

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION ONE

A168497
(Consolidated with Case No. A168959)

MENDOCINO RAILWAY
Plaintiff–Appellant,

v.

JOHN MEYER
Defendant-Respondent.

On Appeal from the Superior Court of California,
County of Mendocino
(Case No. SCUKCVED202074939, Hon. Jeanine Nadel)

**(1) APPLICATION OF AMERICAN SHORT LINE AND
REGIONAL RAILROAD ASSOCIATION
FOR LEAVE TO FILE AMICUS CURIAE BRIEF
IN SUPPORT OF APPELLANT MENDOCINO RAILWAY;
(2) AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANT
MENDOCINO RAILWAY**

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CERTIFICATE OF INTERESTED PARTIES

Pursuant to Rules 8.208 and 8.488 of the California Rules of Court, there are no interested entities or persons that must be listed in this certificate.

I certify that the foregoing is true and correct.

Dated: January 29, 2025

s/ David Diepenbrock
Attorney for Amici Curiae

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APPLICATION FOR LEAVE TO FILE

AMICUS CURIAE BRIEF

The American Short Line and Regional Railroad Association (“ASLRRA”) respectfully requests permission to file the accompanying amicus curiae brief in support of Plaintiff and Appellant Mendocino Railway pursuant to California Rules of Court, rule 8.200(c), to expand upon key issues of federal railroad law that Respondent has confused. ASLRRA is a non-profit trade association representing the interests of approximately 520+ short-line railroads in legislative and regulatory matters. ASLRRA represents the interests of the short-line railroads in ensuring that freight policies promote a stronger, safer, and more efficient national transportation infrastructure in federal and state forums and ASLRRA is filing this amicus to advance those very same objectives here.

The issues confronted by Mendocino Railway in this proceeding are shared by or could potentially impact ASLRRA’s members throughout the nation, including other ASLRRA members in the State of California. As such, ASLRRA’s brief addresses these important topics globally, not just with respect to Mendocino Railway. Specifically, ASLRRA seeks to file an amicus brief to explain that (1)

the Surface Transportation Board (the “STB” or “Board”) has an established process for railroads, including Mendocino Railway, to become and cease being a common carrier subject to the Board’s jurisdiction; (2) Mendocino Railway’s status as a Common Carrier is relevant to its ability to take property by eminent domain under California law; and (3) the Mendocino Railway line remains connected to the interstate rail network through an embargoed line formerly operated by North Coast Railroad Authority because railroads can connect to the interstate rail system via other rail lines (not formerly abandoned), port facilities; interim trail use; and transloading. Accordingly, ASLRRRA respectfully requests that the Court accept the proposed amicus curiae brief for filing.

Sarah Yurasko (General Counsel for the ASLRRRA) and Crystal Zorbaugh (Vice Chair of the ASLRRRA General Counsel Committee) authored the proposed amicus brief. ASLRRRA funded the preparation and submission of the brief.

Dated: January 29, 2025

/s/ David Diepenbrock
Attorney for Amici Curiae

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INTRODUCTION

ASLRRA has filed for leave to file an amicus curiae brief because it wishes to explain for the benefit of the court that the Surface Transportation Board (the “STB” or “Board”) has the exclusive authority to decide what entities are or are not common carriers. ASLRRA is further concerned that applying different definitions for a common carrier under state law than under federal law could unreasonably interfere with a rail carriers’ common carrier obligation and provision of services, as authorized by the Board, and as such would likely be preempted. ASLRRA represents short-line railroads of all shapes and sizes and having a conflict between federal and state law on who is and who is not a common carrier has significant downstream implications for the operations of ASLRRA’s 520+ members as well as on the overall function of the nation’s interstate railroad network. Lastly, ASLRRA believes this court would benefit from a better understanding of how the rail lines in the interstate rail system are connected - via other rail lines (embargoed, but not abandoned), port/waterway facilities; interim trail use; and transloading. For all of these reasons, ASLRRA is submitting this amicus brief.

STATEMENT OF INTEREST

ASLRRA is a non-profit trade association representing the interests of approximately 600 short-line railroads in legislative and regulatory matters. ASLRRA represents the interests of the short-line railroads in ensuring that freight policies promote a stronger, safer, and more efficient national transportation infrastructure in federal and state forums, and ASLRRA is filing this amicus brief to advance those very same objectives here. The issues confronted by Mendocino Railway in this proceeding are shared by or could potentially impact ASLRRA's members throughout the nation, including other ASLRRA members in the State of California. ASLRRA's brief addresses these important topics globally, not just with respect to Mendocino Railway's operations.

ARGUMENT

I. The Surface Transportation Board Has An Established Process for Railroads, Including Mendocino Railway, to Become a Licensed STB Common Carrier (and Abandon Operations)¹ Subject to the Board's Jurisdiction.

Under 49 U.S.C. § 10901 mainline track requires STB authority to construct, acquire, operate, discontinue (to cease operations), and

¹ Further discussed in this section and Section III *infra*.

abandon under 49 U.S.C. § 10903 (to permanently remove from the interstate rail network). See Allied Indus. Dev. Corp. – Petition for Declaratory Order, FD 35477 (S.T.B. served Sept. 17, 2015) (explaining that [t]he federal government has licensed rail common carrier entry and exit since 1920 pursuant to the Interstate Commerce Act; the STB has exclusive jurisdiction over rail lines over which railroads provide point-to-point "common carrier" line-haul service to shippers (i.e., mainlines); and, failure to seek authority to operate pursuant to 49 U.S.C. § 10901 would deprive a common carrier of the ability to assert federal preemption under 49 U.S.C. § 10501(b). See also Suffolk & S. R.R. LLC – Lease & Operation Exemption – Sills Road Realty, FD 35036, slip op. 1 (S.T.B. served Nov. 16, 2007) (explaining while § 10901 (mainline) track required a license, so did the acquisition of existing track that would otherwise be characterized as “spur” track when a new common carrier was created for the “purpose and effect” of extending service of a carrier into new territory; also explaining, railroad lines that are part of the interstate rail network, require a Board license under 49 U.S.C. 10901 (for non-railroad entity) to construct or acquire and operate, or 49 U.S.C. 10902 to acquire and operate (for existing Class II and III common

carriers). In short, § 10901 (mainline track) utilized to serve shippers is subject to the full spectrum of the STB’s entry and exit licensing authority. The aforementioned precedent explains that a rail common carrier subject to the Board’s jurisdiction requires licensing authority (not a physical license similar to a driver’s license), the next few paragraphs explain how an entity becomes a federally licensed common carrier railroad.

Under Federal law, a non-railroad entity² may “acquire a railroad line or acquire or operate an extended or additional railroad line upon the STB exempting/authorizing a certificate permitting the proposed operations....”³ To acquire a railroad line, the non-railroad entity would file a “Notice of Exemption” pursuant to 49 C.F.R. 1150, Subpart D; the regulations provide for the abbreviated “Notice of Exemption” procedure for a new non-carrier (i.e., its status before it acquires a railroad) to obtain authority to operate an STB jurisdictional line of rail (common carrier mainline trackage) pursuant

² Mendocino Railway was a non-carrier prior to 2004. See specific discussion on Mendocino Railway’s license *infra*.

³ 49 U.S.C. § 10901(a)(4).

to 49 U.S.C. 10901, including 49 U.S.C. 10901(a)(4).⁴ The Board has time and again explained that the notice of exemption process involves the Board licensing a new carrier's operations. See City of Rochelle, Illinois – Notice of Exemption – Commencement of Rail Common Carrier Obligations, FD 33587 (STB served July 7, 1998) (explaining that to assume/commence common carrier operations, a

⁴ 49 C.F.R. 1150.31. "Under the licensing provisions of 49 U.S.C. 10901, a noncarrier ... may acquire and operate a rail line only if the Board makes an express finding that the proposal is not inconsistent with the "public convenience and necessity." That means that the Board must examine and weigh the public interest. There are instances, however, where full regulatory scrutiny is not necessary, and so, under 49 U.S.C. 10502 and 49 C.F.R. 1121, any party may request an exemption from the otherwise applicable regulatory provisions, on the grounds that full regulatory scrutiny is not necessary to carry out the national transportation policy and that either the exemption is limited in scope or regulation is not needed to protect shippers from an abuse of market power. This is through the so-called "individual petition for exemption" process. In the 1980's, individual petitions for exemptions became so common that the Board adopted a "class exemption" (a/k/a/ "Notice of Exemption" process) allowing parties to obtain Board authorization quickly. Thus, under our regulations at 49 CFR 1150.31, a noncarrier can obtain approval to acquire and operate a line of railroad" in an abbreviated time "subject to that authority being later revoked (if our regulatory scrutiny is found to be necessary) or treated as void ab initio (if the exemption notice is found to have contained false or misleading information)." Jefferson Terminal Railroad Company – Acquisition and Operation Exemption – Crown Enterprises, Inc., FD No. 33950 (STB served March 19, 2001) ("Jefferson Terminal"), slip op. at 4 (footnotes omitted).

non-carrier invokes the Board’s class exemption at 49 CFR 1150.31); see also Utah Transit Authority – Acquisition Exemption – Line of Union Pacific Railroad Company, FD 32186 (ICC served April 8, 1993).

The notice of exemption to be filed with the Board must include the identity of the applicant and its representative, the proposed operator of the rail line, “[a] statement that an agreement has been reached or details about when an agreement will be reached” (generally referring to an agreement permitting the operation anticipated to result from the transaction described in the notice of exemption), the identify of transferor, “[a] brief summary of the proposed transaction” including the name of the party transferring the property to be operated, and whether the proposed transaction includes an interchange commitment.⁵ If the proposed transaction does include an interchange commitment, then details concerning the interchange commitment (including any relevant agreements) must be

⁵ 49 C.F.R. 1152.33, 49 C.F.R. 1152.34. This requirement was added in the 2010 decade.

provided (on a confidential basis), and the title of the proceeding will be modified to note the inclusion of the interchange commitment.

Upon the filing of a notice of exemption,⁶ a summary of the transaction is published in the Federal Register/on the STB website exempting/licensing the proposed operations.⁷ As stated in 49 C.F.R. 1150.32(b), the exemption (the license) automatically becomes effective by operation of law 30 days after the notice is filed.

Consistent with the Board’s licensing requirements, in 2004, Mendocino Railway became a freight common carrier subject to the STB’s jurisdiction.⁸ Mendocino Railway continues to date to be a Class III short-line railroad and a valued member of the American Short Line and Regional Railroad Association (“ASLRRA”). Despite these facts, there seems to be some confusion in Respondent’s brief as to when a license exempted/or authorized by the Board begins and terminates. In that decision, the Board in a 2013 decision specifically

⁶ When initial operations are expected to generate more than \$5 million, additional disclosures or steps are required. See 49 C.F.R. 1150.32(e).

⁷ 49 C.F.R. 1150.32(b).

⁸ See Mendocino Ry. – Acquisition Exemption – Assets of the Cal. W.R.R., FD 34465, slip op. at 1 (STB served April 9, 2004).

addressed this issue as it applies to **all** federally recognized common carriers. The Board made clear when a rail common carrier's license takes effect and ends, holding:

To avoid any further misunderstanding, we reiterate here that, after obtaining acquisition authority from the Board, an entity that goes forward and acquires an existing railroad line becomes a rail carrier authorized to use 49 U.S.C. § 10902 as of the date of the acquisition, even if it is not actually called upon to provide service until some later time....

Because the common carrier obligation cannot be terminated without abandonment authorization⁹ from the Board, the transfer of [a] railroad line and the common carrier obligation that goes with it immediately impose[s] upon the new owner the continuing obligation to provide common carrier rail transportation service over the line upon reasonable request. As was the case with [a] prior owner, it does not matter whether the line has been inactive for a time, or even if it remains inactive

⁹ Abandonment is the process of terminating a rail carrier's license to operate and removing the Board's jurisdiction over such operations.

after it is acquired. Either way, because a rail line itself is part of ‘transportation,’ on the date that an acquiring entity ... consummates a Board-authorized transaction by acquiring a common carrier railroad line, it becomes a ‘rail carrier’ as defined by § 10102(5) (i.e., a "person providing common carrier railroad transportation for compensation"), and a "rail carrier providing transportation subject to the jurisdiction of the Board...."

See Middletown & New Jersey Railroad, LLC – Lease and Operation Exemption – Norfolk Southern Railway Company, FD 35412 (STB served March 27, 2013) (“Middletown”)

ASLRRRA hopes this explanation resolves any ambiguity with respect to how the STB has licensed rail carrier entry and exit since 1920 and continues to do so today.¹⁰ Put simply a rail carrier remains a rail carrier until the STB specifically says it is not.

II. Once a Federal Common Carrier Obligation is Established, California Law Cannot Decline to Recognize the Common Carrier’s Status as a Federally Recognized Common Carrier.

¹⁰ The Interstate Commerce Commission Termination Act of 1995 (ICCTA) is a federal law that ended the Interstate Commerce Commission (ICC) and established the Surface Transportation Board (STB). See Public Law 104–88, 109 Stat. 803.

Per 49 U.S.C. § 10501(b), the Board has exclusive jurisdiction over common carriers: “(1) transportation by rail carriers, and the remedies provided in this part [49 U.S.C. §§ 10101 *et seq.*] with respect to rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities of such 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.” The Board’s jurisdiction “is exclusive. Except as otherwise provided in this part [49 U.S.C. §§ 10101 *et seq.*], the remedies provided under this part [49 U.S.C. §§ 10101 *et seq.*] with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.” 49 U.S.C. § 10501(b) applies to all tracks and facilities owned by a jurisdictional carrier, whether used in part or whole to provide freight services.

In interpreting the reach of preemption under § 10501(b), both the Board and the courts have found that § 10501(b) categorically prevents states and localities from intruding into matters that are directly regulated by the Board (e.g., rail carrier rates, services,

licensing, entry/exit authority, and construction authority for new rail lines). Other state actions may be preempted as applied, that is, only if they would have the effect of unreasonably burdening, interfering with, or discriminating against rail transportation, which is a fact-specific determination based on the circumstances of each case. See N.Y. Susquehanna & W. Ry. Corp. v. Jackson, 500 F.3d 238, 252-54 (3rd Cir. 2007); Joint Petition for Decl. Order – Boston & Maine Corp. & Town of Ayer, MA, 5 S.T.B. 500, 510-12 (2001); Borough of Riverdale—Pet. for Declaratory Order—N.Y. Susquehanna & W. Ry., FD 33466, slip op. at 2 (STB served Feb. 27, 2001); and Borough of Riverdale – Petition for Declaratory Order – The New York Susquehanna and Western Railway Corporation, 4 S.T.B. 380, 387 (1999).

Mendocino Railway¹¹ has been a federally licensed rail common carrier for over 20 years, and per the STB, the common carrier obligation refers to the statutory duty of railroads to provide “transportation or service on reasonable request;” thus, Mendocino Railway is also a common carrier under state law. See 49 U.S.C.

¹¹ Mendocino holds itself out as a common carrier and offers transportation services on demand.

11101(a). See Common Carrier Obligation of Railroads, Ex Parte No. 677, slip op. at 1 (STB served February 22, 2008). ASLRRRA is concerned that attempts to apply a different state-created definition for what constitutes an interstate common carrier would likely have the effect of unreasonably burdening interstate transportation and discriminating against interstate commerce. Further, such an action would likely be preempted as applied under 49 U.S.C. § 10501(b).

Moreover, it is hard to understand how Mendocino Railway could not be considered under state law to be a common carrier, as defined under California Public Utility Code § 211, “[e]very person and corporation providing transportation for compensation to or for the public or any portion thereof, except as otherwise provided in this part.” See Cal. Pub. Util. Code § 211. Based on that definition, it is clear that Mendocino Railway is a common carrier under both federal and state law. Lastly, any alternative interpretation of what constitutes a “common carrier” cannot be reconciled with the jurisdiction and authority of the Board and would likely be preempted. See Reading, Blue Mountain & Northern Railroad Company – Petition for Declaratory Order, Docket No. FD 35956, 2016 STB LEXIS 155, *21-22 (STB served June 3, 2016) (holding any state law remedy that

infringes upon the Board's exclusive jurisdiction to regulate rail transportation is preempted by § 10501(b) and may only be effectuated upon obtaining the requisite Board authority). See State of Maine, Department of Transportation – Acquisition and Operation Exemption – Maine Central Railroad Company; Maine Central Railroad Company/Springfield Terminal Railroad Company – Trackage Rights – State of Maine Department of Transportation, 8 I.C.C. 2d 835, 1991 ICC LEXIS 105, *4, n. 4 (ICC served May 20, 1991) (“State law cannot transform what is a rail line under Federal law (or by extension who is a common carrier) into something else.”)

III. Railroads Can Connect to the Interstate Rail System Via Other Rail Lines (Not Formerly Abandoned), Port Facilities; Interim Trail Use; and Transloading.

As stated in Section I, and discussed in the Middletown decision, once a rail carrier’s operations become effective, only a Board action specifically authorizing the carrier to abandon service terminates the common carrier obligation of the carrier to provide common carrier rail transportation service over the line upon reasonable request. This is because railroads connect to the interstate rail system in a variety of ways. The key being that all of these ways collectively are “part of” the interstate rail network.

First, railroads can be directly connected to other jurisdictional rail lines, or to a line that remains jurisdictional trackage (not formerly abandoned). This is true even when the jurisdictional rail line is embargoed. “Although a valid embargo temporarily excuses the duty to provide service on reasonable request, it does not permanently eliminate the common carrier obligation under 49 U.S.C. 11101(a). To be relieved of its common carrier obligation, a railroad must seek discontinuance (temporarily suspends the connect carrier’s common carrier obligation) or abandonment authorization under 49 U.S.C. § 10903 (permanently removes that connecting line segment from the Board’s jurisdiction). While a valid embargo is an appropriate defense to an action for a breach of the common carrier's duty, an embargo cannot be used by a railroad to unilaterally abandon or discontinue service on a line at its own election.” See Bar Ale, Inc. v. California Northern Railroad Co. and Southern Pacific Transportation Company, FD 32811, 2001 STB LEXIS 633, *11 (STB served July 18, 2001).

Second, railroads can likewise connect to the interstate rail system by a connection to a port or waterway that links to other modes including trucks, and downstream railroads. Interstate freight ports and railroads work together to transport goods by rail, truck, and

barge. This process is called intermodal transportation and it is a key part of the supply chain, both domestically and globally.¹²

For the court’s benefit, two statutory provisions are most on point here: 49 U.S.C §10501(a)(1)(A) and 49 USC §10501(a)(2)(A) which provides that the STB has jurisdiction over transportation by a rail carrier that is provided by a railroad between a place in a state and a place in the same state as part of the interstate rail network. In 2013, in a passenger rail case, the Board confirmed “[u]nder 49 U.S.C. § 10501(a)(2)(A), the Board has jurisdiction over transportation by rail carrier between a place in a state and a place in the same state, as long as that intrastate transportation is carried out ‘**as part of the interstate rail network.**’” See California High-Speed Rail Authority – Construction Exemption – In Merced, Madera, and Fresno Counties, CAL., FD 35724 (STB served June 13, 2013) (“CHSRA-I”) (emphasis added) (citing DesertXpress Enters., LLC—Pet. for Declaratory Order, FD 34914 (DesertXpress), slip op. at 9 (STB served May 7, 2010)). As long as the rail lines are

¹² See Freight Rail & Intermodal, available at <https://www.aar.org/issue/freight-rail-intermodal/> (explaining over 13.5 million units moved intermodally in 2022).

constructed/operated as part of the interstate rail network, the Board has jurisdiction under § 10501(a)(2)(A). Id. at 14.

The railroad does not need to be physically connected to another STB-regulated railroad to be part of the interstate rail system and subject to the STB's jurisdiction. A perfect example of this is the Alaska Railroad, which is an STB-regulated railroad, but is connected to the rest of the nation's physical rail network through ferry, transloading, air freight, the movement of commodities that have had a prior or subsequent move on another STB regulated rail carrier, and by being part of the Strategic Rail Corridor Network (STRACNET) & Defense Connector Lines.¹³ Another example is the Alaska Hydro-Train, a water carrier, a division of Puget Sound Tug & Barge Company. Hydro-Train in conjunction with the Alaska Railroad and other railroads provide a through common carrier service by rail from any point in the continental United States to the State of Alaska. See

¹³ See, Strategic Rail Corridor Network (STRACNET) & Defense Connector Lines, 2023 Edition, published by the Military Surface Deployment and Distribution Command Transportation Engineering Agency at <https://www.sddc.army.mil/sites/TEA/Functions/SpecialAssistant/RND%20Publications/STRACNET%202023.pdf>, at 1 (identifying “civil rail lines most important to national defense”).

Pipe Line Machinery & Equipment, Various States to Alaska, 349 I.C.C. 799, 1975 I.C.C. LEXIS 50, *5 (I.C.C. served May 29, 1975).

Third, railroads can be connected to other railroads through railbanked lines. See Eastside Community Rail, LLC – Acquisition and Operation Exemption – GNP RLY Inc., FD 35692, Ballard Terminal Railroad Company, LLC – Lease Exemption – Eastside Community Rail, LLC, FD 35730, GNP RLY, Inc. – Abandonment Exemption in King County, Wash., AB 1316X, slip op. at 8 (unconsolidated proceedings addressed in the same decision) (STB served April 24, 2023) (noting that a line that is subject to interim trail use/railbanking protection will not isolate and strand a segment otherwise connected to the interstate freight rail network so long as the commitment to railbanking is enforceable and not illusory).

A fourth way railroads can be connected to the interstate system is via transloading. Examples of "island" railroads cut off from a direct physical connection to a larger, interstate railroad but that nonetheless remain under STB's jurisdiction include facilities that remain "part of" the interstate rail system via transloading. The statute does not require a railroad to have a physical connection with the interstate rail network to be "part of" the interstate railroad system.

CONCLUSION

ASLRRA respectfully requests that the court give careful consideration to the STB's licensing process which for over a century has been in place. While not a conventional license such as a driver's license, the Board licenses a carrier every time it exempts or approves a new carrier or an existing carrier's expansion of proposed freight rail operations. The Board determines under federal law who is a freight rail common carrier, and applying different definitions of a common carrier could unreasonably interfere with a rail carrier's common carrier obligation and provision of services, as authorized by the Board. As such, attempts to find under state law that a federal common carrier is not an interstate common carrier would likely be preempted. Rail lines in the interstate rail system are connected and constitute "part of" the interstate rail network through a connection with other rail lines (not formerly abandoned), port/waterway facilities, interim trail use, transloading, and more. ASLRRA hopes these comments help aid the court in its understanding of the issues before it.

DATED: January 29, 2025.

By: /s/ David Diepenbrock

Attorney for Amicus Curiae

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing BRIEF AMICUS CURAIE is proportionately spaced, has a typeface of 13 points or more, and contains 3,576 words.

DATED: January 29, 2025

/s/ David Diepenbrock