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July 23, 2021

ENTERED
Office of Proceedings
July 23, 2021
Part of
Public Record

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

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

Dear Ms. Brown,

This is regarding the above-captioned matter where CSX Transportation, Inc. (“CSXT”) has filed a Petition for Declaratory Order and Cease and Desist Order. On July 23, 2021, CSXT submitted a letter that purports to supplement the record in this matter. The purpose of this letter is to clarify the International Association of Sheet Metal, Air, Rail and Transportation Workers – Transportation Division’s (“SMART-TD”) position with respect to the selection of a neutral for an Article I, Section 11 New York Dock arbitration.

As has been its position since it began filing claims in 2017 up to including the present, SMART-TD believes that this matter is improper for an Article I, Section 11 arbitration proceeding. To clarify CSXT’s letter dated July 23, 2021, SMART-TD is not refusing to abide by the National Mediation Board’s (“NMB”) instructions. The NMB has not required that SMART-TD act within any timeframe, as is evidenced by the communications submitted with CSXT’s letter. SMART-TD is not obligated to act in the selection of a neutral solely on the basis of CSXT’s unilateral demand that it do so. CSXT has acknowledged this fact, as it by letter dated July 23, 2021, requested that the NMB appoint a neutral to the matter. A copy of this communication is attached.

CSXT's current attempt to "supplement the record" is yet another attempt to get the final word in regarding this dispute, as it did in its reply brief filed on July 18, 2021, in contravention of 49 CFR § 1104.13(c) which expressly forbids replies to replies. As CSXT has petitioned the STB for declaratory relief and a cease and desist order, SMART-TD believes it is appropriate to wait until the STB renders its decision before moving forward with the arduous process of arbitration under the aforementioned *New York Dock* conditions. This is especially true where the claims submitted by SMART-TD have been progressed to the National Railroad Adjustment Board and submissions were made on July 21, 2021. As such, SMART-TD will await the decision of the STB with respect to jurisdiction before any further steps are taken regarding the selection of a neutral for Article I, Section 11 arbitration.

Sincerely,

/s/ Shawn M. McKinley

Shawn M. McKinley

Assistant General Counsel for SMART-TD

Cc: Ronald Johnson, Counsel for CSXT

CERTIFICATE OF SERVICE

The undersigned declares that the foregoing was served upon the following by electronic mail on July 23, 2021.

Ronald Johnson
Law Offices of Ronald Johnson, LLC
4990 Scarsdale Road
Bethesda, MB 20816

/s/ Shawn M. McKinley
Shawn M. McKinley

Counsel for SMART-TD



Jennifer Manz
Director, LR
500 Water Street
Jacksonville, FL 32202
Jennifer_Manz@csx.com

July 23, 2021

Email

Terri D. Brown
Director, Office of Arbitration Services
National Mediation Board
1301 K St. NW. Suite 250 East
Washington, D.C. 20572

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

Dear Ms. Brown:

In response to General Chairperson Lee's request for guidance, the NMB reaffirmed its instructions on striking names from the NMB-supplied list of arbitrators. CSXT's representative on the Section 11 Committee promptly requested that General Chairperson Lee strike one of the two remaining names thereby selecting the neutral chairman for the Committee. He refused, stating that the NMB did not specify a deadline for him to exercise the last strike and he would wait until after the STB acted on CSXT's Petition to do so.

The NMB's July 21, 2021 letter states that it fulfilled its "obligation" by furnishing a list of arbitrators. The NMB's obligation under Section 11(a) of the New York Dock conditions is, "failing agreement on a neutral or a methodology to select a neutral, either party may request the [NMB] to designate within 10 days the neutral member whose designation will be binding upon the parties." The NMB's practice is to provide the parties a list from which they alternatively strike names to select a neutral. This is a reasonable approach, and the NMB uses it in other contexts under Section 3 of the Railway Labor Act when a party requests the appointment of a neutral. 45 U.S.C. §§ 153, First and 153, Second. Like Section 11, the RLA requires the NMB to appoint a neutral upon request after the parties fail to do so. The NMB's approach of furnishing a list only works, though, if the parties participate in good faith in the striking process. In this case, we have the extraordinary circumstance of the Organization refusing to follow the NMB's instructions and participate in the striking. In these, hopefully rare, circumstances, the NMB must perform its duty to "designate" a neutral. CSXT therefore requests that the NMB immediately designate one of the two remaining names – either Sydney Moreland or Kathryn A. VanDagens – to be the neutral member of the Section 11 Committee and advise the parties of the selection.

Absent such an appointment, a party will be able to frustrate the arbitration process, as the

Organization is intending here, by declining to participate in the selection of the neutral. If the NMB does not designate a neutral, the Organization will achieve the very result the NMB's role under Section 11 was intended to prevent.

Sincerely,

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

Jennifer Manz
Director Labor Relations

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., SMART-TD International Vice President (Board Member)