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SERVICE DATE – AUGUST 19, 2010

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35246

JAMES RIFFIN—ACQUISITION AND OPERATION—VENEER SPUR—IN BALTIMORE
COUNTY, MD.

Decided: August 18, 2010

On May 6, 2009, James Riffin filed an application to acquire and operate, under 49 U.S.C. § 10902, approximately 400 feet of track formerly known as the Veneer Mfg. Co. Spur (Veneer Spur) located at milepost 15.05 on the Cockeysville Industrial Track (CIT), in Cockeysville, Baltimore County, Md. On the same date, Riffin filed a petition for declaratory order posing the following questions: (1) did Riffin become a common carrier by rail when the Board authorized him to acquire a line of railroad in Allegany County, Md. (Allegany Line);¹ and (2) would Riffin's operation of the Veneer Spur constitute operating an additional line of railroad. James Riffin—Petition for Declaratory Order, FD 35245.

By decision served May 29, 2009, this proceeding was held in abeyance pending resolution of the questions before the Board in FD 35245. In a decision served September 15, 2009, in that docket, the Board found that: (1) Riffin is not a rail carrier because he lacks the ability to provide rail service on the Allegany Line, and (2) because Riffin is not a rail carrier and does not operate any rail line, his proposal to operate the Veneer Spur does not qualify as the operation of an "extended or additional rail line" under 49 U.S.C. § 10902.

On October 5, 2009, Riffin filed a motion asking the Board to postpone rendering a further decision in this proceeding on the basis of its ruling in FD 35245 until: (1) the United States Court of Appeals for the District of Columbia Circuit ruled on a pending Riffin appeal that could affect his status as a carrier, and (2) the Board resolved the status of Riffin's offer of financial assistance (OFA) to acquire and operate a portion of rail line under 49 U.S.C. § 10904, in Consolidated Rail Corp.—Aban. Exemption—In Hudson County, N.J., AB 167 (Sub-No. 1190X).

The court case and AB 167 (Sub-No. 1190X) have now been resolved in a manner adverse to Riffin's position that he is a carrier. In an unpublished decision issued January 22, 2010, in James Riffin v. Surface Transportation Board and United States of America, U.S.C.A.,

¹ By decision served on August 18, 2006, the Board permitted Riffin to substitute for his then-corporate affiliate, WMS, LLC, as the prospective purchaser of the 8.54-mile Allegany Line. CSX Transp. Inc.—Aban. Exemption—In Allegany County, Md., AB 55 (Sub-No. 659X) (STB served Aug. 18, 2006).

D.C. Cir., No. 08-1208, the court upheld a prior Board decision refusing to compel CSX Transportation, Inc., to reissue the deed to the Allegany Line to Riffin, which, had the Board granted Riffin's request, could have made him a carrier.² In a decision served May 17, 2010 in AB 167 (Sub-No. 1190X), the Board exempted the entire Lehigh Valley Line from the OFA provisions of 49 U.S.C. § 10904. Therefore, Riffin will not become a carrier on the Lehigh Valley line because there is no line for him to potentially acquire pursuant to 49 U.S.C. § 10904.

As a result of these decisions, there is no longer any reason to hold this proceeding in abeyance. The application will be dismissed. First, Riffin has sought to acquire the Veneer Spur under 49 U.S.C. § 10902, which applies only to Class II or III carriers, and the Board has determined that Riffin is not a rail carrier. Second, assuming the Veneer Spur was connected to the CIT (and thus the national rail system) when Riffin filed his application, it no longer is. In a decision served April 5, 2010, the Board authorized Norfolk Southern Railway Company (NSR) to abandon the freight operating rights on a portion of the CIT that included milepost 15.05. Norfolk Southern Ry. Co.—Petition for Exemption—In Baltimore City and Baltimore County, Md., AB 290 (Sub-No. 311X) (STB served Apr. 5, 2010), stay den. (STB served May 4, 2010). On May 5, 2010, NSR filed, in that docket, a notice indicating it was consummating its abandonment authority, effective that day. The Veneer Spur thus cannot be considered a part of the national rail system and is not subject to the Board's authority.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Riffin's application to acquire and operate the Veneer Spur is dismissed for the reasons discussed above.
2. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

² The Board issued its decision in CSX Transp. Inc.—Aban. Exemption—In Allegany County, Md., AB 55 (Sub-No. 659X) (STB served Apr. 24, 2008). CSXT had consummated the sale in July 2006 and had issued the deed to WMS.