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EXPEDITED CONSIDERATION REQUESTED
BEFORE THE SURFACE TRANSPORTATION BOARD
FINANCE DOCKET NO.: 34997



ENTERED
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Part of
Public Record

PETITION OF JAMES RIFFIN
FOR EXPEDITED DECLARATORY ORDER

1. On February 9, 2007, Petitioner, James Riffin, ("Petitioner"), a Class III rail carrier,¹ petitioned the Surface Transportation Board ("Board"), pursuant to the Board's authority under 5 U.S.C. §554 (e) and 49 U.S.C. §721 (b) (4), to enter a declaratory order to terminate a controversy, and / or to remove uncertainty, as to the preemptive reach of the Interstate Commerce Act. The Petitioner asked the Board to specifically address the following issues:

- (1) Does the Interstate Commerce Act ("ICA") completely preempt State and local regulation of transportation by rail carrier;
- (2) Is the construction, acquisition, maintenance and / or operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or of facilities, including rail carrier yards, rail carrier freight depots, and rail carrier maintenance-of-way ("MOW") facilities, subject to the exclusive jurisdiction of the Board;
- (3) Are the remedies provided in 49 U.S.C. §§10101-11908 with respect to regulation of rail transportation, exclusive and does these remedies preempt the remedies provided under State or local law;

¹ See *CSX Transportation, Inc. – Abandonment Exemption – In Allegany County, MD*, STB Docket No AB-55 (Sub-No 659X) (STB served August 18, 2006), *James Riffin d/b/a The Raritan Valley Connecting Railroad – Acquisition and Operation Exemption – On Raritan Valley Connecting Track*, STB Finance Docket No 34963, (STB served December 20, 2006), and *James Riffin d/b/a The Northern Central Railroad – Acquisition and Operation Exemption – in Baltimore City, MD*, STB Finance Docket No 34982, (STB served January 26, 2007)

(4) Are State or local permitting or preclearance requirements of any kind, including building permits, zoning ordinances, and environmental and land use permitting requirements, that would affect the construction, acquisition, maintenance and / or operation, of rail lines, spur, industrial, team, switching, or side tracks, or rail carrier facilities, including rail carrier yards, rail carrier freight depots, and rail carrier MOW facilities, completely preempted by the ICA; and

(5) Is what constitutes a line of rail, spur, industrial, team, switching, or side track, or a rail carrier facility, including a rail carrier yard, rail carrier freight depot, or a rail carrier MOW facility, to be determined exclusively by the Board

2. To date, the Board has not rendered a decision.

THE CONTROVERSY

3. The Petitioner needs to repair three washouts on his line of railroad situated in Allegany County, Maryland. The Petitioner needs to construct 2,000 feet of passing track, and a 1,000-foot siding, in order to be able to interchange with CSX. The Petitioner also needs to construct rail car inspection and maintenance facilities, rail yards, and a transload / intermodal facility along his Line. Allegany County permitting individuals, and the Allegany County office of law, have told the Petitioner that the Code of Allegany County does not permit rail carriers (or anyone else, except Federal, State or local governmental entities) to do any kind of construction activity without first obtaining a permit from the County. Petitioner's request for a temporary restraining order enjoining Allegany County from attempting to regulate Petitioner's rail-carrier-related construction activities, was denied by the Allegany County circuit court on **October 17, 2007**.

4. Allegany County has taken the position that Petitioner must seek, then obtain, permission from the County **prior to beginning any type of construction activity**. In *CSX Transp . Inc – Petition for Declaratory Order*, STB Docket No. 34662, decided March 14, 2005, at p. 6, the Board declared.

“However, the courts have made clear that state or local permitting or preclearance requirements of any kind that would affect rail operations (including building permits,

zoning ordinances, and environmental and land use permitting requirements) are preempted. See, e g , *City of Auburn*, 154 F.3d at 1029-31; *Soo, Austell, Ridgely Park* ” [Emphasis added]

5. Presently, Petitioner is being barred by Allegany County (by requiring Petitioner to apply for a permit, which the County is not obligated to issue) from fulfilling his common carrier obligation to maintain his way. And until Petitioner repairs the three washouts on his way, he cannot provide rail service on his Line. And until Petitioner constructs a passing and spur track, he cannot interchange with CSX at the beginning of his Line. [There is only one track where Petitioner’s Line connects with CSX’s line.] And until Petitioner constructs a locomotive / rail car inspection and repair facility, Petitioner cannot comply with FRA regulations regarding the inspection of locomotives. And until Petitioner can construct additional rail yard tracks and transloading facilities at the end of his Line, Petitioner cannot transload goods from rail cars to trucks, or from trucks to rail cars.

BACKGROUND INFORMATION

6. On **December 14, 2005**, the Board authorized WMS L.L.C., a corporate affiliate of Petitioner, authority to acquire and operate a line of railroad located in Allegany County, Maryland, which line was the subject of *CSX Transportation, Inc – Abandonment Exemption -- In Allegany County, MD*, STB Docket No. AB-55 (Sub-No. 659X).

7. On **June 20, 2006**, the Petitioner sent to CSX, the former owner of the Line, the balance of the purchase price for the Line.

8. On **August 18, 2006**, the Board granted Petitioner, in his individual capacity, authority to acquire and operate the Georges Creek Line of Railroad, which is located in Allegany County, Maryland. See footnote 1.

9. During the month of **September, 2007**, your Petitioner took delivery of approximately 6,000 linear feet of track material, including a number of switches. This track material was obtained for the purpose of constructing a passing track, a spur track, and additional yard tracks, on Petitioner’s Georges Creek Line.

10. The Line had three washouts when Petitioner acquired the Line. Since Petitioner acquired the Line, additional railbed has been eroded by the adjacent creek. The washouts were so great, the entire track was suspended in the air. To prevent the track from falling into the creek, Petitioner cut the rails, then pulled the rails onto solid ground. No local contractors have been willing to perform any type of work on the washed-out railbed, since Petitioner does not have a permit from Allegany County to do any type of grading or earth-moving work.

11. Allegany County appears to have two standards: CSX has never been required to obtain a permit prior to doing any type of track or way maintenance. Your Petitioner, on the other hand, is being required to obtain a full panoply of permits prior to doing any type of track or rail-carrier facility work.

12. Allegany County permitting individuals have indicated that until the Board, or a Court, states Federal law preempts local regulations as they pertain to transportation by rail carrier, they are obligated to demand that all non-governmental entities (except CSX) obtain appropriate permits prior to beginning any type of construction activity.

13. WHEREFORE, your Petitioner would implore the Board to render a decision in this proceeding at its earliest convenience, so that your Petitioner may begin to reconstruct his way, so that Petitioner may begin to construct a passing and spur track, so that Petitioner can interchange rail traffic with CSX; so that Petitioner can begin to construct his yard tracks, transload facility, and locomotive / rail car inspection, maintenance and repair facility, and so that Petitioner may begin to fulfill his common carrier obligation to maintain his way and to offer rail service on his Line.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Riffin', written in a cursive style.

James Riffin