

LAW OFFICE OF DAVID L. MEYER
WWW.MEYERLAWDC.COM

1105 S STREET, N.W.
WASHINGTON, D.C. 20009
202-294-1399

305390

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BY ELECTRONIC FILING

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

Re: Finance Docket No. 36500, *Canadian Pacific Ry. – Control – Kansas City Southern*

Dear Ms. Brown:

I write on behalf of Applicants regarding the submissions by Mr. Runyowa and his clients on September 21, 22, and 23, 2022, including material self-servingly described as a “whistleblower alert” purporting to place in the record 1000+ pages of material.¹ This material constitutes Mr. Runyowa’s effort to cure his inappropriate *ex parte* submission to Chairman Oberman dated June 7, 2022, which was the subject of Applicants’ September 12, 2022 filing (CP-63/KCS-49).

Although Mr. Runyowa has now attempted to place his material on the public docket, all of it should nonetheless should be stricken from the record for the following reasons:

1. Labeling a late-filed document a “Whistleblower Alert” does not entitle it to any special treatment. But it is worth noting that there is no “whistleblower” here. Mr. Runyowa and his clients are not insiders blowing the whistle on any misconduct, but a self-interested plaintiffs’-injury lawyer and his clients seeking

¹ Applicants are responding to Mr. Runyowa’s September 23 “Response to the Board’s Memorandum of September 7, 2022 and CP Railway’s correspondence of September 12, 2022” (the “September 23 Response”); his September 22 “Whistleblower Alert” (filed September 23, 2022); and his September 21 “Response to Filing #305268 and STB Decision #51385” (the “September 21 response”).

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to hijack the Board's processes to facilitate their own crusade against CP in multiple pending private litigations in Canada.

Mr. Runyowa and his clients are plaintiffs in five active lawsuits against CP in Canada, each of which involve allegations about the functions performed in Canada by CP's Canadian railway police. The first of those complaints was filed in early February 2021, more than nine months prior to the Board's deadline for notices of intent to participate in this proceeding. All of those lawsuits have been vigorously defended by CP.

Mr. Runyowa has launched similar lawsuits and proceedings against CN, has created a petition to lobby for the abolition of railway police in Canada, and has given several interviews for the Canadian media. Most recently, in March 2022, Mr. Runyowa's effort on behalf of his clients to enjoin the holding of CP's annual shareholders meeting was rejected by the Alberta Court of King's Bench. This Board's consideration of the CP/KCS Transaction is simply the next target.

In an effort to hide the private, foreign litigation interests which lie at the heart of the self-styled "alert," Mr. Runyowa now argues that the issues raised will have little impact on his own clients or their ongoing litigation against CP. Instead, Mr. Runyowa says, the issues affect the "American people" more.² But this position only serves to underscore the ulterior purposes of his clients' new-found interest in a U.S. regulatory process: it is transparently designed to create leverage in that advances the personal and financial interests of Mr. Runyowa and his clients in their pending litigations.

2. Whatever its character, Mr. Runyowa's new submissions are fatally non-compliant with the Board's procedural schedule in the case, which called for notices of intent to participate in November of 2021 and comments on the Application in January 2022.

Mr. Runyowa asserts that the content he has submitted could not have been provided until recently, but that is neither honest nor a sufficient excuse. As noted, the first of Mr. Runyowa's lawsuits against CP was filed in early February 2021, long before notices of intent to participate were due. Mr. Runyowa even asserts that CP has been aware of the issues "*since at least January 2022*" (when comments in this proceeding were due) from materials he himself prepared on behalf of one of his clients.³ If Mr. Runyowa and his clients believed they had

² E.g., September 21 Response at 3; Whistleblower Alert at 19.

³ "Whistleblower Alert" at 3 (emphasis added); *see also id.* at 23.

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sufficient information to inform CP about these alleged issues by January 2022, they could have done so in accordance with the Board's procedural schedule.

Just as important, the "issues" Mr. Runyowa purports to raise involve the very existence of railroad policing in the United States, which most (but not all) U.S. states authorize to exercise state police powers. Railroad policing has been a vital part of railroading for more than a century. None of the applicable law governing railroad policing in the United States cited in the "Whistleblower Alert" is new, and CP has always been bound by it. Like every other U.S. railroad, CP's U.S. rail carrier affiliates employ railroad police, who are duly authorized to perform those functions under applicable state law. (CP's Canadian railway police do not operate in the United States.).

In short, nothing has occurred and nothing has been discovered since January 2022 (or even since November 21, 2021) that would justify the need for a late submission to this Board or lend credence to Mr. Runyowa's assertions.

3. Contrary to Mr. Runyowa's assertions, there is nothing germane to this proceeding in the bloated submission of September 23, 2022. Despite Mr. Runyowa's rhetoric, there is no concrete allegation, and certainly no "evidence," suggesting that the operations of CP's police service has violated any applicable federal, state, or other law governing the operation of railroad policing in the United States.

Mr. Runyowa himself repeatedly confirms that his so-called Alert presents no serious allegations or evidence:

- He disclaims "any formal or authoritative assertion about the application of American laws."⁴
- He spends a considerable amount of time discussing the consequences of railroad policing by a hypothetical "bad faith actor," but expressly disclaims any suggestion that CP is a "bad faith actor" or that CP has any intention to "undermine American interests."⁵
- He relies on allegations made in the ongoing Canadian litigation which have been defended by CP and, as he admits, "have not yet been proven in

⁴ *Id.* at 1 n.1.

⁵ *Id.* at 32 ("CP Railway ... may not be bad faith actor[] with the intention to undermine American interests").

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Court.”⁶ In fact, the five actions have not even progressed to the merits discovery stage.

4. Whatever the motives of Mr. Runyowa and his Canadian clients for developing an interest in changing the law of railway policing in Canada (and now, apparently, in the United States), Mr. Runyowa has brought his campaign to the wrong forum. Instead of engaging appropriately in petitioning directed at the Canadian and U.S. jurisdictions that administer the legal framework for railway policing, Mr. Runyowa proposes that this Board orchestrate a broad-ranging investigation involving broad swaths of the U.S. federal government to overturn a longstanding legislative scheme governing the routine railroad policing functions that CP and every other Class 1 railroad engage in across their networks. The suggestion lacks any nexus to the CP/KCS Transaction, is outrageous in scope, and should not distract the Board and public from their appropriate focus on the public interest benefits of the proposed Transaction.

* * *

Although Mr. Runyowa’s submission has no place in the Board’s record in this proceeding, the Board can rest assured that there is no underlying risk of harm to the public interest. Mr. Runyowa and his clients remain free to pursue their efforts to malign CP’s character with a witch hunt regarding the role of CP’s railroad police, and CPKC’s railroad policing in the United States—like that of CP’s today – will adhere to all applicable legal requirements. Not only is there no “merger-related” issue, there is no issue whatsoever warranting the Board’s attention.

Pursuant to 49 C.F.R. § 1114.8, the Board has inherent authority to strike from the record “any redundant, irrelevant, immaterial, impertinent, or scandalous matter.” Under that authority, Mr. Runyowa’s submissions of September 21-23, 2022 should be stricken.

Please contact me with any questions.

⁶ Whistleblower Alert at 55.

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Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Dan L Meyer", with a stylized, cursive script.

David L. Meyer

*Attorney for Canadian Pacific
Railway Limited*

cc: All Parties of Record