

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Chief Counsel
May 26, 2026
Part of
Public Record

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

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Finance Docket No. 34342

**RESPONDENTS' SURREBUTTAL
IN OPPOSITION TO PETITIONER'S MOTION FOR A STAY**

Petitioner Daniel T. White seeks review of an arbitration award that authorizes Respondents Kansas City Southern Railway Company ("KCSR") and its subsidiary The Texas Mexican Railway Company ("Tex-Mex") to implement certain operational changes in implementation of this Board's decision in the above-captioned Docket granting control authority to KCSR.¹ Mr. White also seeks a stay of the arbitration award, but if his "Reply to Respondents' Opposition (May 14, 2026)," filed May 20, 2026 (hereinafter "Reply to Opposition") makes anything clear, it is that Mr. White no longer contends that he will suffer cognizable harm, much less irreparable harm, if a stay is not granted. Because he therefore cannot satisfy his burden of persuasion as to irreparable harm -- in addition to the other

¹ *Kansas City Southern--Control--The Kansas City Southern Railway Company, et al.*, F.D. No. 34342 (served Nov. 29, 2004) ("*Tex-Mex Control*").

Mr. White's petition for review also names Canadian Pacific Kansas City Limited as a Respondent, but that company was not a party to F.D. No. 34342 or to the arbitration proceeding in question. It does control KCSR and KCSR's subsidiaries, including 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 have adopted the common designation "CPKC" for purposes of the proceeding. *CPKC Control* itself is not otherwise related to this case.

reasons set forth in Respondents' Opposition to Motion for Stay (filed May 14, 2026) -- his motion must be denied.

PROCEDURAL HISTORY

Mr. White initiated this proceeding on April 24, 2026, by filing a petition for review of an arbitration award rendered on April 1, 2026, in a proceeding conducted under Article I, section 4 of the Board's "*New York Dock*" employee protective conditions.² These conditions were imposed on KCSR and Tex-Mex when the Board approved KCSR's acquisition of control of Tex-Mex in *Tex-Mex Control*. 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, in implementation of *Tex-Mex Control*.

Mr. White also filed an "Emergency Motion For Stay And Interim Relief," seeking to enjoin CPKC from proceeding with its proposed operational changes pending Board decision on the arbitration appeal. CPKC filed its Opposition to that motion on May 14, 2026.

Without asking for leave, Mr. White filed his Reply to Opposition on May 20, 2026.

CPKC has today moved the Board to strike Mr. White's unauthorized May 20, 2026 filing, or, in the alternative, to permit the filing of this Surrebuttal, which is limited to a single issue that is critical to the Board's consideration of Mr. White's motion for a stay.

² 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).

ARGUMENT

Mr. White, in his Reply to Opposition, disclaims reliance on the Board's established four-part test for determining whether a stay should be granted.³ He repeatedly asserts that only one question matters: whether CPKC's proposed operational changes are forbidden by the Board's decision in *Tex-Mex Control*, which he repeatedly contends approved only a "limited control transaction" that does not provide a basis for these operational changes.

The simple fact is that implementation of CPKC's proposed operational changes under authority of *Tex-Mex Control*, which involve application of the MidSouth CBA to Tex-Mex engineers, will not harm Mr. White at all, in any sense pertinent to the "irreparable harm" standard. In our Reply to the stay motion, we listed numerous respects in which Mr. White will be *benefited* by working under the MidSouth CBA, and other respects in which the changes will be *neutral* in terms of their impact on Mr. White. Mr. White, who has substantial seniority as a Tex-Mex engineer, will be able to continue working on the same Tex-Mex territory as before, and he will have "prior rights" to jobs on that territory, meaning he cannot be displaced by any engineer who is not already a *Tex-Mex* employee with greater seniority; all engineers now working under the MidSouth CBA will lack prior rights on Tex-Mex territory no matter what their ranking is on MidSouth. Mr. White will also have access to additional work opportunities on the MidSouth territory, if he chooses to pursue them; and he will become eligible to participate in the existing MidSouth 401K plan, with employer match – while under Mr. White's current Tex-Mex CBA there is no 401K at all. In the unlikely event that Mr. White, as a result of

³ See *Wash. Metro. Area Transit Comm'n 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).

the transaction, should be placed in a “worse position,” he will have up to six years of wage and benefits protection under terms of the *New York Dock* conditions.⁴

Mr. White now asserts that none of the above facts is pertinent to his request for a stay. He says, “Respondents’ detailed enumeration of purported benefits – including compensation structure, work opportunities, and retirement options – *does not bear on the governing inquiry.*” Reply to Opposition at 4 (emphasis added). And he says, “Respondents devote substantial discussion to purported benefits associated with the imposed framework. Petitioner does not ask the Board to adjudicate the comparative merits of competing labor agreements.” *Id.* at 4 n.1; see also *id.* at 6 n.2 (“Petitioner does not ask the Board to adjudicate the comparative merits of competing labor agreements.”).⁵

Mr. White has the burden of persuasion on the question of irreparable harm. He has declared, in effect, that he has nothing of substance to say on this question.

⁴ 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) (appropriate protection for affected employees).

⁵ Mr. White does venture one supposed, partial wage comparison, but it is incomplete and, in any event, inapposite. He compares a specific pay guarantee under the Tex-Mex CBA with what he asserts would be a corresponding guarantee under what he calls the “separate ‘Hourly’ framework.” Reply to Opposition at 4 n.1; see also *id.* at 5, 6 (references to “hourly” agreement). This appears to be a reference to recent Railway Labor Act negotiations between CPKC and BLET -- negotiations that are not under this Board’s authority; do not implicate *New York Dock* issues; and are not involved in the arbitration award presented for review in this case. In their RLA conferences, negotiators for CPKC and BLET came to terms on a so-called “hourly” agreement, that is, a new CBA providing for a new basis of pay; but that agreement was put to a ratification vote by BLET’s members, and on May 21, 2026, BLET informed CPKC that ratification *failed*. Accordingly, as matters stand, the “hourly” agreement cannot become effective.

CONCLUSION

Mr. White has acknowledged, whether intentionally or not, that he will suffer no harm, much less irreparable harm, if CPKC implements its proposed operational changes as allowed by the April 1, 2026 arbitration award. Because a showing of irreparable harm is a prerequisite to the grant of a stay, the Board should deny Mr. White's motion for a stay.

Respectfully submitted,

/s/ Charles W. Webster

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of May, 2026, I caused a copy of the foregoing Respondents' Surrebuttal In Opposition To Petitioner's Motion For A Stay to be served by email on:

the Petitioner; and by email on:

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/s/ Charles W. Webster

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