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Ms. Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

ENTERED
Office of Proceedings
June 15 2021
Part of
Public Record

Re: **Finance Docket No. 33388 (Sub-No. 102), CSX Transportation, Inc.—Petition
for Declaratory Order and Cease and Desist Order**

Expedited Handling Requested

Dear Ms. Brown:

Enclosed for electronic filing is a Petition for Declaratory Order and Cease and Desist Order by CSX Transportation, Inc. concerning a labor dispute with the International Association of Sheet Metal, Air, Rail and Transportation Workers.

The filing is in three parts. The first part is the Petition. The second and third parts are Exhibit Volumes 1 and 2.

The filing fee of \$1,400 has been paid via pay.gov.

Thank you for your assistance. If you have any questions, please contact me.

Sincerely yours,

/s/ Ronald M. Johnson

Ronald M. Johnson
Attorney for CSX Transportation, Inc.

Enclosure

FILED
June 15, 2021
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
June 15, 2021
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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388 (Sub-No. 102)

CSX TRANSPORTATION, INC.
PETITION FOR DECLARATORY AND CEASE AND DESIST ORDERS

I. Introduction

CSX Transportation, Inc. (“CSXT”) is filing this Petition for Declaratory and Cease and Desist Orders pursuant to 49 CFR § 1117.1, 5 USC § 554(e) and 49 USC § 1321 to resolve a dispute between CSXT and the International Association of Sheet Metal, Air, Rail and Transportation Workers (hereinafter “SMART-TD”) concerning whether the Surface Transportation Board (the “Board”) has exclusive jurisdiction over SMART-TD’s objection to CSXT’s use of a Consolidated Rail Corporation (“Conrail”) switch job to transfer railcars between rail yards in the Detroit Shared Assets Area (“SAA”).

The underlying dispute is over CSXT’s replacement of a CSXT yard job with a Conrail yard job to transfer railcars between CSXT’s Rougemere Yard and Conrail’s Livernois Yard within the Detroit SAA.¹ CSXT maintains that its use of a Conrail yard job is proper under the Operating

¹ Terms used in this Petition such as “Shared Assets” and “Shared Assets Area” are defined in the Shared Assets Area Operating Agreement for Detroit between Conrail, CSXT, and NSR and explained in *CSX Corp. et al.—Control—Conrail, Inc. et al.*, Decision No. 89, 3 S.T.B. 196 (1998). See *Decision* at 228; Shared Assets Area Operating Agreement for Detroit, §§ 1 (xx) (“Shared Assets”), (yy) (“Shared Assets Area”) (attached as Exhibit No. 1).

Agreement for the Detroit SAA approved by the Board in *CSX Corp. et al.—Control—Conrail, Inc. et al.*, Decision No. 89, 3 S.T.B. 196 (1998) (hereinafter the “*Conrail Decision*”). As the Board recognized there, Conrail acts as an “agent or subcontractor” for CSXT or Norfolk Southern Railway Company (“NSR”) to perform switching services within the SAAs. *Conrail Decision* at 231.

SMART-TD is the union representative for employees in the craft of trainmen employed by CSXT and Conrail. SMART-TD is claiming that this transfer work belongs exclusively to CSXT trainmen covered by the applicable collective bargaining agreement between CSXT and SMART-TD, the B&O Agreement. By utilizing a Conrail job staffed with Conrail employees, SMART-TD claims CSXT is violating the B&O Agreement. In addition, SMART-TD argues that its position that this work must be performed by CSXT trainmen is supported by the 1998 New York Dock Implementing Agreement for the Conrail Transaction and a 2010 New York Dock Implementing Agreement between SMART-TD and CSXT. As explained, in the Conrail Transaction, the assets of Conrail were largely divided between CSXT and NSR.

The parties’ underlying dispute clearly grows out of the implementation of a railroad consolidation approved by the Board pursuant to 49 USC §§ 11323-11324 in the *Conrail Decision*. The dispute requires the application and interpretation of the *Conrail Decision*, the Detroit SAA Operating Agreement, New York Dock implementing agreements, the New York Dock conditions², and whether this Board’s authorizations supersede conflicting requirements in RLA collective bargaining agreements. All of these matters are undeniably within the Board’s

² *New York Dock Ry.-Control-Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), *aff’d sub nom. New York dock Ry. v. United States*, 609 F.2d 83 (2d Cir. 1979 (“*New York Dock*”).

exclusive jurisdiction by virtue of 49 USC § 11321(a). The Board requires that such disputes under the *New York Dock* conditions first be submitted to the dispute resolution procedures in Article I, Section 11 of the *New York Dock* conditions with review by the Board. In fact, CSXT has invoked the Section 11 procedures and a Section 11 Committee has been established by operation of Section 11(a).

SMART-TD, however, is trying to stall and frustrate the Section 11 dispute process while it improperly progresses its claim in arbitration before the National Railroad Adjustment Board (“NRAB”) under Section 3 of the RLA. SMART denies the applicability of this Board’s jurisdiction, denies that a Section 11 Committee has been established, has refused to participate at every step in this Board’s Section 11 process, and most recently objected to CSXT’s request to the National Mediation Board to appoint a neutral arbitrator to act as chairperson of the Section 11 Committee. In effect, SMART-TD is attempting a collateral attack on the Board’s jurisdiction and authorizations in the *Conrail Decision* through arbitration pursuant to Section 3 of the RLA. SMART-TD’s arguments would also frustrate CSXT’s ability to use Conrail as its Board-approved agent in the SAAs. For these reasons, CSXT was compelled to file this Petition.

CSXT is seeking the following relief in this Petition:

--a declaration that the parties’ dispute over CSXT’s use of Conrail to perform a transfer move in the Detroit SAA is within the Board’s exclusive jurisdiction because it requires the interpretation or application of the *Conrail Decision*, the Board approved Detroit SAA Operating Agreement, 1998 New York Dock implementing agreements for the Conrail Transaction, the 2010 New York Dock implementing agreement, and the New York Dock conditions,

--a declaration that whether the Detroit SAA Operating Agreement in conjunction with the Detroit SAA New York Dock Implementing Agreement supersedes requirements in the B&O Agreement presents an issue within the Board’s jurisdiction,

--a declaratory order that the above disagreements must be resolved by a Section 11 Committee in the first instance,

--an order directing SMART-TD to participate in the Section 11 dispute procedure invoked by CSXT, and

--an order directing SMART-TD to cease and desist progression of its claim before the NRAB.

In Part II of this Petition, CSXT explains the background of the dispute. In Part III.A, CSXT explains that the parties' arguments raise matters within the Board's exclusive jurisdiction. In Part III.B, CSXT explains that the parties' dispute should be first addressed by a Section 11 Committee. In Part III.C, CSXT explains why a cease and desist order is necessary to protect the Board's dispute procedures and exclusive jurisdiction.

EXPEDITED HANDLING REQUESTED

CSXT is requesting expedited consideration of its Petition, because the NRAB is requiring the parties to submit arbitration briefs by July 14, 2021 and SMART-TD continues to refuse to recognize or participate in this Board's Section 11 dispute resolution procedures.

II. Background

A. Conrail Transaction

The dispute over CSXT's use of Conrail has its genesis in the Conrail Transaction. In the Conrail Transaction, the Board approved the control of Conrail, Inc. and its wholly owned rail carrier subsidiary, Conrail, by CSX Corporation and CSXT and Norfolk Southern Corporation and NSR and the division of Conrail between CSXT and NSR. Most of Conrail's rail lines, equipment, facilities and employees were allocated to either CSXT or NSR, the "Allocated Assets," and

integrated, respectively, into the rail systems of CSXT or NSR. See *Conrail Decision* at 221-225.³

The Board found that the division of Conrail between CSXT and NSR had public benefits and would enhance rail competition. *Conrail Decision* at 247-251. The *New York Dock* and other employee protective conditions were imposed for employees adversely affected by the Conrail Transaction. *Conrail Decision* at 371-372.

B. Shared Assets Areas

While most Conrail assets were allocated to CSXT or NSR, some remained in Conrail, the “Retained Assets.” Conrail is jointly controlled by CSXT and NSR. The Retained Assets are operated by Conrail in three “Shared Assets Areas”: Detroit, Philadelphia/South Jersey, and North Jersey. *Conrail Decision* at 226. The Shared Assets Areas are defined geographic areas, which include Shared Assets (operated by Conrail) and lines and yards of CSXT and NSR within the same geographic area. The Detroit Shared Assets Area was described in Volume 3B of the Application. See Exhibit No. 2 (excerpt describing the Detroit SAA). In these areas, it was not feasible to divide Conrail facilities between CSXT and NSR and still provide enhanced competition. To address competitive issues, the Applicants (CSXT, NSR, and Conrail) presented the Shared Assets Areas concept as a unique means to preserve and enhance competition. A “procompetitive” feature of the SAAs is that all former Conrail shippers in a SAA are served by both CSXT and NSR. *Conrail Decision* at 247. In order that shippers on Conrail lines in the SAA

³ The Allocated Assets were initially allocated to non-operating subsidiaries of CSXT and NSR, respectively, to New York Central Lines LLC and Pennsylvania Lines LLC. CSXT and NSR operated their Allocated Assets for their respective subsidiaries. In a Supplemental Transaction, the Board approved the consolidation of New York Central Lines LLC into CSXT and Pennsylvania Lines LLC into NSR. See *CSX Corp. et al.—Control—Conrail, Inc. et al.-Supp. Order*, 7 S.T.B. 205 (2003).

have access to either CSXT or NSR, Conrail acts as an “agent or subcontractor” for CSXT and NSR. *Id.* at 231. Conrail is not an independent carrier. The freight moves in the account of CSXT or NSR even when it is being handled by Conrail in the SAA. See Detroit SAA Operating Agreement, § 3(f). A copy of the Detroit SAA Operating Agreement is Exhibit No. 1. CSXT and NSR do not interchange traffic with Conrail. Conrail has no operations outside of the SAAs.

There is an Operating Agreement between CSXT, NSR, and Conrail, which governs operations in each SAA and defines the particular SAA. In these Operating Agreements, CSXT and NSR granted trackage rights to Conrail to operate over their track in the SAAs, and Conrail granted trackage rights to CSXT and NSR to operate over its tracks in the SAA as necessary for efficient operations within the SAAs. Because the present dispute involves the Detroit SAA, CSXT limits its discussion to that SAA unless the context requires otherwise.

C. Board Approval of Shared Assets Areas

Applicants specifically sought Board approval of the SAAs and their Operating Agreements pursuant to 49 USC § 11323(a)(2). See the *Conrail Decision* at 234. The purpose and operation of the SAAs were described in detail in the Application and accompanying exhibits, which included the SAA Operating Agreements. The SAAs were reviewed and discussed throughout the *Conrail Decision*. The Board recognized the unique role of Conrail in the SAAs, stating as followed:

It is intended that, following the Division: CRC will not hold itself out to the public as performing transportation services directly and for its own account; CRC will not enter into any contract (other than with CSXT or NSR) for the performance of transportation services; and all transportation services performed by CRC will be performed as agent or subcontractor of CSXT or NSR.

Conrail Decision at 231. The Board found that the Conrail Transaction was in the public interest and approved the control and division of Conrail by CSXT and NSR pursuant to 49 USC § 11323.

Conrail Decision at 371-372. The Board specifically approved the SAA Operating Agreements in Finance Docket No. 33388, stating as follows:

The foregoing findings specifically extend to the following elements of the transaction authorized in STB Finance Docket No. 33388: ... (c) ... the entry by CSXT, NSR, and CRC into the Shared Assets Areas Operating Agreements and the operation by CSXT, NSR, and CRC thereunder of the assets held by CRC, with CSXT and NSR respectively acquiring the right to operate and use the Allocated Assets Operating Agreements, the Shared Assets Area Operating Agreements....

Conrail Decision at 372. The Board imposed the *New York Dock* conditions on these approvals.

Conrail Decision at 371-372.

The Applicants (CSXT, NSR, and Conrail) reached settlement agreements with many interested parties, which were reviewed by the Board and in some cases made conditions of its approval of the Conrail Transaction. Interestingly, the Applicants reached a settlement with SMART-TD's predecessor union, United Transportation Union ("UTU"), in which the UTU supported the Conrail Transaction, including the SAAs. *Conrail Decision* at 328. The UTU raised no objection to the planned operation of the SAAs or their Operating Agreements, including the ability of CSXT to utilize Conrail as an agent or subcontractor to perform switching services on CSXT's behalf within a SAA. There was no reason to do so, because the work of the trainmen craft would be performed by either CSXT, NSR, or Conrail employees represented by UTU (now SMART-TD). Moreover, if CSXT employees could show that they were adversely affected by CSXT's use of Conrail within the Detroit SAA, they could be eligible for benefits under the *New York Dock* conditions. Indeed, the *Conrail Decision* expressly recognized that the *New York*

Dock conditions were imposed on “the entry into and performance of operating agreements for Allocated and Shared Assets....” *Id.* at 372 n. 259.

D. Conrail Transaction New York Dock Implementing Agreements

While the parties refer to the Conrail New York Dock Implementing Agreement in their correspondence as if there were a single implementing agreement, there were actually several, interrelated implementing agreements. In anticipation that the Board would impose the *New York Dock* employee protective conditions on its approval of the Conrail Transaction, the Applicants negotiated the August 6, 1998 Master New York Dock Implementing Agreement (the “Master Agreement”) with SMART-TD’s predecessor, UTU, for the craft of trainmen (attached as Exhibit No. 3). The Master Agreement addressed how the Conrail workforce would be divided between employees who went to CSXT or NSR or who remained with Conrail. Two New York Dock Implementing Agreements were reached in conjunction with the Master Agreement, which implement the Conrail Transaction regarding operations by Conrail in the SAAs. The one that addresses the Detroit SAA is attached as Exhibit No. 4. The other addresses operations in the North and South Jersey SAAs. In this Petition, CSXT only discusses the Master Agreement and the Detroit SAA New York Dock Implementing Agreement.

E. Transfer Operations Between Rougemere and Livernois Yards

CSXT had utilized a yard job, Y122, to move railcars between Rougemere and Livernois Yards. The two yards are connected by CSXT and Conrail track, as shown in the map that is Exhibit No. 2. Y122 originated at Rougemere Yard and traveled over several miles of CSXT track to a connection with Conrail track. The assignment then traveled over a few miles of Conrail track to reach Livernois Yard. It then returned to Rougemere Yard with cars picked up at

Livernois Yard. The distance between Rougemere and Livernois Yards is only about six miles. The cars moved by Y122 were at all times in CSXT's account; as explained, there is no interchange between CSXT and Conrail.

In 2018, exercising its rights under Section 3 of the Detroit SAA Operating Agreement, CSXT and Conrail agreed to replace CSXT Yard Job Y122 with a Conrail yard job (hereinafter "Conrail Yard Job") to perform this transfer work. The Conrail Yard Job originates and terminates at the Livernois Yard. Conrail and CSXT decided to replace Y122 with the Conrail Job because of inefficiencies and congestion in the Livernois Yard due to the operational availability of Y122.

Section 3(d) of the Detroit SAA Operating Agreement allows CSXT to request Conrail to perform "Switching and Yard Service" within the SAA as agent for CSXT. Section 3(d)(i) states as follows:

At the request of and as agent for each Operator, CRC shall perform Switching and Yard Services required by such Operator within the Shared Assets Area, including without limitation any such services which such Operator may be responsible for performing or having performed for a shipper or other Person.

"Operator" is defined by the Detroit SAA Operating Agreement as either CSXT or NSR.

"Switching and Yard Services" is defined by the Detroit SAA Operating Agreement as follows:

"Switching and Yard Services" means the service of classifying and assembling trains for the account of an Operator in Jointly-Operated Facilities; movement of loaded or empty Railcars between yards and local industries, and switching train and Railcars at yards, terminals and local industries.

The Conrail Yard Job meets the definition of "Switching and Yard Services" because it handles cars in the account of CSXT and moves these cars "between yards," i.e., between Rougemere and Livernois Yards. The service is provided "within the Shared Assets Area" within the meaning

of Section 3(d), because Rougemere and Livernois and the track connecting them are all within the Detroit SAA.

F. SMART-TD Objects to CSXT's Use of Conrail Yard Job

The crew of Y122 was one locomotive engineer, represented by the Brotherhood of Locomotive Engineers and Trainmen ("BLET"), and one conductor, represented by SMART-TD. The crew of the Conrail Yard Job is also one engineer and one conductor, represented by BLET and SMART-TD, respectively. SMART-TD began filing claims on behalf of a CSXT conductor who had worked on Y122 alleging that its work belonged to CSXT employees and was being "farmed out" to Conrail in violation CSXT's collective bargaining agreement with SMART-TD, the B&O Agreement. See Appeal of Claim Denial (attached as Exhibit No. 5). There followed conferences and exchanges of correspondence where the parties set out their positions, which CSXT summarizes next, not to convince the Board of their relative merit, but to show that they involve matters within the Board's jurisdiction.

1. SMART-TD Arguments

In an e-mail dated January 20, 2021, SMART-TD Vice General Chairperson Belew described the parties' positions as they had been discussed in conferences to that date. SMART-TD there characterized the kind of work performed by Y122 and now the Conrail Yard Job as "interchange work." SMART-TD contended that "[b]eing that CSX relied solely on FD 33388 to base this position there is not any additional filings with the STB to legally allow this interchange." Therefore, according to SMART-TD, CSXT's use of a Conrail job instead of a CSXT job for this "interchange" work violated "STB requirements to operate in such a fashion" and

the “Conrail Implementing Agreement” and the *Conrail Decision* did not support CSXT’s position. A copy of the January 20, 2021 e-mail is Exhibit No. 6.

SMART-TD also argued that work “farmed out” by CSXT to Conrail violated the B&O Agreement, specifically, Rule 1 (scope), Rule 106 (interchange), and Article 3. The essence of SMART-TD’s claim was that this work belonged to CSXT employees and had to be done in accordance with the requirements of the B&O Agreement. Rule 1, entitled “Scope,” provided that the B&O Agreement “covers all road and yard service employees: ‘Conductors’, ‘Trainmen’ and ‘Yardmen’, found in their respective classes, represented by the United Transportation Union (C&T) under the Railway Labor Act, as amended.” SMART-TD interprets Rule 1 to require that all work historically done by CSXT employees continue to be done by CSXT employees. Rule 106, entitled “Interchange” addressed matters relating to the interchange of railcars between CSXT and “connecting carriers.” SMART-TD contends that CSXT violated Rule 3 by not notifying the union which tracks in Rougemere Yard were designated for interchange service. Article 3(e) Percentage of Work-Transfer Runs provides as follows: “Effort will be made to give Baltimore and Ohio yardmen their percentage of all transfer work between foreign lines and The Baltimore and Ohio Railroad.” SMART-TD explained that it relied on Article 3 for its argument that CSXT “failed to adhere to equitable requirements of the property agreement(s) of the Detroit SAA Operating Agreement to provide CSXT employees we represent with a portion of the interchange and transfer work that is theirs.” SMART-TD April 8 Letter at 2 (Exhibit No. 8).

Even if the Board had authorized CSXT’s use of Conrail, SMART-TD contended that the Board’s approvals did not supersede the CSXT-SMART-TD collective bargaining agreement. SMART-TD concluded by summarizing the parties’ positions as follows:

To summarize the position of the Carrier as previously given; FD 33388 grants CSX the right to abolish prior CSX assignments at Rougemere Yard and thus no contractual violation has occurred.

To summarize the Organization's position; FD 33388 does not give any such rights to the Carrier as Finance Docket 33388 is merely a filing with the STB which grants the railroad rights to trackage right once approved but in this instant case does not even grant CSX the right to operate their Shared Assets Rail road into Rougemere yard. Furthermore FD 33388 does not grant relief to CSX from the CBA [collective bargaining agreement] nor to farm out our work to another rail road.

SMART-TD attached excerpts from the Application in Finance Docket No. 33388, including the Detroit SAA Operating Agreement, to support its arguments.

It is important to note SMART-TD has also argued that its position, that the Rougemere-Livernois transfer move must be performed by CSXT trainmen, is supported "by the 1999 UTU/CSXT Conrail Implementing Agreements as well as the 2010 Northern Mid-Atlantic Agreement." See April 8, 2021 letter from General Chairperson Lee to Jennifer E. Manz, CSXT Dir. Labor Relations (attached as Exhibit No. 8). The 2010 Northern Mid-Atlantic Agreement is another *New York Dock* implementing agreement in which CSXT and SMART-TD agreed that former Conrail territory allocated to CSXT (but not SAAs territory) would be placed under the B&O Agreement.

2. CSXT Arguments

CSXT explained in a letter dated April 6, 2021 (attached as Exhibit No. 7) that SMART-TD was fundamentally in error as to the Board's authorizations in the *Conrail Decision*, Conrail's role in the SAAs, and the service performed by Y122 and the Conrail Yard Job. SMART-TD was also in error that the Board's approval of the Detroit SAA Operating Agreement did not override inconsistent requirements of the B&O Agreement.

First, the Organization (SMART-TD) was wrong that the function performed by Y122 or the Conrail Yard Job was the “interchange” of cars between CSXT and Conrail. As explained, under the Detroit SAA Operating Agreement, there can be no interchange between CSXT and Conrail. Conrail acts as an agent for CSXT or NSR. The cars handled by Conrail as agent for CSXT are never in Conrail’s account. They remain in the account of CSXT. Therefore, CSXT did not need additional Board authority to allow a non-existent interchange between CSXT and Conrail.

Second, SMART-TD was wrong that the *Conrail Decision* did not authorize CSXT to “farm out” work to Conrail. As explained, in the Application CSXT, NSR, and Conrail sought and were granted Board authority for Conrail to function as agent for CSXT and NSR. By definition, all of the work performed by Conrail is “farmed out” from CSXT or NSR. Conrail has no train operations other than what it performs as agent for CSXT or NSR. In the *Conrail Decision*, the Board specifically authorized the operating arrangements between CSXT, NSR, and Conrail and CSXT’s ability to request Conrail to perform “Switching and Yard Services” that otherwise would be performed by CSXT, without any objection from UTU/SMART-TD. Given that the Board authorized the Detroit SAA Operating Agreement and Section 3 thereof allows CSXT to request Conrail to perform services such as that as had been performed by Y122, there was no basis for the SMART-TD’s current claims that substitution of a Conrail job for Y122 violated any Board requirements.

Third, SMART-TD was wrong that the Board’s authorizations in the *Conrail Decision* did not approve a grant of trackage rights to Conrail to operate over CSXT track between Rougemere and Livernois Yards. In Section 3(c)(i) of the Detroit SAA Operating Agreement, CSXT

granted Conrail operating rights over CSXT in order to perform Switching and Yard Services within the Detroit SAA. Section 3(c)(i) states as follows:

(c) *Grant of Rights.* Subject to reasonable compensation and other terms established in the Accounting Plan, and in each case for the purpose of Switching and Yard Services performed by CRC pursuant to Section 3(d) and movement of Operator Trains pursuant to Section 3(a):

- (i) CSXT hereby grants to CRC and NSR overhead operating rights to operate CRC trains and NSR trains, respectively, with their own crews, over such CSXT line segments access to and use of which by CRC and NSR are necessary to effectuate the train operations and services contemplated by this Agreement.

Fourth, CSXT also relied on the Conrail New York Dock Implementing Agreements for its position that the B&O Agreement did not apply to jobs for which the Detroit SAA Operating Agreement allowed CSXT to contract to Conrail as agent for CSXT. As explained *infra*, the New York Dock implementing agreement for the Detroit SAA specifies that work performed by Conrail pursuant to the Detroit SAA Operating Agreement is covered by Conrail's collective bargaining agreement with SMART-TD, not its agreements with CSXT.

Fifth, SMART-TD was wrong that the Board's approval of the Detroit SAA Operating Agreement and Conrail New York Dock Implementing Agreements could not supersede conflicting requirements in collective bargaining agreements. *See infra* at 24.

G. SMART-TD Refuses to Acknowledge This Board's Section 11 Dispute Procedures and Invokes RLA Arbitration

Because the dispute grew from implementation of the Conrail Transaction, it is within the exclusive jurisdiction of the Board. Therefore, the parties' dispute must first be handled under the arbitration procedures in Section 11 of the *New York Dock* conditions imposed in the *Conrail Decision*. In a letter dated April 6, 2021, CSXT invoked such arbitration, appointed

Jennifer E. Manz, Director, Labor Relations, as CSXT's member of the Section 11 Committee, and asked SMART-TD to designate its member. *See Exhibit No. 7.*

In a letter dated April 8, 2021, SMART-TD disagreed that Section 11 applied. SMART-TD responded that "[a]s for designating a member for the New York Dock Section 11 Committee, we again disagree this is applicable. However, if and when we are required to designate such member, we will do so when advised by the Surface Transportation Board." *See Exhibit No. 8.* SMART-TD contended that the dispute should be arbitrated under Section 3 of the RLA. After SMART-TD failed to designate its member of the Section 11 Committee within the time frame set out in Section 11(a), by letter dated April 20, 2021, CSXT notified SMART-TD that General Chairperson Richard D. Lee had been designated the union's member of the Committee by default by operation of Section 11(a). *See Exhibit No. 9.* CSXT requested that SMART-TD confer to select the neutral member of the Committee.

SMART-TD never conferred on the selection of the neutral member of the Section 11 Committee. Rather, on April 29, 2021, SMART-TD initiated RLA arbitration of its claim before the First Division of the National Railroad Adjustment Board by filing a Notice of Intent with the National Mediation Board ("NMB"), which provides administrative support for the NRAB. *See Exhibit No. 10.* By letter dated April 30, 2021, the NRAB advised SMART-TD and CSXT that it had docketed SMART-TD's claim as Case No. NRAB-00001-210254 and directed the parties to file arbitration submissions with the NRAB by July 14, 2021. *See Exhibit No. 11.*

Because SMART-TD refused to confer on the selection of a neutral under the *New York Dock* conditions, the next step in the Section 11 dispute resolution process was for the parties to confer on a methodology to select a neutral. By letter dated May 3, 2021, CSXT requested

that the parties do so. See Exhibit No. 12. SMART-TD responded in a letter dated May 7, 2021 restating its disagreement “that this is a case involving a review by a NYD Section 11 Committee pursuant to Finance Docket No. 33388.” SMART-TD again refused to designate a member on the Section 11 Committee unless advised to do so by the Board, even though General Chairperson Lee had already been so designated by Section 11(a). As justification for its continued refusal to disregard the Board’s procedures, SMART-TD referred to the recent listing of the dispute by it with the NRAB. See Exhibit No. 13.

Section 11(a) of the *New York Dock* conditions provides that if the parties fail to select a neutral and fail to agree on a methodology to select a neutral, either party can then request the NMB to appoint a neutral. Since more than the requisite time periods had passed, with no participation by SMART-TD, CSXT on May 24, 2021 requested the NMB to appoint the neutral chairman of the Section 11 Committee. See Exhibit No. 14. Also by letter dated May 24, 2021 to the NRAB, CSXT advised that SMART-TD’s claim was subject to this Board’s jurisdiction and was already before an arbitration committee established under Section 11 of the *New York Dock* conditions. See Exhibit No. 15. CSXT asked the NRAB to dismiss SMART-TD’s case or hold it in abeyance pending resolution of the parties’ arguments by this Board. SMART-TD responded in a letter to CSXT dated May 25, 2021 from General Chairperson Lee that it will continue progressing its claims with the NRAB and CSXT should present its jurisdictional arguments to the NRAB. In blatant disregard of this Board’s procedures, SMART-TD denied that a Section 11 Committee even exists, proclaiming that “SMART-TD never agreed to establish such a board and the facts remain that this board does not exist between us currently.” SMART-TD further argued that any jurisdictional issues had to be resolved by the NRAB. See Exhibit No. 16.

SMART-TD's statement that a Section 11 Committee does not exist simply because it disagrees is of course untrue. Per Section 11(a), the Committee was established effective with CSXT's April 6, 2021 request to SMART-TD and the members of the Committee are Jennifer E. Manz for CSXT and General Chairperson Lee for SMART-TD.

By letter dated May 26, 2021, NMB asked SMART-TD to provide any comments on CSXT's request for the appointment of an arbitrator for the Section 11 Committee. *See Exhibit No. 17.* SMART-TD responded by letter dated June 9, 2021 objecting to the appointment of an arbitrator. SMART-TD argued such appointment was inappropriate, because this Board's Section 11 procedures were supposedly limited to disputes arising under the *New York Dock* conditions and because the matter was pending before the NRAB. *See Exhibit No. 18.* CSXT replied to SMART-TD's objection in a letter dated June 11, 2021. CSXT there explained that SMART-TD had misstated the types of disputes that can be heard in Section 11 arbitration. Under this Board's precedents, they include disputes over the interpretation and application of New York Dock implementing agreements, as this dispute does. *See Exhibit No. 19.* As of the filing of this Petition, the NMB has still not acted on CSXT's request for appointment of an arbitrator.

Because SMART-TD is refusing to acknowledge this Board's jurisdiction and dispute resolution procedures and has refused to participate at every step of the Section 11 process, CSXT was compelled to file this Petition.

III. ARGUMENT

A. This Board Has Exclusive Jurisdiction Over the Rougemere Yard Job Dispute

The Board has exclusive jurisdiction over railroad consolidations approved under 49 USC §§ 11323-11324 by virtue of 49 USC § 11321(a). It is equally true that the Board has exclusive jurisdiction over labor disputes growing from the implementation of a Board-approved consolidation and this jurisdiction supersedes requirements of the RLA and RLA collective bargaining agreements. *See, e.g., Norfolk & Western Ry. Co. v. Am. Train Dispatchers Ass'n*, 499 US 117 (1991); *Union Railroad Co. and Bessemer & Lake Erie R.R. Co.—Arbitration Review—United Steel Workers*, STB Finance Docket No. 31363 (Sub-No. 3), slip op. at 4 (served Dec. 17, 1998), 1998 STB LEXIS 950, * 8-10. *See also, e.g., Conrail Decision* at 329 n. 198 (“In this regard, the courts have made clear that under what is now 49 U.S.C. § 11321(a), agency approval of a rail merger confers self-executing immunity on all material terms of the transaction from all other laws to the extent necessary to permit implementation of the transaction.”). The Conrail Transaction, including the Detroit SAA Operating Agreement, was authorized by the Board pursuant to 49 USC §§ 11321(a) and 11323-324.

CSXT next reviews the issues, which are dispositive of SMART-TD’s objection to CSXT’s use of Conrail to perform the transfer and switching services between Rougemere and Livernois Yards. The purpose of this discussion is to demonstrate that these issues are within the Board’s exclusive jurisdiction. CSXT is not asking the Board at this time to address their merits, which, as explained in Part III.B, are to be addressed first in the Section 11 dispute procedure.

1. Is CSXT's Use of Conrail Authorized by the *Conrail Decision* or Does It Violate STB Requirements?

CSXT's primary defense to SMART-TD's claim that CSXT's use of Conrail to perform the transfer run between Rougemere and Livernois Yards is the Board approved Operating Agreement for the Detroit SAA. As explained, SMART-TD contends that CSXT's replacement of Y122 with the Conrail Yard Job violated Board requirements and was not authorized by the *Conrail Decision*. As CSXT has explained, CSXT's use of Conrail is permitted by the Operating Agreement, is authorized by the *Conrail Decision*, and therefore does not violate any Board requirements. As discussed, Section 3 of the Operating Agreement allows CSXT to request Conrail to perform switching and yard services within the Detroit SAA as agent for CSXT, which could have been done by CSXT. The transfer of cars between Rougemere and Livernois Yards is "Switching and Yard Services" within the meaning of Section 3. While SMART-TD has not yet explained exactly what Board requirements are supposedly violated by CSXT's use of Conrail in this case, whether CSXT's actions are authorized by the Detroit SAA Operating Agreement as approved in the *Conrail Decision* or violates Board requirements is clearly a matter within the Board's exclusive jurisdiction.

2. Did the Board Authorize a Grant of Trackage Rights to Conrail?

SMART-TD argues that CSXT's use of Conrail to handle the transfer move was not proper, because Conrail does not have trackage rights over CSXT track to access Rougemere Yard. However, as explained, the Detroit SAA Operating Agreement granted such operating rights in Section 3 (c)(i): "CSXT hereby grants to CRC and NSR overhead operating rights to operate CRC trains and NSR trains, respectively, with their own crews, over such CSXT line segments access to and use by CRC and NSR are necessary to effectuate the train operations

and services contemplated by this Agreement.” (Emphasis added.) Furthermore, the Board ordered that “the approval granted herein expressly includes ... (j) the acquisition by CRC from CSXT and NSR ... of certain incidental trackage rights over certain line segments, as identified in Section 3(c) of each of the three Shared Assets Areas Operating Agreements”. *Conrail Decision* at 386.

The transfer movement by Conrail between Rougemere and Livernois Yards falls within “train operations and services contemplated within this Agreement,” because this movement comes within “Switching and Yard Services” that CSXT can request of Conrail under Section 3(d)(i) of the Detroit SAA Operating Agreement. While SMART-TD disputes CSXT’s interpretation of Section 3, any remaining question as to whether the Board approved such trackage rights for Conrail requires interpretation of the Detroit SAA Operating Agreement.

3. Does CSXT Interchange Traffic With Conrail?

A central feature of SMART-TD’s claim that CSXT’s use of Conrail violates the B&O Agreement is that CSXT is using a Conrail job to perform interchange service between CSXT and Conrail. CSXT has explained to SMART-TD that it fundamentally misconstrues the role of Conrail in the Conrail Transaction as approved by the Board. As the Board recognized, Conrail acts as an agent for CSXT and NSR in the SAA’s. Freight cars are either in the account of CSXT or NSR. The Detroit SAA Operating Agreement expressly provides that they are never in the account of Conrail. See Detroit SAA Operating Agreement, § 3 (f) (“All freight traffic and Railcars handled within the Shared Assets Area, including traffic and Railcars handled by CSXT or NSR pursuant to *Sections 3(a) and 3(c)*, and traffic and Railcars handled by CRC pursuant to *Sections 3(c) and 3(d)*, shall at all times remain in the waybill, car hire and revenue accounts of either CSXT or

NSR.”). While CSXT believes it is irrefutable that there can be no interchange of cars between CSXT and Conrail, since freight cars are never in Conrail’s account and Conrail acts as CSXT’s agent, SMART-TD continues to assert that the disputed yard job performs interchange service between the two carriers. Resolution of this disagreement again requires interpretation of the Detroit SAA Operating Agreement and the Board’s authorization of that Agreement.

4. Does the Detroit SAA New York Dock Implementing Agreement in Conjunction With the Detroit SAA Operating Agreement Supersede Inconsistent Requirements in the B&O Agreement?

SMART-TD contends that the movement of rail cars between Rougemere and Livernois Yards belongs to CSXT trainmen by virtue of the B&O Agreement and the fact that a CSXT yard job historically performed this transfer before and after the Conrail Transaction. It is CSXT’s position that the Board’s approval of the Detroit SAA Operating Agreement together with the Detroit SAA New York Dock Implementing Agreement supersede or override any requirements in the B&O Agreement which was entered prior to and not as a part of the Conrail Transaction, which SMART alleges would preclude CSXT from using Conrail as allowed by the Detroit SAA Operating Agreement.

In the *Conrail Decision*, the Board declined to make any advance determination whether there was a necessity to override existing collective bargaining agreements. *Conrail Decision* at 329-330. The Board left such matters to agreements implementing the Conrail Transaction.

Under Section 4 of the *New York Dock* conditions, an implementing agreement is required to address “changes in operations” that result from a Board approved transaction. Here, the “changes in operations” of CSXT and Conrail within a SAA are set out in the SAA Operating Agreements. As discussed, Conrail acts as an agent for CSXT or NSR. Section 3 of the

Detroit SAA Operating Agreement allows CSXT to request Conrail to perform switching and yard services within the SAA on CSXT's behalf, including such work that had or could have been performed by CSXT. The Detroit SAA New York Dock Implementing Agreement provides that when Conrail performs switching or yard services for CSXT or NSR as their agent, the work is performed by Conrail employees covered by Conrail's collective bargaining agreements. See Article II-Collective Bargaining Agreement. "For CRC [Conrail] employees working in the Shared Assets Areas (SAAs) the CRC collective bargaining agreement will be the effective agreement for SAA employees." See Exhibit No. 4. As shown by Article VI, it was anticipated that Conrail employees would perform service not only on Conrail lines in a SAA but also on CSXT or NSR lines as agent for CSXT or NSR within a SAA. See Article VI.A. "CRC employees may be required to perform service throughout the SAA territory in accordance with the CRC schedule agreement." "SAA territory" includes both Retained Assets of Conrail but also CSXT lines within the Detroit SAA such as the CSXT line connecting to the Conrail line between Rougemere and Livernois Yards.

The Detroit SAA New York Dock Implementing Agreement, by specifying that the Conrail collective bargaining agreement applies to work performed by Conrail as agent for CSXT throughout the Detroit SAA, necessarily must override the scope and other requirements in the B&O Agreement. Otherwise, application of the B&O Agreement would prevent CSXT from using Conrail outside of the lines operated by Conrail, but within the Detroit SAA, in direct contravention of the Detroit SAA Operating Agreement. Whether CSXT satisfies the Board's criteria for the override of a RLA agreement set out in *CSX Corp.—Control—Chessie System, Inc. and Seaboard Coast Line Industries, Inc. (Arbitration Review)*; *Norfolk Southern Corp.—*

Control—Norfolk & Western Ry. Co. and Southern Ry. Co. (Arbitration Review), Finance Docket Nos. 28905 (Sub-No. 22), 29430 (Sub-No. 20) (served Sept. 22, 1998), 1998 STB LEXIS 497 (referred to as “*Carmen III*”) is clearly a question within the Board’s exclusive jurisdiction. While SMART-TD disagrees, whether the Detroit SAA New York Dock Implementing Agreement overrides the B&O Agreement is a question for the Section 11 Committee.

Notably, SMART-TD also asserts that the Conrail New York Dock Implementing Agreements and the 2010 NOMAD New York Dock Implementing Agreement support its position that the work CSXT requested Conrail to perform belongs to CSXT employees covered by the B&O Agreement. SMART-TD so far has not offered any explanation how those agreements support its position.⁴ Whatever its rationale, the union’s reliance on them requires their interpretation and application, which are again matters within the Board’s exclusive jurisdiction.

5. Is SMART-TD’s Requested Remedy Allowed by the *New York Dock Conditions*?

SMART-TD in its claim is seeking “a basic eight (8) hour day penalty” for the claimant who worked on Y122 prior to its abolishment. See Exhibit No. 5 (Appeal from Claim Denial). According to SMART-TD, this is a continuing violation, which means CSXT must pay the penalty

⁴ CSXT disagrees there is any support for the Organization in the 2010 NOMAD New York Dock Implementing Agreement. That Agreement had nothing to do with coordination of any work between CSXT and Conrail in the SAAs. The 2010 NOMAD New York Dock Implementing Agreement provided for the coordination of work on Conrail Assets allocated to CSXT and former B&O territory. After consummation of the Conrail Transaction, most Conrail assets allocated to CSXT were placed under the former Conrail collective bargaining agreement, which became the CSXT North Agreement. As a result of the 2010 NYD Agreement, territory covered by the CSXT North Agreement was placed under the B&O Agreement.

until Y122 is restored. However, because CSXT's replacement of Y122 with a Conrail Yard Job was a "change in operations" within the meaning of the *New York Dock conditions*, authorized by the Board-approved Detroit SAA Operating Agreement, any remedy is governed by the *New York Dock* conditions imposed in the *Conrail Decision*.

Under the *New York Dock* conditions, an employee is eligible for labor protection benefits only if adversely affected by a Board approved transaction. An employee still working for the carrier may be eligible for a monthly displacement allowance under *New York Dock* Section 5 if he or she can show that his or her earnings have diminished because of a New York Dock transaction. SMART-TD has not alleged or shown that the claimant suffered a loss of earnings because of a New York Dock transaction (i.e., abolishment of Y122 and CSXT's use of a Conrail job). To the contrary, SMART-TD has disavowed seeking any New York Dock protective benefits. See April 8, 2021 Letter of Gen. Chairperson Lee at 2 ("the Organization is not seeking New York Dock Protections") (Exhibit No. 8). This may be because the claimant in fact continues to work other CSXT train assignments and has not suffered a loss of earnings. In any event, the remedy sought by SMART-TD is not allowed by *New York Dock*.

B. *New York Dock* Section 11 Procedures Are Appropriate for These Issues

The Board requires that disputes arising from New York Dock implementing agreements and the *New York Dock* conditions first be submitted to the dispute resolution procedures in Section 11 of those conditions. See, e.g., *Union Pac. Corp., Union Pac. R.R. Co. and Missouri Pac. R.R. Co.—Control and Merger—Southern Pac. Rail Corp., Southern Pac. Transp. Co., St. Louis Southwestern Ry. Co., SPCSL Corp., and the Denver & Rio Grande Western R.R. Co.*, Finance Docket No. 32760 (Sub-No. 45) (served Dec. 14, 2010), 2010 STB LEXIS 547, * 15 ("Although we

retain jurisdiction to resolve disputes regarding the application of these conditions, we first require parties to submit these disputes to arbitration, as provided in *New York Dock*. Article 1, section 11 of *New York Dock* specifically provides for binding arbitration if ‘the railroad and its employees or their authorized representatives cannot settle any dispute or controversy with respect to the interpretation, application or enforcement of any provisions’ of these conditions.”) (footnotes omitted). Section 11 expressly states that “any dispute or controversy with respect to the interpretation, application or enforcement of any provision in this appendix [the *New York Dock* conditions]” be submitted to arbitration by a committee established pursuant to Section 11(a). The Board has interpreted Section 11 to also apply to disputes arising under implementing agreements reached pursuant to the *New York Dock* conditions. *See, e.g., id.* * 15 (“ Arbitrators routinely rule on disputes that concern the interpretation and application of rail merger implementing agreements, and their decisions have been reviewed by the Board and our predecessor, the Interstate Commerce Commission (ICC).” (footnotes omitted)).

The Board also prefers that a *New York Dock* arbitration determine in the first instance whether there is necessity to override or modify a collective bargaining agreement in order to allow the efficiencies from a Board-approved merger or consolidation applying the criteria set forth in Board precedents. *See generally Carmen III.*

As discussed, the parties’ arguments require interpretation or application of New York Dock implementing agreements. CSXT relies on the Master New York Dock Implementing Agreement for the Conrail Transaction and the related Detroit SAA New York Dock Implementing Agreement for its position that the B&O Agreement does not apply to work

performed by Conrail for CSXT pursuant to the Detroit SAA Operating Agreement. Conversely, SMART-TD relies on New York Dock implementing agreements for its position that the transfer work must be performed by CSXT trainmen, citing, without explanation, the Conrail New York Dock Implementing Agreement and the 2010 NOMAD New York Dock Implementing Agreement.

Given the clear applicability of Section 11, an order directing SMART-TD to participate in the Section 11 procedures is necessary because SMART-TD denies that a Section 11 Committee has been established (with General Chairperson Lee as the union member)⁵ even though it has by operation of Section 11. Further, SMART-TD has repeatedly stated its refusal to participate in the Section 11 process until “advised by the Surface Transportation Board.”⁶

C. The Board is Justified in Ordering SMART-TD to Cease and Desist From Pursuing RLA Arbitration

CSXT requests that the Board order SMART-TD to cease pursuing its claim in RLA arbitration, because, as shown, the claim grows out of implementation of a Board approved consolidation, requires interpretation of matters within the exclusive jurisdiction of the Board, and is subject to the Section 11 dispute procedures. A cease and desist order is necessary to protect the Board’s exclusive jurisdiction.

As explained, SMART-TD has submitted its claim that CSXT’s use of Conrail violates the B&O Agreement to the NRAB’s First Division for arbitration pursuant to Section 3 of the RLA. The NRAB is a permanent arbitration board established by Section 3, First of the RLA. The

⁵ See Exhibit No. 16 (“the facts remain that this [Sec. 11] board does not exist between us currently.”).

⁶ See Exhibit Nos. 8 (at 2) and 13.

NRAB's First Division hears disputes involving the operating crafts, which includes the craft of trainmen represented on CSXT by SMART-TD. The NRAB has docketed SMART-TD's claim and directed the parties to file simultaneous submissions supporting their positions by July 14, 2021.

The NRAB's jurisdiction is limited to disputes arising out of collective bargaining agreements. 45 USC § 153, First (i). The NRAB has no jurisdiction to interpret decisions of this Board, the Detroit SAA Operating Agreement, New York Dock implementing agreements, or the *New York Dock* conditions. To date, SMART-TD has relied not only on its interpretation of the requirements of the B&O Agreement, but also on its interpretation of Board requirements and the *Conrail Decision* and NOMAD New York Dock Implementing Agreements. Even if SMART-TD abandons those arguments, CSXT relies on the Board's authorizations and implementing agreements for its defense that the B&O Agreement is inapplicable or superseded by them.

CSXT has requested that the NRAB dismiss SMART-TD's claim or defer action until after exhaustion of proceedings before this Board. SMART-TD has objected to CSXT's request, and the NRAB probably will not defer action on SMART-TD's claim. If necessary, CSXT will argue in its submission to the NRAB First Division, due July 14, 2021, that it should dismiss SMART-TD's claim for lack of jurisdiction, because it requires interpretation of Board decisions, the Detroit SAA Operating Agreement, and New York Dock implementing agreements. Indeed, there is nothing for the NRAB to interpret because the B&O Agreement is arguably inapplicable to work properly performed by Conrail as agent for CSXT. However, this Board should not rely on an arbitrator sitting with the NRAB First Division to decide this Board's exclusive jurisdiction. This is especially so when there is already a pending proceeding under Section 11 to address these

same issues. The NRAB is not obligated to follow Board precedent or take into account the Board's rationale or policies for approving the Conrail Transaction, including the significant procompetitive aspect of the SAAs or their operational efficiencies. Unlike a decision by a Section 11 Committee, which is an extension of this Board, the Board will not be able to review an arbitration award by the NRAB. Absent Board intervention to protect its jurisdiction and dispute procedures, CSXT is also at risk of being subject to inconsistent decisions of the Board and NRAB.

By pursuing RLA arbitration of matters that should be heard by a Section 11 Committee, SMART-TD is attempting a collateral attack on this Board's jurisdiction and its approval in the *Conrail Decision*. As discussed, it is well settled that the Board has exclusive jurisdiction over disputes growing out the implementation of railroad mergers and consolidations, when the Board's authorization is pursuant to 49 USC §§ 11323-11324 and labor protective conditions have been imposed on the transaction. *Norfolk & Western Ry. Co. v. Am. Train Dispatchers Ass'n*, 499 U.S. 117 (1991). It is equally well settled that unions cannot use the arbitration procedures of the RLA to avoid this Board's jurisdiction or arbitration procedures. *See, e.g., Union Railroad Co. and Bessemer & Lake Erie R.R. Co.—Arbitration Review—United Steel Workers of Am.*, Finance Docket No. 31363 (Sub-No. 3) (served Dec. 17, 1998) ("These decisions, in turn, relied on precedent which established that the Board's approval of a transaction automatically removes its implementation from the procedures of the RLA, and that the Board or arbitrators acting under authority delegated under New York Dock may exempt a transaction from the provisions of the RLA and may override collective bargaining agreements

when necessary to realize public benefits of an approved transaction.”). *See also, e.g., Ry. Labor Executives Ass’n v. Southern Pac. Transp. Co.*, 7 F.3d 902 (9th Cir. 1993).

In *Delaware & Hudson Ry. Co.—Lease and Trackage Rights Exemption—Springfield Terminal Ry. Co.*, ICC Finance Docket No. 30965 (Sub-Nos. 1 and 2) (served Dec. 13, 1991), 1991 WL 261567, the Interstate Commerce Commission (the “ICC”), the Board’s predecessor, was faced with an analogous situation. The carrier and union, the predecessor to SMART-TD, were engaged in a dispute over the meaning of an implementing agreement reached under the ICC’s employee protective conditions. The carrier sought to submit the dispute to arbitration under Section 11 of the ICC’s employee protective conditions. The union sought to have the dispute arbitrated under Section 3 of the RLA. The carrier requested and was granted a cease and desist order by the ICC in which “UTU is directed to cease and desist from attempting to have disputes arising out of implementation of the Harris Award resolved by an arbitrator appointed pursuant to the RLA.” 1991 WL 261567, * 6. The ICC found that the union’s attempt to have issues arising under implementing agreements arbitrated under the RLA was a collateral attack on the ICC’s exclusive jurisdiction. CSXT is similarly seeking an order directing SMART-TD to cease and desist from attempting to have the dispute growing out of implementation of the Detroit SAA resolved by arbitration under the RLA.

IV. Conclusion

A Section 12 Committee has been established. CSXT appointed its member; General Chairperson Lee was appointed by operation of Section 11(a) after the union refused to designate its member. Yet, SMART-TD denies this Board’s jurisdiction, denies that a Committee exists, and is opposing the appointment of a neutral. For the reasons set forth in this Petition,

the parties' dispute raises issues within this Board's exclusive jurisdiction that should be presented to the existing Section 11 Committee, and the Board should order SMART-TD to participate in the Board's Section 11 dispute process and cease pursuing its claim before the NRAB.

Respectfully submitted,

/s/ Ronald M. Johnson

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Dated: June 15, 2021

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of June, 2021, a copy of the forgoing Petition for Declaratory and Cease and Desist Orders was served by email on the following persons:

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/s/ Ronald M. Johnson

Ronald M. Johnson
Law Offices of Ronald M. Johnson, LLC

Counsel for CSX Transportation, Inc.

Finance Docket No. 33388 (Sub-No. 102)

CSX Transportation, Inc.—Petition for Declaratory Order and Cease and Desist Order

EXHIBITS VOLUME 1

- 1 Excerpts from Shared Assets Area Operating Agreement for Detroit
- 2 Excerpts from Vol. 3 of Application in Finance Docket No. 33388 (describing Detroit SAA with map)
- 3 Master New York Dock Implementing Agreement, Finance Docket No. 33388

EXHIBIT 1

**SHARED ASSETS AREA
OPERATING AGREEMENT
FOR
DETROIT**

Dated as of June 1, 1999

By and Among

**CONSOLIDATED RAIL CORPORATION,
CSX TRANSPORTATION, INC. and
NORFOLK SOUTHERN RAILWAY COMPANY**

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**SHARED ASSETS AREA
OPERATING AGREEMENT
FOR
DETROIT**

This SHARED ASSETS AREA OPERATING AGREEMENT ("Agreement") dated as of June 1, 1999, is by and among Consolidated Rail Corporation ("CRC"), CSX Transportation, Inc. ("CSXT") and Norfolk Southern Railway Company ("NSR").

WITNESSETH:

WHEREAS, all capitalized terms in this Agreement have the respective meanings set forth in *Section 1*; and

WHEREAS, CSX owns all of the common stock of and controls CSXT, NSC owns all of the common stock of and controls NSR, and CSX and NSC jointly control CRC; and

WHEREAS, CSXT, NSR and CRC desire that the Shared Assets shall be owned, operated and maintained by CRC and used by or for the exclusive benefit of CSXT and NSR, and that CSXT and NSR shall each have full and equal rights to use the Shared Assets to provide competitive railway freight transportation services to, from and between all places within the Shared Assets Area.

NOW, THEREFORE, in consideration of the premises, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, CRC, CSXT and NSR hereby agree as follows:

Section 1. Definitions. For purposes of this Agreement, the following terms have the following meanings:

- (a) "AAR" means the Association of American Railroads.
- (b) "Accounting Plan" means the plan of accounting adopted pursuant to *Section 9(a)*.

(c) "Action" means any action, claim, suit, arbitration, inquiry, subpoena, discovery request, proceeding or investigation by or before any Governmental Entity.

(d) "Adjacent Improvement" means a capital improvement, such as a spur, which provides access to customers and local industries and which (i) is on property which is not part of the Shared Assets and (ii) will be directly (without intermediate connection to another railroad) attached to trackage included within the Shared Assets.

(e) "Bill" means a bill delivered by CRC to an Operator pursuant to *Section 9(e)*.

(f) "Billing Month" means the calendar month for which information is shown on a Usage Statement.

(g) "Board of Managers" means any Board of Managers which may be appointed by the CRC Board pursuant to *Section 2(a)(ii)*.

(h) "Budgeted Capital Expenditures" means capital expenditures included on a Capital Expenditure Budget which has been approved by the CRC Board.

(i) "Capital Expenditure Budget" means a written budget specifying proposed capital expenditures to be made by CRC with respect to Shared Assets for the periods of time specified in such budget, and the proposed sources of the capital required to make such expenditures.

(j) "Capital Expenditure Statement" means a statement delivered by CRC pursuant to *Section 9(d)*.

(k) "CRC Administrative Office" means the administrative office of CRC located at Philadelphia, Pennsylvania, or at such other place designated by CRC in a notice it delivers to CSXT and NSR.

(l) "CRC Board" means the Board of Directors of CRC.

(m) "CRC Train" means a train operated by CRC and performing services pursuant to *Sections 3(c) or (d)*.

(n) "CRC Train Usage Percentage" means for an Operator for a particular time period and Zone, the percentage obtained by multiplying 100 by the quotient obtained by dividing (i) the total number of loaded and empty Railcars in the account of such Operator in

CRC Trains, by (ii) the total number of loaded and empty Railcars in the accounts of both Operators in CRC Trains, during such time period in such Zone.

(o) "CSX" means CSX Corporation.

(p) "CSXT Operating Agreement" means the agreement, dated June 1, 1999, between CSXT and NYC providing for the use, operation and maintenance by CSXT of certain assets owned or leased by NYC.

(q) "Damage(s)" means all assessments, fines, losses, damages, liabilities, and costs and expenses related thereto, including, without limitation, interest, penalties and attorneys' and consultants' fees and also expressly including, without limitation, all liabilities arising after the effective date hereof under the Federal Employers Liability Act, as amended, and environmental laws.

(r) "Dispute Letter" means a letter delivered by an Operator pursuant to *Section 9(g)(i)*.

(s) "Excluded Taxes" means: (A) all Taxes based, in whole or in part, on net income or gross income (including, without limitation, any minimum tax) of CRC or which are in substitution for, or relieve CRC from, any Tax based upon or measured by CRC's net income or gross income, together with any interest, penalties, additions to tax or additional amounts that may become payable in respect thereof; (B) business and occupation taxes, and gross receipts taxes (unless in the nature of a sales tax) of CRC and Taxes based upon the equity interests of CRC; and (C) interest, fines and penalties to the extent due to the acts or omissions of CRC in connection with such Excluded Taxes.

(t) "Expense Statement" means a statement delivered by CRC pursuant to *Section 9(c)*.

(u) "GAAP" at any time means generally accepted accounting principles in effect at such time.

(v) "General Manager" means the chief executive officer of CRC.

(w) "Governmental Entity" means any federal, state, local or foreign court, administrative agency or commission or other governmental or regulatory authority or commission or any arbitration tribunal.

(x) "Interest Rental" means an amount representing a fair periodic return on the Shared Asset Value as of the most recent preceding Valuation Date as determined by such

appraiser as CSXT and NSR may select. The Interest Rental for the first six years of this Agreement shall be as follows:

June 1, 1999 through May 31, 2000 -- \$6 million
June 1, 2000 through May 31, 2001 -- \$6 million
June 1, 2001 through May 31, 2002 -- \$7 million
June 1, 2002 through May 31, 2003 -- \$7 million
June 1, 2003 through May 31, 2004 -- \$8 million
June 1, 2004 through May 31, 2005 -- \$8 million

(y) "Jointly-Operated Facility" means a facility or yard which is operated by or for a rail carrier and one or more other rail carriers.

(z) "Lesser Insured Operator" means the Operator which has the lesser (as between the Operators) amount of available insurance benefits as specified in *Section 11(f)(i)(A.1)(2)*.

(aa) "Liabilities" means any and all debts, liabilities and obligations of any kind whatsoever, whether or not accrued, contingent or reflected on a balance sheet, known or unknown, absolute, determined, determinable or otherwise, including, without limitation, those arising under any law, rule, regulation, action, order or consent decree of any Governmental Entity or any judgment in any Action of any kind or award of any arbitrator of any kind and those arising under any contract.

(bb) "Nonseverable Improvement" means a capital improvement which is integral to the operation of the Shared Assets and is not readily removable.

(cc) "NSC" means Norfolk Southern Corporation.

(dd) "NSR Operating Agreement" means the agreement, dated June 1, 1999, between NSR and PRR providing for the use, operation and maintenance by NSR of certain assets owned or leased by PRR.

(ee) "NYC" means New York Central Lines LLC, a Delaware limited liability company.

(ff) "Operating Budget" means a written budget specifying estimated operating revenues and expenses and working capital requirements of CRC with respect to the Shared Assets for the periods of time specified in such budget.

(gg) "Operating Plan" means the plan for road train and local train schedules and classifications and related operating protocols for the Shared Assets Area as may be agreed to, and modified from time to time, by CRC, CSXT and NSR.

(hh) "Operator" means either CSXT or NSR.

(ii) "Operator Consequential Damages" means consequential, indirect, incidental or other similar damage, injury or loss to an Operator.

(jj) "Operator's Expense Percentage" means for an Operator the percentage obtained by multiplying 100 by the quotient obtained by dividing (i) the total Reimbursable Expenses (except for Interest Rental, Taxes, insurance costs and any other CRC expenses not apportioned between the Operators on a usage basis) payable by such Operator for a particular period, by (ii) the total Reimbursable Expenses (except for Interest Rental, Taxes, insurance costs and any other CRC expenses not apportioned between the Operators on a usage basis) payable by both Operators for such period.

(kk) "Operator's Facility" means a present, expanded or new facility or yard which is owned or controlled exclusively by an Operator.

(ll) "Operator Train" means a train operated by an Operator and performing services in accordance with *Sections 3(a) and 3(c)*.

(mm) "Person" means any individual, corporation, association, partnership (general or limited), joint venture, trust, estate, limited liability company or other legal entity or organization.

(nn) "Program Maintenance" means scheduled renewal of track, signals, structures and other fixed facilities performed by system or production gangs assembled to accomplish a specific task or tasks.

(oo) "Program Maintenance Proposal" means a written proposal prepared by CRC, CSXT or NSR which describes specific Program Maintenance which the preparer of such proposal believes is necessary or desirable to maintain the Shared Assets in a safe operating condition to permit or facilitate (i) the performance by CRC of its services pursuant to this Agreement, or (ii) the use of Shared Assets by the Operators, and which specifies a budget for such Program Maintenance.

(pp) "PRR" means Pennsylvania Lines LLC, a Delaware limited liability company.

(qq) "Railcar" means, except as otherwise provided in the Accounting Plan, each railroad freight car, locomotive, caboose or other equipment (including RoadRailer® or comparable bimodal freight hauling equipment in the account of either Operator) furnished in substitution of railroad equipment, loaded or empty, which an Operator originates, terminates, switches or moves on or overhead to any Shared Assets, except that (i) a single standard flat car not exceeding 96 feet in length (excluding articulated flat cars) shall count as a single Railcar, (ii) freight rail cars consisting of articulated units bearing AAR Car Type Codes "Q" and "S" shall count as multiple Railcars based on the second (numeric) digit of the Car Type Code for such articulated units (by way of example, a car consisting of AAR Car Type Code "S566" would be counted as five Railcars) (or corresponding car type codes and digits if the AAR Car Type Codes should be modified at any time during the term of this Agreement), and (iii) a single unit of RoadRailer® equipment (or comparable bimodal freight hauling equipment in the account of either Operator) shall count as one-half (1/2) of a Railcar.

(rr) "Reimbursable Expenses" means the expenses shown on an Expense Statement, minus the revenues, if any, shown on such Expense Statement.

(ss) "Renewal Term" means the term of extension of this Agreement under *Section 14*.

(tt) "RoadRailer®" means bimodal freight hauling equipment manufactured by or under license from "RoadRailer®", a division of Wabash National Corporation, and capable of movement over the highway when pulled by a tractor and on the rails using locomotive power.

(uu) "Routine Maintenance" means day-to-day repairs to track, signals, structures and other fixed facilities that are not part of Program Maintenance.

(vv) "Severable Improvement" means a capital improvement which is not a Nonseverable Improvement.

(ww) "Shared Asset Value" means at any date the value of the Shared Assets, except leases and other contract rights granted by either Operator to CRC, as of the most recent preceding Valuation Date as determined by such appraiser as CSXT and NSR may select.

(xx) "Shared Assets" means all tracks, lands, easements, rights of way, structures, facilities, appurtenances and rights related thereto, which CRC owns, leases or otherwise has the right to operate over (including those segments over which CRC or an Operator possesses operating rights pursuant to *Section 3(c)*), and which are used for railway purposes in the Shared Assets Area, including the properties, rights, equipment, inventory and

supplies, whether owned or leased, described or referred to in Item 3A of Schedule 1 (including Attachments I and II) of the Transaction Agreement, but excluding Operator's Facilities.

(yy) "Shared Assets Area" means the geographical area comprising the Shared Assets and Operator Facilities and Jointly-Operated Facilities directly (without intermediate connection to another railroad) attached to trackage included within the Shared Assets, which is designated as the "Detroit" Shared Assets Area.

(zz) "STB" means the Surface Transportation Board or, if there shall be no Surface Transportation Board, any federal agency which is charged with the function of approving combinations by rail carriers or persons controlling them, or of other arrangements between rail carriers, and granting exemptions from other laws with respect thereto or regulating other specific functions with respect to the context in which such term is employed or any successor entity thereof.

(aaa) "Switching and Yard Services" means the service of classifying and assembling trains for the account of an Operator in Jointly-Operated Facilities; movement of loaded or empty Railcars between yards and local industries, and switching trains and Railcars at yards, terminals and local industries.

(bbb) "Tax" or "Taxes" means taxes of any kind, levies or other similar assessments, customs, duties, imposts, charges or fees, including, without limitation, income taxes, gross receipts, ad valorem, excise, real or personal property, sales, use, payroll, withholding, unemployment, transfer and gains taxes or other governmental taxes imposed by or payable to the United States, or any state, local or foreign government or subdivision thereof, and in each instance such term shall include any interest, penalties or additions to tax attributable to such Tax or Taxes.

(ccc) "Temporary Services" means services provided by CSXT or NSR employees in the operation, maintenance or repair of any Shared Asset on an emergency basis with the prior approval of the General Manager or senior CRC employee who is directly responsible for the operation or maintenance of such Shared Asset.

(ddd) "Tier One Damages" means those Damages defined as Tier One Damages in *Section 11(f)(i)(A.1)*.

(eee) "Tier Two Damages" means those Damages defined as Tier Two Damages in *Section 11(f)(i)(B.1)*.

(fff) "Total Train Usage Percentage" means for an Operator for a particular time period and Zone, the percentage obtained by multiplying 100 by the quotient obtained by dividing (i) the sum of the total number of loaded and empty Railcars in the account of such Operator in CRC Trains and the total number of loaded and empty Railcars in the account of such Operator in Operator Trains, by (ii) the sum of the total number of loaded and empty Railcars in the accounts of both Operators in CRC Trains and the total number of loaded and empty Railcars in the accounts of both Operators in Operator Trains, during such period in such Zone.

(ggg) "Transaction Agreement" means the Transaction Agreement dated as of June 10, 1997, among CSX, CSXT, NSC, NSR, Conrail Inc., CRC and CRR Holdings LLC.

(hhh) "Usage Statement" means a statement delivered by CRC pursuant to Section 9(b).

(iii) "USOA" means the uniform system of accounts prescribed for class I railroads by the STB or any successor federal agency that shall succeed to the functions of the STB in prescribing uniform systems of accounts for rail carriers; *provided*, that if there shall be no STB and no such federal agency, USOA shall mean such system of accounts as is generally maintained by rail carriers consistent with GAAP as applied in the rail industry.

(jjj) "Valuation Date" means the date of this Agreement and thereafter the sixth (6th), twelfth (12th), eighteenth (18th) and twenty-fourth (24th) anniversaries of the date of this Agreement and the first day of each Renewal Term.

(kkk) "Zone" means a designated geographic section, or designated facilities, of the Shared Assets Area as established and described in the Accounting Plan.

Section 2. Management.

(a) CRC Board.

(i) The CRC Board shall manage the Shared Assets.

(ii) The CRC Board may appoint a Board of Managers, a committee, a CRC officer or other persons to have such duties and authority with respect to the Shared Assets as may be assigned to them from time to time by the CRC Board.

(iii) Any Board of Managers appointed by the CRC Board shall be comprised of an equal number of individuals (and their successors) nominated by CSXT and nominated by NSR.

(iv) The CRC Board shall remove from any Board of Managers (A) at the direction of CSXT, any person who was nominated by CSXT, and (B) at the direction of NSR, any person who was nominated by NSR.

(b) *General Manager.*

(i) The General Manager shall not at any time have been an employee of CSXT or NSR or any of their affiliates unless otherwise agreed to by both Operators, and shall be appointed by the CRC Board.

(ii) The General Manager shall manage and supervise the ownership, operation, maintenance and use of the Shared Assets in accordance with directives and policies of the CRC Board and this Agreement, subject to the authority of the CRC Board, and through such Shared Assets Area superintendents and other Shared Assets Area executives as are appointed by the General Manager with the approval of the CRC Board. The General Manager shall report to the CRC Board. The General Manager shall perform his or her responsibilities on an impartial and non-discriminatory basis as between CSXT and NSR.

(iii) The General Manager may be removed from office prior to the expiration of his or her term at any time by a majority of the CRC Board for any reason or for no reason. Upon the written request of CSXT or NSR to the CRC Board, the General Manager shall also be removed from office prior to the expiration of his or her term for serious misconduct, which shall mean conduct that would make it unreasonable to retain the General Manager, including but not limited to conduct such as: (A) violation of applicable alcohol or drug use policies, (B) fraud, (C) embezzlement or other act of dishonesty against CRC, CSXT or NSR or any of their customers or suppliers, (D) activities willfully undertaken by the General Manager which reflect adversely upon the reputation of CRC, CSXT or NSR, (E) refusal to perform or substantial neglect of the responsibilities assigned to the General Manager, (F) failure to perform his or her responsibilities on an impartial and non-discriminatory basis as between CSXT and NSR after 45 days' written notice from an Operator describing such failure, (G) any violation of any law or rule or regulation of any Governmental Entity which results in serious adverse consequences to CRC, CSXT or NSR, or (H) any material violation of any directive or policy of the CRC Board or any statutory or common law duty of loyalty to CRC. If a majority of the CRC Board in response to such a request of CSXT or NSR fails to direct the removal of the General Manager, the dispute may be submitted by either Operator for resolution by binding arbitration pursuant to *Section 13, provided, however, that in any such arbitration to resolve a dispute under this Section 2(b)(iii), the hearing shall*

commence no later than 30 days following the appointment of the arbitrator and the award shall be rendered no later than 30 days following the completion of the hearing.

(c) *Employees.* The General Manager and all persons who operate and maintain the Shared Assets shall be employees of CRC, except for CSXT or NSR employees who provide Temporary Services and employees of Operators or independent contractors which provide services pursuant to contracts or arrangements in accordance with Section 2(f).

(d) *CRC Responsibilities.* CRC shall be responsible for safely and efficiently operating, controlling and managing the use of the Shared Assets, impartially as between CSXT and NSR in accordance with directives and policies of the CRC Board, and with responsible business practices which are consistent with those used by CSXT and NSR in the operation of their businesses, and are designed to achieve the lowest cost of the safe and efficient operation, use and maintenance of the Shared Assets.

(e) *Impartiality.* CRC shall perform all of its obligations pursuant to this Agreement on an impartial and non-discriminatory basis as between CSXT and NSR, giving no preference to either of them in providing Switching and Yard Services, in the control of train dispatching over the Shared Assets, or in any other way whatsoever.

(f) *Independent Contractors.* CRC may, at least to the extent it may do so immediately prior to the date of this Agreement, procure the use of equipment or facilities owned by independent contractors, or services provided by independent contractors (using their own employees), with respect to the operation, maintenance and use of Shared Assets, including, without limitation, accounting, computer and other administrative services, and the furnishing of equipment and mechanical services. For purposes of this Section 2(f), independent contractors may include CSXT or NSR.

Section 3. Operations.

(a) *Operator's Rights.* CRC hereby grants to each Operator full operating rights to operate its own trains (staffed by a road crew) and equipment, with its own crews and equipment and at its own expense, over any and all tracks included in the Shared Assets, and to use all of the Shared Assets in connection with the operation of such trains or equipment, for the following purposes:

(i) Movement by such Operator of trains (staffed by a road crew) through the Shared Assets Area between two geographical locations outside the Shared Assets Area;

(ii) Movement by such Operator of trains (staffed by a road crew) between a geographical location outside the Shared Assets Area and an Operator's Facility or a Jointly-Operated Facility which is within the Shared Assets Area;

(iii) Movement by such Operator of trains (staffed by a road crew) between a geographical location outside the Shared Assets Area and local industries which are within the Shared Assets Area;

(iv) Movement by such Operator of trains (staffed by a road crew) between Operator's Facilities or Jointly-Operated Facilities which are within the Shared Assets Area and local industries which are within the Shared Assets Area;

(v) Movement, handling, pick-up, set off, switching, transfer and interchange of Railcars, blocks of Railcars or trains (staffed by a road crew) to, from or at local industries, Operator's Facilities or Jointly-Operated Facilities, in connection with movements described in *Sections 3(a)(i) through (iv)*, to the extent provided for in the Operating Plan agreed to and modified by the parties from time to time; and

(vi) such other purposes as may be agreed upon by CRC, CSXT and NSR.

(b) *Use.* The crews of each train operated by an Operator on Shared Assets shall be qualified under and shall comply with applicable laws and regulations as well as the safety and operating rules of CRC.

(c) *Grant of Rights.* Subject to reasonable compensation and other terms established in the Accounting Plan, and in each case for the purpose of Switching and Yard Services performed by CRC pursuant to *Section 3(d)* and movement of Operator Trains pursuant to *Section 3(a)*:

(i) CSXT hereby grants to CRC and NSR overhead operating rights to operate CRC trains and NSR trains, respectively, with their own crews, over such CSXT line segments access to and use of which by CRC and NSR are necessary to effectuate the train operations and services contemplated by this Agreement.

(ii) NSR hereby grants to CRC and CSXT overhead operating rights to operate CRC trains and CSXT trains, with their own crews, over such NSR line segments access to and use of which by CRC and CSXT are necessary to effectuate the train operations and services contemplated by this Agreement.

When required by the CSXT Operating Agreement and the NSR Operating Agreement, CSXT and NSR have obtained the consent of NYC and PRR, respectively, for the grant of rights referred to in this *Section 3(c)*. Notwithstanding any other provision of this Agreement, each rail line segment identified in this *Section 3(c)* shall be dispatched, maintained, operated and controlled by the Operator which granted the rights with respect to such segment, *provided* that such dispatching, maintenance, operation and control shall be performed on an impartial and non-discriminatory basis as between the Operators. Trains operated by an Operator pursuant to operating rights granted under this *Section 3(c)* shall be governed by and subject to the Operating Plan.

(d) *Switching and Yard Services.*

(i) At the request of and as agent for each Operator, CRC shall perform Switching and Yard Services required by such Operator within the Shared Assets Area, including without limitation any such services which such Operator may be responsible for performing or having performed for a shipper or other Person.

(ii) Except as otherwise provided in *Section 3(a)*, and other than within an Operator's Facility, neither Operator shall with its own equipment or with its own crews perform any Switching and Yard Service within the Shared Assets Area for itself or for any other Person.

(e) *Operating Protocols.* From time to time, NSR, CSXT and CRC may mutually establish Shared Assets Area Operating Plans, General Dispatching Guidelines, Car Movement Guidelines, Switching/Blocking Requirements and other operating protocols and rules concerning operations within the Shared Assets Area, for the purpose of assuring timely train operations, fluid movement of all railcars, equal and impartial handling of Operators' trains and railcars, minimization in the number of empty cars in the Shared Assets Area, and overall operating efficiency in the Shared Assets Area. The current Operating Protocols have been agreed upon by NSR, CSXT and CRC and are set forth as Exhibit A to this Agreement. The Operating Protocols may be modified only upon mutual agreement of all parties.

(f) *Freight Traffic To Remain in Account of Each Operator.* Switching and Yard Services and other services performed by CRC for either Operator under this Agreement shall be performed as agent for, and for the account of, such Operator. All freight traffic and Railcars handled within the Shared Assets Area, including traffic and Railcars handled by CSXT or NSR pursuant to *Sections 3(a) and 3(c)*, and traffic and Railcars handled by CRC pursuant to *Sections 3(c) and 3(d)*, shall at all times remain in the waybill, car hire and revenue accounts of either CSXT or NSR.

(g) *Rates, Routes and Divisions.* Each Operator shall have exclusive and independent authority to establish all rates, charges, service terms, routes and divisions, and to collect all freight revenues, relating to freight traffic transported for its account to, from and within the Shared Assets Area (except those Shared Assets Area line segments over which such Operator possesses only overhead operating rights pursuant to *Section 3(c)*). CRC shall not participate or appear in any rates, routes or divisions relating to any freight traffic whatsoever to, from and within the Shared Assets Area, and shall not be entitled to or responsible for any freight charges relating to such freight traffic. CRC shall not quote or establish any rate or service terms applicable to freight transportation services to, from and within the Shared Assets Area, enter into transportation contracts with any Person (other than an Operator) for freight transportation services to, from and within the Shared Assets Area, or undertake to perform any for-hire transportation services directly, in its own name or for its own account for any Person (other than an Operator). The transfer or exchange of freight traffic between CSXT and CRC, and between NSR and CRC, within the Shared Assets Area shall not constitute an interchange of freight traffic or freight rail cars for purposes of determining rates, routes, divisions or interline settlements relating to any such freight traffic.

(h) *Shipper Bills.* Neither Operator shall inform the other or CRC of any rates or charges to shippers to which such Operator provides freight transportation services in the Shared Assets Area, and no copies of any shipper bill of lading or waybill shall be given by such Operator to the other or to CRC except to the extent that such documents are exchanged between rail carriers in the usual course of interline shipments and documenting.

(i) *Service Responsibility.* Each Operator shall at all times be solely responsible for obtaining, supplying and routing Railcars other than locomotives, for all Railcar ownership costs (including per-diem charges and mileage allowances) and for providing service to its shippers within the Shared Assets Area pursuant to its transportation contracts or other prices with its shippers, including interline accounting, and all car hire and demurrage or detention charges associated with Railcars in its account within the Shared Assets Area.

(j) *Dispatching.* CRC shall, from local locations or a location agreed upon by CSXT and NSR, control the dispatching, scheduling and movement of, and Switching and Yard Services for, all trains (including Operator Trains and CRC Trains) over the Shared Assets (other than Operator's Facilities, unless requested to do so by the Operator thereof) without any discrimination at any time in favor of or against either Operator, but in accordance with written policies and priorities for categories of freight, type of Railcar, size of train and train destinations established from time to time by the General Manager and approved by the CRC Board to achieve the maximum efficiency and lowest aggregate Shared Asset costs of CRC and the Operators, *provided*, however, that CSXT shall control the dispatching,

scheduling, movement and Switching and Yard Services for all CRC Trains and Operator Trains over the following Shared Asset rail segments:

(A) the current CRC Lincoln Secondary between Carleton, MI and Hold Out Signal at Lincoln Yard;

and NSR shall control the dispatching, scheduling, movement and Switching and Yard Services for all CRC Trains and Operator Trains over the following Shared Asset rail segments:

(B) the current CRC Detroit Line between Trenton, MI and CP YD;

(C) the current CRC Junction Yard Secondary between CP YD and CP Townline, including New Wye Runner; and

(D) the current CRC Lincoln Running Track between Ecorse Jct. and the connection with NSR.

Dispatching, scheduling and movement of trains performed by either Operator under this Section 3(j) shall conform to the same standards of non-discrimination, written policies and priorities applicable to the control of such functions by CRC at other locations included within the Shared Assets Area.

(k) *Railcar Weighing.* All Railcars for the account of an Operator which originate or terminate on Shared Assets and which require weighing shall be weighed by and at the expense of such Operator or its customer, and at no cost to CRC.

(l) *Freight Claims.* The Operators shall agree among themselves on the most fair, practical and efficient arrangements for handling and administering freight loss and damage claims with the intent that (i) each Operator shall be responsible for losses occurring to lading either in its possession or in the possession of CRC for the account of such Operator, and (ii) the Operators shall follow relevant AAR rules and formulas in providing for the allocation of losses which are either of undetermined origin or in Railcars handled in interline service by or for the account of both Operators.

(m) *Freight Car Repairs.* If any Railcars are bad ordered while on the Shared Assets and must be set out from a CRC Train or Operator Train, CRC shall promptly return such Railcars to the Operator in whose account such Railcars reside in accordance with such Operator's instructions. CRC shall furnish, at such Operator's expense, required labor and material to perform, and shall perform, light repairs on such bad ordered Railcars as necessary to make such Railcars legal and safe for movement. CRC shall bill such Operator

for the costs of such light repairs in accordance with the Field and Office Manuals of the AAR Interchange Rules in effect at the time such repairs are performed. CRC shall bill directly to and collect from the applicable Operator charges for repair items that, under the AAR Interchange Rules, are the responsibility of the Railcar owner and/or the handling line carriers. Each Operator may rebill charges for repair items that are the responsibility of the Railcar owner and/or the handling line carriers. If any such bad ordered Railcar cannot be made legal and safe for movement by the performance of light repairs, CRC shall, at such Operator's expense, arrange for appropriate removal of the affected Railcar in accordance with such Operator's instructions.

(n) *Train Services.* Actual costs incurred by CRC to provide special services (other than services otherwise provided for in this Agreement) at the request of an Operator with respect to trains, locomotives and Railcars for the account of such Operator, shall be paid by such Operator to CRC, *provided* that the costs and terms of similar special services rendered to each Operator shall be without discrimination between Operators as to cost and terms, giving due allowance to any differences in the costs of providing such services.

(o) *Wrecking Service.* Wrecking service or wrecking train service required in connection with services contemplated by this Agreement shall be provided by CRC (or its designee) as promptly as possible.

(p) *Admission of Third Parties.* Notwithstanding any other provision in this Agreement, no party may permit any Person (other than a party hereto) to have access to, operate over or use any Shared Asset without the prior approval of all parties, which approval may be given or refused in the sole discretion of each party.

Section 4. Equipment and Properties.

(a) *Procurement.* CRC shall procure, operate and maintain all equipment, real property rights and improvements thereon which are reasonably required for (i) CRC to operate the Shared Assets, and (ii) the Operators to move trains over the Shared Assets, in each case in accordance with this Agreement.

(b) *Contribution of Locomotives by Operators.* Upon reasonable request by the General Manager, the Operators shall furnish to CRC, through full-service lease or other mutually satisfactory arrangements, locomotives reasonably required by CRC for the performance of its obligations under this Agreement. The respective obligations of each Operator to furnish such locomotives shall be based, insofar as reasonably practicable, upon the Operator's CRC Train Usage Percentage during the calendar month preceding such request for the Shared Assets Area or Zone in which such locomotives are needed by CRC. It is the parties'

EXHIBIT 2

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

CSX CORPORATION AND CSX TRANSPORTATION, INC.,
NORFOLK SOUTHERN CORPORATION AND
NORFOLK SOUTHERN RAILWAY COMPANY
— CONTROL AND OPERATING LEASES/AGREEMENTS —
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

RAILROAD CONTROL APPLICATION

VOLUME 3B OF 8

NS OPERATING PLAN, LABOR IMPACT EXHIBIT,
DENSITY CHARTS AND SUPPORTING STATEMENTS
(EXHIBITS 13 AND 14)

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J. GARY LANE

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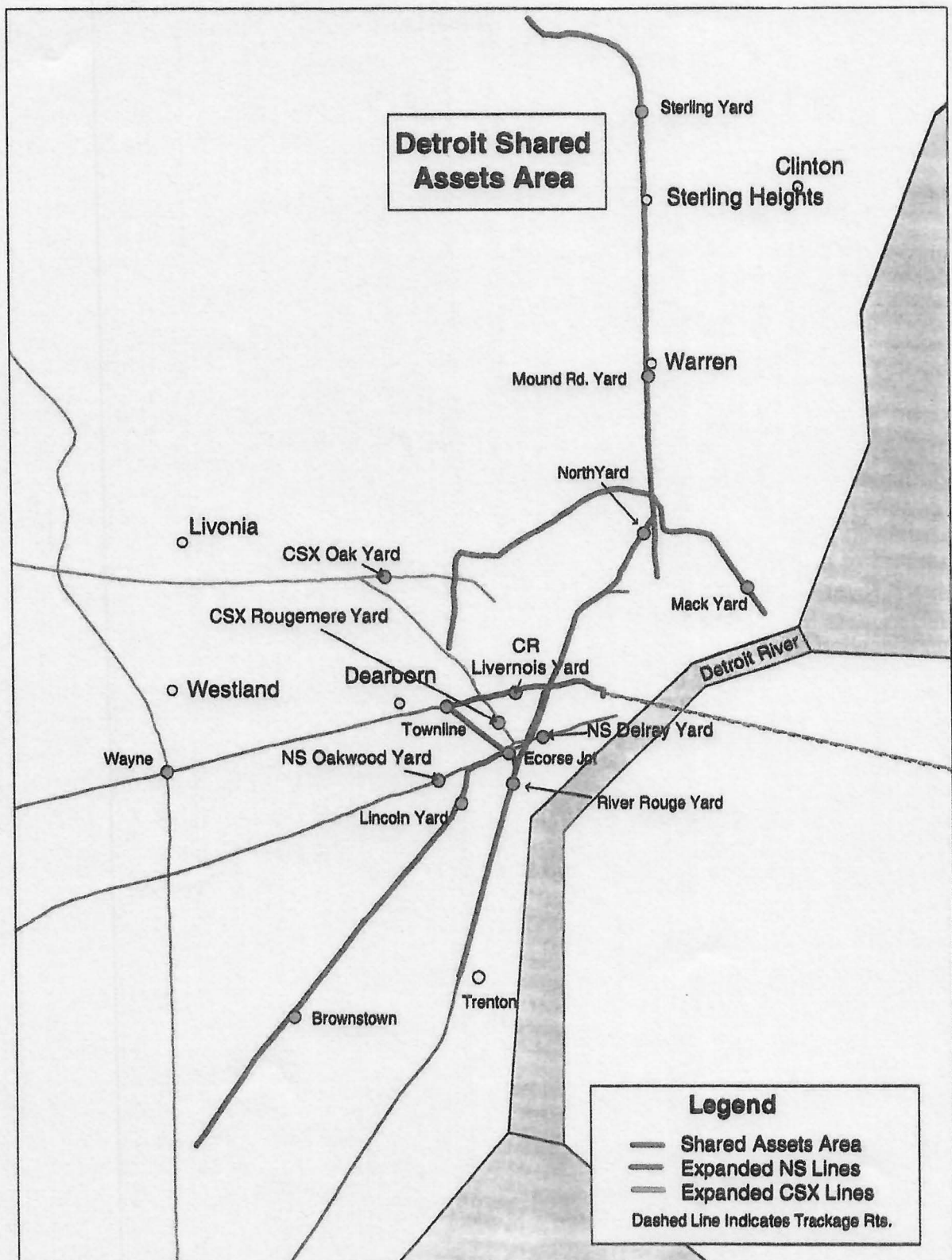
4.1.3 Detroit, MI

Present Operation

CONRAIL: The Detroit Shared Asset Area is comprised of 85 route miles of track from Trenton, MI (MP 20) to Utica, MI (end of track), including: Terminal West Industrial Track to West Belt Jct., Terminal East Industrial Track, the Lincoln Secondary and Conrail's Michigan Line to "CP-Townline" (MP 7.4) and all other Conrail trackage within these boundaries. Detroit Shared Assets facilities are shown in Figure 13.4-3.

There are eight significant Conrail yards within the Detroit Shared Assets Area, which are operated as follows:

Figure 13.4-3



North Yard is Conrail's major Detroit classification facility located on the North Yard Branch and includes 24 classification tracks and a 17 track receiving and departure yard. North Yard primarily functions as an assembly point for traffic from the Mound Road and Mack Yard facilities, but is also used to consolidate traffic into trains originating at Sterling Yard to the north. In addition, there is a small four-track auto loading facility at this yard which currently loads approximately five railcars per day. North Yard maintains car repair facilities.

North Yard and the surrounding area is managed by three trainmasters and four yardmasters; service is performed by six yard switching assignments. Two clerks are also assigned to North Yard.

River Rouge Yard is a major Conrail facility for industrial support and has 23 classification tracks. The yard is located next to Ford's Rouge Steel Works just west of downtown Detroit and some road trains originate or terminate at this facility. River Rouge has car repair facilities for light repairs.

River Rouge and the surrounding area is managed by a trainmaster and four yardmasters and service is performed by 11 yard switching assignments. One clerk is assigned to River Rouge who also handles requirements at Livernois.

Livernois Yard is a large industrial support yard and has 11 classification tracks, 21 track departure tracks, 18 receiving tracks and a four track intermodal facility. The yard is located in the heart of Detroit's industrial district and some road trains originate or terminate at this facility. Livernois has car repair facilities for light repairs.

Livernois is supervised by three yardmasters and service is performed by six yard switching assignments.

Sterling Yard is a large industrial support yard located approximately 20 miles north of Detroit on the Sterling Secondary with seven receiving tracks, 20 classification tracks and three mainline sidings used to build and dispatch trains. Its primary function is to serve as an operations base for the several large automotive plants located in the Warren-Sterling Heights-Utica service area. There is also a five-track auto ramp facility for loading and unloading automobiles onto multi-level rail cars which handles approximately 25 cars per day. Sterling Yard typically handles eight through trains and three local switching trains per day. This yard has car repair facilities for light repairs.

Sterling Yard is supervised by three trainmasters and service is performed by three traveling road switcher assignments and six trains which originate and terminate at this facility daily. In addition, a coal train operates through the terminal area about five days per week and a loaded and empty train operates to and from Great Lakes Steel six days per week. Five clerks ordinarily are assigned to Sterling Yard.

Mound Road Yard is a ten track yard located 12 miles north of Detroit, also on the Sterling Secondary; five of the tracks are stub-ended. The yard is primarily a local yard supporting industry switching services at the Chrysler assembly plant and several other local plants. There also is an auto ramp facility for loading and unloading automobiles onto multi-level rail cars which handles approximately 28 cars per day. Traffic is transferred to North Yard for road movement.

Mound Road operations are managed by two yardmasters and operations are performed by five yard assignments.

Mack Yard is a 15-track facility located on Conrail's Terminal East Industrial Track. It is the extension of what was formerly the Detroit Terminal Railroad. Most activity at this yard is associated with Chrysler's auto assembly plant and loading ramp at Jefferson Avenue, although other industries are served as well. The yard also has an 11 track vehicle loading ramp (with 77 spots) which handles approximately 110 multi-level rail cars per day. Traffic is transferred to North Yard for road movement.

Mack Yard operations are managed by four yardmasters and operations are performed by five yard assignments.

Lincoln Yard is a two track support yard used to stage cars for Ford's Brownstown plant and other industries along the Lincoln Secondary Track. Two crews are assigned to this facility from River Rouge.

Trenton Yard is a five track yard which supports switching activities in the Trenton area. Trenton Yard operations are managed by yardmasters at River Rouge and operations are performed by one local assignment.

NS: NS operates six facilities in Detroit as follows:

Oakwood Yard is a 53-track yard which is used for local and system classification, interchange, train make-up and intermodal support. Oakwood Intermodal Facility is a two track TOFC/COFC facility, principally for conventional intermodal traffic.

Melvindale is an 18 track automotive multi-level loading facility owned and

operated by NS. Principal shippers loading automobiles at Melvindale are Chrysler and Ford Motor Company.

Boat Yard has 34 tracks and is used for interchange with CSX. In 1994, the float operation was discontinued. The traffic handled at this location now is minimal.

East Yard is a five-track Triple Crown RoadRailer® facility. Two westbound Triple Crown trains originate and two eastbound trains terminate at this location daily. In addition, a train to and from Canada, via Canadian Pacific Rail System (CPRS) between Detroit and Toronto, operate daily.

Reserve Yard has eight tracks and supports the intermodal operation at Delray. Reserve Yard is used primarily for stack intermodal traffic.

NS operates 15 yard crews and one local freight assignment at Detroit to perform all transportation functions.

CSX: CSX operates five principal yards in the Detroit area operated as follows:

Rougemere Yard is located five miles west of central Detroit on the Detroit Subdivision. The yard has 29 tracks, along with car repair and locomotive servicing facilities. There are ten daily yard assignments at Rougemere, and two local assignments (one a transfer job to Windsor, Ontario and the other a local industrial assignment based at the Canadian Pacific Rail System (CPRS) leased Oak Yard), to service an average of 500 cars per day. This yard handles 10-12 through trains daily. It also serves as the support yard for the River Rouge complex, located adjacent to the yard.

Wixom Yard is located on CSX's Saginaw Subdivision north of Plymouth, MI. The yard has 17 tracks and is primarily designated to support local automotive manufacturing facilities. There are three daily yard assignments which support the movement of local traffic to six road trains per day.

Plymouth Yard is located at the intersection of CSX's Detroit-Grand Rapids and Saginaw-Toledo lines. The yard handles movement of local industrial traffic and blocks to and from through trains. There are two small yards at Plymouth, one with 12 tracks on the North-South line, and one with seven on the East-West route. Over 40 road trains per day pass through Plymouth in all directions, with 8 to 10 picking up traffic.

There are three daily yard switching assignments (two six-day and one five-day) and four daily road switching assignments (three six-day, one five-day) working at Plymouth Yard. The yard is supervised by yardmasters around-the-clock.

Wayne Yard is located seven miles south of Plymouth on the Saginaw Subdivision and supports a local automotive manufacturing facility and a steel warehousing company. Both are located adjacent to the yard, which has 21 switching tracks and several support sidings. Conrail's Michigan Line crosses CSX at Wayne south of Plymouth Yard. Interchange of multi-level cars for loading and auto part cars for the adjacent facility is handled between the two carriers. There are two daily yard assignments at Wayne, with two local trains and six to eight through trains picking-up traffic at the yard.

New Boston Yard is located 10 miles south of Wayne on the Saginaw Subdivision. This facility is owned and operated by TDSI, a CSX subsidiary.

Automotive vehicles manufactured in the Detroit area are drayed to New Boston for loading on railcars. Loading volumes there average 120 to 150 multi-level cars per day. The yard has six tracks with four loading ramp tracks. Six to eight road trains per day pick-up at this yard.

Proposed Operation

The Detroit Shared Assets Area will be supervised by a superintendent headquartered at North Yard. Train movements within the Detroit Shared Assets Area will be controlled by a CSAO dispatcher. The dispatching control stations now located at Dearborn may be relocated. All existing Conrail yards will be operated by CSAO.

Customer switching, yard functions and operations will be handled by CSAO crews with no change expected in the number of local switching assignments for North Yard, River Rouge Yard, Livernois Yard, Mound Road Yard, Mack Yard and Lincoln Yard.

Sterling Yard: CSAO crews will provide all customer switching for CSX and NS. Both CSX and NS will originate and terminate trains in Sterling Yard.

Trenton Yard is presently outside the switching limits of Detroit but will be made part of the Detroit Shared Assets Area and CSAO crews will provide all customer switching for CSX and NS. No change is expected in the number of local switching assignments.

CSX: CSX will operate five road trains in each direction, one multi-level, two merchandise, and two Intermodal. One pair of trains will operate between Sterling Yard and Doremus Avenue Yard, handling multi-levels in each direction. The second pair will operate between North Yard and Avon Yard at Indianapolis, handling auto parts and merchandise traffic. The third pair will operate between River Rouge and Stanley Yard, handling auto parts and merchandise traffic. The fourth pair will operate between Livernois and Atlanta, handling intermodal traffic. The fifth pair will operate between Livernois and Collinwood Yard at Cleveland, also handling intermodal traffic. The Lincoln Branch will be upgraded between Lincoln Yard and Carlton, MI and the Carlton connection will be replaced to access the CSX North/South mainline providing access to Toledo. CSX blocks all loaded multi-levels and auto parts. General merchandise is handled in separate blocks. Under this plan, five destination multi-level and auto parts blocks will be made. Also, Toledo, Willard, Cincinnati and Indianapolis merchandise blocks will be made. Inbound CSX trains will make blocks for North Yard, Sterling, River Rouge, Livernois and Jefferson Avenue.

CSX will continue to maintain interchanges with CPRS at Rougemere Yard.

NS: NS will operate three road trains in each direction. One pair of trains will operate between Elkhart and Sterling Yard, one will operate between Bellevue and Sterling and one pair will operate between St. Louis and Sterling Yard.

Inbound NS trains will have blocks for River Rouge, North Yard and Sterling Yards. Outbound trains originating at Sterling Yard will pick-up traffic at Mound Road, North Yard, River Rouge and Trenton as necessary. NS will also operate a transfer assignment between Sterling and NS Oakwood Yard daily.

NS will grant CSX rights between Ecorse Junction and Delray Interlocking from Lincoln Secondary so that CSX can use this route to reach CSAO locations as well as their Rougemere Yard. NS controls this route with their operator at NS' Rouge River Bridge. NS will require CSX to install a holdout signal on the Lincoln Secondary located west of the access switch to the NS Melvindale auto loading facility. Also, CSX trains westbound must call the NS operator before leaving either Rougemere Yard or North Yard.

4.2 Other Areas Subject to Special Arrangements

4.2.1 The Northeast Corridor

Current Operations:

Conrail now provides local switching services to customers located on the Northeast Corridor (NEC) between Newark, NJ and Washington, DC. The switching activity is most significant between Newark and New Brunswick, NJ, in North Philadelphia, between Philadelphia and Newark, Delaware and in the Baltimore area. Where switching operations are intense, Conrail has its own parallel tracks and yards to minimize its use of passenger tracks.

There is no through freight service over the length of the corridor today. That service was terminated in the late 1980s through agreements with CSX and NS that shifted Conrail freight services to other routes. Traffic to/from CSX in Alexandria, VA was shifted to the parallel CSX route under a trackage rights agreement. Traffic to/from NS was shifted to the Hagerstown Gateway.

EXHIBIT 3

IMPLEMENTING AGREEMENT

BETWEEN

CSX TRANSPORTATION, INC.
and its Railroad Subsidiaries

NORFOLK SOUTHERN RAILWAY COMPANY
and its Railroad Subsidiaries

and

CONSOLIDATED RAIL CORPORATION

and

their Employees Represented by

UNITED TRANSPORTATION UNION

WHEREAS, Norfolk Southern Corporation ("NS"), Norfolk Southern Railway Company and its railroad subsidiaries ("NSR"); and CSX Corporation ("CSX") and CSX Transportation, Inc. and its railroad subsidiaries ("CSXT"); and Conrail, Inc. ("CRR") and Consolidated Rail Corporation ("CRC") have filed an application with the Surface Transportation Board ("STB") in Finance Docket No. 33388 seeking approval of acquisition of control by NS and CSX of CRR and CRC, and for the division of the use and operation of CRC's assets by NSR and CSXT (the "transaction");

The NSR includes the following Carriers: Norfolk Southern Railway Company, the Alabama Great Southern Railroad Company, Atlantic and East Carolina Railway Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, Georgia Southern and

Florida Railway Company, Interstate Railroad Company, Norfolk and Western Railway Company, Tennessee, Alabama and Georgia Railroad Company, Tennessee Railway Company.

WHEREAS, it is anticipated that the STB has imposed the employee protective conditions set forth in New York Dock Ry. - Control - Brooklyn Eastern District, 360 I.C.C. 60 (1979) ("New York Dock conditions") on all aspects of the Primary Application; Norfolk and Western Railway Company - Trackage Rights - Burlington Northern, Inc., 354 I.C.C. 653 (1980), on related authorization of trackage rights; Oregon Short Line Railroad - Abandonment - Goshen, 360 I.C.C. 91 (1979), on related abandonment authorizations; and Mendocino Coast Railway, Inc., - Lease and Operate - California Western Railway, 360 I.C.C. 653 (1980), on the related authorization of the operations by CSXT or NSR of track leases with other rail carriers to which CRC is a party;

WHEREAS, the parties signatory hereto desire to reach an implementing agreement in satisfaction of Article I, Section 4 of the New York Dock conditions and other aforementioned labor protective conditions or any other protective conditions that may be imposed by the STB in this proceeding to the extent such conditions may be applicable to the transaction and related authorizations;

NOW, THEREFORE, IT IS AGREED:

ARTICLE I

Upon ten (10) days' advance written notice by CSXT, NSR and CRC posted on appropriate bulletin boards, with copies to the General Chairmen signatory hereto, after the effective date of the STB's order approving the control transaction, CSXT, NSR and CRC may effect the following selection and rearrangement of forces as described herein and in the separate related agreements (Attachments 1 and 2) between NSR, CSXT, and/or CRC and United Transportation Union (UTU).

ARTICLE II - WORKFORCE ALLOCATION

CRC employees will be allocated among CSXT, NSR, and the Shared Assets Areas (SAA) according to the needs of service.

A. Such employees actively employed, using their CRC seniority, will place themselves at a location thirty (30) days after the notification provided in Article II(B) below, will be considered as part of the pool of employees at that location in the following manner:

1. Where such a location becomes entirely NSR or CSXT, all of the employees at the location at the end of

the thirty (30) day period will likewise become exclusively employees of NSR or CSXT.

2. Where such a location is divided by CSXT and NSR, (or, in the case of SAA's , by CSXT, NSR and CRC), bulletins will be posted at the end of the thirty (30) day period advising employees at that location of the number of employees to be allocated exclusively to NSR and the number to be allocated exclusively to CSXT (or, in the case of the Shared Asset Areas, the number, if any, to be allocated to CRC). Such allocation will be made by accepting bids by certified mail from employees at that location. At the expiration of fifteen (15) days, employees will be assigned on the basis of straight seniority by their earliest retained date of hire. Service needs of each Carrier left unfilled at the expiration of the bulletin period, will be filled by those employees remaining at the location.
3. For the purpose of this Article II A only, the term "actively employed" likewise encompasses those employees on leave of absence(s), furloughed, sick and or injured and returning to service from forms

of discipline. Such employee upon returning to service shall have thirty (30) days in which to exercise seniority to a position within his/her respective seniority district.

- B. Notification and explanation of the above procedure will be made in writing (see Attachment "A") to all active CRC employees by certified mail.

ARTICLE III

After this initial allocation, former CRC employees, whether they are allocated to CSXT Northern District or NSR may only be permitted, or will be required, to exercise their former CRC seniority to the SAAs only when furloughed and until such time as they stand for recall. Likewise, former CRC employees allocated to CRC may only be permitted, or will be required to exercise their former CRC seniority to CSXT Northern District or NSR when furloughed and until such time as they stand for recall.

ARTICLE IV - SENIORITY AND EXISTING AGREEMENT PRESERVATION

The provisions of the agreements between the National Railroad Passenger Corporation (AMTRAK), all commuter agencies, CRC and their Employees represented by the United Transportation Union pursuant to Sections 1145 and 1165 of the Northeast Rail Service

Act are hereby incorporated into applicable CSXT and NSR agreements as if signed by those Carriers.

ARTICLE V

Employees with an employment relationship on implementation date, who are force assigned as a result of this agreement or required to operate over trackage on which they previously had no rights, will not be required to lose time or utilize off-duty time for the purpose of qualifying.

ARTICLE VI

Equipment, including engines, cabooses, and shoving platforms, that meet the minimum standards under any agreement on CSXT, NSR, or CRC may be used on any part of either system or in the SAAs.

ARTICLE VII

A. The New York Dock conditions, which are attached and made a part hereof as Attachment "B", shall be applicable to employees determined to be "displaced employees" or "dismissed employees" as a result of the transaction as set forth herein.

ARTICLE VIII

A. In order that the provisions of the first proviso set forth in Article I, Section 3 of the New York Dock or any other

conditions may be properly administered, each employee determined to be a "displaced employee" or a "dismissed employee" as a result of this Agreement, who also is otherwise eligible for protective benefits and conditions under some other job security or other protective conditions or arrangements, shall, within thirty (30) days after having established "displaced" or "dismissed" status under the conditions set forth in New York Dock, elect between the benefits under such other arrangement and this Agreement. This election shall not serve to alter or affect any application of the substantive provisions of Article I, Section 3.

B. In the event an employee fails to make such election within the said thirty (30) day period, he or she will be subject to the protective benefits of this Agreement.

C. There shall be no duplication or pyramiding of protective benefits receivable by any employee under this Agreement and any other agreement or protective arrangement.

D. If, subsequent to the effective date of the transaction described herein, Organization Representatives exercise seniority rights in road and/or yard service, and then during the period such seniority is exercised such persons meet the definition of "displaced" or "dismissed" employees, they shall be entitled to the

same protection afforded employees in road or yard service in which such seniority is exercised. When determining the "average monthly compensation" for such persons, it is understood that:

1. As to "full time" Organization Representatives who do not work in the class or classes in which they hold seniority while holding office, the individual's test period average will be determined by taking the average of both the average monthly compensation and average monthly time paid for of the two senior active and two junior active employees ahead of and behind the individual on the roster to which he or she displaces.

2. As to other than "full time" Organization representatives, their test period average will first be computed in accordance with New York Dock. The test period average as thus determined will then be increased proportionately for each day the individual lost time or laid off to participate in union business.

3. The dates on which the individual lost time in order to participate in union business will be certified by the individual involved and by an officer of his Organization and furnished to the designated officer of the Carrier.

ARTICLE IX

A. Each "dismissed employee" shall submit to the Carrier a claim with the following information for the month in which he is claiming benefits on a form (Attachment "C") provided by the Carriers and in accordance with the applicable claim procedures for handling protective conditions:

1. The day(s) claimed by such employee under any unemployment insurance act.
2. The day(s) each such employee worked in other employment, the name and address of the employer and the gross earnings made by the "dismissed employee" in such other employment.

B. If the employee referred to in this Article has nothing to report under this Article account not being entitled to benefits under any unemployment insurance law and having no earnings from any other employment, such employee shall submit, within the time period provided for in Section C of this Article, the appropriate form stating "Nothing to Report".

C. The failure of any employee referred to in this Article to provide the information required in this Article shall result in the withholding of all protective benefits during the month covered

by such information pending Carrier's receipt of such information from the employee.

In order to provide a routine method for handling claims for protective benefits under the New York Dock Conditions, the following procedures will apply in connection with this transaction;

1. The steps in the handling of claims for compensation will be:
 - (a) An initial Entitlement to Benefits Form provided by the carrier will be filed by the employee with the designated Labor Relations Officer.
 - (b) Once the employee has been advised that he or she is entitled to benefits the carrier will provide the employee with Claim Forms for the purpose of filing for benefits in any month he or she did not have the opportunity to earn the equivalent of his or her Test Period Average.
 - (c) All Entitlement to Benefits Forms and monthly Claim Forms must be filed by the employee not later than seventy-five (75) days from the last day of the month for which a claim is being made. Claims not made within this time limit will not be entertained or allowed.
2. When claims for compensation alleged to be due have been presented in accordance with paragraph 1, above, and are not allowed, the employee will be notified of the reason for the declination in writing within seventy-five (75) days from the date such claims were received. When not so notified, claims will be allowed.
3. Final appeal will be by the General Chairman and directed to the designated Labor Relations Officer. Appeals from

decisions regarding claims for compensation alleged to be due will be made within sixty (60) days or they will not be entertained or allowed. When such timely appeals are not allowed, the General Chairman will be notified of the reason for the declination, in writing, within sixty (60) days from the date of appeal. When not so notified, claims for compensation alleged to be due will be allowed.

4. Failure to comply with the time limit set forth above will cause the matter to be closed, but this will not be considered as a precedent or waiver of the contentions of either party to similar claims.
5. All claims involving a decision by the designated Labor Relations Officer will be barred unless, within one (1) year from the date of said officer's decision, proceedings are instituted by the employee or his representative before the arbitration committee described in Article I, Section II of New York Dock.

ARTICLE X

An employee whose job is abolished as a result of the transaction or who is displaced by such an employee and becomes unable to secure a position through the normal exercise of

seniority under existing agreements and who is eligible to receive a dismissal allowance, may be offered a position by the Carriers at any location. Such employee shall be given thirty (30) days' notice of such offer and must elect one of the following options prior to the expiration of the notice:

1. To accept the offer;
2. Resign from all service and accept a lump sum payment computed in accordance with New York Dock conditions; or
3. To be furloughed without protection during the furlough.

In the event an employee fails to make such an election, he shall be considered to have exercised option 3.

Employees accepting a job offer pursuant to this Article requiring a change of residence will be subject to the moving and real estate expenses provided in Sections 9 and 12 of the New York Dock conditions. Employees accepting the offer will be ranked on the appropriate roster in accordance with the applicable schedule agreement.

Employees transferred to other rosters pursuant to this Article will retain seniority rights and recall rights on their previous rosters. If recalled, they shall accept such recall in accordance with the appropriate agreement or forfeit all seniority on their previous roster. If they accept such recall, they shall forfeit all seniority on the roster to which they have previously

accepted transfer. The application of this paragraph shall not involve any expense to the Carrier for moving or real estate costs, or otherwise, unless the employee is furloughed within three (3) years after changing his point of employment, in which case the provisions of Section 9 of Article I of New York Dock will apply.

NOTE: This Article has no application to an employee who is eligible to exercise seniority in any other craft or class in which he holds seniority.

ARTICLE XI

For convenience, references to gender, if any, in this agreement are made in the masculine gender. It is understood and agreed by the parties to this agreement that references to the masculine gender include both the masculine gender and the feminine gender.

ARTICLE XII

This agreement does not impose any restrictions on work rights of any assignments operating within or through the territory covered by this agreement that did not exist on the effective date of this agreement.

ARTICLE XIII

All pending notices and proposals, if any, served under

Section 6 of the Railway Labor Act, as amended, on behalf of individuals who become employees of CSXT or NSR under Article II will no longer apply to such employees. These employees, if any, will be covered by the current notices pending on the agreement applicable to the territory to which transferred as if they were on such territory when said notices were served.

ARTICLE XIV

The parties further agree that after the initial division of the use and operation of CRC's assets between CSXT and NSR pursuant to this agreement, if either CSXT or NSR serves a subsequent notice related to the Application but limited to a coordination of its CRC allocated assets and not affecting the other railroads, then only that railroad needs to be the party to the subsequent implementing agreement.

ARTICLE XV

This agreement, with attachments, shall become effective only upon STB approval of the transaction and upon ten (10) days notice to the respective General Chairmen and will fulfill the requirements stipulated in Article I, Section 4 of the New York Dock conditions imposed in the Order in STB Finance Docket No.

33388. Nothing in this agreement is intended to diminish the protection in New York Dock.

Signed at Cleveland, Ohio this 6th day of August, 1998.

FOR THE UNITED TRANSPORTATION
UNION:

L R Davis

L. R. Davis, Vice President
United Transportation Union

R W Earley

R. W. Earley, Vice President
United Transportation Union

A D Smith

A. D. Smith, Vice President
United Transportation Union

FOR THE CARRIERS:

D. A. Arouca

D. A. Arouca, Vice President
Labor Relations
Consolidated Rail Corporation

K R Peifer

K. R. Peifer, Vice President
Labor Relations
CSX Transportation, Inc.

R. S. Spenski

R. S. Spenski, Vice President
Labor Relations
Cincinnati, New Orleans and
Texas Pacific Railroad
Company
Norfolk Southern Railway
Company
Norfolk & Western Railway
Company

Finance Docket No. 33388 (Sub-No. 102)

CSX Transportation, Inc.—Petition for Declaratory Order and Cease and Desist Order

EXHIBITS VOLUME 2

- 4 Detroit Shared Assets Area New York Dock Implementing Agreement, Finance Docket No. 33388
- 5 July 3, 2018 SMART-TD Claim Appeal
- 6 January 20, 2021E-Mail from Erik Belew, SMART-TD, to Jennifer Manz, CSXT
- 7 April 6, 2021 Letter from Jennifer E. Manz, Dir., Labor Relations, CSXT to Erik Belew, SMART-ST Vice Gen. Chairperson
- 8 April 8, 2021 Letter from SMART-TD Gen. Chairperson R.D. Lee to Jennifer E. Manz, Dir., Labor Relations, CSXT
- 9 April 20, 2021 Letter from Jennifer E. Manz, Dir., Labor Relations to SMART-TD Gen. Chairperson R.D. Lee
- 10 April 29, 2021 Notice of Intent to National Railroad Adjustment Board, First Div.
- 11 April 30, 2021 Letter from NRAB to CSXT and SMART-TD (docketing SMART-TD Claim)
- 12 May 3, 2021 Letter from Jennifer E. Manz, Dir., Labor Relations to SMART-TD Gen. Chairperson R.D. Lee
- 13 May 7, 2021 Letter from SMART-TD Gen. Chairperson R.D. Lee to Jennifer E. Manz, Dir., Labor Relations, CSXT
- 14 May 24, 20201 Letter from Jennifer E. Manz, Dir., Labor Relations, CSXT to National Mediation Board (requesting appointment of an arbitrator for the Section 11 Committee)
- 15 May 24, 2021 Letter from Jeff Wall, VP, Labor Relations, CSXT to NRAB (requesting that SMART-TD case be dismissed or stayed)
- 16 May 25, 2021 Letter from SMART-TD Gen. Chairperson R.D. Lee to Jeff Wall, VP, Labor Relations, CSXT
- 17 May 26, 2021 Letter from to NMB to SMART-TD Gen. Chairperson R.D. Lee (requesting comment on CSXT request for appointment of arbitrator)

- 18 June 9, 2021 Letter from SMART-TD Gen. Chairperson R.D. Lee to NMB (opposing appointment of Section 11 arbitrator)
- 19 June 11, 2021 Letter from Jennifer E. Manz, Dir., Labor Relations, CSXT to National Mediation Board (responding to SMART-TD request for arbitrator)

EXHIBIT 4

It is Agreed:

Article I - IMPLEMENTING AGREEMENT

This agreement is written in conjunction with the Master Implementing Agreement dated August 6, 1998 and incorporates all provisions contained therein. Nothing in this agreement is intended to supersede any provisions contained in the Master Implementing Agreement.

Article II - COLLECTIVE BARGAINING AGREEMENT

For CRC employees working within Shared Asset Areas (SAA's) the CRC collective bargaining agreement will be the effective agreement for SAA employees.

Article III - SAA TERRITORY

The Detroit Shared Asset Area (SAA) is identified as follows:

DETROIT, MI

The Detroit SAA is comprised of 85 route miles of track from Trenton, MI (MP 20) to Utica, MI (end of track), including: Terminal West Industrial Track to West Belt Jct., Terminal East Industrial Track, the Lincoln Secondary to Carleton, MI, and Conrail's Michigan Line to "CP-Townline" (MP 7.4) and encompasses all yards within this area.

ARTICLE IV - SENIORITY DISTRICTS

A. A new CRC seniority district and seniority roster shall be

UTU SAA DETROIT

created covering the SAA.

B. CRC employees allocated to the Detroit SAA will be placed on the new Detroit SAA seniority roster based upon date of hire and this roster will be used to fill regular and extra vacancies in the Detroit coordinated SAA.

C. In the event the Detroit SAA is sold or leased to an operator other than CRC, SAA employees will in seniority order be permitted to exercise seniority to CSXT Northern District or NSR in the same manner as if they were furloughed from the SAA.

D. Former CRC employees allocated to the SAAs, CSXT Northern District or NSR may flow between an SAA and CSXT Northern District or NSR zones operating into that SAA subject to the following conditions:

1. Employees will be permitted to submit requests to move between the railroads on December 15 of each year. Requests will be granted in seniority order subject to the limitations specified below:

2. The number of employees at a location permitted to move will be limited each year to 10% of the employee work force at that location or SAA.

UTU SAA DETROIT

3. The number of employees moving in either direction between an SAA and a zone must be matched by an equal number of employees moving in the opposite direction. In the event of an imbalance, the move(s) will not be permitted unless junior former CRC employee(s) are available to be force assigned in the opposite direction to achieve a one to one ratio.

4. Former CRC employees initially allocated to CSXT or NSR who subsequently move to an SAA may not at a later date move to the Carrier to which they were not initially allocated. Likewise, former CRC employees initially allocated to an SAA moving to CSXT or NSR may not at a later date move to the other Carrier.

E. Employees hired subsequent to the effective date of this agreement will be placed on the bottom of the Detroit SAA seniority roster. Such employees will not have seniority rights outside of the Detroit SAA.

ARTICLE V - ADVERTISING POSITIONS

CRC will advertise for positions to be filled in the SAA after the transaction. The initial advertisement will describe positions and locations. The initial advertisement will be for fourteen (14) days.

The advertisement will contain expiration and effective dates.

ARTICLE VI - SERVICE AND OUALIFYING

A. CRC employees may be required to perform service throughout the SAA territory in accordance with the CRC schedule agreement.

B. CSXT and NSR will operate trains into, out of, and through the SAA, and will be able to operate the trains with their road crews to any allocated, shared or customer operated facility as if operating in their own territory, under the terms of their collective bargaining agreement.

ARTICLE VII

Where the rules of the applicable CRC schedule agreement conflict herewith, the provisions of this agreement apply. Such rules, or portions thereof, that are not in conflict with this agreement are preserved.

ARTICLE VIII

This agreement shall become effective upon the effective date of the Master Implementing Agreement.

August 6, 1998

Side Letter No. 1 to Attachment 1

Mr. L. R. Davis, Vice President
United Transportation Union
275 Spring Run Lane
Downingtown, PA 19335

Mr. R. W. Earley, Vice President
United Transportation Union
14600 Detroit Avenue
Cleveland, OH 44107

Mr. A. L. Smith, Vice President
United Transportation Union
P.O. Box 560
Jeffersonville, GA 31044-0560

Gentlemen:

This refers to our discussions concerning the application of the Crew Consist Agreement and the Productivity Savings Sharing Allowance (up-front payment) to former CRC employees allocated to the Detroit SAA.

CRC employees with a seniority date before March 7, 1989 upon implementation will continue to be eligible for up-front payments.

CRC employees eligible for up-front payments shall receive a \$30 up-front payment for each trip or tour of duty when performing service as a member of a train crew consisting of a conductor-only (other than a single-position assignment) or a conductor and a single brakeman. The up-front payment shall be frozen at \$30 and shall not be subject to future wage increases or cost-of-living adjustments.

All other elements of the CRC Crew Consist Agreement shall apply to CRC employees allocated to the Detroit SAA.

If you concur, please sign in the space provided below.

Agreed:

L R Davis

L. R. Davis, Vice President
United Transportation Union

R W Earley

R. W. Earley, Vice President
United Transportation Union

A L Smith

A. L. Smith, Vice President
United Transportation Union

Very truly yours,

D. A. Arouca

D. A. Arouca
Vice President Labor Relations
Consolidated Rail Corporation

K R Peifer

K. R. Peifer
Vice President Labor Relations
CSX Transportation, Inc.

R. S. Spenski

R. S. Spenski
Vice President Labor Relations
Norfolk Southern Railway Co.

EXHIBIT 5

Jason Floyd - Claim Appeal
Director of CSXT Labor Relations
6th Floor, J-455
500 Water Street
Jacksonville, Florida 32202

July 3rd, 2018

RE: LCAT File Number 18-53433-BOUTU

Dear Sir: Please accept this appeal of the following claim and forward a letter for a payment or a statement of your reason for declination.

Statement of Claim:

Allow the Claimant a basic eight (8) hour day penalty due to CSX's willful violation of the CBA, in particular but not limited to the Scope Rules/Articles, Rule 59, Article 3, and Rule 106. The violation of the CBA has eliminated a prior right employees ability to work an assignment of his choosing belong to CSX employees and was illegally "farmed out" to Conrail SA to which they are not entitled to, in an attempt to eliminate assignment to reduced costs for the stockholders. Consider this claim as notice that this is a continuous claim starting on November 19, 2017 and will be continued until resolved under the RLA. If CSX chooses to deny and not resolve the issue they do so at their own peril and should pay all claims in the full amount.

Statement of Facts:

On November 17, 2017, Crew Management displaced Patrick M. Gay (ID# 199599) from his regular assignment, the Y122 operating at CSX Rougemere Yard in Detroit, MI., Milepost CH 1, at 0937 hours while he was observing two rest days prior to the advertised effective date of the abolishment of his assignment.

The Y122 is an independent yard assignment operating solely in Detroit to switch and transfer cars back and forth from Rougemere Yard (MP CH 1) to Conrail Shared Assets Livernois Yard. This work has always been performed by employees of the owning railroad of Rougemere Yard which predates even CSX. Since CSX took over Rougemere Yard from the former Pere Marquette railroad, CSX has utilized in accordance with the CBA the crews they employ as the facilities are still owned, operated, and maintained by CSX as an on duty point. Obviously this would also predate the acquisition of Conrail (Consolidated Rail Corporation) by CSX and Norfolk Southern in 1999. Moreover it must be pointed out that Livernois Yard is now jointly owned by CSX and NS under the banner of Conrail Shared Assets. It was not until the abolishment date of the Y122 that CSX chose to use Conrail SA supplied work force at a reduced rate versus their own crews to perform transfer and switching duties of the abolished assignment.

As a result of this violation Mr. Gay input the following claim as prescribed under Rule 32:

CLAIM TEXT: ALLOW 8 HOURS PAY FOR CSX ABOLISHING MY REGULAR ASSIGNMENT THE Y122 ON 12/09/17 IN VIOLATION OF RULE 1, RULE 3, AND RULE 106 BY FARMING OUT ROUGEMERE YARD WORK TO SHARED ASSETS, ANOTHER RAILROAD. ROUGEMERE YARD IS A SOLELY CSXT OWNED ANDSIGNMENT. FOR THIS REASON AN 8 HOUR PENALTY IS DUE.

CLAIM TEXT FOR CON CODE: IDENTIFY ISSUE - RUNAROUND, DISPLACEMENT, OTHER: CLAIMING EIGHT HOURS FOR ILLEGALLY ABOLISHING MY REGULAR ASSIGNMENT WHILE WORKING Y122 AT ROUGEMERE

DATE & TIME OF ISSUE? 11190700
NAME & ID INVOLVED IN ISSUE OTHER THAN YOURSELF: NONE
TRAIN/JOB/LOCATION INVOLVED: Y12219 CH 1
ON DUTY TIME OF JOB INVOLVED: 0700
LOCATION OF JOB: ROUGEMERE, DETROIT, MI AGREEMENT
& ARTICLE VIOLATED: RULE 1, RULE 3 AND RULE 106

CSX then denied this claim as prescribed under Rule 32 stating the following:

DECLINE TEXT: CLAIM DECLINED. THERE IS NO VIOLATION IN THE CARRIER ABOLISHING THE Y122, AND CLAIMANT HAS FAILED TO GIVE ANY CONTRACTUAL SUPPORT WHICH PROHIBITS THE CARRIER FROM ABOLISHING AN ASSIGNMENT. CLAIMANT HAS FAILED TO IDENTIFY ANY OF THE WORK ALLEGEDLY BEING PERFORMED BY SHARED ASSETS WHICH PURPORTEDLY VIOLATES THE CITED RULES OF THE AGREEMENT. CLAIMANT HAS FAILED TO PROVIDE SUFFICIENT INFORMATION TO VALIDATE AND SUPPORT HIS CLAIM.

Position of Organization:

The act of "farming out", "sub-contracting", or "shifting duties" of a CSX employee's work to another railroad carrier is prohibited under the UTU B&O Agreement. In connection with the Scope Rules of the Agreement the Organization directs you to Article 3, titled Service To Which Yardmen Are Entitled, which clearly reads under part (a), All transfer work performed within the switching limits. Pertinent parts of reproduced directly below states:

ARTICLE 3.

SERVICE TO WHICH YARDMEN ARE ENTITLED

(a) **All transfer, construction, maintenance of way, and work trains doing work exclusively within the switching limits will receive not less than yardman's rate of pay.**

Moreover, CSX has failed to properly notify or designate Rougemere Yard as an interchange point when reversing the interchange from Conrail SA. Livernois Yard as required under Rule 106. For your ready reference copied below is Rule 106, with underlining added for emphasis, which states:

RULE 106.

INTERCHANGE

(a) 1. At points where yard crews are employed, road freight crews may be required to receive their over-the-road trains from a connecting carrier or deliver their over-the-road trains to a connecting carrier provided such trains are solid trains which move from one carrier to another intact with or without motive power and/or caboose.

2. If road crews referred to in Section 1 of this Rule 106 are not required to return or deliver their motive power and/or their cabooses to or from their on or off

duty points an alternate means of transportation will be provided.

3. At designated interchange points, if a carrier does not now have the right to specify additional interchange tracks it may specify such additional track or tracks as the carrier deems necessary providing such additional track or tracks are in close proximity. Bulletins, specifying additional tracks will be furnished the General Chairman or General Chairmen involved prior to the effective date.

4. If the number of cars being delivered to or received from interchange tracks of a connecting carrier exceeds the capacity of the first track used, it will not be necessary that any one interchange track be filled to capacity before use is made of an additional track or tracks provided, however, the minimum number of tracks necessary to hold the interchange will be used.

5. Crews used in interchange service may be required to handle interchange to and from a foreign carrier without being required to run "light" in either direction.

Work equities between carriers previously established by agreement, decision or practice will be maintained with the understanding that such equity arrangements will not prevent carriers from requiring crews to handle cars in both directions when making interchange movements. Where carriers not now using yard and transfer crews to transfer cars in both directions desire to do so, they may commence such service and notify the General Committees of the railroad involved thereof to provide an opportunity to the General Committees to resolve any work equities between the employees of the carriers involved. Resolution of work equities shall not interfere with the operations of the carriers or create additional expense to the carriers. It is agreed, however, that the carriers will cooperate in providing the committees involved with data and other information that will assist in resolution of work equities.

6. The foregoing provisions are not intended to impose restrictions with respect to interchange operation where restrictions did not exist prior to the date of this Agreement.

(b) 1. Pursuant to the new road/yard provisions contained in the recommendations of Presidential Emergency Board No. 219, as clarified, a road crew may perform in connection with its own train without additional compensation one move in addition to those permitted by previous agreements at each of the (a) initial terminal, (b) intermediate points, and (c) final terminal. Each of the moves -- those

previously allowed plus the new ones -- may be any one of those prescribed by the Presidential Emergency Board: pick-ups, set-outs, getting or leaving the train on multiple tracks, interchanging with foreign railroads, transferring cars within a switching limit, and spotting and pulling cars at industries.

2. The crew of an over-the-road solid run-through train may perform one move as prescribed, in addition to delivering and/or receiving their train in interchange.

(Sections (b) 1 and 2 from Article VII of the November 1, 1991 National UTU Agreement.)

Rule 106, 3, was violated as there was not any correspondence with the General Chairman prior to the Bulletin abolishing the Y122 which performed the transfer work delivery freight to interchange with Conrail SA Livernois Yard and then returning to CSX Rougemere Yard. Rule 106 was further violated as a prior agreement with the Conrail Shared Assets sharing any equity nor has one been entered into. This work is 100% CSX employees work as Conrail SA did not exist until CSX and the NS acquired the Former Conrail in FD 33388. CSX entered into an Interchange Agreement with Conrail SA violating the agreement. CSX never filed a written notice to the General Chairman of jurisdiction, notifying him of the proposed work change. This unilateral change was done without agreement or consent from CSX SMART Transportation B&O General Chairman Steve Mavity.

This abolishment and Mr. Gay's removal was performed in violation of the Agreement one (1) day before the effective date of bulletin No. 146, published in the MCBL Screen, T&E Daily Messages. The Bulletin, reproduced below, was not advertised to take effect until November 18, 2017. The MCBL screen is used by employees to inform them of upcoming changes to assignments and required under Rule 59 of the B&O Agreement to be accurately posted.

Pertinent Parts of Rule 59, Assignment And Filling Of New Runs And Permanent Vacancies is reproduced below:

(h) New runs in all classes of service will not be made effective nor changes in existing runs made effective until after the expiration of the notice advertising same.

It is clear that CMC improperly displaced Mr. Gay from his regular assignment one day prior to force him to make a seniority move to another assignment or receive CAPS points as it is well advertised that Detroit is in a CSX self-created "man power shortage". Instead of Claimant receiving discipline for attendance Mr. Gay was forced to make a seniority move to the Y191 prematurely.

When addressing the CSX's initial declination it forces the Organization to ask if they even reviewed the claim. Mr. Gay provided all necessary documentation such as Rules No.'s and detailed the specific issue at hand. For CSX to feign ignorance as to what the issue at hand is simply a ploy to invoke burden of proof. The information given by Mr. Gay details the claim and in no way puts CSX at a disadvantage to properly investigate the claim properly. To believe otherwise one would have to believe they have no knowledge of the Agreement or the operational changes that CSX approved.

Conclusion

By entering into an illegal Interchange Agreement between Conrail SA (CSX owns half) and CSX one of the parent companies of Conrail SA the Agreement was violated by CSX and is required to pay Mr. Gay the penalty of a basic day for each day this violation continues. Please place claim in line for payment or a detail explanation for declination.

The Organization offers the following in support of this claim.

CSX's MCES Screen displaying the Seniority Roster's the Claimant is assigned and validating his prior rights status.

MCMS.MCES EMPLOYEE SENIORITY ROSTER INQUIRY DATE 05/16/18 09:24
OPTION INQU PAGE 01 PRT _____
EMPLOYEE ID: 199599 NAME: PM GAY

A	SEN	TIE	STATUS			
C ROSTER ID	DESCRIPTION	QUAL	DATE	BRKR	AC	CDE
BOCOWESTER	B&O WESTERN CONSOLIDATED CONDUCTORS	TR	07/08/96	0003	—	
BOENSYSTEM	BO NORTHERN MID-ATLANTIC ENGINEER ROST	EN	07/14/97	0003	—	
BOENWESETS	B&O WESTERN ENGINEER ETS	FI	07/14/97	0013	—	
BOENWESTER	B&O WESTERN CONSOLIDATED ENGINEERS	FI	07/14/97	0013	—	
BOTRSYSTEM	BO NORTHERN MID-ATLANTIC TRAINMAN ROST	TR	07/08/96	0004	—	
BOTRWESTER	B&O WESTERN CONSOLIDATED TRAINMEN	TR	07/08/96	0003	—	
COCOCOMICH	CONSOLIDATED MICHIGAN CONDUCTOR	SEN. CO	07/08/96	0003	—	
COENCONSPM	CONSOLIDATED PM ENGINEER SENIORITY DI	FI	07/14/97	0013	—	
COENGRPSAG	GRAND RAPIDS-SAGINAW CONSOLIDATED ROST	FI	07/14/97	0013	—	
COENSAGGRP	SAGINAW-GRAND RAPIDS CONSOLIDATED ROST	FI	07/14/97	0013	—	
COFICONSPM	CONSOLIDATED PM FIREMEN SENIORITY DI	FI	07/14/97	0013	—	
COTRCOMICH	CONSOLIDATED MICHIGAN TRAINMEN'S SEN.	TR	07/08/96	0003	—	

Claimant's Employee Work History from the CSX Main Frame displaying that he was assigned and the incumbent Foreman on the Y122.

DIST: DE SUB-DIST: MI EMPLOYEE WORK HISTORY PSTS18X

EMPLOYEE NAME: GAY PM EMPLOYEE NUMBER: 000199599
START DATE: 111417 CURRENT ASSIGNMENT: YY191 FO

X	DATE	TIME	FUNCTION	TRAIN/ASG	CC	EFF-TIME	EMP-AFF	LO	POOL	I-O	USERID
	1114	0503	SCAL	Y12214	FO	11/14-0700		B0	YD	0	SYAQ
	1114	1703	TIE UP/10	Y12214	FO	11/14-1703		A0	YD	0	SYAS
	1115	0503	SCAL	Y12215	FO	11/15-0700		B0	YD	0	SYAQ
	1115	1540	TIE UP/10	Y12215	FO	11/15-1540		A0	YD	0	SYAS
	1116	0500	IVR-CNCL	DETTY122	FO	11/16-0500					F6008
	1116	0503	SCAL	Y12216	FO	11/16-0700		B0	YD	0	SYAQ
	1116	1628	TIE UP/10	Y12216	FO	11/16-1628		A0	YD	0	SYAS
	1117	0606	RJNA(08)	Y19017	S1	11/17-0730					F6008
	1117	0700	REST DAY	DETTY122	FO	11/17-0700		A0	YD	0	SYZR
	1117	0937	AJ DEL	DETTY122	FO	11/17-0937		C1	YD		A4381
	1117	1618	NTFY-IVR	DETTY122	FO	11/17-1618		C0			SY6R
	1117	1622	SEN-MOVE	DEMIYY191	S1	11/17-1622	000534810	A0	YD	0	VRU

CSX T&E Daily Message (MCBL Screen) displaying the abolishment Assignment Y122 effective 11-18-17.

MCAI.MCBL	T&E DAILY MESSAGE	DATE 05/16/18 09:39
OPTION: INQU	MESSAGE DATE: 111417 NO: 146	PRT PAGE 01
SHORT DESCRIPTION	: DEDT YY122 ABOLISHED	SMART ID: CA28963
EFFECTIVE DATE	: 2017-11-18 0001	
ASSIGNMENT DESCRIPTION	: DET UP #301	
TRAIN ID	: Y122	
ON DUTY MILEPOST	: CH 1	
KIND OF SERVICE	: YARD	
CRAFTS	: ENGINEER, FOREMAN	
DAYS	: MON TUE WED THU FRI SAT SUN	
ASSIGNMENT	: YY122 YY122 YY122 YY122 YR70 YR70 YY122	
ON-DUTY TIME	: 0700 0700 0700 0700 0700 0700 0700	
WORKING LIMITS	: YARD LIMITS	

Thank you,

Donald Roach, Chairman, SMART-TD Local 1760

EXHIBIT 6

Erik Belew

From: Erik Belew
Sent: Wednesday, January 20, 2021 6:32 PM
To: Manz, Jennifer
Cc: Richard Lee
Subject: Rougemere Yard LCAT Claims (UTU File: 696.31)
Attachments: Volume 8A of 8 Detroit.pdf; Volume 8B of 8 Detroit.pdf; Volume 8C of 8 Shared Assets Operating Agreement For Detroit.pdf; Volume 3B of 8 Detroit Shared Assets Area.pdf; Volume 3B of 8 4.1.3 Detroit.pdf; RULE 106.pdf

Jennifer,

As a brief synopsis of the what we are referring to as the Rougemere Yard claims discussed in multiple conferences as a result of the Detroit terminal yard assignment Y122 being abolished so that CSX could begin utilizing the subsidiary of CSX, Shared Assets to perform what is our work. On November 14, 2017, CSX in Crew Management Notice No. 146 abolished the Y122 with an effective date of November 18, 2018. The Claimant in the majority of the claims is Mr. PM Gay (ID# 199599) who was assigned to the Y122 on the effective date of the abolishment as he had been the incumbent on this assignment for a significant amount of time prior to the abolishment. The Y122 primary purpose were to transfer cars for interchange between the CSX owned and operated Rougemere Yard to the Shared assets yard of Livernois. Prior to the abolishment of the Y122 this work had been performed by CSX crews for multiple decades, including the period of time prior to the 1999 Conrail acquisition which resulted in FD 33388. Being that CSX relied solely on FD 33388 to base this position there was not any additional filings with the STB to legally allow this interchange. It is this offices position that CSX is in Violation of Rule 106, Article 3, The Conrail Implementing Agreement, and that the FD 33388 does not grant this authority to CSX and as a result are in violation of the STB requirements to operate in such a fashion.

As discussed in claims conference and to be fully transparent to resolve this current dispute I have attached excerpts from FD 33388 as requested that supports our position that the interchange work being currently done at Rougemere Yard is not supported by FD 33388 which former HDO Jason Floyd had stated solely allowed this work and that CSX Legal Department had previously reviewed. I further ask that you provide any internal correspondence from former HDO Floyd concerning this issue with CSX Legal to make it a matter of record if further adjudication is needed. Furthermore, it is our position that the Finance Docket does not grant CSX relief from its obligation to abide by the CBA regardless of what is stated in FD 33388. Simply stated CSX is bound by the Contract with its employees and its operations need to reflect what is contained in the Agreement unless changed through the RLA.

When CSX abolished the Y122 operating at Rougemere Yard and gave the work entirely to Shared Assets it violated our scope rules as the work is to be performed by CSX crews and not to be "farmed out" to another rail road which CSX happens to own a large portion along with the NS Rail Road. As we discussed Rule 106 is applicable in this instant case as well and is currently being violated due to CSX's loose compliance of the standards contained in the Rule to which despite numerous requests from this office to date have received zero correspondence in return for multiple years.

I have attached Rule 106 for your review and for the lawyers to review as well to once again be fully transparent in our position. As we discussed this office and from multiple General Chairmen have been seeking compliance with Rule 106 as this office has received little correspondence advising us what tracks etc. have been designated for interchange across CSX territory. Moreover CSX abolished the Y122 and are currently farming out our work at Rougmere Yard in its entirety to the Shared assets in violation of our scope Rule.

To summarize the position of the Carrier as previously given; FD 33388 grants the CSX the right to abolish prior CSX assignments at Rougemere Yard and thus no contractual violation has occurred.

To Summarize the Organizations position; FD 33388 does not give any such rights to the Carrier as the Finance Docket 33388 is merely a filing with the STB which grant the railroad rights to track age rights once approved but the in this instant case does not even grant CSX the right to operate their Shared Assets Rail road into Rougmere yard. Furthermore FD 33388 does not grant relief to CSX from the CBA nor to farm out our work to another rail road.

As you stated you are going to have the CSX lawyers review this information again.

Erik Belew

Vice General Chairperson

SMART-TD B&O/NMAD General Committee



EXHIBIT 7



Jennifer E. Manz
Director, Labor Relations
500 Water Street
Jacksonville, FL 32202
(904) 518-0005
Jennifer_Manz@csx.com

April 6, 2021

Mr. Erik Belew
SMART-TD - Vice General Chairperson
12443 San Jose Blvd. Suite 701
Jacksonville, FL 32223

Re: Rougemere Yard Claims

Dear Erik,

This responds to our recent discussion of the Rougemere yard issue, in which the Union claimed that the abolishment of assignment Y122 in Rougemere Yard and use of a Conrail job to move cars between CSXT's Rougemere Yard and Conrail's Livernois Yard violate Rule 1 (Scope) and/or Rule 106 (Interchange) of the CSXT—SMART-TD collective agreement covering the former B&O Railroad.

We respectfully disagree, since the matter is governed not by the B&O Agreement, but rather by the Operating Agreement for the Detroit Shared Assets. The Operating Agreement was approved by the Surface Transportation Board in Finance Docket No. 33388, to utilize Conrail to perform certain "switching and yard services" for CSXT in the Shared Assets Area ("SAA"). CSXT's request that Conrail perform the work formerly performed by the Y122, i.e., transferring cars between Rougemere and Livernois Yards, with some industrial switching, was clearly contemplated and authorized by the Operating Agreement, including Section 3(d) (*excerpts attached*). Rougemere and Livernois Yards and the track between them are within the Detroit SAA as defined in the Agreement. Please note that Conrail does have trackage rights over CSXT track. The STB-approved Operating Agreement granted Conrail such trackage rights. See Sec. 3(c)(i).

Given the above, Rule 106 of the B&O Agreement is clearly inapplicable to Conrail. Moreover, no interchange is involved. Under the Operating Agreement (Sec. 3(e), Conrail acts as CSXT's agent, and the traffic remains in CSXT's account.

The STB's jurisdiction to approve such operating arrangements, and its approval of them, supersedes collective bargaining agreements negotiated under the Railway Labor Act. Accordingly, any impacts on CSXT employees from this operational change must be addressed under the New York Dock conditions and the New York Dock Implementing Agreement applying those conditions to the Conrail Transaction.

The Union's claim that the New York Dock Implementing Agreements do not authorize CSXT to use Conrail as its agent to transfer cars between Rougemere and Livernois Yards requires interpretation and application of the STB decision approving the Conrail Transaction, the Detroit SAA Operating Agreement, the New York Dock conditions and the Conrail Implementing Agreement. Exclusive jurisdiction to consider such claims lies with the STB and a committee established under Article I, Section 11 of the New York Dock conditions imposed in Finance Docket No. 33388. An arbitration board established under the Railway Labor Act would lack subject matter jurisdiction over all such disputes.

We understand, respect and share your interests in timely resolving matters that the parties may dispute. Therefore, CSXT is advancing these issues to a New York Dock Section 11 committee for adjudication, and appoints the undersigned as its member of the Committee. Please advise who will be the Organization's member.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Manz".

Jennifer E. Manz
Director, Labor Relations

Cc: Richard D. Lee – SMART-TD General Chairperson

EXHIBIT 8

R. D. Lee, General Chairperson
E. C. Kosinski, Asst. General Chairperson (E)
E. R. Belew, Vice General Chairperson
K. L. Serres, Vice General Chairperson
J. P. Ciemny, GCA Secretary



General Committee of Adjustment GO-049

April 8, 2021

(SENT VIA EMAIL and LCAT Upload)

Jennifer E. Manz
Director, Labor Relations
500 Water Street
Jacksonville, FL 32202
(904) 518-0005
Jennifer_Manz@csx.com

RE: LCAT# 18-53433-T&E-BOUTU (Conrail Detroit Shared Assets – Y122 Rougemere Claims)

Dear Mrs. Manz:

This will serve as a formal response to your letter dated April 6, 2021, dealing with claims arising out of deprivation of interchange and transfer work belonging to the CSXT employees on the B&O/NMAD seniority rosters. Whereas, the Carrier inaccurately states in their letter that the Organization only claims rights to such work under the Rule 1 (Scope) and Rule 106 (Interchange). However, to the contrary, be advised that our position is also founded on the language contained in Article 3 of the B&O Agreement. Further, our position is supported by the 1999 UTU/CSXT Conrail Implementing Agreements as well as the 2010 Northern Mid-Atlantic Agreement. Therefore, the agreement rules in place between SMART-TD (*formerly UTU*) and the Carrier are indeed applicable and binding upon the Carrier, and above any operating arrangement made in the Finance Docket No. 33388.

Moreover, your letter is also flawed and misleading wherein the Carrier claims that no interchange is involved with the rail traffic between CSX Rougemere Yard and the Livernois Yard on the Detroit Shared Assets ("SAA"). In fact, attached to this letter is a notice (**Attachment 1**) served by the Conrail Shared Assets to the SMART-TD Conrail Local Chairperson, stating, *inter alia*, that "[t]his interchange service will begin November 11, 2017". (Underscore added for emphasis). Correspondently, CSXT released Crew Management Notice No. 146, dated November 14, 2017, which abolished the Y122 (Rougemere Assignment) with an effective date of November 18, 2017 (**Attachment 2**). The Y122 handed the cars for the interchange traffic to the SAA. The fact that this job was abolished due to new

interchange arrangements with Conrail SAA, is clearly seen in the CSXT Crew Assignment Form as it noticeably indicates the Y122 is being abolished due to "Conrail Interchange" (**Attachment 3**).

Accordingly, the Organization disagrees that this is a case involving a review or intervention by a NYD Section 11 Committee pursuant to Finance Docket No. 33388. Rather, this dispute before us is clearly a dispute under Section 3 of the Railway Labor Act, as amended. In other words, the Organization is not seeking New York Dock Protections claiming the Y122 was abolished due to the CSX/NS/Conrail transaction, but rather because the Carrier has failed to adhere to equitable requirements of the property agreement(s) to provide the CSXT employees we represent with a portion of the interchange and transfer work that is theirs.

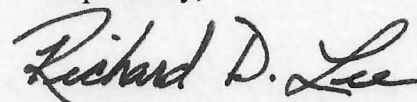
Consequently, based on the evidence at hand, it is our position that CSXT is bound by the property agreement(s) to afford CSXT employees their rights to such percentages of the transfer and interchange work to and from the SAA. Moreover, as your letter states, it's noteworthy to mention that the Carrier is not burdened with any additional costs to allow CSXT employees their percentage of the transfer/interchange work as the Operating Arrangement under Section 3(e) of the Operating Agreement requires the Carrier to maintain these costs in CSXT's account.

As for designating a member for the New York Dock Section 11 Committee, we again disagree this is applicable. However, if and when we are required to designate such member, we will do so when advised by the Surface Transportation Board.

Based on the foregoing, we again request that the Carrier promptly resolve the matter by making an equitable arrangement to reinstitute the interchange/transfer assignment to handle our portions the interchange and transfer work. However, if the Carrier refuses to comply with the agreement, we stand ready and prepared to submit the dispute to binding arbitration under the terms of the RLA.

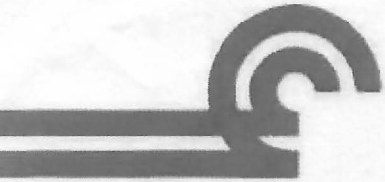
If you have any questions or further discussion, please contact the undersigned. Otherwise, the Organization is agreeable to leaving the record open for further discussion for a period of thirty (30) days from the date of this letter if requested.

Respectfully,

A handwritten signature in black ink that reads "Richard D. Lee". The signature is written in a cursive, flowing style.

Richard D. Lee
General Chairperson

3 Attachments



October 27, 2017

Mr. G. Karkoska
Local Chairman, SMART-TD
18605 Hillcrest St.
Livonia, MI 48152-4321

smart.local1477@gmail.com

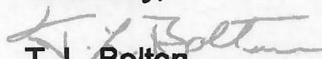
Dear Mr. Karkoska,

Subject: Rougemere Yard Interchange

In accordance with Rule 68 of the Agreement between the parties, this is to notify you of Conrail's intent to institute interchange service at CSX's Rougemere Yard in Detroit, MI. The Westbound and Eastbound Main tracks at Rougemere Yard are designated for the cars arriving at Rougemere from Conrail and Tracks Number 7 and Number 8 Receiving are designated for the cars which Conrail crews will be picking up there. Notice of the designated interchange tracks will also be immediately placed in the Conrail Detroit SAA Operating Bulletin. This interchange service is scheduled to begin on November 11, 2017.

Please contact me if you have any questions regarding this change in service.

Sincerely,


T. L. Bolton
Director, Labor Relations

MCAI.MCBL
OPTION: INQU MESSAGE DATE: 111417 NO: 146
SHORT DESCRIPTION : DEDT YY122 ABOLISHED
EFFECTIVE DATE : 2017-11-18 0001
ASSIGNMENT DESCRIPTION : DET UP #301
TRAIN ID : Y122
ON DUTY MILEPOST : CH 1
KIND OF SERVICE : YARD
CRAFTS : ENGINEER, FOREMAN
DAYS : MON TUE WED THU FRI SAT SUN
ASSIGNMENT : YY122 YY122 YY122 YY122 YR70 YR70 YY122
ON-DUTY TIME : 0700 0700 0700 0700 0700 0700 0700
WORKING LIMITS : YARD LIMITS

DATE 04/08/21 16:56
PRT PAGE 01
SMART ID: CA28963

NEXT FUNCTION:
MESSAGE :

Crew Request History Record Approvals

J2941

Request Date: 2017-11-11 10:35:59

Assigned To:

Status: Approved

☒ Yard
☐ Local
☐ Pool

Attachments

Effective Date: 2017-11-18 10:36:02

Region: District: DE 

Sub District: DT

Job Type: Y - Yard Switcher

Train ID: Y122

Abolished? ☒

Abolishment Reason: CONRAIL INTEI

*Crew Terminal Milepost and Off Duty Milepost: CH 1

CTM City and State: DETROIT MI

*Train Departure Milepost: CH 1

TDM City and State: DETROIT MI

Train Arrival Milepost: TAM City and State:

*Assignment Description: DET UP #301

^aWorking Limits: YARD LIMITS

*Reason for Change: CONVENTIONAL. YR70 WILL BE REPLACING YR50 AS THE RELIEF. OFF DUTY DAYS REMAIN THE SAME

CSRA Article 57: 4-Day and 3-Day Work Rest Assignment?

Customer Days of Service Change? Train Order Required: ☐ N

*Bulletin Printer ID: [REDACTED]

Kind Of Service: 5 - Yard

*Road Code: BO

Division: Chicago (CG)

*Yard Master Code: ROU

*TrainMaster Code Engineer: *TrainMaster Code Conductor: ☐

Terminal Outlying:

- ☒ Terminal
- ☐ Outlying

*Additional Impact To

Service to Customer? ☐Train Profile? ☐None of the Above? ☐

Sub Division

There are no rows to display

New Row

EXHIBIT 9



Jennifer E. Manz
Director, Labor Relations
500 Water Street
Jacksonville, FL 32202
(904) 518-0005
Jennifer_Manz@csx.com

April 20, 2021

Mr. Richard D. Lee
SMART-TD General Chairperson
12443 San Jose Blvd. Suite 701
Jacksonville, FL 32223

Re: Rougemere Yard Claim Dispute

Dear Richard:

This responds to the Organization's letter dated April 8, 2021.

The Organization states that its position is based on Article 3 of the B&O Agreement as well as Rules 1 and 106 and on the 1999 UTU/Conrail Implementing Agreements and the 2010 Northern Mid-Atlantic Agreement. The Organization attaches additional documents in support of the Organization's argument that CSXT's use of Conrail violated Rule 106.

The attached documents do not support the Organization's Rule 106 argument. As the Carrier previously explained, the B&O Agreement, including Rule 106, does not apply to work performed by Conrail. In addition, Rule 106 uses the term "interchange" in connection with the exchange of cars between CSXT and a "foreign carrier." When interchange occurs between CSXT and a foreign carrier, the cars move from the account of one carrier to the other. As explained, under the STB's control authorization and the Detroit Shared Assets Operating Agreement, Conrail does not act as a "foreign carrier." Rather, Conrail is an affiliate of CSXT and acts as an agent for CSXT (or NSR) in handling cars within the SAA. As stated in the Operating Agreement, there is no interchange between CSXT and Conrail as that term is used in Rule 106. The Organization has also failed to show any "new interchange arrangements with Conrail SAA." The October 27, 2017 notice from the Conrail Director or Labor Relations to a Conrail Local Chairman was using the term "interchange" in a different sense—the Conrail job would simply move cars from Livernois Yard to Rougemere Yard, all while in CSXT's account. Likewise, CSXT Crew Management Notice No. 146 does not show that this job was involved in interchange service within the meaning of Rule 106 for the same reasons.

The Organization apparently is relying on language in Article 3(e) of the B&O Agreement that "Effort will be made to give Baltimore and Ohio yardmen their percentage of all transfer work between foreign lines and The Baltimore and Ohio Railroad." Again, Article 3(e) addresses the transfer of cars between CSXT and a "foreign carrier," and Conrail is not acting as a foreign

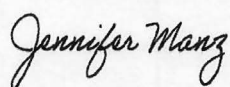
carrier here. Similarly, the transfer of cars between Rougemere and Livernois Yards is not a transfer of cars between CSXT and "foreign lines" because it occurs within the SAA. In that regard, the Organization is mistaken that there is "transfer and interchange work to and from the SAA." Y122 and the Conrail job operate entirely with the Detroit SAA. Article 3 is also limited to yard movements and is not a firm requirement.

The Organization's April 8, 2021 letter makes clear that its arguments based in the B&O Agreement are an effort to obtain an "equitable" share of the work of moving cars between Rougemere and Livernois Yards. New York Dock implementing agreements sometimes make provision for the sharing of work between employees of two or more carriers. However, the 1999 Conrail New York Dock Implementing Agreement and the 2010 NOMAD New York Dock Implementing agreement do not provide for an equitable sharing of work under the Detroit SAA Operating Agreement when CSXT utilizes Conrail for "switching and yard services." Such a requirement would conflict with CSXT's right under that Agreement to utilize Conrail for such services. Therefore, there is no basis for the Organization's demand that CSXT make "an equitable arrangement to reinstitute the interchange/transfer assignment to handle our portions of the interchange and transfer work." In effect, the Organization is seeking an amendment to the 1999 New York Dock Implementing Agreement.

The Organization's April 8 letter reiterates its disagreement that Section 11 applies and states that "if and when we are required to designate such a member, we will do so when advised by the Surface Transportation Board." CSXT's April 6 letter was notice to the Organization that CSXT has referred this dispute to arbitration by a Section 11 Committee and appointed the undersigned as the Carrier member. Section 11 requires the Organization to designate its member within ten days of CSXT's request. Consequently, given you did not name a member by April 16, you have been designated as the Organization's member per Section 11.

Please provide me within the next 10 calendar days a convenient time to meet and discuss the selection of a neutral arbitrator.

Sincerely,



Jennifer E. Manz
Director, Labor Relations

Cc: Erik Belew – SMART-TD Vice General Chairperson

EXHIBIT 10

R. D. Lee, General Chairperson
E. C. Kosinski, Asst. General Chairperson (E)
E. R. Belew, Vice General Chairperson
K. L. Serres, Vice General Chairperson
J. P. Ciemny, GCA Secretary

SMART



General Committee of Adjustment GO-049

April 29, 2021
SMART-TD File: 18-53433-T&E-BOUTU
CSXT File: 18-53433-T&E-BOUTU
NMB CODE: 102

Ms. Linda Gathings
Arbitration Program Specialist
National Railroad Adjustment Board First Division
844 North Rush Street, Room 944
Chicago, IL 60611-2092

APR29'21 RCVD

NATIONAL RAILROAD ADJUSTMENT BOARD FIRST DIVISION

NOTICE OF INTENT

This is to serve notice, as required by the June 23, 2003 Uniform Rules of Procedure of the National Railroad Adjustment Board, of the Organizations intent to file a Submission in regard to a dispute between the SMART Transportation Division (*formally* UTU) B&O General Committee of Adjustment and CSX Transportation, as outlined below.

This dispute involves the claims of E. D. Gay, CSX ID# 199599, encompassing CSXT LCAT Numbers: 20-81382-T&E-BOUTU, 19-947748-T&E-BOUTU, 19-47369-T&E-BOUTU, 18-99293-T&E-BOUTU, 18-62675-T&E-BOUTU, 18-48329-T&E-BOUTU, 18-83412-T&E-BOUTU, 18-53433-T&E-BOUTU, whereas:

“Allow the a basic eight (8) hour day penalty due to CSX’s willful violation of the CBA, in particular but not limited to the Scope Rules/Articles, Rule 59, Article 3, and Rule 106, BLE 1971 Interchange agreement. The violation of the CBA has eliminated a prior right employees ability to work an assignment of his choosing belong to CSX employees and was illegally “farmed out” to Conrail SA to which they are not entitled to, in an attempt to eliminate assignment to reduced costs for the stockholders. Consider this claim as notice that this is a continuous claim starting on November 19, 2017 and will be continued until resolved under the RLA. If CSX chooses to deny and not resolve the issue they do so at their own peril and should pay all claims in the full amount.”

This dispute is submitted to the First Division under NMB Code 102 for final resolution.

Sincerely,

A handwritten signature in black ink, reading "Richard D. Lee". The signature is written in a cursive style with a large, stylized "R" and "L".

Richard D. Lee
General Chairperson

cc: David Wier, Jr., Vice President SMART – Transportation Division
Jamie C. Modesitt, Vice President SMART – Transportation Division
Jennifer Manz, CSXT Director of Labor Relations

EXHIBIT 11



NATIONAL RAILROAD ADJUSTMENT BOARD
OF THE
NATIONAL MEDIATION BOARD
844 N. Rush Street, Room 944,
Chicago, IL 60611

(312) 751-4688

April 30, 2021

Case No. NRAB-00001-210254
First Division

Mr. Richard D. Lee, General Chairperson
SMART - TD
12443 San Jose Blvd., Suite 701
Jacksonville, FL 32223

Ms. Jennifer Manz
Director Labor Relations
CSX Transportation, Inc.
500 Water Street, J-455, 6th Floor
Jacksonville, FL 32202

Dear Sir or Madam:

This will acknowledge receipt at the National Railroad Adjustment Board of the National Mediation Board (NRAB) of the Notice of Intent submitted by the organization. In the Notice, the organization stated its intent to file a Submission within 75 days covering an unadjusted dispute between SMART - TD and CSX Transportation, Inc.

Case No. NRAB-00001-210254 (First Division) has been assigned to this case and must appear on all future correspondence relative to this matter. You are requested to furnish the original submission and any attachments to the NRAB by July 14, 2021. The submission and exhibits must be furnished electronically to the NRAB.

The NRAB has established a Master File system for the submission of exhibits and documents regarding the same or similar claims. If subsequent notices concerning the same or similar claims are filed, the NRAB case listed above will be the Master File for exhibits, documents and any other evidence. There is no longer any need to file a set of identical documents for each case in a series. The Master File will be the only file used for exhibits and other documents for the cases in the series. The exhibits and other documents in the Master File will be utilized by reference in other cases in the series. No duplicate sets will be received and filed. Documents which are unique to a particular case in the series will be accepted and filed in that NRAB case.

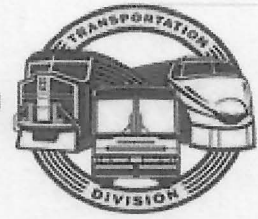
A copy of the Notice of Intent is enclosed. Any questions should be directed to the NRAB staff at 312-751-4688.

Sincerely yours,

Terri D. Brown
Director, Office of Arbitration Services

R. D. Lee, General Chairperson
E. C. Kosinski, Asst. General Chairperson (E)
E. R. Belew, Vice General Chairperson
K. L. Serres, Vice General Chairperson
J. P. Ciemny, GCA Secretary

SMART



General Committee of Adjustment GO-049

April 29, 2021
SMART-TD File: 18-53433-T&E-BOUTU
CSXT File: 18-53433-T&E-BOUTU
NMB CODE: 102

Ms. Linda Gathings
Arbitration Program Specialist
National Railroad Adjustment Board First Division
844 North Rush Street, Room 944
Chicago, IL 60611-2092

APR29'21 RCVD

NATIONAL RAILROAD ADJUSTMENT BOARD FIRST DIVISION

NOTICE OF INTENT

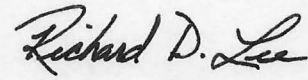
This is to serve notice, as required by the June 23, 2003 Uniform Rules of Procedure of the National Railroad Adjustment Board, of the Organizations intent to file a Submission in regard to a dispute between the SMART Transportation Division (*formally* UTU) B&O General Committee of Adjustment and CSX Transportation, as outlined below.

This dispute involves the claims of E. D. Gay, CSX ID# 199599, encompassing CSXT LCAT Numbers: 20-81382-T&E-BOUTU, 19-947748-T&E-BOUTU, 19-47369-T&E-BOUTU, 18-99293-T&E-BOUTU, 18-62675-T&E-BOUTU, 18-48329-T&E-BOUTU, 18-83412-T&E-BOUTU, 18-53433-T&E-BOUTU, whereas:

“Allow the a basic eight (8) hour day penalty due to CSX’s willful violation of the CBA, in particular but not limited to the Scope Rules/Articles, Rule 59, Article 3, and Rule 106, BLE 1971 Interchange agreement. The violation of the CBA has eliminated a prior right employees ability to work an assignment of his choosing belong to CSX employees and was illegally “farmed out” to Conrail SA to which they are not entitled to, in an attempt to eliminate assignment to reduced costs for the stockholders. Consider this claim as notice that this is a continuous claim starting on November 19, 2017 and will be continued until resolved under the RLA. If CSX chooses to deny and not resolve the issue they do so at their own peril and should pay all claims in the full amount.”

This dispute is submitted to the First Division under NMB Code 102 for final resolution.

Sincerely,

A handwritten signature in black ink, reading "Richard D. Lee". The signature is written in a cursive style with a large, stylized "R" and "L".

Richard D. Lee
General Chairperson

cc: David Wier, Jr., Vice President SMART – Transportation Division
Jamie C. Modesitt, Vice President SMART – Transportation Division
Jennifer Manz, CSXT Director of Labor Relations

EXHIBIT 12



Jennifer E. Manz
Director, Labor Relations
500 Water Street
Jacksonville, FL 32202
(904) 518-0005
Jennifer_Manz@csx.com

VIA EMAIL

May 3, 2021

Mr. Richard D. Lee
SMART-TD General Chairperson
12443 San Jose Blvd. Suite 701
Jacksonville, FL 32223

Re: Rougemere Yard Dispute

Dear Mr. Lee:

This letter is to advise that the timeframe provided for under Section 11 of the New York Dock conditions to select a neutral arbitrator expired on April 30, 2021. However, Section 11 provides an additional ten days for the parties to meet and agree on a method to select an arbitrator.

Please let me know a date and time within the next ten calendar days that works for your schedule to identify a method to select the neutral arbitrator. If we are unable to resolve that issue within the next ten calendar days, CSXT will request the NMB to appoint a neutral member.

Sincerely,

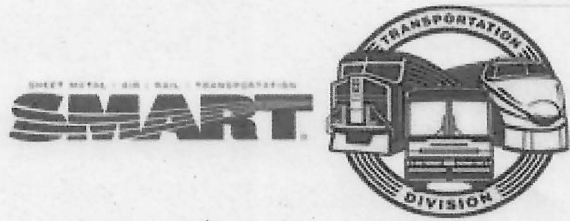
A handwritten signature in cursive script that reads "Jennifer Manz".

Jennifer E. Manz
Director, Labor Relations

cc: Erik Belew – SMART-TD Vice General Chairperson

EXHIBIT 13

R. D. Lee, General Chairperson
E. C. Kosinski, Asst. General Chairperson (E)
E. R. Belew, Vice General Chairperson
K. L. Serres, Vice General Chairperson
J. P. Ciemny, GCA Secretary



General Committee of Adjustment GO-049

May 7, 2021

(SENT VIA EMAIL and LCAT Upload)

Jennifer E. Manz
Director, Labor Relations
500 Water Street
Jacksonville, FL 32202
Jennifer_Manz@csx.com

RE: LCAT# 18-53433-T&E-BOUTU (Conrail Detroit Shared Assets – Y122 Rougemere Claims)

Dear Mrs. Manz:

This will serve as a response to your letters dated April 20th and 26th, 2021, dealing with claims arising out of deprivation of interchange and transfer work belonging to the CSXT employees on the B&O/NMAD seniority rosters.

Again, the Organization disagrees that this is a case involving a review by a NYD Section 11 Committee pursuant to Finance Docket No. 33388. Rather, this dispute before us falls under Section 3 of the Railway Labor Act. Therefore, if and when we are required to designate such member and select an arbitrator under Section 11, we will do so when advised by the Surface Transportation Board.

Currently however, the dispute is listed to the National Railroad Adjust Board – First Division, and has been assigned case number NRAB-00001-210254 by the National Mediation Board, with submissions due on July 1, 2021.

If you have any questions or further discussion, please contact the undersigned.

Respectfully,

A handwritten signature in cursive script that reads "Richard D. Lee".

Richard D. Lee
General Chairperson

EXHIBIT 14



Jennifer E. Manz
Director, Labor Relations
500 Water Street
Jacksonville, FL 32202
(904) 518-0005
Jennifer_Manz@csx.com

May 24, 2021

Via First Class Mail and Email

Terri D. Brown
Director, Office of Arbitration Services
National Mediation Board
1301 K St. NW
Suite 250 East
Washington, D.C. 20005-7011

Re: Rougemere Yard Dispute, New York Dock Section 11 Committee, STB Finance
Docket No. 33388

Dear Ms. Brown:

CSX Transportation, Inc. ("CSXT") requests the Board to appoint an arbitrator to serve as the neutral member of a committee established pursuant to Section 11 of the New York Dock conditions of the Surface Transportation Board ("STB"). The partisan members of the Section 11 Committee are the undersigned for the Carrier and General Chairman Richard D. Lee for the Organization.

CSXT and the Organization are in a dispute whether the use of a Conrail yard job that transferred freight cars between CSXT's Rougemere Yard in Detroit and Conrail's Livernois Yard also in Detroit violated the B&O collective bargaining agreement between CSXT and SMART-TD. This dispute grows out of the STB's 1998 authorization for CSXT and Norfolk Southern Railway Company ("NSR") to jointly control Conrail and divide the rail lines and facilities of Conrail between them (the "Conrail Transaction"). *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Co.—Control and Operating Leases/Agreements—Conrail, Inc. and Consolidated Rail Corp.*, STB Finance Docket No. 33388, Decision No. 89 (served July 23, 1998). Certain rail lines and facilities were retained by Conrail, the Shared Assets, and are operated by Conrail for the benefit of CSXT and NSR. Detroit is one such Shared Assets. Rail operations in the Detroit Shared Assets Area ("SAA") are governed by the Shared Assets Area Operating Agreement for Detroit between CSXT, NSR, and Conrail. The Detroit Shared Assets Operating Agreement was authorized by the STB in Decision No. 89.

It is CSXT's position that its utilization of Conrail to perform switching services for CSXT in the Detroit SAA is authorized by STB's authorization of the Conrail Transaction, the creation of the SAA's, the Operating Agreement, and by the New York Dock implementing agreement for the Conrail Transaction reached with SMART-TD's predecessor, the United Transportation Union.

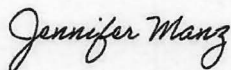
Further, it is CSXT's position that the STB's authorization, the New York Dock conditions imposed on the Transaction, and the implementing agreement reached in satisfaction of those conditions supersede any contrary requirements in the B&O Agreement. SMART-TD disagrees that the STB authorization and New York Dock implementing agreement can override the B&O Agreement and contends that its position is supported by the Conrail Transaction New York Dock Implementing Agreement as well as another 2010 New York Dock implementing agreement to which CSXT and SMART-TD are party.

As the Board is aware, the New York Dock conditions contain in Section 11 a dispute resolution procedure for resolving disputes that involve the interpretation, application or enforcement of the New York Dock conditions and implementing agreements reached pursuant to those conditions, as well as disputes over the extent to which STB authorizations supersede collective bargaining agreements. Section 11(a) provides for a committee consisting of two partisan members and a neutral member who is chairman. Because the present dispute requires the interpretation or application of STB authorizations, the New York Dock conditions, and New York Dock implementing agreements, CSXT invoked the Section 11 dispute process by letter dated April 6, 2021 and appointed the undersigned as the Carrier member of the Committee. After the Organization refused to appoint a member to the Committee, General Chairman Lee was automatically appointed the Organization member by operation of Section 11(a).

The next steps in the Section 11 process were for the parties to confer within ten days to select the neutral member of the Committee. Failing agreement on such selection, Section 11(a) provided another ten -day period for the parties to agree on a method to select the neutral. Section 11(a) further provides that, failing agreement on such a method, "either party may request the National Mediation Board to designate within 10 days the neutral member whose designation will be binding upon the parties." SMART-TD failed to agree to CSXT's April 20, 2021 request that the parties meet to agree on a neutral or to CSXT's May 3, 2021 request that the parties agree on a selection methodology. Copies of CSXT's April 6, April 20, and May 3 letters are attached. This correspondence shows that the preconditions for CSXT to request the Board to appoint the neutral member of the Section 11 Committee have been met. CSXT asks that the Board appoint an arbitrator who has previously served on Section 11 Committees and has experience with New York Dock matters.

Subsequent to the establishment of this Section 11 Committee, SMART-TD filed a Notice of Intent with the National Railroad Adjustment Board to have the parties' Rougemere Yard dispute heard by that tribunal. CSXT disagrees that the NRAB has jurisdiction over SMART-TD's claim. In any event, SMART-TD's attempt to avoid the STB's jurisdiction is not a basis for refusing CSXT's request for appointment on a neutral to the Section 11 Committee. If SMART-TD objects to CSXT's request for some reason, as the Board knows, its responsibility under Section 11 to appoint a neutral is purely ministerial.

Respectfully,



Jennifer Manz
Director Labor Relations

Cc: Richard D. Lee - SMART-TD General Chairperson

Jeremy Ferguson, SMART-TD International President
Jamie Modesitt, SMART-TD International Vice President (Board Member)
David Wier Jr., SMART-TD International Vice President (Board Member)
Jeff Wall, Vice-President Labor Relations, CSXT

EXHIBIT 15



Jeff Wall
Vice-President, LR
500 Water Street
Jacksonville, FL 32202
Jeff_Wall@csx.com

May 24, 2021

Via First Class Mail and Email

Terri D. Brown
Director, Office of Arbitration Services
National Railroad Adjustment Board
844 N. Rush Street, Room 944
Chicago, IL 60611

Re: NRAB-00001-210254 (First Division)

Dear Ms. Brown:

By letter dated April 30, 2021, you notified CSX Transportation, Inc. ("CSXT") and SMART-Transportation Division that SMART-TD's claim had been docketed with the First Division of the National Railroad Adjustment Board. It is CSXT's position that the NRAB has no jurisdiction over SMART-TD's claim, because it requires the interpretation and/or application of the New York Dock conditions of the Surface Transportation Board ("STB"), New York Dock implementing agreements reached under those conditions, STB Decision No. 89 in STB Finance Docket No. 33388 approving the control and division of Conrail between CSXT and Norfolk Southern Railway Company ("NSR") (the "Conrail Transaction"), and the Shared Assets Operating Agreement for Detroit, which was approved as part of the Conrail Transaction. SMART-TD's claim also raises the issue of the extent to which the STB's authorizations, New York Dock conditions, and New York Dock implementing agreements override terms in CSXT's collective bargaining agreement with SMART-TD, the B&O Agreement.

Prior to the filing by SMART-TD of its Notice of Intent on or about April 29, 2021, CSXT had on April 6, 2021 already initiated the dispute resolution procedures in Section 11 of the New York Dock conditions to address SMART-TD's claim. A copy of the April 6 letter is attached. A Section 11 Committee has already been established effective April 16 with the undersigned as the carrier member and, by operation of Section 11(a), General Chairman Richard D. Lee as the Organization member. SMART-TD has refused to participate in the Section 11 dispute resolution procedure. CSXT recently requested the NMB to appoint the neutral member of the Section 11 Committee in accordance with Section 11(a). Because the STB has exclusive jurisdiction over matters relating to SMART-TD's claim, the NRAB should dismiss that claim for lack of jurisdiction. SMART-TD's proper recourse is to participate in the Section 11 Committee proceedings.

The essence of SMART-TD's claim is that CSXT violated certain rules in its agreement with

SMART-TD applicable in the Detroit area, the B&O Agreement, when CSXT replaced a CSXT yard job with a Conrail job to transfer freight cars between a CSXT yard and a Conrail yard in Detroit. SMART also relies on 2010 and 1998 New York Dock implementing agreements for its claim. Detroit is a "Shared Assets Area" within the meaning of the STB's Conrail Decision. In three areas, certain Conrail assets were not allocated to CSXT or NSR, but continued to be operated by Conrail, under the control of and for the benefit of CSXT and NSR. In these areas, Conrail acts as the agent or subcontractor for CSXT and NSR. These three areas are the Detroit, South Jersey, and North Jersey Shared Assets Areas. CSXT, NSR, and Conrail are party to Operating Agreements, which govern operations in each SAA. These Operating Agreements were approved by the STB when it approved the acquisition and division of Conrail between CSXT and NSR.

Under the STB-approved Shared Assets Area Operating Agreement for Detroit, CSXT has the right to request Conrail, as agent to CSXT, to perform "switching and yard services" for it in the Detroit Shared Assets Area. That is what happened in this case. When Conrail performs services for CSXT in the Detroit SAA, under the New York Dock implementing agreement for the Conrail Transaction with SMART-TD's predecessor, the United Transportation Union ("UTU"), Conrail's collective bargaining agreements with SMART-TD apply, not the B&O Agreement. SMART-TD disagrees and argues that the B&O Agreement supersedes any STB approved operating agreement and that the STB authorizations and New York Dock implementing agreements do not authorize CSXT's use of Conrail in this case.

CSXT is not asking that the NRAB consider the merits of either parties' arguments. The point here is that exclusive jurisdiction to resolve them is committed to the STB, not the NRAB.

Precedents of the First and other Divisions of the NRAB are clear that it does not have jurisdiction to resolve disputes such as this one, which involve STB decisions, the New York Dock conditions, and New York Dock implementing agreements, and has dismissed such claims for lack of jurisdiction. The NRAB has recognized that such claims are within the exclusive jurisdiction of the STB, including Section 11 Committees established under the New York Dock conditions, such as the one established here at CSXT's request. *See, e.g., Brotherhood of Locomotive Engineers and Trainmen and Kansas City Southern Ry. Co.*, NRAB, First Div., Award No. 27079 (2010) (Wallin, Arb.). *See also, e.g., Transportation Communications International Union and Consolidated Rail Corp.*, NRAB, 3d Div., Award No. 36276 (2002) (LaRocco, Arb.) (dismissing claim involving Shared Assets Area and New York Dock implementing agreement).

For these reasons, CSXT submits that the NRAB should dismiss SMART-TD's claim and close this docket. Alternatively, CSXT requests that the NRAB hold this proceeding in abeyance until after the STB dispute resolution procedures have been exhausted.

Respectfully,



Jeff Wall
Vice-President Labor Relations

CC: Richard D. Lee - SMART-TD General Chairperson
Jeremy Ferguson, SMART-TD International President
Jamie Modesitt, SMART-TD International Vice President (Board Member)
David Wier Jr., SMART-TD International Vice President (Board Member)
Jennifer Manz, Director Labor Relations HDO, CSXT

EXHIBIT 16

R. D. Lee, General Chairperson
E. C. Kosinski, Asst. General Chairperson (E)
E. R. Belew, Vice General Chairperson
K. L. Serres, Vice General Chairperson
J. P. Ciemny, GCA Secretary



General Committee of Adjustment GO-049

May 25, 2021

(SENT VIA EMAIL ONLY)

Jeff Wall, Vice President
CSXT Labor Relations
500 Water Street
Jacksonville, FL 32202

RE: CSX Request to Dismiss NRAB-00001-210254

Dear Mr. Wall,

This letter is in response to the correspondence by your office on May 24, 2021, submitted to the NMB Director, Terri Brown, requesting they dismiss our above captioned case. This case involved a dispute over claims submitted by SMART-TD to the National Railroad Adjustment Board – First Division, and was in proper form. Thus, contrary to your assertions, the NRAB indeed has jurisdiction over the matter.

Moreover, be advised that you have no authority to infer to the NMB/NRAB to dismiss a case being presented by the aggrieved party (SMART-TD) for adjudication process under Section 3 of the Railway Labor Act. Rather, your opinion, wherein you suggest your chosen venue is one falling under Section 11 of the New York Dock provisions, is just that; your opinion. SMART-TD never agreed to establish such a board and the facts remain that this board does not exist between us currently. Although you are entitled to your opinion and position on the matter; our position is that the cases were properly submitted to the NRAB under the property Agreement and the Act, and therefore, the NMB should disregard your improper request as we move forward with the arbitration process.

Nevertheless, you are welcome to argue your procedural position during the arbitration hearing, but your position alone does not grant the Carrier authority to arbitrarily remove the cases from the RLA Section 3 process. The NRAB was established so the parties could adjudicate our disputes in this venue and we fully intend to use the First Division to perform the function for which it was intended.

Accordingly, by copy of this letter to all affected parties, the case submitted should be handled in accordance with Section 3 arbitration under the RLA. Should you have any additional questions, please feel free to contact my office.

Sincerely,

A handwritten signature in dark ink that reads "Richard D. Lee". The signature is written in a cursive, flowing style.

Richard D. Lee
General Chairperson

cc: Jeremy Ferguson, President – SMART Transportation Division
 Terri Brown, Director of Arbitration Services
 Linda Gathings, Arbitration Program Specialist – NRAB
 Jennifer Manz, CSXT Director Labor Relations (Carrier HDO)
 Jamie C. Modesitt, Vice President – SMART Transportation Division (NRAB Board Member)
 Dave Wier Jr., Vice President – SMART Transportation Division (NRAB Board Member)

EXHIBIT 17



NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

(202) 692-5000

May 26, 2021

Richard D. Lee
General Chairperson
SMART-Transportation Division
12442 San Jose Blvd, Suite 701
Jacksonville, FL 32223

RE: New York Dock: CSX Transportation, Inc. and SMART-Transportation Division

Dear Mr. Lee:

The National Mediation Board (NMB) is in receipt of a request for the NMB to appoint an arbitrator to serve as the neutral member of a committee established pursuant to Section 11 of the New York Dock conditions of the Surface Transportation Board ("STB"), involving CSX Transportation, Inc. and SMART-Transportation Division.

A copy of the Carrier's letter is enclosed. You are requested to furnish this office with any comments concerning the letter by the close of business on June 9, 2021. These comments can be submitted to our email address at arb@nmb.gov.

A Memorandum outlining the process for the selection of a neutral to resolve disputes pursuant to the New York Dock employee protective conditions is enclosed for your information.

Sincerely,

A handwritten signature in black ink, appearing to read "Terri D. Brown".

Terri D. Brown
Director, Office of Arbitration Services

cc: Jennifer E. Manz, Director- Labor Relations, CSXT
Jeff Wall, Vice-President Labor Relations, CSXT
Jeremy Ferguson, SMART-TD International President
Jamie Modesitt, SMART-TD International Vice President (Board Member)
David Wier Jr., SMART-TD International Vice President (Board Member)

Enclosures-

EXHIBIT 18

R. D. Lee, General Chairperson
E. C. Kosinski, Asst. General Chairperson (E)
E. R. Belew, Vice General Chairperson
K. L. Serres, Vice General Chairperson
J. P. Ciemny, GCA Secretary

SMART



General Committee of Adjustment GO-049

June 9, 2021

SMART-TD File: 18-53433-T&E-BOUTU

NMB Code 102

(Sent via Email)

Terri D. Brown
Director, Office of Arbitration Services
National Mediation Board
1301 K St. NW
Suite 250 East
Washington, D.C. 20005-7011

RE: New York Dock: CSX Transportation, Inc. and SMART-Transportation Division

Dear Ms. Brown,

This letter is in response to your letter dated May 26, 2021, requesting comments from the undersigned on CSX Transportation's (CSXT) request for the NMB to appoint an arbitrator to serve as the neutral member of a committee established pursuant to Section 11 of the New York Dock conditions of the Surface Transportation Board ("STB").

Initially, we urge that there are no grounds upon which CSXT could request the appointment for an arbitrator for Section 11 arbitration (NYD) and thus must follow the customary practice under the Railway Labor Act when deciding the outcome of collective bargaining questions or interpretations.

To explain further, Section 11 (NYD)/Appendix III, reads as follows:

11. Arbitration of disputes. - (a) In the event the railroad and its employees or their authorized representatives cannot settle any dispute or controversy with respect to the interpretation, application or enforcement of any provision of this appendix, except section 4 and 12 of this article I, within 20 days after the dispute arises, it may be referred by either party to an arbitration committee. (Emphasis added).

As noted above, Section 11 specifically addresses disputes with respect to New York Dock provisions (Appendix III). Therefore, the NMB should understand that there is no dispute by the Organization which surrounds New York Dock provisions. In fact, there are no pending or disputed New York Dock Protection claims filed with the Carrier pursuant to Article VII (Labor Protection) of the 1999 CSX/Conrail Implementing Agreement related to the current dispute. Moreover, there have been no New York Dock Protection claims filed or in dispute under the 2010 New York Dock Implementing Agreement between the parties' when the Carrier subsequently consolidated the associated work force under Article I, Section 4 of the New York Dock provisions as it relates to Finance Docket 33388.

Rather, the current dispute surrounds the equity of interchange/transfer work under the B&O Schedule Agreement. Thus, there is not a dispute that has been advanced by this office that would require an interpretation by the STB.

To demonstrate further, the STB has previously ruled that the agreement in effect on a property is controlling and belongs to the proper board (NMB/NRAB) for adjudication. In STB Arbitration Appeal, Docket No. FD 32760 (Sub-No. 47), the STB declined to disturb an arbitration award finding that the Union Pacific Railroad Company use of Article IX of the 1986 National Arbitration Award to establish new interdivisional operations was proper. The STB determined that the review of the Award were outside the STB's jurisdiction as it involved a contractual interpretation of the implementing and collective bargaining agreements.

The Carrier's belief that the STB filing negates the entirety of the B&O Agreement is misplaced. STB Finance Dockets require the negotiation Implementing Agreements to address specific protection and seniority issues. In addition, as here, the Implementing Agreement will identify the active collective bargaining agreement. In this case, the B&O Agreement was chosen by the parties as the Agreement to apply to the effected territories and employees. Moreover, the claims advanced by the Organization rely on the language of the collective bargaining agreements, not the provisions of NYD protections in FD 33388.

In addition, the Carrier infers that the Organization is trying to avoid the STB's jurisdictions, but such a position is misplaced. To explain, and as noted above, the STB does not resolve matters involving labor protective conditions. See STB Arbitration Procedures, What Matters Can Be Arbitrated? Instead, disputes arising over the implementation of employee protection conditions are governed under Section 11 of Appendix III, New York Dock Protective Conditions. For this reason, the National Mediation Board (NMB) Memorandum, dated April 28, 2000, was developed to simplify the procedures for the selection of a neutral to resolve Section 4 and 11 disputes relating to New York Dock Protective Conditions. The NMB Memorandum however does not address the inability of the parties to agree to a NYD protection dispute. Rather, the Memorandum provides a fluid process for arbitrator selection once a dispute under Section 11 is mutually identified by the parties. In most cases, the disputes regarding protective conditions arise in the negotiation of employee protection benefits in the early stages of the implementing agreement. In short, STB authorizations do not supersede collective bargaining agreements as CSXT asserts.

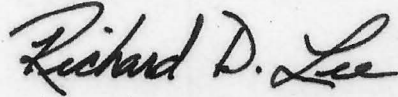
With the above in mind, the Organization's Letter of Intent (LOI), dated April 29, 2021, is the most compelling evidence provided as to the jurisdiction of the dispute. The LOI's statement of claim reads as follows:

"Allow the a basic eight (8) hour day penalty due to CSX's willful violation of the CBA, in particular but not limited to the Scope Rules/Articles, Rule 59, Article 3, and Rule 106, BLE 1971 Interchange agreement. The violation of the CBA has eliminated a prior right employees ability to work an assignment of his choosing belong to CSX employees and was illegally "farmed out" to Conrail SA to which they are not entitled to, in an attempt to eliminate assignment to reduced costs for the stockholders. Consider this claim as notice that this is a continuous claim starting on November 19, 2017 and will be continued until resolved under the RLA. If CSX chooses to deny and not resolve the issue they do so at their own peril and should pay all claims in the full amount."

As shown above, this dispute relates directly to the negotiated work rules of the collective bargaining agreement and not to protective conditions stipulated under the NYD provisions. The Carrier has failed to produce any evidence that would validate their assertion that NYD Protective Conditions are disputed by this office. In fact, the Carrier's letter to the NMB denotes that, "the implementing agreement reached in satisfaction of those conditions supersede any contrary requirements in the B&O Agreement." This statement proves that CSXT's dispute is rooted within the interpretation and application of the collective bargaining agreements on the property. For this reason, CSXT is either purposely, or inadvertently, making an improper request of the NMB under the guise of a Section 11 dispute.

Finally, this office infers; based on the facts of the dispute, that CSXT's request for an arbitrator for a Section 11 dispute is improper in this scenario. Further, Section 11 does not relieve the Carrier from the proper administrative steps under the RLA to establish a proper tribunal. In other words, the Carrier seeks to assign an arbitrator before the establishment of a tribunal. Therefore, the NRAB's decision to issue Case No. NRAB-00001-210254 to the instant dispute is wholly within the jurisdiction of the NRAB and the NMB's ministerial duties; and on balance, should not be disturbed.

Sincerely,

A handwritten signature in cursive script that reads "Richard D. Lee".

Richard D. Lee
General Chairperson

cc: Jeremy Ferguson, SMART-TD International President
Jamie Modesitt, SMART-TD International Vice President (Board Member)
David Wier Jr., International Vice President (Board Member)
Jennifer E. Manz, Director-Labor Relations, CSXT
Jeff Wall, Vice-President Labor Relations, CSXT

EXHIBIT 19



Jennifer E. Manz
Director, Labor Relations
500 Water Street
Jacksonville, FL 32202
(904) 518-0005
Jennifer_Manz@csx.com

June 11, 2021

Via Email

Terri D. Brown
Director, Office of Arbitration Services
National Mediation Board
1301 K Street NW
Suite 250 East
Washington, DC 20005-7011

Re: New York Dock: CSX Transportation, Inc. and SMART-Transportation Division

Dear Ms. Brown:

I was copied on the June 9, 2021 response of SMART-TD to your letter dated May 26, 2021 regarding CSX Transportation, Inc.'s ("CSXT") request that the Board appoint an arbitrator to serve as the neutral member of a committee established pursuant to Section 11 of the New York Dock conditions of the Surface Transportation Board ("STB").

I am responding only to point out briefly that the Organization's reason for opposing CSXT's request is clearly erroneous. The Organization contends that appointment of an arbitrator is inappropriate because Section 11 of the New York Dock conditions is limited to disputes arising under "any provision of this appendix," i.e., the New York Dock conditions themselves. According to the Organization, there is no dispute here involving the New York Dock conditions, because the Organization is not seeking any labor protection benefits under those conditions.

CSXT disagrees that the parties' dispute does not involve application of the New York Dock conditions. But, more importantly, the STB does not limit the disputes to be handled in the Section 11 dispute resolution procedures to those involving only the New York Dock conditions or labor protection benefits. The STB has repeatedly held that disagreements involving the interpretation or application of New York Dock implementing agreements be submitted to arbitration under Section 11 before review by the STB. See, e.g., *Union Pac. Corp., Union Pac. R.R. Co. and Missouri Pac. R.R. Co.—Control and Merger—Southern Pac. Rail Corp., Southern Pac. Transp. Co., St. Louis Southwestern Ry. Co., SPCSL Corp., and the Denver & Rio Grande Western R.R. Co.*, Finance Docket No. 32760 (Sub-No. 45) (served Dec. 14, 2010), 2010 STB LEXIS 547, * 15 (" [Section 11] Arbitrators routinely rule on disputes that concern the interpretation and application of rail merger implementing agreements, and their decisions have been reviewed by the Board and our predecessor, the Interstate Commerce Commission (ICC)." (footnotes omitted); *Delaware & Hudson Ry. Co.—Lease and Trackage*

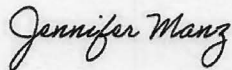
Rights Exemption—Springfield Terminal Ry. Co., Finance Docket No. 30965 (Sub-Nos. 1 and 2) (served Dec. 13, 1991), 1991 WL 261567 (SMART-TD's predecessor required to submit implementing agreement dispute to Section 11 arbitration.).

As explained in my May 24 letter, the disagreements between CSXT and SMART-TD include disputes over the application of New York Dock implementing agreements and whether the applicable implementing agreements override provisions of the B&O Agreement relied upon by SMART-TD.

SMART-TD is also wrong that CSXT "seeks to assign an arbitrator before the establishment of a tribunal." As I previously explained, the Section 11 Committee has been established by operation of Section 11.

For these reasons and those set forth in my earlier letter, CSXT reiterates that this Board should provide a list of neutrals from whom the parties can select an arbitrator for the Section 11 Committee. SMART-TD can present its arguments that a Section 11 Committee lacks jurisdiction over the parties' dispute to that Committee.

Respectfully,



Jennifer Manz
Director Labor Relations, HDO

cc: Jeff Wall, Vice President Labor Relations, CSXT
Richard Lee, SMART-TD General Chairperson
Jeremy Ferguson, SMART-TD International President
Jamie Modesitt, SMART-TD International Vice President (Board Member)
David Wier Jr., International Vice President (Board Member)