

SERVICE DATE – SEPTEMBER 23, 2022

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36500¹

CANADIAN PACIFIC RAILWAY LIMITED; CANADIAN PACIFIC RAILWAY COMPANY; SOO LINE RAILROAD COMPANY; CENTRAL MAINE & QUEBEC RAILWAY US INC.; DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION; AND DELAWARE & HUDSON RAILWAY COMPANY, INC.

—CONTROL—

KANSAS CITY SOUTHERN; THE KANSAS CITY SOUTHERN RAILWAY COMPANY; GATEWAY EASTERN RAILWAY COMPANY; AND THE TEXAS MEXICAN RAILWAY COMPANY

Decision No. 26

Digest:² The Board denies a request from the applicants in this proceeding to preclude a party from participating in a public hearing.

Decided: September 23, 2022

By notice served on July 22, 2022, the Board announced that it will hold a public hearing in this proceeding on September 28, 29, and 30, 2022. On September 13, 2022, Tavengwa Runyowa of Runyowa Law filed a notice of intent to participate in the hearing. In that notice, Mr. Runyowa stated that he is Canadian legal counsel for Pamela Fraser, Heather Dockrell, Edward Dockrell, Lorelei Desrochers, and Kaitlyn Timmerman.

¹ This decision embraces: Docket No. FD 36500 (Sub-No. 1), Illinois Central Railroad—Acquisition of a Line of Railroad Between Kansas City, Mo., & Springfield & East St. Louis, Ill.—Kansas City Southern Railway; Docket No. FD 36500 (Sub-No. 2), Illinois Central Railroad—Trackage Rights Between Airline Junction, Mo., & Grandview, Mo.—Kansas City Southern Railway; Docket No. FD 36500 (Sub-No. 3), Canadian National Railway—Control—Gateway Eastern Railway; Docket No. FD 36500 (Sub-No. 4), Illinois Central Railroad—Assignment of KCS Trackage Rights Between Rock Creek Junction, Mo., & Airline Junction, Mo.—Union Pacific Railroad; and Docket No. FD 36500 (Sub-No. 5), Norfolk Southern Railway—Trackage Rights—Kansas City Southern.

² The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

On September 20, 2022, the applicants in this proceeding (Applicants) objected to Mr. Runyowa's notice of intent to participate, asserting that the topics Mr. Runyowa intends to address are not appropriate for the hearing and that Mr. Runyowa may not appear before the Board on behalf of clients pursuant to 49 C.F.R. § 1103.2 (permitting "a member in good standing of the bar in the highest court of any State, Commonwealth, possession, territory, or the District of Columbia" to represent persons before the Board). By response filed September 21, 2022, Mr. Runyowa asserts that he plans to speak on behalf of his clients at the hearing but that his representation is merely informative and should not trigger 49 C.F.R. § 1103.2.

In a decision served on September 21, 2022, the Board provided a schedule of appearances for the hearing, including Mr. Runyowa as a tentative panelist subject to a future decision. See Canadian Pac. Ry.—Control—Kan. City S., FD 36500 et al., slip op. at 9 & n.6 (STB served Sept. 21, 2022).

The Board will deny Applicants' request to prohibit Mr. Runyowa's participation at the public hearing. To the extent that 49 C.F.R. § 1103.2 applies to Mr. Runyowa's participation at the hearing, the Board finds good cause to waive that regulation to permit his participation at the hearing.

It is ordered:

1. Applicants' request to prohibit Mr. Runyowa from participating at the public hearing scheduled for September 28, 29, and 30, 2022, is denied.
2. Section 1103.2 is waived to the extent necessary to permit Mr. Runyowa to participate at the hearing.
3. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.