

July 25, 2017 Publication

Topics

Transportation
Business
Railroad and Mass Transportation

Related People

Warren E. Babb Jr.
babbw@lanepowell.com

Related Practices & Industries

Business
Litigation
Transportation

No Idle Matter — D.C. Circuit Holds that State's Attempt to Regulate Locomotive Noise is Preempted by ICA and ICCTA

Transportation Legal Update

States and municipalities commonly attempt to curb or eliminate noise generated by locomotives and rail cars as they pass through their jurisdictions. A recent attempt by the state of Delaware to shut down idling locomotives was rejected by the D.C. Circuit Court of Appeals as violative of the ICA and the ICCTA. In the recent decision of *Delaware v. Surface Transportation Board*, 859 F.3d 16, 2017 (D.C. Cir. June 9, 2017), the court held that Delaware Senate Bill 135 (SB 135) was an impermissible attempt to regulate railroads by permitting the state of Delaware to decide for the railroads how they should operate, posing potential obstacles to rail transportation.

Background

The state of Delaware enacted SB 135 to limit nighttime noise caused by idling locomotives in residential areas. The relevant portion of the legislation stated “No person may permit the nonessential idling of locomotive under its control or on its property between 8:00 p.m. and 7:00 a.m.”

In response to the enactment of SB 135, Norfolk Southern Railroad Company filed a petition with the Surface Transportation Board seeking a

declaratory order that the statute was preempted under the ICCTA as it “specifically prohibits rail transportation” and constitutes direct regulation of specifically targeted railroads.

In support of its position, Norfolk Southern submitted a verified statement from its Superintendent of Operations in the state of Delaware. He explained that, “In order to promote its transportation objective, the Railroad idles locomotives for a variety of reasons.” The statement provided three examples for the court. Railroads must idle trains: (1) to maintain the air line, a process necessary to the braking system, because if the air line is not maintained for more than four hours, a multi-hour air test is required by federal law; (2) due to unforeseen conditions such as train crew shortages or scarce rail capacity because shutting down and then restarting trains consumes a significant amount of time while idling avoids network congestion and delays; (3) when the temperature is below 35 degrees Fahrenheit idling is necessary to prevent freezing to the automatic dumping of the locomotive cooling system, which could result in damage to the train and impair rail service and network operations.

The court concluded that SB 135 directly regulated rail transportation by prohibiting locomotives from idling in certain places at certain times, in essence requiring that at night, in residential neighborhoods they either shut down or keep moving. As such, the court declared that SB 135 is “categorically preempted by the ICCTA.”

The court rejected a related argument by the state of Delaware that SB 135 should not be stricken as it is “narrowly tailored” and “seeks only to limit nonessential idling that has a deleterious public health effect.” In rejecting this contention the court explained “That SB 135 is more narrowly drawn does not mean that it does not impermissibly target rail transportation and railroad operations.” As such it is directly prohibited by the ICCTA.