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SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42171

SANIMAX USA LLC
v.
UNION PACIFIC RAILROAD COMPANY

Digest:[1] The Board clarifies that, pursuant to its partial revocation of the commodity exemptions at issue in this case, the Board will consider granting relief only from November 2, 2021—the date the partial revocation took effect—forward. The Board also clarifies that the partial revocation does not limit the rights of the parties to conduct discovery and develop a full record regarding prospective liability and relief in this matter.

Decided: February 24, 2022

On November 2, 2021, the Board issued a decision, effective that day, denying a motion filed by Union Pacific Railroad Company (UP) to dismiss the complaint filed by Sanimax USA LLC (Sanimax) in the above-named docket, granting Sanimax's request for partial revocation of the commodity exemptions at issue, and setting forth a procedural schedule to govern the complaint proceeding. Sanimax USA LLC v. Union Pac. R.R. (Nov. 2 Decision), NOR 42171 (STB served Nov. 2, 2021). On November 23, 2021, UP filed a petition for clarification or, in the alternative, reconsideration of the November 2 Decision. For the reasons discussed below, the Board will grant UP's petition in part.

BACKGROUND

On November 6, 2020, Sanimax filed a complaint against UP, seeking a determination from the Board that UP's reduction in service from five days per week to three days per week, coupled with service issues, constitutes a failure to provide adequate rail service in violation of 49 U.S.C. § 11101(a), a failure to provide adequate notice of a change in common carrier service terms as required by 49 U.S.C. § 11101(c), and an unreasonable practice in a matter related to transportation and service in violation of 49 U.S.C. § 10702(2). On November 30, 2020, UP filed an answer and a motion to dismiss Sanimax's complaint on the basis that the commodities at issue are exempt from Board regulation. At the request of the parties, the proceeding was stayed to allow them to engage in negotiations. On February 16, 2021, the parties informed the

[1] The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol'y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

Board that they were unable to reach an agreement, and Sanimax filed a reply to UP's motion to dismiss, in which it also requested that the Board partially revoke the commodity exemptions to permit the Board to consider the complaint. On March 8, 2021, UP replied in opposition to Sanimax's request for partial revocation, and, on March 22, 2021, Sanimax filed a motion for leave to file a surreply, along with a tendered surreply.

In the November 2 Decision, the Board denied UP's motion to dismiss the complaint, granted Sanimax's request for partial revocation of the commodity exemptions, and set forth a procedural schedule to govern the complaint proceeding.[2]

In its November 23, 2021 petition, UP states that it "seeks clarification on whether the exemption revocation applies to [UP]'s service provided to Sanimax before November 2, 2021, the date the decision was issued." (Pet. 1.) Moreover, if the Board did intend the exemption revocation to apply to UP's service prior to the November 2 Decision, then UP seeks reconsideration as a material error of law. (Pet. 2, 8.) Specifically, UP argues that Sanimax cannot be awarded damages for events that occurred while the exemptions were in effect. (Id. at 2.) UP argues that clarification is necessary to provide guidance as to the appropriate scope of discovery and evidentiary filings. (Id.)

UP contends that Board regulation of UP's service prior to the November 2 Decision would amount to retroactive regulation not authorized by 49 U.S.C. § 10502. (Pet. 3-4.) UP asserts that the Supreme Court has established that "a statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms." (Id. at 4 (quoting Bowen v. Georgetown Univ. Hosp., 488 U.S. 204, 208 (1998)).) UP argues that "'the legislative rulemaking authority' granted in § 10502(d) contains no authority to revoke exemptions retroactively and regulate conduct occurring while an exemption was in place." (Pet. 4.) UP also contends that such retroactivity would contravene the congressional intent behind § 10502 to provide carriers with "freedom from unnecessary regulation." (Pet. 6 & n.20 (quoting H.R. Rep. No. 96-1430, at 80 (1980)).)

In further support of its position, UP cites to the Board's decision in Pejepscot Industrial Park, Inc.—Petition for Declaratory Order, 6 S.T.B. 886 (2003). (Pet. 5.) In Pejepscot, the petitioner sought a declaratory order from the Board that the respondent carriers had violated 49 U.S.C. § 11101 by refusing to provide rail service upon reasonable request. Pejepscot, 6 S.T.B. at 886. The carriers responded that the Board could not consider petitioner's claims since the commodities at issue had been exempted from Board regulation. Id. at 891. The Board determined that the commodities were "no longer regulated" as of the effective dates of the exemptions; however, prior to the exemptions' effective dates, the carriers were subject to the common carrier requirements of § 11101. Pejepscot, 6 S.T.B. at 892. The Board explained that "even if a carrier's conduct would constitute a statutory violation during a period of regulation, the exemption bars regulatory relief during the period when the exemption is in force." Id. at 891. UP argues that, as in Pejepscot, "where the Board could only regulate conduct that

[2] The Board granted Sanimax's motion for leave to file a surreply in the November 2 Decision.

occurred before the applicable exemptions were in place, here the Board may only regulate rail transportation to Sanimax that occurs after the applicable exemptions were partially revoked." (Pet. 6.)[3]

Additionally, UP contends that regulating UP's service prior to the November 2 Decision would violate principles of due process and fairness since UP relied on the understanding that its actions would be exempt from Board regulation. (Pet. 7-8.) UP asserts that regulating UP's conduct prior to the November 2 Decision would essentially "alter the consequences of [UP's] completed actions." (Pet. 7.)

On December 9, 2021, Sanimax filed a reply to UP's petition. Sanimax emphasizes that the primary relief it seeks is prospective (i.e., for the Board to order UP to provide service five days per week), but Sanimax renews its request for damages for violations prior to the partial revocation. (Sanimax Reply 1-2.) Citing the Supreme Court's decision in Bradley v. Richmond School Board, 416 U.S. 696, 711 (1974), Sanimax concedes that retroactivity is disfavored but argues that it may pursue damages for UP's conduct prior to the November 2 Decision under the principle that "a court is to apply the law in effect at the time it renders its decision, unless doing so would result in manifest injustice or there is statutory direction or legislative history to the contrary." (Sanimax Reply 4.) Here, Sanimax argues that "the law in effect" is now that UP's service to Sanimax is governed by the common carrier obligations codified at 49 U.S.C. § 11101. (Sanimax Reply 4.)

Nonetheless, Sanimax asserts that, if the Board determines that it may order only prospective relief, the Board should confirm that such determination would not limit the scope of discovery, the record, or arguments in this matter. (Id. at 2.) Sanimax contends that, pursuant to the Board's discovery regulations at 49 C.F.R. § 1114.21(a), pre-November 2 Decision facts are relevant to this proceeding, including the scope of UP's present common carrier obligations and the appropriate prospective relief. (Sanimax Reply 2-3.)

On December 13, 2021, the Association of American Railroads (AAR) filed a reply in support of UP's petition and a request for leave to intervene "for the limited purpose of submitting these reply comments on the legal effect of a revocation of an exemption." (AAR Reply 1.)[4]

[3] UP also argues that, in Granite State Concrete Co. v. Boston & Maine Corp., NOR 42083, slip op. at 7 (STB served Sept. 15, 2003), the Board did not "address the extent to which its revocation was retroactive or forward-looking, and that question ultimately was not relevant to the outcome since the Board found that the railroad's actions were lawful." (Pet. 6); see also Granite State, 7 S.T.B. 834, 834, 838 (2004).

[4] In the interest of compiling a more complete record, the Board will grant AAR's request to intervene for the limited purpose of accepting its reply comments into the record.

DISCUSSION AND CONCLUSIONS

For the reasons discussed below, the Board will grant UP's petition in part and clarify that, pursuant to the partial revocation, the Board will consider whether the issues raised in Sanimax's complaint warrant relief prospectively from November 2, 2021.

As UP notes, the Board has found that an "exemption bars regulatory relief during the period when the exemption is in force," Pejepscot, 6 S.T.B. at 891, and, if an exemption is revoked, a carrier "would then again have a common carrier obligation to furnish rates and service upon request," id. at 893 n.15. Sanimax argues that, because a court is to apply the law in effect at the time of its decision, and because the Board is revoking the exemption in part, the law when the Board issues its decision will be that UP's conduct is subject to regulation. Consistent with its longstanding precedent, the Board clarifies that, pursuant to its partial revocation of the relevant class exemptions, in this proceeding the Board will consider relief, including damages, only from November 2, 2021—the date the partial revocation took effect—forward.

Permitting regulatory relief for the period the exemptions were in effect would be, as UP argues, contrary to the principle that retroactive application of administrative determinations is disfavored, see Bowen, 488 U.S. at 208, and could raise due process concerns. That a tribunal must generally apply the law in effect at the time it renders its decision, as Sanimax observes and for which it cites Bradley, does not mandate a different result. Indeed, the Supreme Court determined that Bradley did not "displace the traditional presumption" against retroactive actions that would "impair rights a party possessed when [it] acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed," absent clear congressional intent favoring such a result. Landgraf v. USI Film Prods., 511 U.S. 244, 278-80 (1994). The Board sees no basis for overriding the presumption against retroactive relief here.

The partial revocation leaves the parties free to develop a full record regarding prospective liability and relief, which may include arguments based on and discovery into events that occurred prior to the date of partial revocation, to the extent relevant. As Sanimax observes, the Board's discovery regulations are broad. See 49 C.F.R. § 1114.21(a)(1)-(2) (allowing parties to obtain discovery on any matter that is relevant to the subject matter of a proceeding, as well information that is "reasonably calculated to lead to the discovery of admissible evidence"). As will typically be the case when a complainant seeks revocation at the time it files its complaint, the relevant facts giving rise to the complaint did not begin on the date the Board determined whether revocation was warranted. UP's actions prior to that date may be relevant to the Board's ultimate determination about what kind of prospective relief is warranted, if any. See Granite State, 7 S.T.B. at 835-38 (considering the carrier's actions both before and after the partial revocation in determining that the carrier had not violated § 11101).

It is ordered:

1. UP's petition for clarification or, in the alternative, reconsideration is granted, in part, as described above.

2. AAR's request for leave to intervene is granted for the limited purpose of allowing the reply comments into the record.

3. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.