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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, DC 20423

July 19, 2021

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

Dear Ms. Brown:

Enclosed for electronic filing is a Reply of CSX Transportation, Inc., including a request
for leave to file a Reply.

Thank you for your assistance.

Sincerely yours,

/s/ Ronald M. Johnson

Ronald M. Johnson
Attorney for CSX Transportation, Inc.

Cc: Shawn M. McKinley
Asst. Gen. Counsel, SMART-TD

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

REPLY OF CSX TRANSPORTATION, INC.

I. Introduction

CSX Transportation, Inc. (“CSXT”) filed its Petition for Declaratory and Cease and Desist Orders against the International Association of Sheet Metal, Air, Rail and Transportation Workers-Transportation Division (“SMART-TD”) to protect the Board’s jurisdiction over disputes involving the interpretation and application of New York Dock implementing agreements and conditions. SMART-TD recently filed a Response. While the Board does not normally allow a reply, CSXT is seeking leave to file the instant Reply to SMART-TD’s Response. The Board allows a reply in certain circumstances. CSXT respectfully submits that such circumstances are present here.

SMART-TD’s Response does not take issue with CSXT’s position, as set forth in its Petition, that the Board has jurisdiction over the parties’ dispute over CSXT’s replacement of a CSXT assignment with a yard job of Consolidated Rail Corporation (“Conrail”) to transfer railcars between rail yards in the Detroit Shared Assets Area. Nor does SMART-TD deny that such issues are required to be addressed in the first instance pursuant to the dispute resolution procedures in Article I, Section 11 of the New York Dock conditions. Instead, SMART-TD argues that CSXT “inaction” constitutes a waiver of the Board’s jurisdiction over the parties’ dispute. Response

at 10. SMART-TD makes two different waiver arguments. First, CSXT waived its right to invoke Article I, Section 11 by supposedly waiting more than three years to raise a defense to the union's claimed violation of a collective bargaining agreement (the B&O Agreement) based on New York Dock. Second, CSXT should have filed a new notice of change in operations pursuant to Article I, Section 4 of the New York Dock conditions before replacing the CSXT job Y122 with a Conrail Yard Job. SMART-TD then argues that the Board's jurisdiction over implementation of mergers is not "timeless and limitless," and any such use of the New York Dock conditions is too late, coming twenty years after the Board approved the Conrail Transaction in the *Conrail Decision*.¹

SMART-TD never made any kind of waiver argument in the on-property handling of its claims. Its new waiver argument, presented for the first time in its Response, is really an invitation to the Board to decide issues that Board precedent has long required be submitted first to Section 11 dispute resolution. CSXT submits that fairness, a need to correct misrepresentations in SMART-TD's Response, and benefit of a complete record and briefing of SMART-TD's new waiver arguments support its Reply. In addition, CSXT should have the opportunity to respond to SMART-TD's new arguments because the union is accusing CSXT of violating Section 4. CSXT also updates the Board on SMART-TD's latest efforts to frustrate the Section 11 dispute resolution process.

As CSXT explains, there is no merit to SMART-TD's new waiver arguments.

¹ *CSX Corp. et al.—Control—Conrail, Inc. et al.*, Finance Docket No. 33388, Decision No. 89 (served July 23, 1998).

II. CSXT Has Not Waived Its Right to Invoke Article I, Section 11 Dispute Procedures

SMART-TD argues that CSXT waived its position that the parties' dispute over the abolition of CSXT yard assignment Y122 must be submitted to arbitration under Article I because CSXT's claimed reliance on New York Dock is "late in the day" (Response at 6) and "at no point until more than three years after SMART-TD began filing claims did CSXT even mention the application of *New York Dock* protective conditions" (Response at 9). SMART-TD further contends that CSXT only invoked the New York Dock Section 11 procedures after SMART-TD had filed hundreds of claims with substantial potential liability. Response at 4.²

The waiver argument fails for the simple reason that it is based on a false premise. As shown by the union's own statements, early in the handling of its claims, CSXT's position was that utilization of a Conrail job to perform work that had been performed by a CSXT job was justified by the Operating Agreement for the Detroit Shared Assets Area ("SAA"), the Board's approval of that Operating Agreement in the *Conrail Decision*, and the New York Dock implementing agreement entered into in Finance Docket No. 33388 implementing the changes in operation in the Detroit SAA. SMART-TD attached to its Response the January 20, 2021 e-mail from SMART-TD Vice Chairperson Belew to CSXT's Director of Labor Relations, Jennifer Manz. See Response, Exhibit F.³ His e-mail was "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

² To put these claims in perspective, almost all were filed on behalf of one employee and all relate to the same event, CSXT's abolishment of Y122 and utilization of a Conrail Yard Job instead. See Response at 3.

³ CSXT also attached Vice Chairperson Belew's January 20, 2021 e-mail to its Petition as Exhibit No. 6.

of CSX, Shared Assets to perform what is our work. . . . 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.” Vice Chairperson Belew goes on to state that “[a]s 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.”⁴ The attached excerpts included the Detroit SAA Operating Agreement. Vice Chairperson Belew concluded: “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.” (Emphasis added).

As shown by the union’s own recitation of the history of this dispute, SMART-TD’s contention that “[i]t was not until a letter dated April 6, 2021, years after claims had been filed and progressed regarding the abolishment of Y122, did CSXT first venture to state that ‘the matter is governed not by the B&O Agreement, but rather by the Operating Agreement for the Detroit Shared Assets’ and ‘no interchange is involved’” is totally false. Response at 4. The union’s summary shows that SMART-TD understood early on in claims handling that CSXT relied upon Finance Docket No. 33388 for its position. CSXT’s April 6 letter was in response to the union’s historical summary of the parties’ positions.

SMART-TD’s waiver argument is also inconsistent with SMART-TD’s own reliance on New York Dock implementing agreements for its claims. As explained in CSXT’s Petition (at 25),

⁴ “HDO” is the acronym for highest designated officer, a CSXT Labor Relations position.

and never denied by SMART-TD, the union relies not only on the B&O Agreement, but on the Conrail Transaction New York Dock Implementing Agreement and 2010 NOMAD New York Dock Implementing Agreement to argue the transfer work belongs to CSXT employees. SMART-TD raised the 2010 NOMAD New York Dock Implementing Agreement for the first time in General Chairperson Lee's April 8, 2021 letter, attached as Exhibit F to the union's Response.

For these reasons, *CSX Transportation, Inc. v. Transportation Communications Int'l Union*, 480 F.3d 678 (4th Cir. 2007), does not support SMART-TD. In that case, CSXT did not assert that the Board had jurisdiction over the dispute until after the NRAB had already ruled in the union's favor in several cases. Here, CSXT raised its jurisdictional objections during the on-property claims handling process and invoked the Section 11 procedure before the union submitted its claim to the NRAB, let alone before the NRAB has issued its decision. CSXT has also made jurisdictional objections to the NRAB. Additionally, unlike that case, the union here also bases its position on New York Dock implementing agreements.

There is also no merit in this case to SMART-TD's argument that "waiting years to invoke New York Dock arbitration constitutes a waiver of the right to do so." Response at 10. It is not unusual in the railroad industry for the handling of claims to be discussed in conferences over a period of time, even years, as the parties try to persuade each other of their position. SMART-TD clearly has been in no rush to resolve the matter. It, and not CSXT, waited "years" to summarize the parties' positions, as it did in its January 20, 2021 e-mail. CSXT did not then wait "years" to invoke arbitration under Article I, Section 11. CSXT did so in its April 6, 2021 letter responding to SMART-TD's summary of positions. See CSXT Petition, Exhibit No. 7.

SMART-TD's argument that "inaction" amounts to a waiver also is not supported by the 20-day time period in Article I, Section 11(a). See Response at 10. That section states that if the parties "cannot settle any dispute or controversy with respect to the interpretation, application or enforcement [of New York Dock] within 20 days after the dispute arises, it may be referred by either party to an arbitration committee." 360 ICC 60, 87.⁵ The plain language shows the intention that the parties must engage in settlement talks for at least 20 days before either invokes arbitration. That is its only limitation on invoking arbitration. SMART-TD cites no authority that Section 11 has ever been interpreted to mean that a party must invoke arbitration within 20 days of when a disagreement first materializes or a claim is filed. Such an interpretation would undermine the ability of parties to attempt to resolve disputes without having to invoke the Board's dispute resolution procedures.

Finally, SMART's waiver argument cannot cause the Board to lose jurisdiction over the instant dispute, because parties cannot waive the Board's jurisdiction. Even if CSXT somehow was late in invoking Section 11, which it was not, that does not diminish the Board's jurisdiction. SMART-TD would still be required to pursue its claims at the Board rather than the NRAB, because they require interpretation of Board authorizations and New York Dock implementing agreements and conditions.

To borrow words from the Response (at 10), what is "disingenuous" and made "up from whole cloth" is SMART-TD's "late in the day" waiver argument. It must be rejected.

⁵ SMART-TD mistakenly quotes New York Dock that the period is 30 days. Response at 10.

III. CSXT Was Not Required to Serve a New Notice Under Article I, Section 4 to
Replace a CSXT Yard Job with a Conrail Job

SMART-TD's other so-called waiver argument is that the Board's jurisdiction over implementation of railroad consolidations is not "timeless and limitless" and CSXT is trying to "exhume the corpse of a transaction that has long been in the grave . . ." by seeking to invoke Board jurisdiction "20 years after the completion of the Conrail acquisition . . ." Response at 11.⁶ Like SMART-TD's other waiver argument, this one is based on a false premise and without merit.

SMART-TD argues as follows:

Importantly, at no point when CSXT abolished Y122 did it provide the notice required by the New York Dock protective conditions. It is well established that "a railroad contemplating an operational change that may result in dismissal, displacement, or rearrangement of employees, must provide ninety days written notice of its intent to interested employees and their representatives. . . . CSXT failed to do so here.

Response at 8. SMART-TD is clearly referring to the requirements in Article I, Section 4 of the New York Dock conditions. SMART-TD is contending that CSXT violated Section 4 by not serving a required notice. Since it is more than 20 years since implementation of the Conrail Transaction, it is too late now for CSXT to do so.

SMART-TD's "timeless and limitless" argument ignores the fact that CSXT, along with NSR and Conrail, already gave notice to and reached an implementing agreement with SMART-TD's predecessor union, UTU, pursuant to Article I, Section 4 of the New York Dock conditions more than 20 years ago, in 1998, addressing operations in the Detroit SAA. This is the Detroit

⁶ Ironically, SMART-TD pulls the phrase "timeless and limitless" from *Del. & Hudson Ry. Co.—Lease and Trackage Rights Exemption—Springfield Terminal Ry. Co.*, 8 I.C.C. 839, 845 (1992). Response at 8. The Board's predecessor there affirmed that it had jurisdiction to order SMART-TD's predecessor to cease and desist from pursuing a merger related labor dispute at the NRAB instead of under Section 11. This is the very relief sought by CSXT's Petition.

SAA New York Dock Implementing Agreement attached as Exhibit No. 4 to CSXT's Petition. As CSXT explains in its Petition, this implementing agreement addresses the changes in operations that resulted from the creation of the Detroit SAA, such as CSXT's ability to replace its Y122 job with a Conrail Yard Job. See Petition at 8-10, 16, 23-25. While some aspects of merger implementation may be transitory, the Detroit SAA Operating Agreement and Detroit SAA New York Dock Implementing Agreement are "timeless" in the sense that Conrail's unique role as an "agent or subcontractor" to CSXT and NSR in the SAAs is a permanent feature of the Board approved Conrail Transaction and Detroit SAA. Because CSXT reached a New York Dock implementing agreement in 1998 that allows the work done by Y122 to be done by a Conrail Yard Job, CSXT did not need to serve a new Section 4 notice as SMART-TD now argues.

The issue of CSXT's rights under the *Conrail Decision*, Detroit SAA Operating Agreement, and Detroit SAA New York Dock Implementing Agreement is coming up now, 20 years later, not because CSXT is engaging in necromancy as argued by SMART-TD, but only because SMART-TD has "late in the day" decided to challenge CSXT's ability to use Conrail as its agent in the Detroit SAA. SMART-TD's new argument that CSXT should have served a notice under Section 4 of New York Dock is simply an attempt to divert the Board from the obvious conclusion that it has jurisdiction over the issues listed in CSXT's Petition and they are appropriate for Section 11 arbitration. Moreover, SMART-TD is seeking to change the terms of the Detroit SAA New York Dock Implementing Agreement by creating rights for CSXT employees to a guaranteed share of the transfer work between Rougemere and Livernois Yards that do not exist in that Agreement.

SMART-TD's argument that CSXT should have served a new notice under Section 4 is in reality not even a waiver argument. It is simply a disagreement whether the 1998 Detroit SAA

New York Dock Implementing Agreement applied to the replacement of Y122 with a Conrail Yard Job. This is a disagreement over the interpretation of an existing New York Dock implementing agreement, a dispute that Board precedent requires first be heard by a Section 11 Committee. Likewise, Board precedent is clear that SMART-TD's argument that CSXT violated Section 4 by not obtaining a new implementing agreement with SMART-TD before abolishing Y122 and using a Conrail Yard Job must first be presented in Section 11 arbitration; it cannot be brought directly to the Board. *See, e.g., Norfolk Southern Ry. Co.—Acquisition and Operation—Certain Rail Lines of the Delaware and Hudson Ry. Co., Inc.*, Docket No. 35873, 2015 STB LEXIS 323, * 8 (whether implementing agreement required for anticipated changes in operations “must be resolved in the first instance by arbitration.”); *Illinois Central Corp. and Illinois Central Railroad Co.—Control—CCP Holdings, Inc., et al.*, Finance Docket No. 32858, 1998 STB LEXIS 147, * 6 (same). If SMART-TD really wants to pursue this new Section 4 argument, it must do so in the Section 11 arbitration proceedings initiated by CSXT.

IV. Status of Section 11 Committee Proceedings

SMART-TD continues to delay and frustrate the established Section 11 Committee. More specifically, CSXT advised in its June 15, 2021 Petition that it requested the National Mediation Board (“NMB”), pursuant to Section 11(a), to appoint the neutral member of the Section 11 Committee after SMART-TD refused to participate in selection of a neutral. Petition at 18. As CSXT also reported, SMART-TD objected to CSXT's request, misrepresenting to the NMB that the Board's Section 11 dispute procedures were confined to disputes arising from the New York Dock conditions and did not apply to disputes involving New York Dock implementing agreements. Petition at 19. Regarding CSXT's request for a neutral, SMART-TD represents in its

Response that the “NMB has yet to do so.” Response at 6. This is misleading. As SMART-TD knows, the NMB’s practice, when a neutral is requested for a Section 11 Committee, is to provide the parties with a list of arbitrators from which the parties strike names until only one remains. The NMB provided CSXT and SMART-TD a strike list by letter dated July 1, 2021. See Exhibit No. 20 attached hereto.

CSXT Labor Relations Director Jennifer Manz, CSXT’s member of the Section 11 Committee, reached out to General Chairperson Lee, the Organization member of the Committee, on July 7 to begin the strike process. General Chairperson Lee delayed meeting until July 14 so he could consult with the Organization’s legal team. Director Manz and General Chairperson Lee met July 14. CSXT won the coin toss. After the parties struck three names, and over CSXT’s objection, General Chairperson Lee suspended the striking. He claimed a need to conduct more research on the remaining four arbitrators, an odd request since typically one does this research before beginning the strike process. At CSXT’s insistence, the striking resumed on July 16. General Chairperson initially refused to exercise his next strike, relenting only after CSXT protested. CSXT then exercised its last strike, leaving two names. General Chairperson Lee, who has the last strike, stopped the process, again over CSXT’s objection, and refused to resume. Feigning ignorance of the strike process, later that day he sent a July 16, 2021 letter to the NMB asking for guidance on how to conduct the striking, which at that point was complete except for his last strike. See Exhibit No. 21. CSXT responded in a letter dated July 19, 2021, stating the obvious that SMART-TD was engaging in delaying tactics. The NMB’s instructions were simple and clear, alternatively strike names until one remains and “immediately inform the NMB of the selection.” See Exhibit No. 22.

SMART-TD has taken an arbitrator strike process that should take 20 minutes and stretched it out to more than two weeks and counting.

V. SMART-TD Is In Effect Inviting the Board to Address the Merits of the Dispute

In many ways, SMART-TD's Response argues the merits of issues that Board precedent requires be addressed in the first instance in Section 11 arbitration, including its new waiver arguments. Board precedent has long been that it will not address disputes arising from implementation of a Board approved merger or consolidation until after first addressed in Section 11 arbitration. *See, e.g., Kansas City Southern Industries, Inc., et al.—Control—Gateway Western Ry. Co. et al.*, Finance Docket No. 33311, 1997 STB LEXIS 305 at *5-8. CSXT submits that is true for the issues raised in CSXT's Petition and SMART-TD's Response.

VI. The Relief Sought by CSXT's Petition Is Still Warranted

The relief sought by CSXT's Petition is still warranted. SMART-TD still refuses to acknowledge the Board's jurisdiction, that a Section 11 Committee has been established in accordance with the New York Dock conditions, that General Chairperson Lee is the organization member of the Committee, or participate in good faith in the selection of a neutral member of the Committee. CSXT invoked Section 11 arbitration on April 6, 2021, yet the Section 11 process is stalled three months later. In the meantime, SMART-TD is still progressing its Claim in arbitration before the National Railroad Adjustment Board. Submissions to the NRAB are now due July 21, 2021.

Conclusion

There is no merit to SMART-TD's new arguments that CSXT has waived the Board's jurisdiction or violated Section 4 of New York Dock. For the reasons stated in CSXT's Petition and this Reply, the Board should grant the relief requested by that Petition to ensure compliance with its dispute resolution procedure.

Respectfully submitted,

/s/ Ronald M. Johnson

Ronald M. Johnson
Law Offices of Ronald M. Johnson LLC
4909 Scarsdale Road
Bethesda, MD 20816
rmjohnson@rmjohnsonlaw.com
301-767-5105

Counsel to CSX Transportation, Inc.

Dated: July 19, 2021

EXHIBIT 20



NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

(202) 692-5000

July 1, 2021

Jennifer E. Manz
Director-Labor Relations
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202

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

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

Dear Ms. Manz and Mr. Lee:

Reference is made to the correspondence received at the National Mediation Board's (NMB) office regarding the request to furnish a list of neutrals to hear a dispute involving CSX Transportation, Inc. and SMART-Transportation Division pursuant to Section 11 of the New York Dock conditions of the Surface Transportation Board ("STB"), involving CSX Transportation, Inc. and SMART-Transportation Division pursuant to the New York Dock conditions.

Enclosed is a list of seven (7) qualified neutrals. The parties will use the strike method to derive at a neutral and will immediately inform the NMB of the selection. You may access the arbitrators' contact and biographical information via the NMB website, www.nmb.gov.

Sincerely,

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

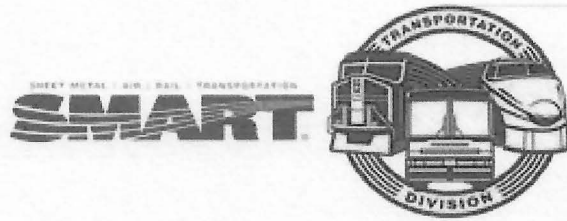
Terri D. Brown
Director, Office of Arbitration Services

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

Enclosure:

EXHIBIT 21

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

July 16, 2021
SMART-TD File: 18-534433-T&E-BOUTU
NMB Code 102

(Sent via Email)

Terri 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 reference to your letter dated July 1, 2021, addressed to CSXT Director Jennifer Manz and the undersigned General Chairperson regarding the selection process of an arbitrator from the supplied list of seven (7) qualified neutrals as determined by the NMB. As you are aware, although SMART-TD was not directly sent a letter initially about providing names of neutrals, the undersigned was copied on the letter sent to CSXT and also supplied names of arbitrators while preserving our procedural objection to the establishment of this Section 11 NYD Board.

Initially, this dispute began over penalty time claims resulting from what SMART-TD believes to be a violation of the on-property agreement over the equity rights to portions of work. After waiting on a response to these claims for a significant period of time, SMART-TD prodded the Carrier to seek resolution to the matter as claims sat dormant since 2018. In April of this year, CSXT indicated in a reply to our January email, that they viewed the claims as a NYD matter. SMART-TD disagrees that NYD has anything to do with the dispute and declined to mutually refer the matter to Section 11 arbitration, and that SMART-TD planned to refer the matter to the NRAB First Division. Following our letter of intent to the Division, CSXT immediately notified the NMB to assign a Section 11 neutral and asked the NRAB to dismiss our case listed with the Division. In addition, CSXT has filed this dispute with the Surface Transportation Board in June asking them to strike down our NRAB First Division case and declare jurisdiction over the dispute. In short, although SMART filed Notice of Intent with the NRAB first, this single issue is now headed down three (3) different paths; the NRAB First Division, NYD Section 11 Arbitration (pertinent to the strike list referred to herein) and the Surface Transportation Board. Needless to say, this has caused confusion and, in our opinion, has only delayed the process of resolution of the

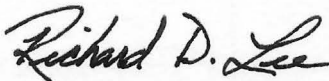
pending claims.

What is more, your July 1st letter provided instructions to the parties to use the “strike method” to determine a neutral of the Section 11 NYD arbitration. However, the letter did not indicate a return date of our decision, but only that we immediately notify your office once the parties concluded the process. Without wavering from our procedural standing on the matter, the parties have begun the “strike method” and during the process the Carrier expressed concern as to the time frame and method of the strike process. This in turn raised a few questions as the undersigned has never been involved in this Section 11 process outside of the standard NRAB First Division strike method process, which is routinely spearheaded by the Division Board Members. The NRAB, as you may know, requires each strike be passed via the Division, and then is sent to the next party for their strike, given each party ample opportunity for their next decision of whom to strike. Considering the foregoing, this raises some questions, which are: 1) should the parties use the strike method in such a manner and send the strikes via the NMB, or directly between the parties? 2) what is the time frame that the strikes should occur? And, 3) can you kindly provide the parties with the specific procedures of the NMB we should follow?

The Carrier would like the process to be immediate and has inferred that the Organization must directly give our strike after they’ve provided their own. However, while the Organization wants to be efficient and not cause excessive delay, we also want to be methodically thorough and not be unfairly rushed on our strike decisions. Consequently, the answers to the questions, *supra*, along with any further insight on the strike method under Section 11 arbitration that you can provide the parties will be greatly appreciated to help expedite the process and ensure it is being done correctly and fairly.

Thank you for your time and diligence when addressing our questions and our concerns.

Sincerely,



Richard Lee

General Chairperson, SMART-TD

cc: Jennifer Manz, Director Labor Relations, CSXT
Jeremy Ferguson, President, SMART-Transportation Division
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 22



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

July 19, 2021

(Sent via Email)

Ms. Terri 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:

I am writing in response to General Chairperson Lee's July 16, 2021 letter asking the NMB for guidance on how to conduct the strike method to select an arbitrator from the list of seven the NMB provided in its letter dated July 1, 2021 for the Committee established under Section 11 of the New York Dock conditions. The Organization's sudden confusion is an obvious ploy to further delay the selection of an arbitrator, thereby delaying the Section 11 dispute resolution process. CSXT asks that the NMB immediately instruct the Organization to follow the already clear and simple direction outlined in the NMB's July 1 letter. The Organization should immediately meet with CSXT's representative to do the last strike; the parties will then advise the NMB of their selection. Nothing more is required.

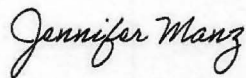
The Organization's letter purports to describe the history and substance of the parties' dispute. Its description is inaccurate and misleading. There is no need to correct its misstatements here, because the NMB's role is ministerial. Nevertheless CSXT points out that, contrary to the Organization's statement, SMART-TD did not [file] Notice of Intent with the NRAB first" CSXT invoked Section 11 arbitration on April 6, 2021, three weeks before the Organization filed its April 29, 2021 Notice of Intent to the NRAB.

As CSXT's Labor Relations Director and member of the Section 11 Committee, I reached out to General Chairperson Lee, the Organization's Committee member, on July 7 to begin the strike process. General Chairperson Lee delayed meeting until July 14, so he could consult with the Organization's legal team. General Chairperson Lee and I met July 14. CSXT won the coin toss. After the parties struck three names, and over CSXT's objection, General Chairperson Lee suspended the striking. He claimed a need to conduct more research on the remaining four arbitrators. There was never a mention of confusion about the NMB's strike method. At CSXT's insistence, the striking resumed on July 16. General Chairperson Lee initially refused to exercise his next strike, relenting only after CSXT insisted. CSXT then exercised its last strike, leaving two names. General Chairperson Lee, who has the last strike, stopped the process, again over

CSXT's objection, and refused to resume. Later that day he sent his July 16 letter asking for advice from the NMB on how to perform the striking, which at that point was complete except for his last strike.

As this history shows, the Organization's newfound confusion is a transparent artifice to delay the Section 11 process. The STB's Section 11 procedures clearly intend that an arbitrator be selected promptly. While General Chairperson Lee professes ignorance and confusion, the NMB's method for selection of a Section 11 arbitrator was issued to carriers and organizations more than 20 years ago. The NMB's July 1, 2021 letter already advised the parties on its "specific procedures" and "return date" for arbitrator selection. The Organization simply has to do its last strike and, as the NMB has already instructed, the parties "will immediately inform the NMB of the selection."

Sincerely,

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

Jennifer Manz
Director Labor Relations, HDO

cc: Jeff Wall, Vice President Labor Relations - CSXT
Richard Lee, General Chairperson – SMART-Transportation Division
Jeremy R. Ferguson, President - SMART-Transportation Division
Jamie C Modesitt, Vice President - SMART-Transportation Division
David Wier Jr., International Vice President - SMART-Transportation Division

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of July, 2021, a copy of the forgoing Reply of CSX Transportation, Inc. was served by email on the following person:

Shawn M. McKinley
Assistant General Counsel
SMART-TD
Legal Dept.
24950 Country Club Blvd., Suite 340
North Olmsted, Ohio 44070-5333
smckinley@smart-union.org

/s/ Ronald M. Johnson

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

Attorney for CSX Transportation, Inc.