

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36500

CANADIAN PACIFIC RAILWAY LIMITED, ET AL.
– CONTROL –
KANSAS CITY SOUTHERN, ET AL.

Canadian National Ry and Illinois Central R.R. Co.
Acquisition of Rail Lines, Trackage Rights and
Acquisition of Control of Gateway Eastern Ry. Co.

Finance Docket No. 36500
Sub-Dockets Nos. 1-4

ARU-8

304957

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Public Record

**COMMENTS ON RESPONSIVE APPLICATIONS
AND REQUESTS FOR CONDITIONS**

In accordance with 49 U.S.C. §11323 et seq., 49 C.F.R Part 1180, and Decisions No. 11 and 20 in this proceeding, 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 submit these Comments and requests for conditions in response to the Responsive Applications (“Responsive Applications”) of Canadian National Railway (“CNR”) and its subsidiary Illinois Central Railroad Co. (“ICRR”), by which CNR and ICRR seek: 1) to acquire Kansas City Southern’s line between Kansas City, Mo., and

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

Springfield and East St. Louis, Ill and an 8.33% ownership share of Kansas City Terminal Railway Company (KCT), along with a 50% ownership interest in KCS's International Freight Gateway terminal (IFG Terminal); 2) overhead trackage rights on KCS's Pittsburg Subdivision, between milepost 5.6+/- at Airline Junction in Kansas City, and milepost 29.5+/- near Grandview, Mo., to reach the IFG Terminal; 3) authority to control the Gateway Eastern Railway Company (GWER) by acquiring KCS's equity interest in GWER; and 4) trackage rights over Union Pacific's line between Rock Creek Junction and Airline Junction-- as conditions of any approval of the Canadian Pacific Ry.- Kansas City Southern transaction.

1. The ARU do not support or oppose the responsive applications and conditions for which CNR/ICRR seek Board approval if the CP-KCS transaction is approved.

2. However, if any or all of these responsive applications are approved, they should be subject to the employee protective conditions set forth in *New York Dock Railway—Control—Brooklyn Eastern District (Terminal)*, 360 I.C.C. 60 (1979) ("*New York Dock*"). 49 U.S.C. §11326). The ARU recognize that some of the proposed responsive transactions involve acquisitions of lines and trackage rights, which, standing on their own, would not be subject to the *New York Dock* conditions imposed in merger and control transactions. And CNR/ICRR has indicated that it believes that the *Wilmington Terminal* variant of the *New York Dock* conditions (*Wilmington Terminal, Railroad—Purchase & Lease—CSX Transportation Inc.*, 6 I.C.C.2d 799(1990)), should apply to the proposed transactions involving line sales; and that the *Norfolk & Western* conditions (*Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry. Inc.—Lease and Operate*, 360 I.C.C. 653 (1980) should apply to the proposed trackage rights transactions. Responsive Application at 19-20. But

here the responsive transactions would be approved only if the CP-KCS transaction is approved; so, the responsive transactions would be part of the main transaction which is subject to the *New York Dock* conditions. Indeed, the subsidiary transactions in the CSXT-Pan Am-B&E transaction² that were not merger or control transactions were subject to the *New York Dock* conditions imposed in the main transaction in that case. If CNR/ICRR are to piggyback off the CP-KCS transaction to gain approval of transactions that would not have occurred without the main transaction, then CNR/ICRR should be subject to the same employee protections as the CP-KCS transaction. Additionally, the acquisition and trackage rights transactions in the responsive applications are expressly and inextricably linked to several control transactions (KCT, IFG and GWER), so the control transaction protections should apply to all connected transactions.

3. In the CP-KCS transaction, CP and KCS have committed that they will abide by the agreement between the Rail Unions and most major carriers, including the ARU unions and CP and KCS, titled “Revised Standards for Preemption of Collective Bargaining Agreements for Transactions Initiated Pursuant to Section 11323 of the Interstate Commerce Act”, colloquially referred to as the “Cramdown Agreement”, as a condition of approval of the main transaction. Application. Application Vol. 1 at 18/27; Verified Statement of Myron Becker Application Vol. 2 at 13-14/253-254. *See* ARU Comments (ARU-7). Although CNR/ICRR were not parties to the Cramdown Agreement, there is no reason that CNR/ICRR should not be subject to the same terms as all the other Class I railroads and to the same conditions as CP and KCS in the

² 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, F.D. 36472.

transaction to which the responsive applications are attached. Indeed, as the responsive transactions would be a direct result of the main transaction, if the responsive applications are approved, they should be subject to the same conditions. Furthermore, given that the Cramdown Agreement was signed by the other Class I's and by Rail Labor, it is necessarily an industry standard and should be imposed as a condition of any approval of the responsive applications submitted by CNR/ICRR.

4. In accordance with practice, especially recent practice, the ARU also urge the Board to incorporate as conditions on any approval of the responsive applications, any and all commitments made by the CNR/ICRR in seeking Board approval of those transactions.

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Respectfully submitted,

/s/ Richard S. Edelman

Richard S. Edelman

Aaron S. Edelman

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

1920 L Street NW, Suite 400

Washington, DC 20036

(202) 783-0010

Redelman@MooneyGreen.com

Aedelman@MooneyGreen.com

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CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served copies of the foregoing Allied Rail Unions' Comments On Responsive Applications and Requests for Conditions to be served on all Parties of Record in this Finance Docket electronically and/or by First Class Mail.

Date: July 11, 2022

/s/Richard S. Edelman
Richard S. Edelman