

SERVICE DATE – JUNE 5, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42174

BOROUGH OF DUMONT, N.J. v. CSX TRANSPORTATION, INC.,
ABC CORPORATIONS, & XYZ INDIVIDUALS

Digest:¹ This decision grants CSX Transportation, Inc.’s motion to dismiss with prejudice a complaint filed by the Borough of Dumont, N.J. (Dumont), and denies as moot Dumont’s request to hold this proceeding in abeyance.

Decided: June 5, 2023

On November 17, 2022, the Borough of Dumont, N.J. (Dumont), filed a complaint with the Board under 49 U.S.C. § 11701(b) against CSX Transportation, Inc. (CSXT), and “fictitious entities and persons not yet identified.” The complaint alleges that CSXT damaged a Dumont sewer line on or about January 26, 2021, while performing boring and excavation activities on CSXT’s property. (Compl. 4-5.) According to Dumont, this work was performed in such a manner as to violate New Jersey state law. (*Id.*) Dumont recognizes that “the STB does not have jurisdiction over safety-related matters” such as the instant action, and that the Superior Court of New Jersey, where it also filed a complaint,² “has primary jurisdiction.” (*Id.* at 3-4.) Nevertheless, Dumont filed this complaint with the Board to “preserve its rights and provide a filing within the STB’s 2-year statute of limitations.” Dumont seeks damages, costs, interest, attorneys’ fees, and any other relief deemed proper. (Compl. 9.)

On December 16, 2022, CSXT filed a motion to dismiss Dumont’s complaint before the Board with prejudice because Dumont does not allege a cause of action upon which relief can be granted under the Interstate Commerce Act, as amended by the ICC Termination Act of 1995 (ICCTA), Pub. L. No. 104-88, 109 Stat. 803. (Mot. to Dismiss 1-2.) CSXT additionally argues that Dumont’s claim is not actionable under 49 U.S.C. § 11704(b)³ (which Dumont also cited)

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 CSXT subsequently removed the state court action to federal court. (See Mot. to Dismiss 3 & n.10 (citing Borough of Dumont v. CSX Transp., Inc., No. 2:22-cv-6982 (D.N.J. 2022)).)

³ Section 11704(b) states 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.”

because Dumont does not identify a specific provision of the statute or the Board’s regulations that CSXT allegedly violated. (Mot. to Dismiss 3-4.)

On January 4, 2023, Dumont filed a response to CSXT’s motion to dismiss and a cross-motion to hold the proceeding in abeyance pending the conclusion of the ongoing litigation in federal court. Dumont again “generally agrees” that the Board lacks jurisdiction over its claims for monetary damages, (Dumont Reply 1), but argues that it should not be precluded from seeking an administrative remedy “until CSXT commits to a factual and legal position” in the federal court case, (*id.* at 2). Dumont asks the Board either to deny CSXT’s motion to dismiss and hold the proceeding in abeyance, or to dismiss the complaint without prejudice. (*Id.* at 6.) CSXT filed a response in opposition to Dumont’s cross-motion on January 24, 2023, arguing, among other things, that if the Board lacks jurisdiction over the proceeding, then it does not have jurisdiction to issue a stay or abeyance with respect to Dumont’s claims. (CSXT Reply 4-5.)

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). When reviewing a motion to dismiss, the Board views the alleged facts in the light most favorable to the complainant. Benton v. CSX Transp., Inc., NOR 42166, slip op. at 2 (STB served Jan. 17, 2020) (citing Cent. Valley Ag Grinding, Inc., NOR 42142, slip op. at 1).

Viewing the allegations of the complaint in the light most favorable to Dumont, the Board finds that the complaint does not state reasonable grounds for investigation or action. Dumont concedes the Board lacks jurisdiction over its claims. (Dumont Reply 3.) Section 11701(b) provides for complaints about a “violation of this part”—that is, a violation of the rail provisions of ICCTA, 49 U.S.C. Subtitle IV Part A. Here, however, all of the four counts of Dumont’s complaint arise under New Jersey statutory or common law; none allege a violation of any provision of ICCTA or the Board’s regulations. And although the complaint references 49 U.S.C. § 11704(b), that provision merely permits recovery of damages resulting from a carrier’s violation of the rail provisions of ICCTA. “Section 11704 does not stand on its own, but must be coupled with a deprivation or violation of rights, duties, or obligations established by statute in the ICCTA or by regulations issued pursuant to the ICCTA.” Griffioen v. Cedar Rapids & Iowa City Ry., 785 F.3d 1182, 1191 (8th Cir. 2015). Thus, there is neither an actionable claim before the Board nor a basis for the Board to investigate or act upon Dumont’s complaint. See Benton, NOR 42166, slip op. at 3. As such, the complaint will be dismissed with prejudice.⁴

Because Dumont’s complaint is being dismissed, its motion to hold this proceeding in abeyance will be denied as moot.

⁴ Dismissal of the instant proceeding with prejudice does not itself preclude the Board from later considering any preemption-related issues in appropriate circumstances, if necessary.

It is ordered:

1. CSXT's motion to dismiss is granted.
2. Dumont's complaint is dismissed with prejudice.
3. Dumont's request to hold this proceeding in abeyance is denied as moot.
4. This decision is effective on its service date.

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