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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. FD 36472

CSX CORPORATION AND CSX TRANSPORTATION, INC., ET AL.

– CONTROL AND MERGER –

PAN AM SYSTEMS, INC., PAN AM RAILWAYS, INC., BOSTON AND MAINE CORPORATION, MAINE CENTRAL RAILROAD COMPANY, NORTHERN RAILROAD, PAN AM SOUTHERN LLC, PORTLAND TERMINAL COMPANY, SPRINGFIELD TERMINAL RAILWAY COMPANY, STONY BROOK RAILROAD COMPANY, AND VERMONT & MASSACHUSETTS RAILROAD COMPANY

STB DOCKET NO. FD 36472 (Sub-No. 1)

NORFOLK SOUTHERN RAILWAY COMPANY

– TRACKAGE RIGHTS EXEMPTION –
CSX TRANSPORTATION, INC.

STB DOCKET NO. FD 36472 (Sub-No. 2)

NORFOLK SOUTHERN RAILWAY COMPANY

– TRACKAGE RIGHTS EXEMPTION –
PROVIDENCE AND WORCESTER RAILROAD COMPANY

STB DOCKET NO. FD 36472 (Sub-No. 3)

NORFOLK SOUTHERN RAILWAY COMPANY

– TRACKAGE RIGHTS EXEMPTION –
BOSTON AND MAINE CORPORATION

STB DOCKET NO. FD 36472 (Sub-No. 4)

NORFOLK SOUTHERN RAILWAY COMPANY

– TRACKAGE RIGHTS EXEMPTION –
PAN AM SOUTHERN LLC

STB DOCKET NO. FD 36472 (Sub-No. 5)

PITTSBURG & SHAWMUT RAILROAD, LLC d/b/a BERKSHIRE & EASTERN RAILROAD

– OPERATION EXEMPTION –

PAN AM SOUTHERN LLC AND SPRINGFIELD TERMINAL RAILWAY COMPANY

RESPONSE OF BLET AND BLET GCA 120

The Brotherhood of Locomotive Engineers and Trainmen National Division (“BLET”) and the Brotherhood of Locomotive Engineers and Trainmen General Committee of Adjustment 120, for Delaware & Hudson Railway Co. * Springfield Terminal Railway * St. Lawrence & Atlantic Railroad * Connecticut Southern Railroad * New England Central Railroad * New York & Susquehanna Western Railway (“BLET GCA 120”) hereby respond to certain aspects of the Revised Application and related filings as identified herein, and to the Surface Transportation Board’s July 26, 2021 Decision (“STB Decision”).

The Applicant Carriers acknowledge that CSXT and Springfield Terminal employees affected by the transaction are entitled to the standard labor protective conditions imposed in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979). Amended and Supplemented Application at 25–27. We agree that this is the level of employee protective conditions required by law. We respectfully request that the Board order such protection as a condition for approval of the transaction, as a whole, and further order that the transaction not be permitted to proceed until all necessary implementing agreements have been concluded.

With respect to the trackage rights sought by Norfolk Southern Railway Company (“NSR”), that Carrier “agrees to the imposition of the employee protective conditions established in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad*, 360 I.C.C. 653 (1980).”¹ We concur that this is the level of employee protective conditions required by law. We respectfully request that the Board order such protection as a condition for

¹ STB Decision at 7, citing NSR Notice 6, FD 36472 (Sub-No. 1); NSR Notice 6, FD 36472 (Sub-No. 2); NSR Notice 6, FD 36472 (Sub-No. 3); NSR Notice 5-6, FD 36472 (Sub-No. 4); see also Amended and Supplemented Application at 25–27.

approval of this related transaction, as a whole, and further order that the transaction not be permitted to proceed until all necessary implementing agreements have been concluded.

Lastly, we address that section of the Supplement to Amended Petition for Exemption filed by Pittsburg & Shawmut Railroad, LLC d/b/a Berkshire & Eastern Railroad (“B&E Supplement”) titled *Benefits of the Proposed Operations of the PAS Lines by B&E*. We agree with the general proposition that smarter and more efficient management should produce a benefit, thanks to enhanced operations. However, this section of the Amended Petition also includes some references that are insufficiently clear, and raise questions that we believe need to be addressed and answered in this proceeding.

First, B&E states that service under its contract operation of the PAS Lines

will benefit from the ability of its employees and management to focus solely on the operation of the PAS Lines. In contrast, the employees currently working on PAS are part of the same Springfield Terminal labor agreements that cover the PAR Railroads as well as PAS.

B&E Supplement at 4. Given that B&E has represented that “it intends to recognize unions currently representing Springfield Terminal’s employees that would be hired by B&E, and to enter into agreements providing *substantially similar* terms and conditions to those contained in existing agreements,” (Emphasis added)² we are at a loss to understand what this claimed benefit is. The fact that the employees operating the PAS and PAR lines are governed by the same CBA does not mean that they don’t presently focus solely on the operations of the particular lines on which they are assigned to work. We understand that if the transaction is approved, ST employees who trans-

² STB Decision at 20, citing B&E Amended Pet. 15, FD 36472 (Sub-No. 5).

fer to B&E will no longer be responsible for operations on the PAR lines, but if it is B&E's intention to alter negotiated work rules applicable to those new B&E workers, it should say so now. We urge the Board to require B&E to clarify what it means.

Further, B&E projects that "access to ... GWI's safety and training programs" also will produce benefits. B&E Supplement at 4. In this regard, the Verified Statement of Leonard Wagner, Senior Vice President of the Northern Region railroads of GWI ("Wagner V.S."), states that—among other GWI safety initiatives—B&E management "will participate in 'Target Zero' safety workshops (based on DuPont safety programs)" Wagner V.S. at 7. The Board should be aware that, unless carefully structured and implemented, a Target Zero program can be counterproductive in three ways. First, inadvertently sending the message to employees that zero mistakes will be tolerated can create a culture of fear, rather than a positive environment where safety is promoted. Second, pressuring the workforce to achieve the target of zero injuries could fuel underreporting. Finally, care must be taken to avoid workforce complacency upon achieving target zero, because underlying risks continue to exist. These are significant considerations that the Board should take into account when evaluating the Safety Integration Plan ("SIP") the Applicants are required to submit.

BLET believes more beneficial, and more sustainable, results flow from non-punitive, root cause analysis-based safety programs such as the Confidential Close Call Reporting System ("C³RS"). As described by the Federal Railroad Administration ("FRA"), "[this] program provides a safe environment for employees to report unsafe events and conditions. Employees receive protection from discipline and FRA enforcement. Railroads also receive protection from FRA enforcement for events reported within C³RS." See <https://railroads.dot.gov/human-performance/c3rs/confidential-close-call-reporting-system-c3rs>. That said, we are unaware of any

chronic, systemic safety issues on the GWI's Northern Region railroads and where we represent employees, and whose safety statistics speak for themselves. If the SIP does not include C³RS, it should explain why not and why a Target Zero program will better ensure safe operations going forward.

Finally, B&E points to benefits that will result from “deploying real-time mobile reporting apps to increase frontline staff’s productivity and responsiveness” B&E Supplement at 6. B&E specifically identifies platforms such as “Wabtec mCrew, Union Pacific PST tool and Microsoft PowerApps”. Wagner V.S. at 8.

The Board should be aware that use of personal electronic devices is strictly regulated by the FRA, in large part due to the tragic September 12, 2008 head-on collision between a Union Pacific freight train and a Metrolink commuter train in Chatsworth, California, which killed 25 and injured 135. In recent years, a number of carriers—in the name of increased productivity—have begun issuing “company” electronic devices that contain platforms similar or identical to those B&E identifies. The use of these platforms would be barred under FRA regulations if installed on a “personal” device, except under very narrowly circumscribed operating conditions. *See* 49 C.F.R. § 220.305.

BLET has made the FRA aware of our concerns over the unregulated use of such technologies because of their potential safety risk under certain operating conditions. Once again, we expect that B&E will provide more detail in its SIP, in order for us to reasonably determine whether this technology proposal could introduce a new risk into the current PAS operation.

We thank the Board in advance for its most serious consideration of our Response, and we expressly reserve the right to further comment on the last two safety issues addressed above, once B&E’s SIP has been posted to the docket.

Dated: August 26, 2021

Respectfully submitted,

/s/ Joshua D. McInerney

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CERTIFICATE OF SERVICE

I certify that I have this 26th day of August 2021 served copies of the above Response of BLET and BLET GCA 120 upon all parties of record in this proceeding, by electronic mail or by U.S. Mail upon the following parties of record.

/s/ Joshua D. McInerney

Joshua D. McInerney