

SERVICE DATE – JANUARY 23, 2025

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36799

UTAH DEPARTMENT OF TRANSPORTATION—
PETITION FOR DECLARATORY ORDER

Digest:¹ The Board grants a request from the Utah Department of Transportation for an order declaring that the previous owner of a railroad right of way consummated the abandonment authority granted by the Board's predecessor agency.

Decided: January 22, 2025

By petition filed on July 29, 2024, the Utah Department of Transportation (UDOT) seeks a declaratory order determining that a railroad right of way formerly owned by the Denver and Rio Grande Western Railroad Company (DRGW), an approximately 22-mile portion of the Provo Canyon Branch from milepost 5.90 near Olmstead, Utah, to the end of the branch line at milepost 28.05 at Heber, Utah (the ROW),² has been abandoned. (Pet. 3.) As discussed in more detail below, the Board concludes that abandonment of the ROW was consummated and the Board therefore lacks jurisdiction over the ROW, which is no longer part of the interstate rail network.

BACKGROUND

Attached to UDOT's petition is a July 29, 1969, certificate and order by the Board's predecessor, the Interstate Commerce Commission (ICC), permitting abandonment of the ROW subject to the employee protective conditions set forth in Chicago, Burlington & Quincy Railroad Abandonment (Burlington), 257 I.C.C. 700 (1944). (Pet., Ex. 2 at 23-24 (Denver & Rio Grande W. R.R. Aban. Between Olmstead & Heber, Utah (July 1969 Order), FD 25625 (ICC served July 29, 1969)).) The July 1969 Order provided that, to exercise the abandonment authority, DRGW would need to advise the ICC in writing of the date the abandonment took

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 UDOT states that the ROW is "located in portions of Lots 4 and 5, in the portion of the west half of the Southeast Quarter of Section 13, Township 5 South, Range 3 East, Salt Lake Base and Meridian, lying between the centerline of US-189 and the centerline of Provo River." (Pet. 1.)

place and submit two copies of the journal entries showing that the line had been retired from service.³ (Pet., Ex. 2 at 24.) Under the July 1969 Order, DRGW was required to exercise its abandonment authority “within one year,” i.e., by July 29, 1970. (*Id.*) Also attached to UDOT’s petition is a letter from DRGW that the ICC stamped as received on September 19, 1969. (*Id.*, Ex. 2 at 25.) The letter states that DRGW exercised the abandonment authority on September 3, 1969, cancelled its tariffs, and submitted two copies of the journal entries showing retirement of the line from service. (*Id.*)

According to the petition, DRGW purported to transfer its interest in the ROW to the Utah State Road Commission in January 1971, and use of the ROW has continued in some capacity since that time, including operation of the “Heber Creeper” for scenic and tourist service. (Pet. 4.) UDOT states that it is currently cooperating with the Heber Valley Historic Railroad Authority, an independent state agency, “to construct a multi-use path and replace the tracks” within the ROW. (*Id.*; *see id.*, Ex. 2 at 11.) According to UDOT, while the ROW was being cleared for that project, beneficiaries of certain trusts (the Trusts) sought to stop construction and claimed interest in real property where the ROW is located. (*Id.* at 2, 4.) This led to a dispute in the United States District Court for the District of Utah (District Court). *See Utah Dep’t of Transp. v. Oveson*, No. 2:23-cv-00789-JNP-DBP (D. Utah filed Oct. 30, 2023).

In the District Court, the Trusts moved to stay or dismiss the action pending a Board referral to determine whether the ROW was abandoned. (*See* Pet. 5, Ex. 1 at 7.) The District Court granted the motion to stay and referred the abandonment issue to the Board, reasoning that the July 1969 Order subjected abandonment of the ROW to the Burlington conditions and that the Board retains exclusive jurisdiction to determine whether those conditions were satisfied. (*Id.*, Ex. 1 at 7-9.) Pursuant to the District Court’s referral, UDOT filed the petition in this matter.

The Trusts did not file a reply to UDOT’s petition. *See* 49 C.F.R. § 1104.13(a) (providing 20 days for a party to reply to a pleading). On January 7, 2025, however, the Trusts and UDOT filed a Joint Stipulation “affirming that the [ROW] has been abandoned, and any conditions associated with this abandonment have been met.” (Joint Stipulation 3.) The parties argue that DRGW employees “[m]ost likely . . . were not affected concerning the abandonment” because there was no rail service over the ROW and that “a separate process [] ensures the labor protective conditions are met.” (*Id.* at 4.) In the Joint Stipulation, UDOT and the Trusts request that the Board issue, on an expedited basis, a determination that abandonment has occurred and that the Board does not have jurisdiction over the ROW. (*Id.*)⁴

³ In this context, “retirement” refers to consummation of abandonment authority. *See Black Hills Transp.—Modified Rail Certificate*, FD 34924, slip op. at 5 (STB served Jan. 27, 2010). The submission of journal entries indicating the intent to retire a line was “the approach followed at that time to inform the agency when an abandonment had been consummated.” *Id.*

⁴ In light of this joint request for an expedited determination, and because the Board is granting UDOT’s petition for declaratory order, the Board will deny UDOT’s request to establish a procedural schedule as moot.

DISCUSSION AND CONCLUSIONS

Under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321, the Board may issue a declaratory order to terminate a controversy or remove uncertainty. The Board has broad discretion in determining whether to issue a declaratory order. 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, 675 (1989). For the reasons discussed below, the Board will issue a declaratory order finding that the abandonment authority granted by the ICC in the July 1969 Order was consummated and that the Board does not have jurisdiction over the ROW.

For lines authorized for abandonment before 1997,⁵ the Board determines whether abandonment authority was consummated on a case-by-case basis by evaluating all the facts and circumstances to determine the line owner's intent. See Beaufort R.R.—Modified Rail Certificate, FD 34943, slip op. at 6 (STB served Mar. 19, 2008).⁶ In determining whether there was an intent to consummate abandonment, the Board looks to the rail line owner's actions, including both stated intentions and various physical acts. See Md. Transit Admin.—Aban. Exemption—in Somerset Cnty., Md., AB 590 (Sub-No. 1X), slip op. at 3 (STB served May 14, 2015).

The record shows that DRGW intended to abandon the ROW. In its September 1969 letter, DRGW advised the ICC that the ROW was abandoned on September 3, 1969, well within the one-year period provided by the ICC to exercise the abandonment authority. (See Pet., Ex. 2 at 24-25.) DRGW's letter also indicates that it cancelled its tariffs and submitted two copies of the relevant journal entries—a submission that was only required if DRGW exercised the authority granted in the July 1969 Order. (*Id.*, Ex. 2 at 25; see *id.*, Ex. 2 at 24.) Additionally, DRGW purported to transfer its interest in the property to the Utah State Road Commission in January 1971, further demonstrating its intent to take the line out of the interstate rail network. See Beaufort R.R.—Modified Rail Certificate, FD 34943, slip op. at 6-7 (“[W]hen determining whether an abandonment has been consummated, the Board looks for a physical act which shows a clear intention on the part of the rail line owner to remove the line from the national rail system and relinquish the property interest.”). In these circumstances, the Board finds that abandonment of the ROW, as authorized by the July 1969 Order, was

⁵ In 1997, the Board established a rule requiring that a railroad authorized to abandon a line file a “notice of consummation” within one year of the service date of a decision authorizing the abandonment unless there remain at that time any outstanding conditions that are barriers to consummation. 49 C.F.R. § 1152.29(e)(2). If any such barriers to consummation remain at the end of the one-year period, the railroad must file the notice of consummation within 60 days after satisfaction, expiration, or removal of the last such barrier. *Id.* Per the notice of consummation, the railroad “signif[ies] that it has exercised the authority granted and fully abandoned the line.” *Id.* Such notice is “deemed conclusive on the point of consummation.” *Id.*

⁶ Accordingly, although UDOT and the Trusts filed a Joint Stipulation indicating an agreement regarding the status of the abandonment, the Board will independently analyze the facts and circumstances here to determine whether abandonment of the ROW was consummated.

consummated and that the Board has no jurisdiction over the ROW because it is no longer part of the interstate rail network.

It is not necessary for the Board to determine whether DRGW satisfied the Burlington conditions, as UDOT requested pursuant to the District Court referral, because employee protective conditions are not barriers to consummation of abandonment authority. Rather, the conditions are intended to protect employees affected by consummation of certain agency-authorized transactions, including rail line abandonments. See 49 U.S.C. § 10903(b)(2). “Obviously the effect of any abandonment upon employees cannot be determined definitely until the abandonment is actually accomplished,” Burlington, 257 I.C.C. at 704, and thus employee protective conditions generally are triggered by events resulting from the abandonment. See Chi. & N. W. Transp. Co.—Aban.—near Dubuque & Oelwein, Iowa (CNW), 3 I.C.C.2d 729, 729-30 (1987) (stating that, “as a result of the [rail line] abandonments,” a rail carrier abolished an employee’s job and that employee claimed benefits under the agency-imposed employee protective conditions); see also Atl. Richfield Co.—Control—Butte, Anaconda & Pac. R.R. (BAP), FD 28490 (Sub-No. 1), slip op. at 8 (ICC served Mar. 2, 1988) (explaining that, for an employee to be entitled to the applicable employee protective benefits, “there must be a reasonably direct causal connection between the transaction and the injury sustained”). Such events may even occur years after the transaction closes. See Burlington, 257 I.C.C. at 705 (establishing a four-year protective period). Accordingly, a rail line owner need not satisfy the employee protective conditions before consummating abandonment authority.

Indeed, the Board generally does not become involved in individual disputes arising out of employee protective conditions. “Once protective conditions have been imposed, our power of review is limited” and individual disputes are typically referred to arbitration.⁷ Bell v. W. Md. Ry., 366 I.C.C. 64, 67 (1981); see BAP, FD 28490 (Sub-No. 1), slip op. at 6 (noting that the ICC “consistently refused to become involved in individual disputes arising under employee protective conditions” where arbitration was prescribed as a remedy). Therefore, even if a dispute had arisen under the Burlington conditions imposed by the July 1969 Order, it is unlikely that the ICC would have considered it.⁸ Regardless, evidence pertaining to any such dispute would not impact the Board’s finding that DRGW abandoned the ROW because, as explained above, the conditions were not barriers to consummation of abandonment of the ROW and an employee would not be entitled to protective benefits unless the abandonment was consummated.

⁷ However, if they are appealed, the Board may review arbitration decisions awarding benefits under conditions imposed by the agency. CNW, 3 I.C.C.2d at 733.

⁸ UDOT does not allege that any such dispute occurred. UDOT argued before the District Court that the “conditions were a ‘non-issue’” and had been satisfied, and the Trusts argued that the employee protective conditions “were likely met.” (Pet., Ex. 1 at 9.) Further, in the Joint Stipulation, UDOT and the Trusts state that the employee protective conditions “were in fact met.” (Joint Stipulation 3.)

It is ordered:

1. UDOT's petition for declaratory order is granted; the Board finds that abandonment of a portion of the Provo Canyon Branch from milepost 5.90 near Olmstead, Utah, to the end of the branch line at milepost 28.05 at Heber, Utah, as authorized in Docket No. FD 25625, was timely consummated and that the Board has no jurisdiction over the ROW.

2. UDOT's request to establish a procedural schedule is denied.

3. This decision is effective on its service date.

4. A copy of this decision will be mailed to:

The Honorable Jill N. Parrish
United States District Court
District of Utah
Orrin G. Hatch United States Courthouse
351 South West Temple, Rm. 1.100
Salt Lake City, Utah 84101

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