

SURFACE TRANSPORTATION BOARD**Docket No. AB 1296X****ENTERED**
Office of Proceedings
July 1, 2021
Part of
Public Record**R. J. CORMAN RAILROAD PROPERTY, LLC—ABANDONMENT
EXEMPTION— IN SCOTT, CAMPBELL, AND ANDERSON COUNTIES, TENN.****ANDERSON COUNTY REBUTTAL**

Anderson County, Tennessee (“Anderson County”) respectfully submits its rebuttal to the Response of R.J. Corman Railroad Property, LLC (“RJC”) to its Petition to Reopen or to Vacate the Board’s June 26, 2020, abandonment authorization for the line at issue (“Oneida Line”). In its Response, RJC makes various allegations of bad faith, untimeliness, and insufficient evidence. However, Anderson County feels compelled to point out that it has merely brought to the attention of the Surface Transportation Board (“STB”) a line of railroad which was approved for construction by the Interstate Commerce Commission (“ICC”) in 1921 (“Branch Line”) and was never abandoned by any of the various owners of this line, including RJC.¹ Anderson County’s actions in assisting the STB in its role as regulator of the Branch Line and national rail network should not be criticized here.² Otherwise, without information from parties like Anderson County, the STB may never be made aware of a railroad line that was de facto

¹ RJC argues that “[i]t can just as easily be true that there is no evidence the Line was **not** abandoned prior to 1973.” RJC Response at 9. However, the only way to demonstrate that an abandonment has occurred is to cite to the proceeding at the STB, ICC, or possibly the courts that made such a determination. Anderson County and presumably RJC have searched the records of these agencies and called the STB for this evidence, but both have come up empty.

² The STB is a complaint-driven agency with limited investigatory powers and resources. Therefore, it depends on its stakeholders to bring to its attention violations of the Interstate Commerce Act which includes the abandonment process.

abandoned without proper authority.³ Anderson County has done nothing in bad faith but has simply sought compliance by RJC with its statutory duties as the owner of the Branch Line.

It is also noteworthy that while RJC's response focuses on Anderson County's Mayor, Anderson County Government authorized this filing by a unanimous vote of its governing legislative body, the Anderson County Board of Commissioners. In addition, Anderson County has a long, documented history of efforts to preserve the Oneida Line that well pre-date any interest by Arkansas-Oklahoma Railroad. As a result, Anderson County has a strong interest in ensuring that RJC complies with applicable law during this abandonment process. Here, it seems clear that this Branch Line remains a part of the national rail network subject to the jurisdiction of the STB and would be stranded because of this abandonment exemption for the Oneida Line.

RJC raises a litany of legal arguments in response to Anderson County's Petition. Noticeably missing from these arguments is any evidence of an STB/ICC proceeding authorizing the abandonment of the Branch Line. Without STB/ICC authorization, the Branch Line cannot have been properly abandoned.

Having found no evidence of an abandonment of the Branch Line, RJC makes the last - ditch argument that “a *de facto* abandonment occurred prior to 1973.” RJC Response at 9. In support of this position, RJC relies on *RLTD Railway Corporation v. STB*, 166 F.3d 808 (6th Cir. 1999) for the proposition that “the STB may properly conclude that it lost jurisdiction over a stretch of track once it was severed from interstate commerce.” *Id.* However, RJC misreads *RLTD* and the well-established principal that STB/ICC authorization is necessary to determine a

³ In the decision served on May 3, 2021, in this proceeding, the STB mentioned the letter of Mayor Frank regarding the Branch Line. The Board acknowledged the letter but stated there was no request to reopen the proceeding. Therefore, Anderson County followed this guidance and filed this Petition. Slip op. at 3-4, n. 5.

railroad line has been abandoned. *See Phillips Co. v. Denver and Rio Grande Western R. Co.*, 97 F.3d 1375, 1377 (10th Cir. 1996). As the court noted, “if de facto abandonment were sufficient to establish abandonment..., a railroad could easily circumvent the ICC’s oversight and regulation by simply terminating its use of a railroad line.” *Id.* (cite omitted). Therefore, it is clear that the STB must be the decision maker with respect to abandonments and a railroad cannot unilaterally declare a line it owns to be abandoned.

In a case similar to the one at hand, the petitioners therein asked the Board to find that a railroad right-of-way that passed through their land was de facto abandoned at some point before 1960. *Angeles A. Zorzi, et al – Petition for Declaratory Order (“Zorzi”)*, FD No. 36016 (STB served January 31, 2017). The STB concluded that the line at issue was never removed from the national rail network and remained within the agency’s jurisdiction. The Board stated without equivocation that it “retains jurisdiction over rail properties until abandonment authority has been sought, granted, and exercised.” *Id.*, slip op. at 3.

First, the STB explained the abandonment process:

To “abandon” (i.e., permanently close and discontinue service over) a line of railroad, a railroad must seek advance authority under 49 U.S.C. § 10903, or an exemption from this authority under 49 U.S.C. § 10502. In general, the statutory requirement of § 10903 applies to all lines of railroad, including both “main” lines and “branch” lines, i.e., lightly-used lines over which carriers provide common carrier service to particular areas, communities, or industrial parks.

Id. at 4.

Like RJC, the petitioners in *Zorzi* asked the Board to look at the railroad's actions and intent to determine whether the line was de facto abandoned, pointing to the cessation of operations, salvage, and loss of control over the right-of-way. The STB stated that its "precedent is clear that a railroad cannot abandon a line of railroad without Board authority. Although the Board has on occasion used the term 'de facto abandonment', the term has been used sparingly, and de facto abandonments have not been found to occur in the absence of a grant of final Board abandonment authority." *Id.* As a result, the STB found that the petitioners' reliance on the railroad's intent with respect to the line to demonstrate abandonment to be immaterial.

The petitioners in *Zorzi* also relied on *RLTD* in support of their position arguing that severing a line from the interstate rail system, i.e., removal of the rails, was evidence of abandonment. The Board pointed out that these petitioners, like RJC, misread this case:

[T]he *RLTD* decisions do not stand for the proposition that a de facto abandonment occurs whenever a rail line has been physically severed from the interstate rail system. In that abandonment proceeding, which commenced prior to the agency's adoption of the 1996 consummation notice requirement, the Board was faced with the question of whether it continued to have jurisdiction over a line of rail that several parties claimed had been abandoned pursuant to agency authority granted 20 years earlier. In *RLTD I*, the agency looked to a railroad's intent to determine whether an abandonment was consummated, and, after a review of the railroad's actions and other indicia, concluded that the abandonment had been consummated. *See RLTD I*, AB 457X, slip op. at 2-3. On reconsideration, the Board specified six factors that were the basis of its conclusion that the railroad intended to consummate abandonment of the line, only one of which directly involved severance of the line from the national rail network. *See also RLTD II*, 2 S.T.B.

at 687-88. Even more significantly, in the *RLTD* proceeding (unlike here), the agency had already authorized abandonment. Thus, the *RLTD* proceeding was a case in which the Board, prior to the existence of the notice of consummation requirement, had to determine if the railroad's actions indicated an intent to consummate its abandonment authority. The fact that the line was disconnected from the rail network was just one of the factors the Board used to determine the railroad's intent. In contrast, as noted, no abandonment authority was issued to Montpelier & Barre for the Northern Segment, obviating the need for such an analysis.

Moreover, the Board notes that the Zorzis have not conclusively shown that the Northern Segment was in fact severed. Removal of tracks alone does not mean that a line is severed from the national rail network. *See Honey Creek*, FD 34869, slip op. at 6. The fact that the State has sought a grant to relay the track also indicates that the line is not severed. *See, e.g., RLTD II*, slip op. at 2 (explaining that a line is severed from the national rail network when another line connecting it with the interstate rail network has been abandoned, creating an inability to reach a main line).

Id. at 6-7.

Based on *Zorzi* and the clear precedent that abandonments only can occur with proper STB authorization, Anderson County asserts that RJC's arguments which relate to the history and present state of the Branch Line are misguided. Again, because there is no evidence that the Branch Line has been abandoned, it is evident that it remains a part of the national rail network. With the abandonment of the Oneida Line, the Branch Line will be stranded from that very network which is an illogical result. Consequently, the Branch Line must now be abandoned through the proper procedures at the STB in order to prevent the stranding of the Branch Line.

Respectfully submitted,

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July 1, 2021

CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2021, I served the foregoing Anderson County Rebuttal using the below email addresses on all parties of record in this proceeding:

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VERIFICATION

I, Terry Frank, Mayor of Anderson County, hereby verify under the penalty of perjury that to the best of my knowledge, the foregoing Rebuttal is true and correct. Further, I certify that I am qualified and authorized to make such verification on behalf of Anderson County in connection with this proceeding before the Surface Transportation Board.

Executed this 29 day of June, 2021



Terry Frank
Mayor, Anderson County