

**DL 19-2**

**302475**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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CANADIAN NATIONAL RAILWAY COMPANY, ET AL.

– CONTROL –

KANSAS CITY SOUTHERN, ET AL.

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**INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS  
DISTRICT LODGE 19'S COMMENTS REGARDING CANADIAN NATIONAL AND  
KANSAS CITY SOUTHERN'S JOINT MOTION FOR APPROVAL OF VOTING  
TRUST AGREEMENT**

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District Lodge 19 of the International Association of Machinists and Aerospace Workers, AFL-CIO ("IAM") respectfully submits these comments regarding Canadian National ("CN") and Kansas City Southern's ("KCS") Joint Motion for Approval of Voting Trust Agreement (CN-18/KCS-1), which was filed on May 26, 2021. District Lodge 19 urges the Surface Transportation Board ("Board") to reject the proposed CN-KCS voting trust in connection with CN's proffered acquisition of KCS.

The Board explained that it will adopt a "more cautious approach" to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the "potential benefits and costs of such use." (Board Decision No. 3 at 7 (served May 17, 2001)). Indeed, the Board's 2001 Major Merger Rules require that CN must explain "why their proposed use of the trust, in the

context of their impending control application, would be consistent with the public interest.” 49 C.F.R. § 1180.4(b)(4)(iv). Based on the current record, it is the District Lodge 19’s view that the use of a trust here would not be in the best public interest or the best interest of its Union Members and fails to meet the standards of the 2001 Rules.

As the Board acknowledged, those rules place “heavier burden[s] on merger applicants to show that a major rail combination is consistent with the public interest” and allows the Board a much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest. (Board Decision No. 3 at 3).

Allowing CN to pursue its control of KCS through a voting trust transaction would greatly diminish, if not eliminate, this opportunity for enhanced competition and would disserve the public interest. CN’s proposed acquisition of KCS is not an end-to-end transaction, but an overlap of largely parallel rail systems. CN may have no incentive to invest in new competitive routes. Such a competitive imbalance poses risks for the United States rail network as a whole, including customers, consumers, and railway employees.

Among District Lodge 19’s concerns is the tremendous debt CN proposes to incur in order to finance the premium stock price CN is offering to KCS. While CN asserts that a merger would “mean additional jobs, not cuts,” (CN-18 at 15), CN’s debt will no doubt heavily impact future collective bargaining as the company seeks to balance its books through cost cutting. Further, should the transaction fail, District Lodge 19 has no way of knowing how CN will recoup this investment and how it will divest the shares, putting CN and its represented employees in an uncertain financial position.

In either scenario, CN’s proposed voting trust is not in the public interest.

Accordingly, for the reasons described above and others, District Lodge 19 urges the Board to carefully consider the implications on this proposed transaction and those that will follow and urges the Board to reject the proposed CN-KCS voting trust.

Dated: June 7, 2021

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I certify that I have this day served copies of the above document by electronic mail per 49 C.F.R. § 1104.12 upon all parties of record in this proceeding.

Dated: June 7, 2021

/s/ Antonia Bird  
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*Attorneys for IAM District Lodge 19*