



**IN THE COURT OF COMMON PLEAS
COUNTY OF PHILADELPHIA
CIVIL TRIAL DIVISION**

Richmond Waterfront Industrial Park, LLC,	:	March Term, 2022
<i>Plaintiff,</i>	:	No. 02872
	:	
v.	:	Commerce Program
	:	
Philadelphia Belt Line Railroad Company,	:	41 CD 2023
<i>Defendant.</i>	:	

Djerassi, J.

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 1ST JUDICIAL DISTRICT PA
 JUDICIAL RECORDS

OPINION

In this quiet title action, Plaintiff/Appellant Richmond Waterfront Industrial Park, LLC (“RWIP”) appeals from an Order dated December 6, 2022, sustaining Defendant/Appellee Philadelphia Belt Line Railroad Company (“PBL”)’s Preliminary Objection to Count III (abandonment of railroad right-of-way) of Plaintiff’s Complaint for lack of subject matter jurisdiction under Pa. R. Civ. P. 1028(a)(1).

As a procedural matter, the court notes that RWIP filed this appeal with the Commonwealth Court of Philadelphia. Although the Superior Court of Pennsylvania typically reviews orders and judgments on appeal from the Commerce Court, the Commonwealth Court is not precluded from exercising jurisdiction over this appeal. *See* Pa. C.S.A. § 762. The Commonwealth Court may, upon its own motion or upon application of any party, transfer the appeal to the Superior Court. *See* 42 Pa. C.S.A. § 705 and Pa. R. A. P. 752.

RWIP seeks quiet title to a railroad right-of-way claimed by PBL, a rail terminal switching carrier engaged in transportation-related development and real estate leasing in the Port of Philadelphia. PBL’s Preliminary Objection was sustained because federal law grants the federal Surface Transportation Board (“STB”) express and exclusive jurisdiction over actions

concerning the abandonment of railroad tracks. To assert property rights against PBL, the STB must first certify that the tracks occupying PBL's right-of-way on RWIP's property have been abandoned. The state court then has jurisdiction to make a final determination of abandonment and other property claims under state law.

For the reasons set forth below, this court's judgment should, respectfully, be affirmed.

I. Statement of Facts

RWIP acquired their property at 2950 Kirkbride Street, Philadelphia, PA, from Rohm & Haas on or about December 22, 1998. RWIP's recorded deed includes the following legal description of PBL's alleged right-of-way: "to a point for a corner on the Easterly side of Thirty Three foot wide (33.00' wd.) Right-of-Way of the Philadelphia Belt Line Railroad." This right-of-way is referenced three times in the deed.

PBL's railway right-of-way on the property dates to Philadelphia's 1890 Ordinance, which established the PBL franchise in the city. The ordinance granted PBL the right to build and operate tracks from Allegheny Avenue north along the Delaware River, including the tracks on RWIP's property.

RWIP asserts that PBL has not monitored, maintained, or used the tracks on the right-of-way during RWIP's ownership of the property. Accordingly, the tracks exist in a state of disrepair. Remaining sections of intact tracks have gaps, rendering them unusable. RWIP has rented portions of their property for truck and trailer parking, which frequently block remnants of the tracks. In addition, RWIP has completely covered sections of the tracks with gravel so that trucks can more easily traverse the property.

Access to the tracks is limited. The tracks run just beyond the northern end of the property; no terminal point exists here and RWIP maintains a fence and a gate to control access.

Likewise, on the southern and western boundaries of the property, RWIP maintains a gate. To the east of the tracks is the west bank of the Delaware River.

PBL has not asserted any rights to the use of the tracks or the right-of-way. Further, PBL has not disclosed plans to provide railroad, rail carrier, or rail transportation services even if the railway right-of-way was fully intact and accessible.

II. Procedural Background

RWIP filed their Complaint on March 28, 2022, and an Amended Complaint on July 7, 2022. The Amended Complaint included the following counts: (I) PBL does not have any right-of-way, easement, or other property right; (II) RWIP owns the land claimed as a right-of-way through adverse possession; (III) PBL has abandoned any rights they may have had; and (IV) in the alternative to Count II (adverse possession), RWIP has acquired a prescriptive easement.

PBL filed Preliminary Objections to the Amended Complaint on May 18, 2022. PBL objected to Counts I, II, and IV based on demurrer under Pa. R. Civ. P. 1028(a)(4). On Count III (abandonment), PBL objected due to lack of subject matter jurisdiction under Pa. R. Civ. P. 1028(a)(1). On December 6, 2022, the Court overruled PBL's objections to Counts I, II, and IV. On Count III, the Court found that if an action concerns the abandonment of railroad tracks, the state trial court must dismiss the action due to the federal Surface Transit Board's express and exclusive jurisdiction over the matter. The Court thus sustained PBL's Preliminary Objection to Count III and dismissed RWIP's Amended Complaint in its entirety.¹ On January 5, 2023, RWIP filed their appeal from the Court's order.

¹ See Court Order dated December 6, 2022.

III. Discussion

Subject matter jurisdiction is “the power of the court to hear cases of the class to which the case before the court belongs, that is, to enter into inquiry, whether or not the court may ultimately grant the relief requested.” *Harley v. HealthSpark Found.*, 265 A.3d 674, 687, 2021 PA Super 205 (2021) (quoting *Lowenschuss v. Lowenschuss*, 579 A.2d 377, 380 n.2, 396 Pa. Super. 531 n.2 (1990)).

With respect to the subject matter of the case here, jurisdiction lies with the Surface Transportation Board. Established by the Interstate Commerce Commission Termination Act of 1995 (ICCTA), the STB has express and exclusive jurisdiction over (1) transportation by rail carriers and (2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one state. 49 U.S.C. § 10501(b)(1)-(2) (2018). Section 10501(b) categorically preempts state action with respect to determining if a railroad has abandoned its tracks: “Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State Law.” *Id.* Thus, if an action concerns transportation by a rail company or the operation or abandonment of tracks pursuant to Sec. 10501(b)(1) or (2), the state trial court must dismiss the action due to STB’s exclusive jurisdiction over the proceedings. *Strasberg Scooters, LLC v. Strasburg R.R., Inc.*, 210 A.3d 1064, 1068-69, 2019 PA Super 158 (2019).

The ICCTA sets forth the procedures a rail carrier must undertake to abandon or discontinue operation of a railroad line. 49 U.S.C. § 10903 (2018). Under Sec. 10903(a), a rail carrier who seeks to abandon or discontinue any part of its railroad line must first file an

application with the STB.² Sec. 10903(d) provides that a rail carrier may not abandon or discontinue operating a rail line unless the STB finds that public convenience and necessity require or permit such abandonment or discontinuance. *See Borough of Columbia v. Surface Transp. Bd.*, 342 F.3d 222, 225 (3d Cir. 2003) (“A line or railroad may not be taken out of the national rail system, and a railroad may not be relieved of its common carrier obligation, unless the carrier first obtains abandonment authority from the STB.”).³

After the STB makes its finding and issues a certificate of abandonment, “STB’s jurisdiction ends, and the property becomes subject to ordinary processes of state law, including condemnation, quiet title, and contract actions.” *In re Condemnation by Lancaster*, 909 A.2d 913, 918 (Pa. Commw. Ct. 2006) (finding that, after the STB exercised its jurisdiction to authorize abandonment of a railroad line, the County of Lancaster’s attempted taking was a matter to be decided in the state courts under state law). *See also Moody v. Allegheny Valley Land Trust*, 930 A.2d 505, 509, 2007 PA Super 189 (2007) (“[W]e held that once the ICC had authorized unconditional abandonment or rail service along the Rail Corridor, the jurisdiction of the ICC and its successor, the STB, terminated.”).

RWIP first avers here that because PBL has failed to maintain or use the tracks and thus assert any rights to the property, PBL intentionally abandoned the right of way and any property rights. However, mere nonuse of railroad tracks by a railroad does not amount to abandonment. *See Birdsboro Mun. Auth. v. Reading Co.*, 758 A.2d 222, 227, 2000 PA Super 231 (2000) (holding that a mere failure to maintain and repair existing tracks did not amount to abandonment). *See also Buffalo Twp. v. Jones*, 813 A.2d 659, 665, 571 Pa. 637, 646 (2002)

² Alternatively, a petition for abandonment may be filed by a party other than a rail carrier. This is called adverse abandonment. *See, e.g., Murray v. Dep’t of Conserv. & Rec.*, 55 N.E.3d 429 n.7 (Mass. 2016).

³ PBL currently retains Conrail as an operating carrier providing rail transportation service under terms of the “the Belt Line Principle” of open access to both Norfolk Southern and Csx. See www.philadelphiabeltline.com/about-us/.

“there must be a showing of intent to abandon the property interest together with a showing of external acts by which such intention is carried into effect”). As properly asserted by PBL, the question of whether PBL abandoned its railroad right-of-way is subject to STB certification before a state court may consider the action.

RWIP next asserts that because PBL is not a statutorily defined “rail carrier,” PBL is not subject to STB’s express and exclusive jurisdiction under Section 10501(b)(1). A rail carrier is “a person providing common carrier railroad transportation for compensation[.]” 49 U.S.C. § 10102(5) (2018). RWIP points to a STB Order from 2010 to support this claim. There, PBL properly petitioned the STB for an order declaring that PBL retained a rail right-of-way on a former Philadelphia street struck from a new city plan.⁴ The STB found that because PBL failed to demonstrate its status as a common carrier, STB did not have jurisdiction over PBL’s claim to the right-of-way, and STB denied the petition.

Yet RWIP’s use of this 2010 Order to explain why the SBT lacks jurisdiction here is misleading. The STB determined that PBL was not a rail carrier not because PBL failed to meet the statutory definition of a rail carrier, but because the STB found no evidence that the right-of-way at issue was ever, in fact, used for rail purposes. PBL conceded that it never constructed or operated a railroad over the particular right-of-way or took an action on the relevant right-of-way that would have met the ICC’s minimum requirement for operation, extension, or construction of a railroad line.⁵ The STB thus concluded that it lacked jurisdiction over the matter because PBL could not claim to be a rail carrier over a rail that did not, in fact, exist.

⁴ PBL filed its petition for declaratory order from STB under 5 U.S.C § 554(e) and 49 U.S.C. § 721(b)(4) [renumbered to § 1321].

⁵ Belt Line Ry. Co. – Petition for Declaratory Order, S.T.B. Docket No. FD 35345 (Aug. 3, 2010).

Also, STB's finding in the 2010 Order that PBL was not a rail carrier subject to STB jurisdiction has no bearing on the facts here. Recall that Section 10501(b) grants the STB express and exclusive jurisdiction over two classes of matters, the second of which – (b)(2) – concerns the abandonment of tracks, the issue here. RWIP seeks quiet title to the right-of-way on the claim that the tracks – which visibly exist and occupy the right-of-way – have been abandoned. PBL does not address the merits of RWIP's claim of abandonment; PBL asserts only, and properly, that RWIP's claim of abandonment in state court fails because the claim is subject to express and exclusive federal STB jurisdiction under Sec. 10501(b)(2). Accordingly, the proper course of action for this matter is for either party to first petition the STB to determine if PBL has abandoned the tracks. Once the STB decides, a state trial court may thereafter take subject matter jurisdiction on whether RWIP may has quiet title on the right-of-way property under review in this dispute.

IV. Conclusion

This court properly sustained PBL's Preliminary Objection to Count III (abandonment) for lack of subject matter jurisdiction. 49 U.S.C. § 10501(b)(2) grants the STB express and exclusive jurisdiction to decide whether railroad tracks are abandoned, the threshold issue in this case. Under 49 U.S.C. § 10903, a rail carrier who intends to abandon or discontinue any part of its railroad line must first file an application with the STB. Once the STB reviews and grants or denies a certificate of abandonment---or makes a ruling as in 2010 that the right-of-way in question was never used by a common rail carrier, then this trial court may apply applicable state law to the applicable quiet title action raised by complaint.

For the reasons set forth above, we, respectfully, request that our order sustaining preliminary objections for lack of subject matter jurisdiction be affirmed.

BY THE COURT,



RAMY I. DJERASSI, J.