liable for damages sustained by a person as a result of an act or omission of that carrier in violation of this part.”

⁴ On October 23, 2019, CSXT filed a clarification in response to Benton’s reply stating, “CSXT did not argue that Mr. Benton should be filing state law tort claims with the Board. Instead, CSXT’s position before the Court is that Mr. Benton’s claims, as pled, are federally preempted by the ICCTA.” (CSXT Reply 3.) CSXT does not advance a preemption argument in its filings before the Board here, nor has the issue of preemption been referred to the Board by the federal district court. Therefore, the Board only notes that it has recently provided guidance on the question of preemption concerning rail safety-related tort claims. See, e.g., Waneck—Pet. for Declaratory Order, FD 36167 (STB served May 25, 2018), pet. for recon. denied (STB served Oct. 31, 2018). That guidance may be helpful to the parties to this matter.

⁵ On November 1, 2019, Benton submitted a letter informing the Board that the federal district court granted in part and denied in part CSXT’s motion to dismiss, and renewed his request that the Board stay this proceeding until the court has issued its final decision. CSXT responded on November 20, 2019, arguing that the renewed stay request should be denied because Benton’s request does not meet the Board’s stay criteria. (CSXT Reply 4, Nov. 20, 2019 (citing Savage Davenport R.R.—Discontinuance of Service Exemption—in Scott Cty., Iowa, AB 1277X, slip op. at 2 (STB served Oct. 29, 2019)).)

Viewing the allegations of the complaint in the light most favorable to Benton, the Board finds that the complaint does not state reasonable grounds for investigation or action. Benton attempts to state a claim based upon CSXT's alleged violation of § 10101(8) of the RTP.⁶ However, "the RTP does not create an independent basis for Board action in the absence of a violation of a substantive provision in the Interstate Commerce Act." CSX Transp., Inc.—Aban. Exemption—in LaPorte, Porter, & Starke Ctys., Ind., AB 55 (Sub-No. 643X) et al., slip op. at 6 (STB served May 31, 2017) (citing Chesapeake & Ohio Ry. v. United States, 704 F.2d 373, 376 (7th Cir. 1983); Louisville & Jefferson Cty. Riverport Auth. & CSX Transp., Inc.—Constr. & Operation Exemption—in Jefferson Cty., Ky., 4 I.C.C.2d 749, 754 (1988); H.R. Conf. Rep. No. 1430, 96th Cong. 2d Sess. 80 (1980)). And, Benton has not identified any provision of ICCTA that CSXT allegedly violated and could be actionable under 49 U.S.C. § 11704(b). Thus, there is no actionable claim before the agency and no basis for the Board to investigate or act upon Benton's complaint. The complaint will therefore be dismissed. See PCI Transp. Inc. v. Fort Worth & W. R.R., NOR 42094 (Sub-No. 1), slip op. at 5 (STB served Apr. 25, 2008) (stating that the RTP "cannot give rise to a cause of action. Instead, it is a statement of policy intended to provide guidance to the Board regarding its implementation of the rest of the Act."); see also Elam v. Kan. City S. R.R., 635 F.3d 796, 812 (5th Cir. 2011) (finding referral of a tort claim to the Board would be futile where there was no alleged violation of ICCTA or Board regulations made actionable under 49 U.S.C. § 11704(b)).

Because Benton's complaint is being dismissed, Benton's motion to stay the proceeding will be denied as moot.

It is ordered:

1. CSXT's motion to dismiss is granted.
2. Benton's complaint is dismissed.
3. Benton's request to stay is denied as moot.
4. This decision is effective on the date of service.

By the Board, Board Members Begeman, Fuchs, and Oberman.

⁶ The complaint also seeks "relief in favor of [c]omplainant under U.S.C. § 1320." (Compl. 1.) No title number is provided, and 49 U.S.C. § 1320 does not exist. Benton may have intended to refer to 49 U.S.C. § 1321, though this provision would also be unavailing.