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February 4, 2008

Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D. C. 20423

RE: Docket No. AB-55 (Sub-No. 659X), *CSX Transportation, Inc.*—
Abandonment Exemption—in Allegany County, MD

Dear Acting Secretary Quinlan:

Enclosed for efilng is the response of CSX Transportation, Inc. to the Motion to Compel filed by James Riffin on January 14, 2008.

Thank you for your assistance. If you have any questions please call or email me.

Sincerely yours



Louis E. Gitomer
Attorney for: CSX Transportation, Inc.

Enclosure

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB-55 (Sub-No. 659X)

CSX TRANSPORTATION, INC.—ABANDONMENT EXEMPTION—
IN ALLEGANY COUNTY, MD

REPLY OF CSX TRANSPORTATION, INC. TO MOTION TO COMPEL

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Dated: February 4, 2008

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. AB-55 (Sub-No. 659X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–
IN ALLEGANY COUNTY, MD

REPLY OF CSX TRANSPORTATION, INC. TO MOTION TO COMPEL

CSX Transportation, Inc. (“CSXT”) files this Reply to the Motion to Compel (the “Motion”) filed by James Riffin (“Mr. Riffin”) on January 14, 2008.¹ CSXT respectfully requests the Surface Transportation Board to deny the Motion.

Mr. Riffin has an interesting history before the Surface Transportation Board (the “Board”). However, this proceeding is not about that history. In the instant proceeding, Mr. Riffin is seeking to further his inexplicable desire to personally become a railroad subject to full regulation by the Board, not to mention the Department of Transportation (“DOT”) and the Federal Railroad Administration (“FRA”), under the Railroad Retirement Act, the Railroad Unemployment Insurance Act, and the Federal Employers Liability Act, among other railroad specific laws, and subject to the rules of the Association of American Railroads (“AAR”).

¹ Pursuant to 49 C.F.R. §1104.13 a reply must be filed within 20 days. However, when a pleading is due to be filed on a Saturday, Sunday, or legal holiday in the District of Columbia, the responsive pleading must be filed by the end of the next day which is not a Saturday, Sunday, or legal holiday in the District of Columbia. 49 C.F.R. §1104.7(a). Since the response to the Motion would be due on Sunday February 3, 2008, CSXT is filing this Reply on Monday February 4, 2008.

The problem that Mr. Riffin has brought to the Board for resolution is a problem of his own making and capable of easily being solved by Mr. Riffin.² This is the ideal situation for the Board to observe those precepts of the Rail Transportation Policy of 49 U.S.C. 10101 to minimize the need for federal regulatory control over the rail transportation system (10101(2)) and to encourage honest and efficient management of railroads (10101(9)).

BACKGROUND

On August 5, 2005, CSXT filed a Notice of Exemption under 49 C.F.R. §1152.50 to abandon an 8.54-mile rail line on its Southern Region, Huntington Division East, Georges Creek Subdivision, between Morrison, Milepost BAI 27.0, and Carlos at the end of track, Milepost BAI 18.46, in Allegany County, Maryland (the “Line”).

The Board served a Notice on August 25, 2005. On September 8, 2005, WMS, LLC (WMS), late-filed a formal expression of intent to file an offer of financial assistance (“OFA”) to purchase the Line, to which CSXT did not object. The Board served a decision on September 23, 2005 tolling the time for WMS to file an OFA.

On October 21, 2005, WMS timely filed an OFA under 49 U.S.C. §10904 and 49 C.F.R. §1152.27(c) to purchase the Line. The Board served a decision on October 26, 2005 accepting the OFA and postponing the effectiveness of the abandonment. Thereafter, CSXT and WMS engaged in negotiations. By letter filed on November 21, 2005, WMS advised the Board that WMS has agreed to accept the purchase price and terms offered by CSXT for the acquisition and operation of the Line. The Board authorized WMS to acquire and operate the line and dismissed

² Indeed, were Mr. Riffin to hire an attorney versed in Maryland real estate law instead of handling that matter *pro se* the problem should be easily resolved.

the notice of exemption effective on the date of the consummation of the sale by decision served December 14, 2005.

CSXT and WMS negotiated a Purchase and Sale Agreement (the “PSA”), which was executed as of March 1, 2006. Thereafter, CSXT agreed to two extensions for closing the transaction despite continuing to incur ownership, maintenance and inspection costs for the Line. On June 6, 2006, CSXT, WMS and Mr. Riffin agreed to the substitution of Mr. Riffin for WMS as the acquiring entity under the OFA. See Attachment 1 (the “Assignment”). Then on June 14, 2006, WMS sought approval from the Board to substitute Mr. Riffin as the purchaser of the Line, after CSXT had consented to the assignment subject to certain conditions, which include compliance with the requirements of the Board, FRA, AAR, and any other necessary government requirements, as well as Mr. Riffin and WMS agreeing to only hold themselves out as a common carrier by railroad for the Line, and that any other holding out elsewhere would require appropriate authority. CSXT received final payment for the Line on June 20, 2006. Allegany County, Maryland was granted an extension of time to respond to the substitution request by decision served July 5, 2006.

Having sought to abandon the Line on August 5, 2005 and since that time continuing to incur ownership, maintenance and inspection costs for the Line and remaining liable for the Line, as of July 5, 2006, CSXT determined that there should be no further delays to closing the transaction. CSXT also determined that transfer to WMS was lawful under the Board’s December 14, 2005 decision.

With funds from WMS in hand, CSXT in good faith issued a deed to WMS (the entity that the Board authorized the Line to be transferred to) (1) in reliance on the representations made to the Board that WMS did exist and the Board's decisions accepting the OFA from WMS and authorizing the transfer of the Line to WMS; (2) in order to end CSXT's liability for the Line and the costs incurred by CSXT for the ownership, maintenance and inspection of the Line; and (3) to permit WMS to act to stabilize the Line, which had deteriorated as a result of the rain storms in the area. CSXT concluded that if there were a problem with WMS operating in the State of Maryland, then WMS and Mr. Riffin could resolve the problem without input from CSXT. Based on the representations made pursuant to the Board's regulations and the Board's decisions, CSXT could not conclude that WMS did not exist. CSXT notified the Board that it had consummated the transaction and provided deeds to WMS on July 10, 2006, terminating CSXT's ownership in the Line and any other property interest that it had in the Line.

CSXT understands that Mr. Riffin has been involved in litigation concerning the Line since it was transferred by CSXT, has not returned the Line to service, and has not recorded the deed to WMS nor been assigned to Mr. Riffin by WMS.

THE MOTION

On January 14, 2008, Mr. Riffin filed the Motion requesting the Board to order CSXT to issue a deed for the Line to Mr. Riffin and to date the deed as of August 18, 2006.

ARGUMENT

CSXT contends that there are both procedural and substantive infirmities with the Motion that warrant its denial. The procedural infirmities are that the Motion is actually a petition to reopen and that this matter is *res judicata*. The substantive infirmities are that Mr. Riffin has not met the criteria for the Board to grant a petition to reopen and that resolution of Mr. Riffin's problem with the deed does not require any action from CSXT or the Board since Mr. Riffin controls WMS and himself.

1. Procedural Issues.

A Motion to Compel under the Board's regulations involves discovery. 49 C.F.R. §1114.31(a). Mr. Riffin and CSXT are not involved in discovery in this proceeding. Indeed, this proceeding terminated upon the payment of the purchase price from WMS to CSXT, CSXT's transfer of the deed to WMS, and the Board's service of the August 18, 2006 decision. This proceeding is administratively final.

Instead, Mr. Riffin appears to be asking the Board to reopen this proceeding and impose additional requirements upon CSXT. As such, CSXT respectfully requests the Board to apply the standards for reopening enumerated at 49 C.F.R. §1115.4 to the Motion.

The relief sought by Mr. Riffin in the Motion was not granted by the Board in response to a very similar request filed by Mr. Riffin on July 12, 2006. These same issues were brought to the Board's attention at that time.

The Board has recognized that “[c]ollateral estoppel” and “*res judicata*,” has the dual purpose of protecting litigants from the burden of relitigating an identical issue with the same party or his privy and of promoting judicial economy by preventing needless litigation. Under the doctrine of *res judicata*, a judgment on the merits in a prior suit bars a second suit involving the same parties or their privies based on the same cause of action. Under the doctrine of collateral estoppel, on the other hand, the second action is based upon a different cause of action and the judgment in the prior suit precludes relitigation of issues actually litigated and necessary to the outcome of the first action. *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 (1979).”³

In the July 12, 2006 filing, Mr. Riffin asked for the same relief as he requested in the Motion. The Board did not grant the relief sought there and under the doctrines of *res judicata* and collateral estoppel should deny the relief sought here.

2. Substantive Issues.

“Under 49 CFR §1115.4, petitions to reopen administratively final actions may be filed at any time. Such petitions must state in detail the respects in which the proceeding involves material error, new evidence, or substantially changed circumstances.”⁴ The Motion does not meet any of the criteria. The Motion repeats the issues raised in Mr. Riffin’s July 12, 2006 filing.

There is no discussion of material error by the Board.

The evidence is the same, except for the Board decision granting Mr. Riffin’s request to be assigned WMS’s rights and obligations.

³ *Santa Fe Southern Pacific Corporation—Control—Southern Pacific Transportation Company*, STB Finance Docket No. 30400 (Sub-No. 21) at 12 (STB served December 10, 1996).

⁴ *Tri-State Brick and Stone of New York, Inc. and Tri-State Transportation, Inc.—Petition for Declaratory Order*, STB Finance Docket No. 34824 at 2 (STB served December 11, 2007).

There are also no substantially changed circumstances except for the litigation that Mr. Riffin has engaged in with Allegany County, which was brought about by Mr. Riffin.

The Motion does not mention the reopening criteria, much less meet them. Indeed, the Motion is a recitation of facts that lead to the inevitable conclusion that neither the Board nor CSXT need to take any action for Mr. Riffin to resolve the purported problem.

Mr. Riffin owns 98 percent of WMS, and therefore controls WMS. CSXT agreed to the assignment of WMS's rights and obligations in the Line, subject to certain conditions, in the agreement contained in Attachment 1. CSXT issued a deed in the name of WMS for the completely valid reasons explained above while awaiting a decision from the Board as to the assignment of the rights and obligations of WMS in the Line to Mr. Riffin.

It appears to CSXT that Mr. Riffin, as the individual controlling WMS can require WMS to issue a deed to Mr. Riffin himself transferring the Line to Mr. Riffin. Neither the Board nor CSXT need to be involved in that process.

The Board has adopted a standard set of closing conditions in the OFA process. The Board imposes other conditions only when agreed upon by the parties.⁵ Neither the PSA nor the Assignment provide for deeding the Line to Mr. Riffin.

⁵ *1411 Corporation-Abandonment Exemption-in Lancaster County, PA*, STB Docket No. AB-581X at 6 (STB served April 12, 2002).

CONCLUSION

No basis has been provided to the Board to alter the consummated OFA sale. CSXT has complied with the Board's decisions and transferred the Line to the party authorized to acquire the Line by the Board. Having consummated the transaction and issued the deed pursuant to the Board's December 14, 2005 decision, CSXT contends that any further transfer of the Line should be left to Mr. Riffin, who is both the party controlling WMS and seeking to have the Line deeded to him. CSXT respectfully requests the Board to deny the relief sought by Mr. Riffin.

Respectfully submitted,



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Dated: February 4, 2008

ATTACHMENT 1

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Betty D. Jones
Manager Real Estate Services

June 6, 2006

VIA OVERNIGHT DELIVERY

Gerald Altizer
WMS, LLC.
P.O. Box 34
Ridgely, West Virginia 26753

To: Bobbi League

Re: 2005-487/AV

Dear Mr. Altizer:

This has reference to Purchase-Sale Agreement dated March 1, 2006, as amended (the "PSA"), between WMS, LLC ("WMS") and CSX Transportation, Inc. ("CSXT"), covering an 8.54-mile line of railroad between milepost BAI 27.0 near Morrison and milepost BAI 18.46 at the end of the track near Carlos, in Allegany County, MD (the "Line").

Pursuant to Section 17 of the PSA, WMS and Mr. James Riffin ("Mr. Riffin") have requested that CSXT consent to the assignment of WMS's rights and obligations under the PSA to Mr. James Riffin and Mr. Riffin's assumption of WMS's rights and obligations under the PSA. In consideration of the mutual promises of the parties hereto, and other good and valuable consideration, CSXT, WMS, and Mr. Riffin agree as follows:

1. CSXT consents to the assignment of all of WMS's rights and obligations under the PSA to Mr. Riffin subject to the following sections 2, 3, and 4.
2. Mr. Riffin agrees to assume all of WMS's rights and obligations under the PSA.
3. WMS and Mr. Riffin agree that before commencing operations over the Line, the owner of the Line, whether it be WMS or Mr. Riffin, shall notify CSXT reasonably in advance of when operations are proposed to commence, will enter into such necessary and appropriate interchange agreements and commercial relationships with CSXT (as the only railroad that connects the Line to the national rail system), and will comply with the necessary Association of American Railroads, Federal Railroad Administration, Surface Transportation Board, and any other necessary governmental requirements.
4. WMS and Mr. Riffin agree that the owner of the Line, whether it be WMS or Mr. Riffin, agrees that it will hold itself out as a common carrier only for the purposes of providing rail service over the Line. Any additional holding out ~~as a railroad~~ in any other part of the United States shall only be made after obtaining appropriate authority to operate from the Surface Transportation Board in that additional locale.

*AS A COMMON CARRIER providing Rail service**NR*

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All other terms and conditions of said Purchase-Sale Agreement, as amended, shall remain in full force and effect.

Please evidence your concurrence to the foregoing by signing all three copies of this letter and returning two executed copies to the undersigned.

Sincerely,

CSX TRANSPORTATION, INC.

By: CSX Real Property, Inc.,

Under the Authority of Property Management Agreement
And Limited Power of Attorney dated as of March 1, 1990

Betty D. Jones
Manager -- Real Estate Services

ACCEPTED this 7th day of June, 2006.

WMS, Inc

By:

Print Name: JAMES RIFFIN

Print Title: MAJORITY / MANAGING MEMBER

ACCEPTED this 7th day of June, 2006.

Mr. James Riffin

By:

Print Name: JAMES RIFFIN

Print Title: SUBSTITUTE PURCHASER georges Peck Line
AB 55-659X

Cc: Bonnie Deckard (Via e-mail)
Dave Geraci (Via e-mail)
Lou Gitomer (Via e-mail)

CERTIFICATE OF SERVICE

I hereby certify that this Reply in Docket No. AB-55 (Sub-No. 659X) was mailed via first class mail postage pre-paid all parties of record.



Louis E. Gitomer
February 4, 2008