

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Blackwood, Inc.	:	
	:	
v.	:	C-20078010
	:	
Reading, Blue Mountain and Northern	:	
Railroad Company	:	
	:	
	:	
Application of Reading, Blue Mountain and	:	
Northern Railroad Company for approval of the	:	
abolition of the crossing (AAR 592 007 F) where	:	A-2008-2016324
Township Road 567 crosses at grade the tracks of	:	
Reading, Blue Mountain and Northern Railroad	:	
Company, located in Reilly Township, Schuylkill	:	
County	:	

FURTHER STAY ORDER

This matter began on July 20, 2007, when Blackwood, Inc. (Blackwood) filed a complaint against Reading, Blue Mountain and Northern Railroad Company (Reading) with the Commission. The complaint alleged that Blackwood was the owner of a 2,200 acre tract of land located in Reilly Township (Township), Schuylkill County (County) which was separated by Reading's railroad tracks and facilities. According to the complaint, Reading had denied Blackwood access to its property by refusing to allow Blackwood to use the crossing where the road designated as T-597 crosses Reading's facilities. The complaint asserted that Reading's refusal had prevented Blackwood from accessing coal reserves or from developing its property.

The complaint contended that the Commission, pursuant to 66 Pa. C.S. §2702, had the authority to order the construction, reconstruction, suspension and abolition of rail-highway crossings and that no rail-highway crossing may be constructed, relocated, suspended or abolished without a Commission order. The complaint requested that the Commission order Reading to allow Blackwood to use the crossing where the road designated T-597 crosses Reading's facilities, compensate Blackwood for damages due to the denial of the use of the crossing and grant such other relief as the Commission deemed appropriate. Pursuant to 52 Pa. Code §3.361(a), the

Commission made the Pennsylvania Department of Transportation (Department), the Township, and the County parties respondent in addition to Reading.

On August 22, 2007, the Department filed an answer to the complaint. The Department's answer admitted the allegations in Blackwood's complaint. The Department's answer contained no request for relief.

On September 10, 2007, Reading filed an answer, new matter and counterclaim in response to Blackwood's complaint. The answer denied the allegations in Blackwood's complaint. The new matter alleged that there was no public road near Reading's tracks as suggested in Blackwood's complaint. The new matter asserted that the road designated T-597 has been vacated and that the vacation of the road designated as T-597 resulted in a vacation of the crossing by operation of law.

The counterclaim asserted that the complaint was without basis in fact or law and that Reading had spent significant money in counsel and expert witness fees responding to the complaint. The answer, new matter and counterclaim requested that the Commission deny the complaint, declare the crossing to be vacated or abandoned and award Reading damages in the amount of \$50,000.

Also on September 10, 2007, the Township filed an answer and new matter. The answer denied the allegations in the complaint regarding the crossing due to the Township's lack of knowledge about the interaction between Blackwood and Reading. The new matter asserted that the Township has no control over Reading's actions, that the Commission should dismiss the Township as a party and that the Commission should order Blackwood to reimburse the Township for all the costs associated with the Township's involvement. The answer and new matter requested that the Commission dismiss it from the action or alternatively award it costs and attorney's fees incurred due to its involvement in the proceeding.

On September 21, 2007, Blackwood filed an answer to the new matter filed by the Township. The answer to new matter asserted that Blackwood has no information regarding the

Township's relation with Reading. The answer to new matter also asserted that Blackwood did not join the Township as a party to this proceeding.

By hearing notice dated November 5, 2007, the Commission scheduled a hearing for this matter on December 17, 2007 at 10:00 a.m. in Hearing Room 4, Commonwealth Keystone Building, Harrisburg, and assigned the case to me. I issued a prehearing order on November 20, 2007 addressing, inter alia, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

On November 30, 2008, Reading requested that I continue the hearing because it had not completed discovery. By letter dated December 4, 2007, the Department notified me that it did not object to Reading's request for continuance. By notice dated December 12, 2007, the Commission converted the December 17 hearing to a telephonic prehearing conference.

I conducted a telephonic prehearing conference as scheduled on December 17, 2007. Counsel for the Department and BTS were present in the hearing room. Counsel for Blackwood, Reading, and the Township participated by telephone. At the prehearing conference, the parties agreed to a schedule that would allow time to complete discovery with hearings in March or April.

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Also on December 17, 2007, Reading filed an application to abolish the alleged crossing. The Commission docketed this application at A-2008-2016324. Reading's application stated that the Court of Common Pleas of Schuylkill County, by order dated May 7, 1946, ordered Township Road T-567 vacated. Attached to Reading's application was a copy of the order. The application further alleged that south of Reading's tracks, for a distance of four hundred feet, the road is vacated. North of Reading's tracks, the application alleged that the road provided a connection to the village of Blackwood which no longer exists and therefore, the Township had not maintained the road for a period in excess of fifty years. Reading's application asserted that no vehicles or pedestrians use the alleged crossing. Reading requested that the Commission grant the application and order the crossing abolished.

By notice dated February 1, 2008, the Commission rescheduled this matter and the application at A-2008-2016324 for hearings on April 15 and 16, 2008 at 10:00 a.m. in Hearing Room 4, Commonwealth Keystone Building, Harrisburg. By letter dated March 20, 2008, counsel for Reading informed me that he had been attached for trial in the Court of Common Pleas of Chester County on April 15 and 16. As a result, the Commission rescheduled this matter and the application at A-2008-2016324 for hearings on June 9 and June 11, 2008.

On April 21, 2008, Blackwood served a motion for sanctions against Reading on me. The motion for sanctions alleged that Blackwood had served interrogatories and requests for production of documents on Reading and that Reading had failed to respond to these discovery requests. The motion for sanctions did not indicate that it had been filed with the Commission's Secretary. By e-mail on April 21, 2008, I informed counsel for Blackwood that the Commission's Rules of Practice and Procedure required that he file the motion with the Commission's Secretary and serve it on the parties and me before I could act on it. I also pointed out that Paragraph 8 of my November 6, 2007 prehearing order required that a motion to compel contain a certification by counsel setting forth any informal discovery undertaken by the parties and any efforts by the parties to resolve discovery disputes informally.

Also on April 21, 2008, Blackwood filed a petition for interim emergency relief. The petition alleged that Blackwood was the owner of a 2,200 acre tract of land located in the Township which is separated by Reading's railroad tracks and facilities. The petition alleged that Reading had denied Blackwood access to its property by refusing to allow Blackwood to use the crossing where the public road designated as T-597 crosses over Reading's facilities and that refusal had prevented Blackwood from accessing coal reserves or otherwise developing its property.

The petition pointed out that the Commission, pursuant to 66 Pa. C.S. §2702, had the authority to order the construction, reconstruction, suspension and abolition of rail-highway crossing and that no rail-highway crossing may be constructed, relocated, suspended or abolished without a Commission order. The petition asserted that Blackwood was being irreparably harmed because it could not access its property for business purposes. The petition also alleged that

Blackwood was in danger of losing business contracts for the use of its property to mine coal and other purposes and that Blackwood would suffer irreparable harm if it lost these contracts. The petition stated that Blackwood was in need of immediate relief in the form of an interim order directing Reading to reinstall the crossing that Reading had allegedly wrongfully abolished. The petition requested that the Commission conduct a hearing and enter an interim emergency order.

On April 22, 2008, Reading filed an answer and new matter to Blackwood's petition for interim emergency relief. Reading's answer to Blackwood's petition for interim emergency relief asserted that the road designated as T-567 had been vacated as a public road. According to Reading, Blackwood could use the vacated road to provide access to its entire property on both the north and south sides of Reading's tracks.

The new matter in Reading's answer to Blackwood's petition for interim emergency relief contended that Blackwood had complete access to its property using the vacated road designated as T-567 and various public roads. According to Reading's new matter, there was no crossing present where the vacated road designated as T-567 used to cross Reading's facilities. Reading's answer and new matter requested that the Commission deny Blackwood's request for an expedited hearing and interim emergency order.

Also on April 22, 2008, Reading served an answer to Blackwood's motion for sanctions with new matter on me. The answer and new matter admitted that Reading had not yet served Blackwood with responses to its discovery requests but stated that it expected to by May 3, 2008. The answer and new matter did not indicate that it had been filed with the Commission's Secretary.

By hearing notice dated April 25, 2008, the Commission scheduled a hearing on Blackwood's petition for emergency relief on April 30, 2008 at 10:00 a.m. in Hearing Room 2, Commonwealth Keystone Building, Harrisburg.

On April 28, 2008, Blackwood filed a motion to continue the hearing on its petition for emergency relief. The motion stated that Blackwood's president departed for Europe

on April 23, 2008 and would not return until May 5, 2008. The motion alleged that Blackwood's president was a necessary witness who would testify in support of the petition for emergency relief.

Also on April 28, 2008, Blackwood filed an amended motion for sanctions and a certification. The amended motion for sanctions again alleged that Blackwood had served interrogatories and requests for production of documents on Reading and that Reading had failed to respond to these discovery requests. The amended motion for sanctions requested that the Commission enter an order preventing Reading from offering any evidence that it removed the alleged crossing surface and abolished the crossing without Commission approval. The amended motion for sanctions also requested that the Commission strike Reading's pleadings seeking Commission authority to abolish the crossing.

On April 29, 2008, Blackwood filed a petition for leave to withdraw its April 21, 2008 petition for interim relief pursuant to 52 Pa. Code §5.94. The petition to withdraw asserted that Blackwood's president was a witness who would testify in support of the petition for interim relief and that Blackwood's president departed for Europe on April 23, 2008 and would not return until May 5, 2008. The petition to withdraw requested that the Commission issue an order that granted Blackwood's petition to withdraw its April 21, 2008 petition for interim relief without prejudice.

By notice dated April 29, 2008, the Commission cancelled the hearing for emergency relief in this matter scheduled for April 30. None of the parties informed me that they objected to Blackwood's petition for leave to withdraw its April 21, 2008 petition for interim relief, so I issued an order on April 30, 2008 granting Blackwood's petition for leave to withdraw its petition for emergency relief.

On May 1, 2008, Reading filed an answer to Blackwood's amended motion for sanctions with new matter. The answer and new matter admitted that Reading had not yet provided responses to Blackwood's second set of discovery requests but expected to on or before

May 3, 2008. The answer and new matter requested that the Commission dismiss Blackwood's amended motion for sanctions.

On May 7, 2008, I issued an order denying Blackwood's amended motion for sanctions. I denied Blackwood's amended motion for sanctions because the amended motion for sanctions failed to provide sufficient information for me to determine whether the information Blackwood was seeking was either irrelevant or prohibited. I also denied that amended motion for sanctions because Blackwood filed the motion before it knew whether Reading would provide it with the information it requested.

On May 19, 2008, Blackwood filed a supplemental motion for sanctions. The supplemental motion for sanctions alleged that Reading filed inadequate responses to Blackwood's second set of interrogatories and requests for production of documents. Attached to the supplemental motion for sanctions were the interrogatories and requests for production along with Reading's responses. Blackwood sent its second set of interrogatories to Reading on February 29, 2008. The supplemental motion for sanctions requested that the Commission enter an order refusing to permit Reading from opposing the reinstatement of the crossing that is the subject of this proceeding and preventing Reading from introducing any evidence that the crossing was not removed without Commission approval. Alternatively, the supplemental motion for sanctions requested that the Commission order discovery to be produced in sufficient time for Blackwood to complete discovery or to engage in discovery and to contact individuals who may be witnesses.

On May 21, 2008, Reading filed an answer to Blackwood's supplemental motion for sanctions with new matter. The answer denied the allegations in the supplemental motion for sanctions.

The new matter asserted that counsel for Blackwood did not contact counsel for Reading before filing the supplemental motion for sanctions. The new matter alleged that if counsel for Blackwood had contacted counsel for Reading, there would have been no need for Blackwood to file the supplemental motion for sanctions. The new matter also asserted that

Blackwood had failed to attempt any informal resolution of discovery issues before resorting to formal motions and had wasted the time of the Commission and Reading. The answer and new matter requested that the Commission order Blackwood to attempt informal resolution of discovery matters prior to repeated formal filings and that the Commission dismiss Blackwood's supplemental motion for sanctions.

On May 30, 2008, I issued an order denying Blackwood's supplemental motion for sanctions. I denied Blackwood's supplemental motion for sanctions because I found that Reading's response to one interrogatory was adequate and while its initial response to another interrogatory 5 was inaccurate, it made a good faith attempt to supply accurate information once it was made aware that its initial response was not accurate.

I conducted the initial hearings as scheduled on June 9, 2008 and June 11, 2008. At the June 11 hearing, the parties agreed that I should stay this proceeding until the Court of Common Pleas of Schuylkill County issued a final order in the case captioned Reading, Blue Mountain & Northern Railroad Company v. Township of Reilly, Docket No. S- 1179-2008, since the decision in that case may affect this proceeding.

The case before the Court of Common Pleas of Schuylkill County addressed whether a Township ordinance was sufficient to vacate Blackwood Road as a public road. Since Blackwood Road is part of the crossing that is the subject of this proceeding, a decision issued by the Court of Common Pleas of Schuylkill County could affect this proceeding. I therefore issued an order on June 12, 2008 staying the proceeding.

By notice dated April 19, 2016, the Commission scheduled this matter for a telephonic prehearing conference on Wednesday, October 26, 2016 at 10:00 a.m. I issued a prehearing conference order dated September 15, 2016, setting forth the procedural matters to be addressed at the prehearing conference.

I conducted a telephonic prehearing conference in this case on October 26, 2016 at 10:00 a.m. in Harrisburg. Present were counsel for Blackwood, Reading, the Township, the County, the Commission's Bureau of Investigation and Enforcement (I&E) and the Department.

At the telephonic prehearing conference, the parties indicated that they were still litigating the proceeding captioned Reading, Blue Mountain & Northern Railroad Company v. Township of Reilly, Docket No. S- 1179-2008. In addition, Blackwood and Reading have initiated additional civil actions in the Court of Common Pleas of Schuylkill County related to this proceeding. In light of these facts, staying this proceeding further is a reasonable course of action. I will issue the following order.

ORDER

THEREFORE,


IT IS ORDERED:

1. That the above-captioned matters are stayed until thirty-five (35) days after the Court of Common Pleas of Schuylkill County issues a final order in the case captioned Reading, Blue Mountain & Northern Railroad Company v. Township of Reilly, Docket No. S- 1179-2008.
2. That within thirty-five (35) days after the Court of Common Pleas of Schuylkill County issues a final order in the case captioned Reading, Blue Mountain & Northern Railroad Company v. Township of Reilly, Docket No. S-1179-2008, Blackwood, Inc. and Reading, Blue Mountain and Northern Railroad Company shall notify the Pennsylvania Department of Transportation, Reilly Township, Schuylkill County, the Commission's Bureau of Investigation and Enforcement and me in writing of the issuance of the final order and whether an appeal of that final order has been filed.

3. That in the event that a party appeals the final order issued by the Court of Common Pleas of Schuylkill County in the case captioned Reading, Blue Mountain & Northern Railroad Company v. Township of Reilly, Docket No. S-1179-2008, any of the parties to this proceeding may seek a further stay of this proceeding.

4. That the Reading, Blue Mountain and Northern Railroad Company shall file a written status report concerning the case captioned Reading, Blue Mountain & Northern Railroad Company v. Township of Reilly, Docket No. S-1179-2008 with the Pennsylvania Public Utility Commission on or before July 1 of each year until the Court of Common Pleas of Schuylkill County issues a final order in the case captioned Reading, Blue Mountain & Northern Railroad Company v. Township of Reilly, Docket No. S-1179-2008. The Reading, Blue Mountain and Northern Railroad Company shall serve copies of the written status report on Blackwood, Inc., the Pennsylvania Department of Transportation, Reilly Township, Schuylkill County, the Commission's Bureau of Investigation and Enforcement and me.

Date: October 27, 2016



David A. Salapa
Administrative Law Judge

A-2008-2016324 - Application of Reading, Blue Mountain and Northern Railroad Company for approval of the abolition of the crossing (AAR 592 007 F) where Township Road 567 crosses at grade the tracks of Reading, Blue Mountain and Northern Railroad Company, located in Reilly Township, Schuylkill County
C-20078010 - Blackwood, Inc. v. Reading, Blue Mountain and Northern Railroad Company

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