

BEFORE THE
SURFACE TRANSPORTATION BOARD

303579

Finance Docket No. 36472 (and embraced sub-dockets)

ENTERED
Office of Proceedings
January 24, 2022
Part of
Public Record

CSX CORP. AND CSX TRANSPORTATION, INC. ET AL
- CONTROL AND MERGER-
PAN AM SYSTEMS, INC., MAINE CENTRAL RAILROAD COMPANY,
NORTHERN RAILROAD, PAN AM SOUTHERN, LLC, PORTLAND TERMINAL
COMPANY, SPRINGFIELD TERMINAL RAILWAY COMPANY, STONEY BROOK
RAILROAD COMPANY, AND VERMONT & MASSACHUSETTS RAILROAD COMPANY

**ALLIED RAIL UNIONS' REPLY TO CSXT'S RESPONSE TO
ALLIED RAIL UNIONS' SUPPLEMENTAL COMMENTS
AND REQUEST FOR CONDITIONS**

In accordance with the Chairman's statement that the Board would accept supplemental comments from parties who believed that it was necessary or appropriate to respond to statements made, information provided, or representations or commitments made at the hearings in this Finance Docket and related Sub-dockets, the Brotherhood of Maintenance of Way Employees Division/IBT; Brotherhood of Railroad Signalmen; International Association of Sheet Metal, Air, Rail and Transportation Workers-Mechanical Division; and National Conference of Firemen and Oilers, 32BJ/SEIU ("Allied Rail Unions" or "ARU")¹ submitted Supplemental Comments to respond to specific statements and representations made by CSXT CEO James Foote during the hearings.

In its Response to Public Hearing, CSXT characterized the ARU filing as one of a

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

number of “late filed comments”, CSXT then availed itself of the opportunity to respond to the substance of the ARU’s Supplemental Comments. The ARU submit this short reply to refute CSXT’s characterization of their Supplemental Comments, and to object to CSXT’s response to the Supplemental Comments.

1. The ARU Supplemental Comments were not “late-filed comments”. The Supplemental Comments were timely filed and properly submitted post-hearing comments. As the ARU expressly noted, the Board allowed for post-hearing filings that were responsive to new facts that were introduced, and to arguments, statements or commitments made in the hearings, and that did not merely reiterate points that were previously made. The ARU demonstrated that its Supplemental Comments addressed specific statements and commitments made by CSXT CEO James Foote at the hearing, and they further showed that those statements and commitments went beyond what had previously been said by CSXT. The ARU did not repeat arguments they previously made or attempt to rebut arguments made by the Applicants or Petitioners in their responses to comments or in their post-hearing briefs. The ARU requested conditions were directly related to commitments Mr. Foote made at the hearing. Accordingly, the ARU Supplement Comments were entirely appropriate and consistent with the guidelines for post-hearing filings that were announced at the hearing. And the Supplemental Comments were filed within the time specified for their filing. CSXT’s characterization of the ARU Supplemental Comments is therefore false.

2. CSXT’s substantive response to ARU’s Supplemental Comments should be stricken from the record and not considered. The Board did not provide for responses to post-hearing filings; but CSXT nonetheless submitted such a response. Presumably, the Board will not allow

CP, Amtrak and MassDOT to respond to CSXT's post-hearing filing; CSXT should not be allowed to respond to ARU's post-hearing filing.²

3. In the event that the Board is inclined to consider CSXT's response to the substance ARU's of Supplemental Comments, the Board should then consider ARU's reply—the commitments made by Mr. Foote are in the record, the ARU believe that they have accurately characterized what he committed to, CSXT should be bound to those commitments; approval of the transactions should be conditioned on those commitments, and not on the more limited commitments made in CSXT's improper response to ARU's Supplemental Comments.

Respectfully submitted,

/s/ Richard S. Edelman

Richard S. Edelman

Mooney, Green, Saindon, Murphy & Welch, P.C.

1920 L Street NW, Suite 400

Washington, DC 20036

(202) 783-0010

Redelman@MooneyGreen.com

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² The only reason CSXT was able to respond to the ARU's Supplemental Comments was because CSXT's filing was made near midnight on the due date, whereas the ARU's comments were filed in the afternoon of the due date. Counsel for the ARU (as well as others) could have similarly waited until the last minute to file the Supplemental Comments but trusted that appropriate standards of practice would deter improper responses. Apparently that trust was misplaced.

CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served copies of the foregoing Allied Rail Unions' Reply To CSXT's Response to Allied Rail Unions' Supplemental Comments And Request for Conditions by First Class Mail to the offices all Parties of Record in this Finance Docket.

Date: January 24, 2022

/s/Richard S. Edelman
Richard S. Edelman