

BEFORE THE
SURFACE TRANSPORTATION BOARD

ENTERED
Office of Proceedings
October 1, 2019
Part of
Public Record

ALONZO BENTON	:	
	:	
<i>Complainant</i>	:	STB DOCKET NO. 42166
	:	
v.	:	
	:	
CSX TRANSPORTATION	:	
	:	
<i>Defendant</i>	:	

**PLAINTIFF'S ANSWER TO CSX TRANSPORTATION, INC.'S
MOTION TO DISMISS COMPLAINT**

ALONZO BENTON
2432 S Frazier Street
Philadelphia, PA 19143

Complainant

JOHN J. LEONARD
LEONARD, SCIOLLA, LEONARD & TINARI, LLP
2 Penn Center, Suite 1910
1500 John F. Kennedy Blvd
Philadelphia, PA 19102
(215) 567-1530 (office)

Attorney for Complainant

PLAINTIFF'S ANSWER TO CSX TRANSPORTATION'S MOTION DISMISS
COMPLAINT

Plaintiff, Alonzo Benton, ("Plaintiff") respectfully moves the Surface Transportation Board (the "Board") to deny CSX Transportation, Inc.'s ("CSXT") Motion to Dismiss Complaint. By way of background, this matter is currently pending in the Federal Court for the Eastern District of Pennsylvania at Alonzo Benton v. CSX Transportation, Inc. No.: 19-0109 in Philadelphia. In the Federal Court action, CSXT argued in a similar motion to dismiss that Plaintiff's personal injury/tort claims could not be brought in that forum, and *must* be brought in front of the Surface Transportation Board.¹ Although the motion to dismiss and opposition thereto were filed in February 2019, there has yet to be a ruling by the Court.

As the motion is still pending, Plaintiff was compelled to file a complaint in front of the Board to preserve his claims should the Federal District Court rule in CSXT's favor. CSXT now argues that under Interstate Commerce Commission Act of 1995 ("ICCTA"), Plaintiff cannot bring his claims in front of the Board. If CSXT's arguments were to be accepted, it would leave Plaintiff with no available remedy. Plaintiff respectfully requests that the Surface Transportation Board stay this action pending the outcome of the litigation in the Federal District Court, which should be dispositive of this claim.

ARGUMENT

Defendant CSXT argues in its Motion to Dismiss that Plaintiff has failed to make a claim upon which relief can be granted. Plaintiff initiated the action in front of the Board as a result of CSXT's representations to the Federal Circuit Court that the Board had exclusive jurisdiction over his claims. In fact, CSXT argued: "ICCTA preempts Plaintiff's claims because, based on

¹ See CSXT's Motion to Dismiss filed in the Eastern District Court of Pennsylvania attached hereto as Exhibit "A."

the factual assertions alone, they target matters within the exclusive jurisdiction of the STB—the ‘operation and construction of rail carrier tracks and facilities.’” Exhibit A at *6. This argument, coupled with its current argument, amounts to Defendant CSXT asking to ‘have it both ways.’ CSXT is requesting that Plaintiff’s claim against it be dismissed both in the federal action and this current action—effectively rendering it judgment proof. This result is precisely the type of “absurd” result to be avoided by the courts when interpreting statutes. “Interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available.” *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982). It can hardly be argued that the legislative intent of ICCTA was to render rail carriers judgment proof—as CSXT suggests through its dual filing of motions to dismiss. To avoid such an absurd result, Plaintiff requests that the Board stay this matter until such time the Federal Circuit Court determines the appropriate forum for Plaintiff’s claims.

PRAYER

For the foregoing reasons, Plaintiff requests the Board to (1) deny CSXT's Motion to Dismiss the Complaint and (2) stay the action until such time the Eastern District of Pennsylvania makes a ruling regarding the appropriate forum in which Plaintiff may bring a claim against CSXT.

Respectfully submitted,

**LEONARD, SCIOLLA,
LEONARD & TINARI, LLP**

BY: 

John J. Leonard, Esquire (PA ID #21745)

Two Penn Center, Suite 1910

1500 JFK Boulevard

Philadelphia, PA 19102

(215) 567-1530

Attorney for Complainant

Dated: October 1, 2019

CERTIFICATION OF SERVICE

I, John J. Leonard, Esquire, certify that I have this day served copies of this document upon all parties of record in this proceeding, by First-Class Mail at the following address:

CSX Transportation, Inc.
c/o CT Corporation System
1015 15th Street, NW
Suite 1000
Washington, District of Columbia 20005

Executed on: 10/1/19

Signature:

A handwritten signature in black ink, appearing to read "John J. Leonard", written over a horizontal line.