

BY ELECTRONIC FILING

September 21st, 2022

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

305363

ENTERED
Office of Proceedings
September 21, 2022
Part of
Public Record

Dear Ms. Brown,

**Re: Finance Docket No. 36500, Canadian Pacific Ry. – Control – Kansas City
Southern. RESPONSE TO FILING #305268 and STB Decision #51385**

I (Tavengwa Runyowa) write this letter to address the following filings in Financial Docket #36500:

1. CP Railway's September 20th, 2022 (*Filing ID 305353*) correspondences to the Board regarding our clients' Notice of Intent to Participate in the Board's public hearing scheduled for between September 27 – 29 of 2022;
2. The Board's Decision of September 21, 2022, Memorandum (*Filing ID 51385*) which designated Mr. Runyowa's Notice of Intent to Participate in the public hearings as *tentative*, pending a future decision of the STB.

At the outset, Runyowa Law and its clients understand and respect that the Board is the master of its procedure. They also understand that the Board established its rules and procedures in this matter to facilitate a fair, orderly, rigorous, and transparent merger review process. Runyowa Law and its clients further understand that the Board's governing statute, from which its rules and procedures derive, govern all the Board's business, including and extending beyond the current merger process. For these reasons Runyowa Law will endeavor to address the claims made by CP

Railway in their filing objecting to Mr. Runyowa's participating in the public hearings, and thereby provide the STB with a counter argument from which the Board can reach its final decision.

CP Railway's correspondence of September 20, 2022 (*Filing ID 305353*).

In its legal counsel's correspondence of September 20, 2022, CP Railway argues that I, Tavengwa Runyowa, should be prohibited from making any presentations at the STB's public hearing that is currently scheduled for September 27 – 29, 2022. The alleged basis is that I am not an American certified attorney. The complainants ask the to Board disregard this request for the following reasons.

- A) Based on the [Board's online posting](#), September 27 – 29, 2022 is for a “public hearing”. Based on that posting, it appears that the Board wished to create a transparent and accessible platform to facilitate the contributions from the general public (without legal counsel) beyond the parties of record. Unlike the Board's more formal proceedings for parties of record, the public hearing posting does not impose any requirements about whether participants must be represented by legal counsel or must satisfy any other formality (apart from the implicit fact that the presentation should touch on the merger and the Board's jurisdiction). As such, Runyowa Law's Notice of Intent to participate in the public hearing only mentions that the firm is “Canadian counsel” for several clients because I, Tavengwa Runyowa, will make submissions on behalf of my clients. As a question of practicality, given the number of clients, the mutuality of their arguments, and the personal challenges they face in articulating themselves on the difficult subject-matter that brought them to this point, I intend to speak on their behalf. For the purposes of the hearing, this “representation” is merely informative and does not reflect an effort to fulfil a technical criteria for participation. As such, it should not trigger the application of 49 C.F.R. § 1103.2, which would otherwise disqualify the “public” whose participation the Board appears to be facilitating without a requirement for participation through legal counsel.

Transparency and accountability are two values that the Board has reflected in the implementation of its rules and the conduct of its proceedings. Defining the “public” broadly in such cases is consistent with these values. It allows any person with relevant information to provide context on important issues that otherwise may have escaped notice, and to the detriment of many stakeholders. Information that it relevant to American interests can come from anywhere in the world. If the information a person is providing is relevant and falls within the jurisdiction of the authority to whom it is directed, there should be no impediments to those issues being brought to the Board's attention.

As such, it would be consistent with the Board's expressed values and statutory mandate to permit any person with relevant information, including a Canadian lawyer on behalf of his clients, to make submissions before the Board

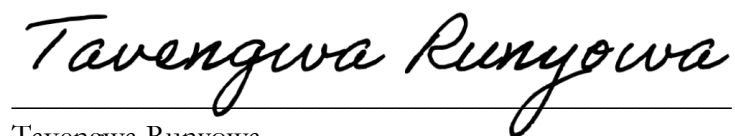
The STB's Decision of September 21, 2022 (*Filing ID 51385*).

The unresolved issues that I intend to present on behalf of my clients will nevertheless prevail and likely pose worsening prejudice to American interests if the Board does not address them. It would be more efficient in terms of time and resources for the Board to pre-empt those future complications and consider the issues at this earlier juncture. Contrary to CP Railway's assertions, my clients' personal tragedies are what led them to **discover** the tunnel of private policing issues that led into the United States, and are not the **subject** of their submissions to the STB. The Board and American people have little to lose but likely, much to gain by learning how CP Railway's cross-border command of police officers **in the United States** reflects and facilitates a minefield of national security and other problems that are unrelated the company's litigation with my clients in Canada. There is no dispute that given their personal experiences, my clients have been advocating for boarder reforms to private railroad policing. However, the issues they intend to bring to the Board's attention affect the American public more than they do for them in Canada. We ask that the Board prevents CP Railway from avoiding the difficult questions about how its proposed merger with Kansas City Southern would aggravate the serious, but largely latent problems arising from its American policing structures and operations.

Runyowa Law and its clients remain prepared to assist the Board in any manner requested.

I certify that I have this day Wednesday the 21st of September 2022 at 7:18 PM, served copies of document upon all parties of record in this proceeding, by e-mail.

Thank you,

A handwritten signature in black ink that reads "Tavengwa Runyowa". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

Tavengwa Runyowa

(Canadian legal counsel for Ms. Lorelei Desrochers, Ms. Pamela Fraser, Mr. Edward Dockrell, and Ms. Heather Dockrell).