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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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DOCKET NO. FD 36710

**RICHMOND WATERFRONT INDUSTRIAL PARK, LLC – PETITION FOR
DECLARATORY ORDER**

SUPPLEMENT TO PETITION FOR DECLARATORY ORDER

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Dated: April 9, 2024

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SUPPLEMENT TO PETITION FOR DECLARATORY ORDER

Richmond Waterfront Industrial Park, LLC (“Petitioner” or “RWIP”), hereby submits this Supplement to its Petition for Declaratory Order (“Petition”) that requests a declaration by the Surface Transportation Board (“STB” or “Board”) that a purported railroad easement traversing Petitioner’s property (the “Easement”) is not, and has never been, subject to the Board’s jurisdiction. With this Supplement, RWIP submits a March 25, 2024 Opinion (Attachment 1) issued by a 3-judge panel of the Superior Court of Pennsylvania, one of Pennsylvania’s two state intermediate appellate courts, that reinforces the need for the Board to provide guidance to the courts in Pennsylvania on the federal preemption legal principles that govern this dispute. RWIP urges the Board to accept the Petition and commence a proceeding to resolve the issues presented by it.

I. Introduction

RWIP has provided extensive factual evidence and argument in the Petition demonstrating that the Easement is neither a line of railroad imbued with a common carrier obligation subject to 49 U.S.C. §10901 and §11101, nor an excepted “side track” governed by 49 U.S.C. §10906.

Rather, prior to all use of the track located within the Easement ceasing approximately 22 years ago, it was constructed and used outside of the national rail system. Therefore, the disposition of the tracks within the Easement is subject to state and local laws.

The Petition was prompted by a December 6, 2022 ruling by the Court of Common Pleas in Philadelphia, Pennsylvania (“Lower Court”) at Civil Action No. 2022-02872 (“Lower Court Order”) that, as a matter of law, the railroad tracks within the easement were a line of railroad imbued with a common carrier obligation. The Lower Court Order was based entirely on the pleadings before it and not upon any evidentiary record. As such, the Lower Court ruled it did not have subject matter jurisdiction to determine whether RWIP could claim the Easement has been extinguished; this includes whether the principles of adverse possession or any other principles under Pennsylvania law can extinguish any associated rights of the Pennsylvania Belt Line Railroad Company (“PBL”).¹

More specifically, the Lower Court ruled that “Plaintiff must bring the matter to the federal Safety [sic] Transportation Board (“STB”) pursuant to the ICC Termination Act of 1995 (ICCTA), 49 U.S.C. Sec, 10501 *et seq.* The Act completely preempts state action when it comes to determining if a railroad has abandoned its tracks.”² The Petition explains in detail why the Lower Court Order’s holding was clearly contrary to (1) the pleadings the Lower Court reviewed, (2) the undisputed facts of record, and (3) well-established legal principles governing the jurisdictional status of railroad tracks.

On January 5, 2023, RWIP appealed the Lower Court Order, which ultimately reached the

¹ A copy of the Lower Court Order is attached as Exhibit A to the Petition.

² Lower Court Order at 1 (citations omitted).

Superior Court of Pennsylvania.³ That Court later denied a request by RWIP to stay further action on the appeal. RWIP sought a stay so that it could ask this Board to rule on the Petition and issue a declaratory order clarifying the jurisdictional status of the Easement and tracks. In the alternative, Petitioner sought a stay to allow the Board to issue a decision providing guidance to the Superior Court on the jurisdictional question that was before it, both for judicial economy and efficiency, but also to avoid the establishment of inconsistent precedent. The parties submitted briefs and oral argument was held on February 8, 2023.

The Superior Court Opinion was issued while the Petition remains pending before the Board. However, as explained below, the requested guidance from this Board to the Superior Court through consideration of the Petition would have benefited the Superior Court and the parties. After all, the Opinion repeated and compounded the errors of the Lower Court in affirming the initial finding that the track at issue is a common carrier line of railroad.

Consequently, there are now *two* state court decisions that clearly misstate and misapply the legal rules governing whether a segment of railroad track is a line of railroad subject to the Board's exclusive jurisdiction. RWIP intends to pursue its efforts to correct these errors through the Pennsylvania state court appeals process.⁴ However, in the continuing interests of both judicial economy and avoiding inconsistent precedent being established it is imperative for the Board to act. Specifically, it should grant the Petition and commence a proceeding that reviews the complicated factual and legal background of the tracks at issue and resolves the jurisdictional question for the purpose of providing much needed guidance to the parties and to the Pennsylvania courts while the appeal proceeds. *See, e.g.,* Docket No. FD 36167, *Jimmy Lee Waneck and Starr*

³ Petition at 3. The appellate proceeding was case No. 1172 EDA 2023.

⁴ This process entails the filing of a Petition for Allowance of Appeal to the Supreme Court of Pennsylvania.

Swearingen Waneck, et al – Petition for Declaratory Order (denial of recon. served October 31, 2018) at 4 (where the STB issued guidance despite the presence of a lower court ruling because the preemption issue was being appealed); Docket No. FD 35788, *14500 Ltd.—Petition for Declaratory Order* (served June 5, 2014) (“*14500 Ltd.*”) (where STB issued guidance on preemption issue related to land after a state court issued its ruling).

For the reasons discussed below, the aspects of the Opinion that should prompt Board involvement are as follows:

II. Key Errors of the Appellate Court

The factual history of the tracks and property at issue is complicated and dates back 130 years. Petition at 5, note 13. There are numerous criteria that would determine the track’s legal status that are unknown or disputed. To name just a few, there is no evidence, or even an allegation by PBL, that it constructed the tracks, but there are strong indicators that it did not. Moreover, there is also no evidence, or even an allegation by PBL, of how it allegedly obtained authority from the Interstate Commerce Commission (“ICC”) or this Board to conduct common carrier operations over the tracks at issue. In fact, the available evidence is to the contrary. *i.e.*, that such authority was never sought or perfected. *See Id.* at 11-12, note 40, (describing how PBL apparently pursued operating authority over the tracks at issue in Finance Docket No. 29517, *Philadelphia Belt Line R.R.—Operation in Philadelphia, PA – Exemption Under 29 U.S.C. § 10505*, but never consummated any authority it might have received, instead entering into a private lease agreement with Conrail).

On this point, a critical fact that is not in dispute is that PBL itself has never conducted any service—common carrier or otherwise—over the tracks at issue or any of PBL’s other tracks in

Philadelphia. See discussion of *Conrail*⁵ case below. PBL has also never made this claim before the Pennsylvania state courts. Nor does PBL have any apparent intention of *ever* commencing any rail service over the tracks. See Lower Court Opinion, Exhibit B to the Petition at 3 (“PBL has not asserted any rights to the use of the tracks or the right-of-way. Further, PBL has not disclosed plans to provide railroad, rail carrier, or rail transportation services even if the railway right-of-way was fully intact and accessible.”).

Moreover, there is also no evidence, or even an allegation by PBL, that the ICC or the Board had granted authority to any other railroad to operate over the tracks on the Property. In fact, the available evidence indicates to the contrary, and that any such use was through haulage rights or private leases that are not subject to the agency’s jurisdiction. See, Docket No. FD 35345, *Philadelphia Belt Line Railroad Company – Petition for Declaratory Order* (served August 4, 2010)(“*Sugarhouse*”) at 2, and *Conrail*, where PBL entered into a private lease that the parties agreed would not be submitted to the Board for approval. Petition at 12.⁶

Notwithstanding, these and other unresolved critical factual determinations must be routinely resolved before the jurisdictional status of any railroad track can be determined. But, the rulings by the Lower Court and now the Superior Court that the track is a common carrier line of railroad were not based on any such analysis and instead were based on flawed assumptions and misapplications of the applicable legal principles. The errors of the Lower Court are summarized in the Petition. As for the specific errors of the Superior Court, they are summarized as follows:

⁵ STB Finance Docket No. 32802 *Philadelphia Belt Line Railroad Co. v. Consolidated Rail Corporation, et. al* (served June 12, 1996) (“*Conrail*”).

⁶ PBL describes itself as “a rail terminal switching carrier engaged in transportation-related development and real estate leasing in the Port of Philadelphia.” See, *About Philadelphia Belt Line Railroad Company*, Philadelphia Belt Line Railroad Website, <http://www.philadelphiabeltline.com/about-us/>.

1. The Superior Court wrongly found that the STB in *Conrail* “held that Defendant is a rail carrier with respect to its tracks running north of the Property to south of the Property and that those tracks connected to Conrail tracks . . .”⁷

The STB made no such holding in *Conrail*. Rather the Board merely said that PBL was “a Class III railroad” *Conrail* at 1, and later, also that “[a]lthough a rail carrier, PBL never operated the Belt Line.” *Conrail* at 2. The STB separately stated “[t]he Belt Line North extends approximately 3 miles from Bridge Street in the north through the site of Conrail’s former Port Richmond Yard to Allegheny Avenue in the south.” *Id.* But the STB in *Conrail* did not affirmatively hold either that the tracks of the Belt Line North were a common carrier line of railroad, or that PBL was a rail carrier “with respect to” *any* tracks, let alone any of the tracks making up what PBL denominated the Belt Line North.

In fact, *Conrail* strongly implies that the STB agreed with Conrail that PBL did *not* have authority to conduct common carrier operations over the Belt Line North track. *See Conrail* at 5 (“Conrail emphasizes . . . that PBL failed to allege that it ever had authority to run trains between the Belt Line North and South, and that PBL has never run any trains”); and *id* at 7 (“PBL may suffer future harm or injury, *if* it were to become the operator of the Belt Line North”) (emphasis supplied). *See also, id* at 2, note 6 (where the Board simply recited PBL’s *assertions* that it had such authority pursuant to Finance Docket No. 29517, but did not concur with PBL or find in PBL’s favor in that regard). Consequently, there was no holding in *Conrail* that the tracks involved in this dispute are lines of railroad subject to the exclusive jurisdiction of the Board or that PBL was a rail carrier “with respect to” the tracks in dispute.

⁷ Opinion at 6.

Indeed, fundamental facts determinative of the jurisdictional status of the tracks on the Property are very much in question. The Petition has supplied the Board with substantial evidence demonstrating that the tracks on the Property from Bridge Street south to Buckius Street—to the extent they are included in the “Belt Line North”⁸—were most likely not constructed pursuant to the 1890 Ordinance and were more likely private tracks exclusively used by the former property owner Rohm and Haas to shuttle its cars of chemical products to and from Buckius Street for service by Conrail. Petition at 7-9.⁹ RWIP has also provided more detailed information about the private lease arrangement between Conrail and PBL that confirms service over the track was not common carrier service, but private contract service. The two rulings so far in the Pennsylvania courts have ignored or glossed over these critical factual elements of the jurisdictional inquiry.

2. The Superior Court applied an erroneous standard that merely because an entity is a rail carrier, all the tracks it owns or controls are considered lines of railroad

The Opinion states “[b]ecause the STB has held that Defendant is a rail carrier, Defendant’s railroad tracks are within the exclusive jurisdiction of the STB unless and until the STB, in its expertise, concludes that there are particular tracks concerning these tracks that remove them from its jurisdiction.” Opinion at 8. This legal conclusion is contrary to the fundamental principle of railroad track jurisdictional determinations, which is the status of a track is determined by its

⁸ Whether these tracks were constructed pursuant to the 1890 Ordinance is a highly disputed fact. Petition at 8-9; See Exhibit A to PBL Reply to Petition for Declaratory Order, filed August 17, 2023 at 37-38.

⁹ The Superior Court also wrongly concluded that the tracks on the Property “were used to transport ‘approximately 2,894 carloads annually, of predominantly intermodal containers, and import-export freight.’” On information and belief, the only shipper north of Buckius Street in 1996 was Rohm and Haas. Petition at 10, Wolf V.S. at 2. Consequently, these carloads were originated and transported on Belt Line North tracks from shipper facilities located south of the Property.

intended use, not whether the entity that owns it is a rail carrier. Docket No. FD 35819, *Brookhaven Rail Terminal and Brookhaven Rail, LLC – Petition for Declaratory Order* (served August 16, 2016) at 3-4 (discussing lines of railroad vs. excepted track); Docket No. FD 35468, *Pinelawn Cemetery – Petition for Declaratory Order* (Served April 21, 2015). Obviously, a rail carrier can own track that is not subject to the Board’s jurisdiction. See Docket No. FD 36616, *Savage Tooele Railroad Company – Petition for Exemption* (served April 1, 2024) (where Union Pacific Railroad Company owned tracks that had been formally abandoned and therefore no longer subject to the STB’s jurisdiction).

Accordingly, a legal conclusion that merely because an entity is a rail carrier means that all tracks owned or controlled by it are lines of railroad subject to the Board’s jurisdiction is obviously wrong. Accordingly, the parties and the courts would benefit from the Board’s expert guidance on this point.

3. The Opinion assumes or simply ignores critical facts

The Opinion ignores the important question of who constructed the tracks and appears to presume that PBL did so although there is no evidence of this and PBL has never claimed it did construct the tracks. Nor is there any proof that the tracks were constructed pursuant to the authority of the ICC or the STB.¹⁰ The Superior Court also wrongly presumed that, to the extent any service was provided on the tracks, it was common carrier service, despite (1) the STB’s

¹⁰ Depending on when the tracks were constructed, the Transportation Act of 1920 might have been applicable. This statute granted the ICC sole licensing authority for the operation, extension, or construction of rail lines initiated 90 or more days after the Act’s effective date. Parties initiating railroad operations, line extensions, or line construction after that date were required to obtain prior authorization from the ICC. See, *Sugarhouse* at 4. There is no evidence that PBL has taken any action to comply with this statute and obtain or perfect federal authorization to construct or operate the tracks on the Property. However, the Superior Court ignored this critical factual issue.

explanation in *Conrail* that PBL provided other railroads access to PBL's tracks pursuant to private agreements not subject to the Board's jurisdiction, such as haulage agreements; and (2) the existence of the private lease agreement between Conrail and PBL governing service over the Belt Line North that the two parties expressly agreed did not need to be submitted to the Board for its approval.

4. The Court wrongly conflated the purpose of the Petition with the ramifications of its legal determination that the tracks are a line of railroad

Finally, the STB's expert guidance is needed because the Superior Court erroneously conflated and confused the relief sought by the Petition with the legal ramifications of the Pennsylvania courts' determination that the tracks are a line of railroad. Specifically, by upholding the Lower Court Order that the tracks on the Property are a line of railroad, the Superior Court – based entirely on pleadings and no evidence – sweepingly decided *all* of the disputed facts pertaining to the legal status of the tracks at issue over a 130-year span, some of which are set out in the Petition.

Moreover, if allowed to stand, the courts' rulings would likely mean that RWIP's only recourse at the Board would be to file an adverse abandonment application pursuant to 49 U.S.C. §10903 and 49 C.F.R. Part 1152 given that the courts have concurrent jurisdiction to decide preemption questions under §10501(b) *14500 Ltd., supra*, at 2.

And yet, the Superior Court did not appear to grasp the significance of its ruling because it justified it in part on the erroneous belief that affirming the Lower Court's finding the tracks are a line of railroad as a matter of law – if upheld after further judicial appeals – would not foreclose the STB's consideration of the Petition, which is focused on demonstrating the track *was never subject to the STB jurisdiction in the first place*. See Opinion at 8 (emphasis supplied (“Plaintiff recognizes that deferring to the STB is an appropriate way of resolving *this jurisdictional issue*.”

and that “Plaintiff has sought both a ruling from the STB that the STB lacks jurisdiction over the tracks at issue and discovery *on the jurisdictional issue* in that STB proceeding . . . ;” and “Plaintiff has represented to this Court that *the jurisdictional question here* ‘presents critical and complex factual and legal issues that are within the STB’s expertise’”).

The Superior Court’s misunderstanding of the ramifications of its ruling and the deleterious effect of a final state ruling on the Board’s ability to lend its expert guidance to this dispute highlight the critical importance of the Board acting in response to the Petition in conjunction with the continuation of the Pennsylvania state court appellate process, so clarity can be achieved prior to a final, unappealable decision.

III. Conclusion

In summary, the Lower Court and Superior Court both reached a legal conclusion that is clearly contrary to the applicable legal standards and not supported by the underlying facts unearthed to date. RWIP intends to continue to pursue its judicial remedies in the Pennsylvania court system. However, it implores the STB to provide the courts with its expert guidance in response to the Petition. Failure to do so could result in a continuation of the erroneous rulings, and eventually a proceeding before the Board under 49 U.S.C. §10903 and applicable regulations

for a segment of track that is not a line of railroad subject to the Board's jurisdiction under the applicable standards but nevertheless has wrongly been categorized as such.

Respectfully submitted,

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Dated: April 9, 2024

ATTACHMENT 1
Superior Court Opinion

2024 PA Super 57

RICHMOND WATERFRONT	:	IN THE SUPERIOR COURT OF
INDUSTRIAL PARK, LLC	:	PENNSYLVANIA
	:	
Appellant	:	
	:	
	:	
v.	:	
	:	
	:	No. 1172 EDA 2023
PHILADELPHIA BELT LINE RAILROAD	:	
COMPANY	:	

Appeal from the Order Entered December 6, 2022
In the Court of Common Pleas of Philadelphia County Civil Division at
No(s): 02872 March 2022

BEFORE: STABILE, J., McLAUGHLIN, J., and COLINS, J.*

OPINION BY COLINS, J.:

FILED MARCH 25, 2024

Appellant, Richmond Waterfront Industrial Park, LLC (Plaintiff) appeals from of an order of the Court of Common Pleas of Philadelphia County (trial court) dismissing its quiet title action for lack of subject matter jurisdiction on the ground that the federal Interstate Commerce Commission Termination Act of 1995 (ICCTA), 49 U.S.C. §§ 10101-16106, vests the federal Surface Transportation Board (STB) with exclusive jurisdiction to decide issues involving the abandonment of the railroad right of way and railroad tracks on its property. For the reasons set forth below, we affirm.

Plaintiff is the owner of a more than 50-acre property at 2950 Kirkbride Street, Philadelphia (the Property), which it acquired from Rohm & Haas Co.

* Retired Senior Judge assigned to the Superior Court.

in 1998. There are railroad tracks on the Property on a 33-foot wide right of way of Philadelphia Belt Line Railroad Co. (Defendant) that runs across the Property. Amended Complaint ¶¶9, 14-15, 17, 19-24, 26 & Ex. A at 3-4; Richmond Waterfront Industrial Park, LLC Petition for Declaratory Order, STB Docket No. FD 36710 (STB Petition), Plaintiff's Verified Statement in Support of STB Petition at 1-2.¹

On March 28, 2022, Plaintiff filed a quiet title action against Defendant seeking an order barring Defendant from asserting any right, easement, or other interest in the Property. Defendant filed preliminary objections, and Plaintiff, on July 7, 2022, filed an amended complaint alleging that Defendant's easement was barred by adverse possession, abandonment, and prescription. Amended Complaint ¶¶45-68. Defendant filed preliminary objections to this amended complaint asserting that the tracks on the Property were constructed pursuant to an 1890 Philadelphia ordinance that granted Defendant the right to build railroad tracks from Allegheny Avenue north along the Delaware River and seeking, *inter alia*, dismissal of the action for lack of subject matter jurisdiction on the ground that the STB has exclusive jurisdiction over abandonment of its railroad tracks and right of way on the Property. Preliminary Objections to Amended Complaint ¶¶4, 8-9, 28-46. In response,

¹ Plaintiff submitted the STB Petition and all of its attachments to this Court for its consideration in this appeal in conjunction with an application that it filed to stay this appeal.

Plaintiff argued that the action should not be dismissed for lack of subject matter jurisdiction on the ground that Defendant is not a rail carrier and that the tracks and right of way were therefore not within the STB's jurisdiction. Plaintiff's Opposition to Preliminary Objections ¶¶ 24-46, 50-51.

On December 6, 2022, the trial court sustained Defendant's preliminary objection to jurisdiction and dismissed the action for lack of subject matter jurisdiction on the ground that abandonment of railroad tracks was within the exclusive jurisdiction of the STB and that Section 10501(b) of the ICCTA, 49 U.S.C. § 10501(b), preempted state courts from determining property rights involving alleged abandonment of railroad tracks. Trial Court Order, 12/6/22; Trial Court Opinion at 4-7. Plaintiff timely appealed to the Commonwealth Court, and the appeal was subsequently transferred to this Court on the joint application of the parties.

On July 28, 2023, prior to briefing in this appeal, Plaintiff filed the STB Petition, a petition for a declaratory order from the STB that Defendant's railroad tracks and right of way on the Property are not within the STB's jurisdiction. STB Petition at 2, 15-21. Plaintiff filed an application to stay this appeal pending the STB's ruling on whether it has jurisdiction over Defendant's railroad tracks and right of way on the Property. This Court denied the application for stay by *per curiam* order on September 13, 2023. Defendant on August 17, 2023 filed a response to the STB Petition in the STB proceeding requesting dismissal of the STB Petition. Joint Response to Court Order

Directing Parties to File Status Report on STB Proceeding ¶2. The STB has neither rendered a decision on whether to accept the STB Petition nor ruled on Defendant's request to dismiss the petition. ***Id.*** ¶4.

Plaintiff raises two issues in this appeal: (1) whether the trial court erred in holding that it did not have subject matter jurisdiction; and (2) whether the trial court erroneously characterized the nature of the tracks at issue and the requirements for their abandonment. Because the issue of subject matter jurisdiction is a question of law, our review is plenary and *de novo*. ***Mazur v. Trinity Area School District***, 961 A.2d 96, 101 (Pa. 2008); ***Strasburg Scooters, LLC v. Strasburg Rail Road, Inc.***, 210 A.3d 1064, 1068 (Pa. Super. 2019).

Section 10501(b) of the ICCTA provides:

(b) The jurisdiction of the [STB] over--

(1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such carriers; **and**

(2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State,

is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.

49 U.S.C. § 10501(b). The only exceptions to the STB's exclusive jurisdiction that Section 10501 sets forth are for public transportation provided by local

governments and their contractors and solid waste transfer facilities. 49 U.S.C. § 10501(c).

Section 10501(b) of the ICCTA preempts actions brought under state law, including quiet title actions, that concern operation or abandonment of railroad tracks. ***Strasburg Scooters, LLC***, 210 A.3d at 1068-69; ***B&S Holdings, LLC v. BNSF Railway Co.***, 889 F.Supp.2d 1252, 1258-60 (E.D.Wash. 2012); ***Cedarapids, Inc. v. Chicago, Central & Pacific Railroad Co.***, 265 F.Supp.2d 1005, 1012-16 (N.D.Iowa 2003); ***Burgoyne, LLC v. Chicago Terminal Railroad Co.***, 169 N.E.3d 815, 823-28 (Ill. App. 2020); ***Ouachita Railroad, Inc. v. Circuit Court of Union County***, 206 S.W.3d 811, 815-17 (Ark. 2005). Although Section 10501(b)(2) references only “spur, industrial, team, switching, or side tracks, or facilities,” 49 U.S.C. § 10501(b)(2), preemption and exclusive STB jurisdiction are not limited to those items and encompass all railroad tracks of a rail carrier. Section 10501(b)(1) of the ICCTA gives the STB exclusive jurisdiction over “transportation by rail carriers.” 49 U.S.C. § 10501(b)(1). The ICCTA defines “transportation” as including any “property, ... instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail,” which necessarily includes railroad tracks. 49 U.S.C. § 10102(9).

Because the STB’s jurisdiction over claims concerning operation or abandonment of railroad tracks is exclusive, Pennsylvania courts lack subject matter jurisdiction over such claims. ***Strasburg Scooters, LLC***, 210 A.3d at

1069. Plaintiff's quiet title action is predicated on the claim that Defendant abandoned the railroad tracks that are on the Property. Amended Complaint ¶¶17-34, 45-68.²

Plaintiff argues that the railroad tracks on the Property are not subject to the STB's jurisdiction because Defendant is allegedly not a rail carrier. The STB, however, has held that Defendant is a rail carrier with respect to its tracks running from north of the Property to south of the Property and that those tracks connected to Conrail tracks and were used to transport "approximately 2,894 carloads annually, of predominantly chemicals, intermodal containers, and import-export freight." ***Philadelphia Belt Line Railroad Co. v. Consolidated Rail Corp.***, STB Docket No. FD 32802, 1996 WL 362996, at *1-*2 (STB July 2, 1996). Although the STB dismissed Defendant's complaint in that case, it did so on the ground that Defendant was not entitled to relief and not because the STB lacked jurisdiction. ***Id.***, 1996 WL 362996, at *5-*6.

² While Plaintiff also alleged a claim that Defendant does not have a valid right of way because Plaintiff's deed did not state that the Property was subject to Defendant's right of way, Amended Complaint ¶¶10-13, 39-44, Plaintiff has subsequently admitted that its ownership of the Property is subject to Defendant's right of way. Plaintiff's Verified Statement in Support of STB Petition at 1-2 (stating under penalty of perjury that Plaintiff "purchased the Property subject to an existing railroad right-of-way easement in favor of the Philadelphia Belt Line Railroad Company ("PBL") which is 33 feet wide and runs the length of two parcels of the Property in a north-south direction for 2,719 feet").

Philadelphia Belt Line Rail Road Co. - Petition for Declaratory Order, STB Docket No. FD 35345 (Aug. 3, 2010), does not support Plaintiff's claim that the STB lacks jurisdiction over the tracks on the Property. In that case, the STB held that it did not have jurisdiction over Defendant's right of way in a different part of Philadelphia because no railroad tracks had been constructed on that portion of Defendant's right of way and Defendant was therefore not a rail carrier with respect to its right of way at the location. ***Id.***, slip op at 3-6. Here, in contrast, Plaintiff admits that there are railroad tracks on Defendant's right of way on the Property. Plaintiff's Verified Statement in Support of STB Petition at 1-2.

Plaintiff also argues that the trial court erred in ruling on the jurisdictional issue without discovery. Plaintiff, however, did not request any discovery on the issue of jurisdiction before the trial court ruled on the preliminary objections. Rather, it argued that the trial court should overrule the preliminary objections without discovery. Plaintiff's Opposition to Preliminary Objections ¶¶ 28-46; Plaintiff's Memorandum in Opposition to Preliminary Objections at 8-9, 17-20. The only reference that Plaintiff made to discovery in its response to Defendant's preliminary objections was in response to a different preliminary objection, a demurrer to one count of the complaint, and concerned merits discovery. Plaintiff's Memorandum in Opposition to Preliminary Objections at 14.

Moreover, given the STB's ruling that Defendant is a rail carrier with respect to its railroad tracks in the part of Philadelphia that includes the Property, ***Philadelphia Belt Line Railroad Co. v. Consolidated Rail Corp.***, 1996 WL 362996, at *1-*2, and the STB's exclusive jurisdiction over rail carriers' railroad tracks, we believe that remand for jurisdictional discovery would be inappropriate because any determination that there are facts that remove these tracks from the STB's jurisdiction must be made by the STB, not by our courts. Indeed, Plaintiff recognizes that deferring to the STB is an appropriate way of resolving this jurisdictional issue. Not only has Plaintiff sought both a ruling from the STB that the STB lacks jurisdiction over the tracks at issue here and discovery on the jurisdictional issue in that STB proceeding, STB Petition at 2, 5 n.13, 15-17, 21-22, but Plaintiff has represented to this Court that the jurisdictional question here "presents critical and complex factual and legal issues that are within the STB's expertise." Appellant's Application for Stay at 5.

Because the STB has held that Defendant is a rail carrier, Defendant's railroad tracks on the Property are within the exclusive jurisdiction of the STB unless and until the STB, in its expertise, concludes that there are particular facts concerning these tracks that remove them from its jurisdiction. To date, the STB has made no determination that it lacks jurisdiction over Defendant's tracks on the Property. The trial court therefore properly concluded that it lacked subject matter jurisdiction over this action seeking an adjudication that

Defendant's railroad tracks on the Property have been abandoned, and its dismissal of this action without prejudice must be affirmed.

In its second issue, Plaintiff contends that the trial court erred in allegedly determining that the tracks on the Property are "side tracks" and in ruling on the substance of the federal requirements for abandonment. We conclude that the first of these claims fails because it is an inaccurate characterization of the trial court's rulings and that the second contention has merit, but is not grounds for reversal of the trial court's order.

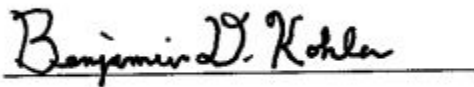
Contrary to Plaintiff's arguments, the trial court did not make any finding that Defendant's railroad tracks on the Property are "side tracks." The only references to "side tracks" in the trial court's order are quotes from two cases and are not a characterization of the tracks at issue here. Trial Court Order at 1-2. Rather, the trial court stated in its order that it lacks subject matter jurisdiction because the ICCTA "completely preempts state action when it comes to determining if a railroad has abandoned it[s] tracks," not that only determinations concerning "side tracks" are preempted. **Id.** at 1. The only reference to "side tracks" in the trial court's opinion is in a description of Section 10501(b) setting forth the broad range of types of railroad tracks that are subject to STB jurisdiction. Trial Court Opinion at 4. Moreover, the opinion makes clear that the trial court's ruling that it lacked jurisdiction was based on its conclusion that the STB has exclusive jurisdiction over abandonment of "railroad tracks." **Id.** at 1-4, 7.

In contrast, Plaintiff's assertion that the trial court made statements in its opinion concerning the federal requirements for abandonment is supported by the record. Trial Court Opinion at 4-5. Whatever the accuracy or inaccuracy of the trial court's statements, the trial court lacked jurisdiction to reach the issue of which federal abandonment procedures and requirements apply to these tracks because that is a matter within the STB's exclusive jurisdiction. Those statements are thus without legal effect and the issue of what requirements for abandonment apply to these railroad tracks is for the STB to decide. Nothing in the trial court's order, however, made any ruling concerning the procedures or requirements for abandonment that apply to these tracks under the ICCTA. This argument is therefore not a basis for reversal of the trial court's order.

For the foregoing reasons, we conclude that the trial court correctly held that the STB has exclusive jurisdiction over Plaintiff's claims concerning the railroad tracks at issue in this action and affirm its order dismissing this action for lack of subject matter jurisdiction.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 3/25/2024

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of April, 2024, copies of the foregoing Supplement to Petition for Declaratory Order were served by electronic mail on the parties of record on the official service list for Docket No. FD 36710.



Thomas W. Wilcox