

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Chief Counsel
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Public Record

Kansas City Southern—Control—The Kansas City Southern
Railway Company, *et al.*

Finance Docket No. 34342

**RESPONDENTS' REPLY TO PETITIONER DANIEL T. WHITE'S
"EMERGENCY MOTION FOR STAY AND INTERIM RELIEF"**

Respondents Kansas City Southern Railway Company ("KCSR"), The Texas Mexican Railway Company ("Tex-Mex"), and Canadian Pacific Kansas City Limited, collectively "CPKC," submit that this Board should deny the "Emergency Motion For Stay And Interim Relief" filed by petitioner, Tex-Mex locomotive engineer Daniel T. White.

Mr. White has petitioned the Surface Transportation Board ("STB" or "Board") for review of an arbitration award rendered on April 1, 2026, in a proceeding conducted under Article I, section 4 (hereinafter "section 4") of the Board's "*New York Dock*" employee protective conditions.¹ The award resolved a dispute between CPKC and Mr. White's labor union, the Brotherhood of Locomotive Engineers and Trainmen ("BLET"), as to what the appropriate implementing agreement should be in connection with the combination of the locomotive engineer work force on Tex-Mex with the locomotive engineer work force on the territory of KCSR. KCSR controls Tex-Mex.

BLET is the exclusive bargaining representative for locomotive engineers on the Tex-Mex and KCSR, under the Railway Labor Act, 45 U.S.C. §§151 *et seq.* ("RLA"). Mr. White was not a

¹ These are the conditions imposed in *New York Dock Ry.--Control--Brooklyn Eastern Dist.*, 360 I.C.C. 60, 84-90 (1979), *aff'd*, *New York Dock Ry. v. United States*, 609 F.2d 83 (2d Cir. 1989).

party to the section 4 arbitration (and could not have been a party under the terms of section 4); did not appear at the arbitration hearing; did not make any sort of argument or submission to the arbitration board; and is not, to CPKC's knowledge, an officer of BLET.²

BLET itself has not appealed from the April 1, 2026 award, and the time for appeal has passed.³

Concurrently with the filing of his petition for review, Mr. White filed his "Emergency Motion For Stay And Interim Relief." Mr. White has not satisfied any of the prerequisites for the grant of such extraordinary relief, and the motion should be denied.

STATEMENT OF FACTS

Procedural History

In 1993, pursuant to approval by the Interstate Commerce Commission, the corporate parent of KCSR acquired control of several other rail carriers, including MidSouth Rail Corporation ("MidSouth"). The ICC imposed the *New York Dock* conditions on the transaction.⁴

² CPKC expects that it will argue, in its Reply to the petition for review, that, given the facts of this case leading to issuance of the April 1, 2026 arbitration award, Mr. White's appeal from the award should not be entertained, and should be dismissed. In filing this Opposition to Mr. White's motion for a stay, CPKC does not waive any of its defenses to the petition for review.

³ It also appears that Mr. White may have filed his petition for review after the 20-day time limit for such petitions had already expired. The award was dated April 1, 2026; therefore, the deadline for filing a petition for review was April 21, 2026. The petition is dated April 21, 2026, and apparently was sent by U.S. mail on that date, and was received by the STB on April 24, 2026. The Board's rules require that to be considered timely filed, a document that is sent to the Board by express mail and received after the deadline must have been mailed no later than one day before the deadline—in this instance, April 20, 2026. 49 C.F.R. §1104.6.

⁴ *Kansas City Southern Industries, et al. —Control—MidSouth Corp., et al.*, F.D. No. 32167 (served June 4, 1993) ("*MidSouth Control*").

MidSouth's locomotive engineers, like those of KCSR, are represented by BLET but have remained separate from KCSR's other locomotive engineers and have continued to be covered by their own collective bargaining agreement between KCSR and BLET (the "MidSouth CBA").

In 2004, the STB approved the acquisition of Tex-Mex by KCSR's corporate parent and imposed standard *New York Dock* conditions on the transaction.⁵ Tex-Mex's engineers are also represented by BLET but, like those of MidSouth, have continued to be covered by their own collective bargaining agreement (the Tex-Mex CBA).

On February 19, 2025, CPKC served notices on BLET, under the *New York Dock* conditions as imposed in *MidSouth Control* and *Tex-Mex Control*, of its intention to "coordinate and merge the entirety of the properties, train operations and the associated work forces of the Carrier's former KCS, Mid-South and Tex-Mex properties."

CPKC approached this overall combination of work forces in two stages. First, CPKC negotiated with BLET over the terms of an appropriate implementing agreement to govern the combination of engineers working on the former MidSouth properties with the rest of KCSR's engineer work force, in what CPKC calls the "Shreveport District." The parties could not reach agreement in negotiations and submitted the matter to arbitration under section 4 of the *New*

⁵ *Kansas City Southern--Control--The Kansas City Southern Railway Company, et al.*, F.D. No. 34342 (served Nov. 29, 2004) ("*Tex-Mex Control*").

More recently, the Board authorized Canadian Pacific Railway Limited's acquisition of control of Kansas City Southern and its subsidiaries, including KCSR and Tex-Mex. *Canadian Pacific Railway Ltd., et al.—Control—Kansas City Southern, et al.*, F.D. No. 36500 (served March 15, 2023) ("*CPKC Control*"). The combined rail system operates under the name Canadian Pacific Kansas City, or CPKC, and the Respondents to this proceeding adopt the common designation "CPKC" for purposes of this submission. The *CPKC Control Decision* itself is not otherwise related to this case.

York Dock conditions as imposed in *MidSouth Control*. They agreed on the selection of a neutral arbitrator, Michael D. Phillips, and on January 16, 2026, Mr. Phillips rendered his award, imposing an implementing agreement as proposed by CPKC. The imposed implementing agreement provides that the existing MidSouth CBA will apply to all locomotive engineers working in the Shreveport District following the combination of work forces. BLET did not petition this Board for review of the January 16, 2026 award, which is, therefore, final and binding on the parties. Mr. White's petition for review does not involve the award, and the award is not before this Board.

In the second stage, having resolved the question of how the combination of MidSouth and KCSR engineer work forces should be carried out, CPKC proposed to combine the Tex-Mex engineer work force into the KCSR work force, as had been contemplated in one of the February 19, 2025 *New York Dock* notices. CPKC proposed that the MidSouth CBA would apply to work on the Tex-Mex territory. Once again, CPKC and BLET could not reach agreement on an implementing agreement to cover this stage of the overall combination, and once again, they selected Michael D. Phillips to serve as neutral arbitrator under section 4 of *New York Dock*, this time as imposed in *Tex-Mex Control*.

Mr. Phillips conducted a "virtual" hearing of the case via Internet on March 25, 2026. CPKC and BLET filed written submissions and argued their positions at the hearing. As we have noted, Mr. White did not appear or otherwise participate in the arbitration proceeding. Then, on April 1, 2026, Mr. Phillips rendered his award, imposing CPKC's proposed implementing

agreement. The arbitrator made two modifications to the MidSouth CBA in order to preserve entitlements already in place for current Tex-Mex employees.⁶

BLET did not seek STB review of the April 1, 2026 award. Mr. White filed his own petition for review of this award on April 24, 2026. By Decision served May 1, 2026, the Board directed that replies to the petition for review are due by May 28, 2026.

This Reply is directed solely to Mr. White's motion for stay.

Petitioner's Allegations

Mr. White's petition takes issue with one component of the implementing agreement as imposed in the April 1, 2026 award: the direction that locomotive engineers who currently work under the Tex-Mex/BLET collective bargaining agreement ("Tex-Mex CBA") will, upon combination of the Tex-Mex work force with KCSR's work force, become subject to the MidSouth CBA, which, in accordance with the January 16, 2026 arbitration award, will also apply to KCSR's engineers working on the former MidSouth property. Mr. White, a Tex-Mex locomotive engineer with 12 years' seniority who is currently covered by the Tex-Mex CBA, would prefer not to work under the MidSouth CBA. He asserts that the intended consolidation of employees under a single CBA is beyond the authority of a *New York Dock* section 4 arbitrator acting under *Tex-Mex Control* to approve – because, he asserts, it is beyond the

⁶ Mr. White has submitted a copy of the April 1, 2026 award to this Board, as directed by the Board's May 1, 2026 Decision.

The April 1, 2026 award modifies the MidSouth CBA to allow current Tex-Mex engineers who will become subject to the MidSouth CBA to (1) retain personal leave days that are in excess of the number of leave days they would be afforded under the MidSouth CBA, and (2) continue to take one week of their annual vacation in single day increments, which is not otherwise allowed under the MidSouth CBA. Award at 13.

authority of section 4 arbitrators generally, and also because the *Tex-Mex Control* decision withheld from KCSR and Tex-Mex the ability to combine their work forces under a single CBA, using the procedures of *New York Dock*.

Mr. White's understanding of the power of arbitrators under the *New York Dock* conditions is incorrect, and he misreads *Tex-Mex Control*; as a result his challenge to the award will necessarily fail when (and if) his arbitration appeal is considered on the merits.

It is clear that Mr. White is not entitled to a stay under the Board's well established standards, and his motion for a stay should therefore be denied.

ARGUMENT

MR. WHITE'S MOTION FAILS TO SATISFY EACH OF THE STANDARDS FOR GRANT OF A STAY.

This Board applies a familiar four-part test in considering a motion for stay:

In ruling on a petition for a stay, the Board considers: (1) whether the party seeking the stay has made a strong showing that it is likely to prevail on the merits; (2) whether the party seeking the stay will suffer irreparable harm in the absence of a stay; (3) whether other interested parties will be substantially harmed by a stay; and the public interest in granting or denying the stay. See *Wash. Metro. Area Transit Comm'n Inc. v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *Va. Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958).

Jackson County Mo.—Acquisition and Operation Exemption—Union Pacific R.R., 2016 STB LEXIS 25, at *4, F.D. No. 35982 (served Feb. 4, 2016); accord, e.g., *Norfolk Southern Ry.—Acquisition and Operation—Certain Rail Lines of the Delaware & H. Ry.*, 2015 STB LEXIS 194, *4, (F.D. No. 35873, (served June 12, 2015).

In addition, the Board has emphasized that:

[t]he party seeking a stay carries the burden of persuasion on all of the elements required for stay. *Canal Auth. of Fla. v. Callaway*, 489 F.2d 567, 573 (5th Cir. 1974). The Board typically does not grant a stay unless it is necessary to prevent irreparable harm. See, e.g., *Eighteen Thirty Group, LLC--Acquis. Exemption--in Allegany County, MD*, FD 35438 et al. (served Nov. 17, 2010).

Norfolk Southern Ry.—Abandonment Exemption—In Aurora, Portage County, OH, Docket No. AB290 (Sub-No. 394X), (served Dec. 28, 2017), slip op. at 3-4.

As we will show, Mr. White’s motion for stay fails to satisfy any of the criteria for grant of such extraordinary relief. It is also worth pointing out, at the threshold, that the motion utterly fails to depict any harm, much less irreparable harm, that Mr. White will suffer if a stay is denied.

1. Mr. White is unlikely to prevail on the merits of his arbitration appeal.

Mr. White contends that the April 1, 2026 award exceeds the authority of an arbitrator under *New York Dock*; that contention, however, overlooks 40 years of decisions by arbitrators, the ICC, this Board, and the courts regarding the extent of that authority. Moreover, the award presented for review contains findings showing beyond question that the arbitrator properly considered and applied ICC and Board decisions regarding that authority.

A. The arbitrator acted within the well-established scope of authority granted to him under section 4 of *New York Dock*, and he made specific findings sufficient to support the remedy he adopted.

The arbitrator correctly concluded that the consolidation of territories now covered by the MidSouth CBA and Tex-Mex CBA is a “transaction” within the meaning of *New York Dock*, and is appropriate under *Tex-Mex Control*. Award at 10.⁷ He correctly noted that it is settled “that the mere passage of time is not a barrier to transactions that are directly related to and

⁷ The *New York Dock* conditions define a “transaction” in Art. I, §(1) as “any action taken pursuant to authorizations of [the ICC] on which these provisions have been imposed.” 360 I.C.C. at 84.

fulfill the purposes of the principal transaction” – in this case, the KCSR-Tex-Mex acquisition of control itself. *Id.*⁸ He correctly found that CPKC demonstrated that its proposed operational changes have “a direct connection” – a “proven nexus” – with the *Tex-Mex Control* decision, and that because all of these changes will occur on territories, and will involve CBAs, completely contained within KCSR’s system, *Tex-Mex Control* provides all the authority necessary for their implementation. *Id.*

The arbitrator then correctly found that CPKC “has demonstrated necessity of operating under a single collective bargaining agreement in the consolidated District,” and that many prior awards, ICC and STB decisions, and court decisions “have confirmed that, for carriers to achieve the public benefits made possible by a consolidation of operations, it is appropriate to provide for application of a single labor agreement to govern the consolidated operations.” *Id.*⁹

⁸ Citing *CSX Corp.—Control—Chessie System, Inc. et al.* 8 I.C.C.2d 715 (1992), *aff’d*, *ATDA v. ICC*, 26 F.3d 1157 (D.C. Cir. 1994).

⁹ Citing *United Transportation Union v. STB*, 108 F.3d 1425, 1431 (D.C. Cir. 1997) as a “representative example.” The arbitrator might also have properly referred to numerous other decisions of the ICC and STB which were also cited by CPKC in its arbitration submission, and which support his conclusions. *E.g.*, *CSX Corp.—Control—Chessie System, Inc. and Seaboard Coast Line Industries, Inc. (Arbitration Review)*, 3 S.T.B. 701, 719-20, 727-28 (1998) (“*Carmen III*”) (section 4 designed to facilitate and expedite the implementation of transactions approved by the ICC and STB as in the public interest, including subsequent operational changes that are directly related to and promote the benefits of the principal transaction; arbitration “plays a central role in the process”); *Norfolk Southern Corp.—Control—Norfolk & Western Ry., et al.*, 4 I.C.C.2d 1080, 1084 (1988), *aff’d after remand*, *Carmen III*; *CSX Corp.—Control—Chessie System and Seaboard Coast Line Industries*, 10 I.C.C.2d 831, 842-43 (1995) (operational implementation of a control transaction unfolds over time, as carriers gain experience with their new system; gradual implementation “is more likely to benefit employees”), *aff’d*, *United Transportation Union v. STB; Norfolk & Western Ry., et al.—Exemption—Contract to Operate and Trackage Rights, (Arbitration Review)*, F.D. No. 30582 (Sub-No. 2) (served July 7, 1989), *as reaff’d after*
(Cont’d)

The arbitrator then expressly held, “we find that adoption of a single collective bargaining agreement for the new District is necessary to effectuate the transaction.” *Id.* at 11.

And he also expressly held:

. . . As was held in *American Train Dispatchers Ass’n v. ICC*, 26 F.3d 1157 (D.C. Cir. 1994), a transaction “must yield enhanced efficiency, greater safety, or some other gain.” We find that the record in this case reveals that the Carrier has articulated the transportation benefits necessary to meet that standard.

Id.

The arbitrator found: “[H]ere, the Carrier has supplied adequate confirmation that application of the Tex-Mex CBA impedes operational efficiency and contributes to delay and congestion, impacts which can be reduced or eliminated if the MidSouth CBA is applied to the consolidated District.” *Id.* at 11-12.

The arbitrator’s ultimate holding was:

On this record, we find that the implementing agreement proposed by the Carrier, with its prior rights and dovetailing of seniority provisions, is appropriate for the transaction, subject to the amendments described below. The Carrier has sufficiently established that applying the MidSouth CBA to the consolidated District is not merely an attempt to transfer wealth from the employees to the employer, but that it is necessary to produce efficiencies and to better serve its current and potential customers. We find that allowing the Organization to retain the Tex-Mex CBA would impede operational efficiencies and benefits obtained by merging the territories. The New York Dock protective conditions are in place to address claims of employees who allege they have suffered wage loss as a result of changes in operations and agreements.

Id. at 13. The “amendments” to which the first sentence refers are the changes respecting personal leave and vacation days, see Award at 13, as mentioned in our note 6, above.

remand (served May 14, 1992) (arbitration award imposed CBA of the railroad that will be controlling operations).

B. The *Tex-Mex Control* decision did not separately limit CPKC's ability to make operational changes necessary to achieve the purposes of the approved control transaction, subject to the standard application of *New York Dock* procedures.

There is no substance to Mr. White's assertion (Motion at 2) that the arbitration award conflicts with limitations supposedly imposed on KCSR in the Board's *Tex-Mex Control* decision. Mr. White evidently reads into that decision a specific requirement that existing CBAs "would remain in force" and that Tex-Mex's "operational structure would not be fundamentally altered except through negotiation." Motion at 2; see also *id.* at 3, 4. But the decision imposes no such condition on the Board's approval of the Tex-Mex control transaction, and therefore no such limitation on the carriers' future deployment of employees, on their future combination into a single work force, or on the future use of *New York Dock* section 4. Mr. White misreads the decision and misunderstands its ordering language.

The STB ordered, in the third item of the decision's ordering language: "The proposed acquisition by Kansas City Southern of control of the Texas Mexican Railway Company is approved, *subject to the conditions set forth here*" (emphasis added). In the fourth item, the Board ordered: "Applicants must adhere to their *five representations*, as set out in this decision" (emphasis added). And in the seventh item, it ordered: "Approval of the KCS/TM control application is subject to the conditions for the protection of railroad employees set out in *New York Dock*, 360 I.C.C. 60, 84-90 (1979), *with the added condition* that employees who choose not to follow their work to Mexico will not lose their otherwise applicable *New York Dock* protections, and that employees whose work is moved over U.S. borders will not be required to show that Mexican law precluded them from following their work." *Tex-Mex Control* (slip op. at 24) (emphasis added).

So the conditions placed on the Board's approval of the control transaction were (a) adherence to the "five representations," and (b) the *New York Dock* conditions, subject to an "added condition" for the benefit of employees, applicable in the event work is moved to Mexico (which is not a circumstance involved in this case).

The "five representations" to which the fourth ordering item refers are listed in the decision (slip op. at 13-14) as follows:

- (1) KCS will not change the basic structure and operations of TFM except through negotiations. . . .
- (2) KCS will honor the terms of all existing Tex Mex and TFM agreements (marketing and pricing agreements in particular) and will allow such agreements to continue to their full term and not seek to cancel them early, even if it has the legal right to do so. When an existing agreement reaches its full maturation, KCS will not simply renew the agreement under the old terms without undertaking a good faith negotiation.
- (3) KCS will keep the Laredo gateway open on commercially reasonable terms. . . .
- (4) All carriers will be treated fairly at the Laredo Bridge. . . .
- (5) There would not be significant changes in applicants' operations and safety will remain a top priority. The KCS/TM transaction will not adversely impact the operations of any carrier, the environment, or safety. . . .

The "five representations" all concerned future relations with other railroads and the need to exclude the possibility that U.S. rail operations would be taken over by a Mexican entity. None refers to KCSR's future bargaining with the RLA representatives of its employees or those of Tex-Mex; nor does any of these commitments limit the application of standard *New York Dock* (separately and explicitly modified only to protect employees in the event work is moved to Mexico). Importantly, Tex-Mex is always referred to in the decision as "TM" or "Tex Mex." The short form "TFM," as mentioned in representations (1) and (2), refers not to Tex-

Mex, but to the Mexican railroad that at the time of the application owned Mexrail, the Mexican holding company that, in turn, owned the stock of Tex-Mex, which was purchased by Kansas City Southern, the parent of KCSR; it was KCSR's intent to acquire control of TFM, in a transaction not subject to STB regulation. (See slip op. at 7-13.) TFM (not Tex-Mex) controlled the Laredo Bridge (the U.S.-Mexico border crossing used by TFM and Tex-Mex) and had numerous commercial agreements with other U.S. railroads. The STB made the "five representations" conditions on its approval of the control transaction to ensure fairness in respect to U.S. competitors of KCSR/Tex-Mex, and also to ensure that rail operations in the U.S. would not come under the control of one of the Mexican entities. Thus, TFM's operations were to remain south of the U.S.-Mexico border, and "investment and management decisions of KCSR and Tex Mex will remain within the U.S. . . ." (Slip op. at 14.)

Not only do the "five representations" as recited in *Tex-Mex Control* address commercial and operational issues exclusively, but the supposed commitments conjured up by Mr. White will not be found in the applicants' submissions in the control proceeding.

Tex-Mex Control addressed all issues relating to the protection of Tex-Mex and KCSR employees' interests by imposing *New York Dock*. Where the standard operation of *New York Dock* was to be modified, the decision specified a single modification, for the benefit of employees whose work is moved to Mexico. The decision noted that applicants had stated their immediate expectation that "[t]he existing collective bargaining agreements for KCSR and Tex Mex would remain in force," while also making clear that they "further acknowledge the possibility that significant labor changes might occur as they gain experience in the course of implementing the KCS/TM transaction." Slip op. at 14. Those statements are included in the

decision's paragraph describing the railroads' understanding that *New York Dock* would apply – not as a proposal that *New York Dock*'s application be limited, but rather as expectations and a typical acknowledgment that the *New York Dock* process might be called upon in the future.

Mr. White's reading of *Tex-Mex Control* is not only erroneous on its face, but postulates an inconceivable result: that the *New York Dock* conditions would be imposed on KCSR and Tex-Mex, but those railroads would be prohibited – and *volunteered* to be prohibited, evidently in perpetuity, from implementing necessary changes in working conditions through the established (and unmodified) procedures of *New York Dock*. Of course, the railroad did not volunteer for such treatment, and it was not ordered by this Board in the control decision. What has, in fact, happened with regard to MidSouth and Tex-Mex employees is fully consistent with how the protective conditions have been understood to operate for the past four decades: Following acquisition of control, the controlling carrier finds a way to realize public transportation benefits by rearranging its operations with a consequent effect on its union-represented employees; the *New York Dock* conditions provide a procedure for proposing, negotiating, and, as required, arbitrating the changes necessary to realize those benefits.

2. Mr. White has not shown that he will suffer irreparable harm in the absence of a stay.

Mr. White, who has more than 12 years of seniority as a Tex-Mex locomotive engineer, has not alleged, and cannot allege, that he will suffer anything that could reasonably be called “harm,” much less “irreparable harm,” when the operational changes are implemented on Tex-Mex as permitted by the April 1, 2026 arbitration award. In brief, the MidSouth CBA will *not* require Mr. White to work on territory other than the Tex-Mex territory; it will *not* require him

to relocate; it will afford him *expanded* work opportunities because he will be able to choose to work at additional locations and over additional territory; it will *preserve* his existing rights under the Tex-Mex agreement, including his seniority standing. Moreover, Mr. White will be protected from loss of compensation for six years because *New York Dock's* monetary benefits will be available to him.

More specifically, when Mr. White begins working under the MidSouth CBA as permitted under the arbitration award, he will *benefit* from certain changes in his working conditions and entitlements:

- Mr. White will have “prior rights” to work in his current seniority district, selecting assignments in accordance with his current seniority ranking. If a MidSouth engineer transfers to Tex-Mex territory, that engineer will be junior to Mr. White in using his seniority to select assignments on that territory (no matter what seniority he has on MidSouth), because Mr. White, like all other current Tex-Mex engineers, will have prior rights on the territory.
- Mr. White will not be obligated to relocate and can continue to work on the Tex-Mex territory. Engineers on Tex-Mex will maintain the same home terminal unless they choose to relocate. Mr. White will gain work options if he chooses to move, because he may use his company seniority to work at MidSouth locations, which are not currently open to him.
- Employees in engineer pools under the MidSouth CBA are paid for full calendar days if marked up and not called, both home and away; in contrast, under the Tex-Mex CBA, pools do not have this benefit and employees in pools are not paid if they do not work. The Tex-Mex CBA does provide “held away” pay, which is an hourly payment to engineers at an away-from-home terminal that begins after 16 hours and ceases the moment the employee is called to work; but under the MidSouth CBA, engineers held at an away-from-home terminal, like those at home, are paid for full calendar days even if not used – a more significant benefit.
- Pool work, extra board work, and local work on Tex-Mex territory would be treated the same under the MidSouth CBA as they are under the Tex-Mex CBA.
- A 401K plan, with an employer match, will be available to Mr. White under the MidSouth CBA. In contrast, a 401K plan is not offered under the Tex-Mex CBA.

Other changes in Mr. White's working conditions will be *neutral* in effect:

- Mr. White's collective bargaining representative, BLET, will remain the same.
- Under the MidSouth CBA, as modified by the arbitration award for the benefit of employees, Tex-Mex engineers' accrued paid personal days are protected and they will retain the ability to take a split vacation week.
- Today, locomotive engineers on Tex-Mex are paid based on mileage, while on MidSouth, payment is based on hours served. This will be a neutral change for Tex-Mex engineers, as the time to take a train over a particular run (say, from Kendleton to Beaumont), does not change and the hourly rate of pay under the MidSouth CBA is commensurate with pay for the mileage under the Tex-Mex CBA.¹⁰
- Calling order stays the same.
- "Seven-day mark" (procedure for selecting assignments) stays the same.
- Under both CBAs, all pool assignments are available to employees in the pool before they are made available to extra board employees.

Against this, Mr. White simply says – without any factual support – that he will suffer immediate and irreparable harm in that (1) seniority rights will be altered or eliminated; (2) there will be changes to assignments and job structures; (3) the Tex-Mex CBA will be replaced by the MidSouth CBA, and (4) established working conditions will be disrupted. Motion at 2.¹¹

¹⁰ In the event that assignments under the MidSouth CBA result in monthly compensation lower than paid for corresponding assignments under the Tex-Mex CBA, Mr. White would be eligible for *New York Dock* monetary benefits during his six-year protective period, provided he satisfies the requirements of the protective conditions.

¹¹ Mr. White asserts that he "and similarly situated employees" will be irreparably harmed. Motion at 2. Mr. White is the sole petitioner in this matter. He has no capacity to represent other employees, for purposes of the RLA, or any other statute. As noted, he is seeking review as an individual and does not speak for his labor union, which has not appealed from the award, or for assertedly "similarly situated employees."

As we have shown above, none of these allegations has any substance. Seniority rights on Tex-Mex will be preserved, *not* altered or eliminated; changes to job assignments will also generally be to open up more jobs, with *New York Dock* monetary benefits available to employees whose compensation may be adversely affected (an event we do not anticipate). The mere replacement of one CBA by another CBA, with existing union representation maintained, has never been considered cognizable “harm” under *New York Dock*. Working conditions on Tex-Mex territory will be largely unchanged – again, with monetary benefits available if called for under the protective conditions. Imposition of the *New York Dock* conditions appropriately protects employees who may be affected by a control transaction. *Cf. Burlington Northern Inc., et al. —Control and Merger—Santa Fe Pacific Corp., et al.*, 1995 ICC LEXIS 249, *10, F.D. No. 32549 (served Sept. 21, 1995) (“*BN Control*”).

Mr. White’s allegations of “harm” boil down to his unhappiness at having to work under a different CBA. He wrongly asserts that this supposed harm would be irreparable because it “is not easily reversible,” and that if the arbitration award is given effect, restoration of the prior status quo thereafter would be “difficult or impossible” and “impracticable,” so that he could not, absent a stay, obtain relief sought by his arbitration appeal. CPKC disagrees with those propositions, for which Mr. White offers no support. In the unlikely event that CPKC implements its MidSouth-Tex-Mex work force consolidation and subsequently this Board were to sustain Mr. White’s appeal, CPKC sees no significant administrative impediment to readjusting its working arrangements. (To be sure, such an event would mean that CPKC and its customers would no longer be realizing the economic and service benefits of the transaction;

but those benefits are a reason for allowing CPKC to go forward with the transaction, not a justification for delaying its implementation as approved in the April 1, 2026 arbitration award.)

3. Other interested parties would be substantially harmed by a stay.

CPKC would be harmed if the April 1, 2026 arbitration award is stayed, because the railroad could not make its intended operational changes; it is essential to realization of the benefits of those changes that a single CBA – in particular, the MidSouth CBA – be applied to all operations over the Tex-Mex territory, as contemplated. If the operational changes are not made, CPKC’s customers would be deprived of the service and cost benefits that those changes are intended to generate. And, whether Mr. White is interested or not, other current Tex-Mex engineers would be deprived of the *benefits* of being brought under the MidSouth CBA –an increase in available work opportunities with their existing Tex-Mex seniority preserved, the ability to participate in a 401K plan with match, and with *New York Dock* monetary benefits potentially available should there be any adverse effect on their compensation. The loss of benefits by other persons would, moreover, be irreparable. *Cf. BN Control*, 1995 ICC LEXIS 249, *9-10.¹²

4. The grant of a stay will harm, not serve the public interest.

The purpose of CPKC’s intended operational changes is to provide cost efficiencies and better service to CPKC’s customers. As long as CPKC is unable to implement its operational

¹² Mr. White incorrectly states the third part of the inquiry in considering a motion for stay as involving a “balancing” of harms as between the parties, rather than assessing the harm that a stay would inflict on parties *other than the movant*. Motion at 2. Some courts outside the D.C. Circuit may apply such a test, but this Board does not.

changes as allowed under the April 1, 2026 arbitration award, the benefits of those changes cannot be realized.

Mr. White concludes with a bootstrap assertion that the public interest will be served by a stay because the Board's authority would be subverted by allowing the *New York Dock* conditions to be incorrectly applied. Motion at 2. As we have indicated, the protective conditions are correctly applied in the arbitration award, and Mr. White's contentions to the contrary are without merit. Allowing CPKC's operational changes to be delayed by Mr. White's fundamental misunderstanding of *New York Dock* and his personal, idiosyncratic objection to working under a different CBA would introduce an aspect of irregularity and randomness into this Board's processes, contrary to all normal expectations.

CONCLUSION

For the foregoing reasons, this Board should deny Mr. White's "Emergency Motion For Stay And Interim Relief."

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of May, 2026, I caused a copy of the foregoing Respondents' Reply to Petitioner Daniel T. White's Emergency Motion for Stay and Interim Relief to be served by email on the Petitioner.

/s/ Charles W. Webster

Charles W. Webster