

ARU-3

BEFORE THE
SURFACE TRANSPORTATION BOARD

302485

Finance Docket No. 36500

CANADIAN PACIFIC RAILWAY LIMITED, ET AL.
– CONTROL –
KANSAS CITY SOUTHERN, ET AL.

ENTERED
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June 9, 2021
Part of
Public Record

**ALLIED RAIL UNIONS' COMMENTS IN RESPONSE TO PETITION FOR
CONTINUED ACCESS TO INFORMATION**

The Brotherhood of Maintenance of Way Employees Division/IBT; Brotherhood of Railroad Signalmen; International Association of Sheet Metal, Air, Rail and Transportation Workers-Mechanical Division; and National Conference of Firemen and Oilers, 32BJ/SEIU (referred to herein as the “Allied Rail Unions” or “ARU”)¹ respectfully submit these comments concerning the petition of Canadian Pacific Railway (“CP”) (filing CP-18) for an order requiring Kansas City Southern (“KCS”) to continue to provide information to CP so that CP can file its application to acquire control of KCS.

The ARU take no position regarding the merits of a proposed acquisition of KCS at this time. Nor do they express a preference for this proposed transaction or the competing proposed acquisition of KCS by Canadian National Railway in F.D. 36514. But the ARU do support CP’s petition that KCS be required to continue to provide information to CP that CP needs to file its

¹ There is no formal organization known as the “Allied Rail Unions”, rather that name has been adopted by these organizations for convenient collective reference in this proceeding; each organization is a separate participant in this proceeding.

application, and to continue to allow CP to access information that KCS has already provided to CP in connection with its preparation of its application.

Currently, the Board, the ARU, and other stakeholders have no basis for assessing the merits of the two proposed transactions to acquire KCS and its affiliates because neither CP nor CN has filed its application with the Board. Pursuant to its agreement with KCS, CN plans to move forward with filing an application. Also pursuant to its agreement with CN, KCS has terminated its agreement with CP. CP has nonetheless indicated that it intends to continue to seek Board authorization for its acquisition of control of KCS. However, CP asserts that it needs to continue to receive information from KCS and to access information that it previously received from KCS in order to file the application. If CP cannot have access to the information it seeks, it may not be able to file an application or may not be able to file as complete and effective an application as it would file if it had the information from KCS.

The ARU submit that the public interest supports granting CP's petition because the Board and interested parties ought to be able to assess both potential transactions. Additionally, once there is opportunity to review the applications and engage in discovery, it may become apparent that approval of one of the transactions would not be consistent with the public interest, or that one of the proposed transactions would be preferable; but that will not be possible if CP is disabled from moving ahead with its application. The availability of a CP alternative application (in a parallel proceeding or as a responsive application) would be particularly important if the CN voting trust is approved, because if the Board were to ultimately deny the CN application, pendency of the competing CP application would allow the Board to simultaneously rule on that

alternative, or to expeditiously consider that alternative, rather and leave KCS in trust for another extended period.

The ARU also note that in their motion for approval of the voting trust in FD 36514, CN and KCS asserted that the CN voting trust “mirrors” the CP voting trust that was approved by the Board in this Finance Docket, and they argue that it would be unfair for the Board to approve CP’s voting trust, but not CN’s similar voting trust. CN/KCS Voting Trust Motion at 5-12, 46-49. CN and KCS also argued that the availability of a CP alternative is a reason for the Board not to be concerned about having to unwind CN’s acquisition of control of KCS through a voting trust in the event that the CN/KCS application is denied. Motion at 32. But, as is noted above, in that situation, it could be another long period of review with KCS still in a trust, while a post-denial application by CP is considered, and that might cause harm to KCS, or cause the Board to be reticent about denying the CN/KCS application. The possibility of a CP alternative as a basis for discounting concerns about the potential problems with unwinding the CN acquisition if the CN/KCS application is denied can only be viable if CP is allowed to continue to have full access to KCS information so CP can advance its own application.

Accordingly, the ARU submit that the Board should grant CP’s motion and require KCS to continue to provide CP with the information it needs to file its competing application, and to continue to allow CP access to information it has already received.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served one copy of the foregoing Allied Rail Unions' Comments In Response To Petition For Continued Access To Information by First Class Mail to the offices all Parties of Record as of the date of this filing.

Date: June 9, 2021

/s/Richard S. Edelman
Richard S. Edelman