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May 28, 2026

Chief of Case Administration
Office of the Chief Counsel
United States Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

ENTERED
Office of Chief Counsel
May 28, 2026
Part of
Public Record

Re: FD 34342, *Kansas City Southern—Control—The Kansas City Southern Railway Company, et al*

Dear Chief of Case Administration:

Attached please find Respondent Kansas City Southern Railway et al.'s Reply to the Petition for Review and/or Declaratory Order brought by Daniel T. White in this matter. Thank you.

Sincerely,

/s/ Charles W. Webster

cc (via email): Daniel T. White
Mark Wallace
John F. Fink

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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

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) Finance Docket No. 34342
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**RESPONDENTS' REPLY TO PETITIONER DANIEL T. WHITE'S
PETITION FOR REVIEW AND/OR DECLARATORY ORDER**

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 dismiss the Petition for Review filed by Tex-Mex locomotive engineer Daniel T. White, or in the alternative, deny review, and in any event deny all relief sought by petitioner.

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

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. 1980).

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.

territory of KCSR. KCSR controls Tex-Mex, under authority granted in this Docket, *Kansas City Southern--Control--The Kansas City Southern Ry., et al.*, F.D. No. 34342 (served Nov. 29, 2004) ("*Tex-Mex Control*").

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

BLET itself has not appealed from the April 1, 2026 award, and the time for appeal has passed.²

Concurrently with the filing of his petition for review, Mr. White filed an "Emergency Motion For Stay And Interim Relief." Respondents filed an Opposition to the motion, which is pending. Petitioner then filed an unauthorized Reply to Opposition, and Respondents moved to strike that Reply, or, in the alternative, for leave to file a Surrebuttal; that motion is pending.

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

² It 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, 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 filing 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.

Corporation (“MidSouth”). The ICC imposed the *New York Dock* conditions on the transaction.³

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, in *Tex-Mex Control*, the STB approved the acquisition of Tex-Mex by KCSR's corporate parent and imposed *New York Dock* conditions on the transaction, subject to additional protections for employees whose work might be transferred to Mexico -- a point not in issue here. Tex-Mex's engineers are also represented by BLET and, like those of MidSouth, have continued to be covered by their own collective bargaining agreement (the “Tex-Mex CBA”).

On February 19, 2025, CPKC⁴ served notices on BLET, under section 4 of the *New York Dock* conditions as imposed in *MidSouth Control* and *Tex-Mex Control*, of the railroads' 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

³ *Kansas City Southern Industries, et al. —Control—MidSouth Corp., et al.*, F.D. No. 32167 (served June 4, 1993) (“*MidSouth Control*”).

⁴ 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 Ry. 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 collective designation “CPKC” for purposes of the underlying arbitration and this submission. The *CPKC Control* decision itself is not otherwise related to this case. See Part II.C. of our Argument, below.

combination of engineers working on the former MidSouth properties with other engineers of KCSR's own 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 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 following the combination of work forces, the existing MidSouth CBA will apply to all locomotive engineers working in the Shreveport District , including those previously under the MidSouth CBA and those previously working under KCSR's own CBA with BLET. 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 this 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 locomotive engineer work forces at Shreveport should be carried out, CPKC proposed to proceed with the operational changes contemplated in the second February 19, 2025 *New York Dock* notice. CPKC proposed to consolidate train operations and transportation assets of Tex-Mex into a "Consolidated Southern Region," establishing in the Region a consolidated work force consisting of the engineers of MidSouth, KCSR, and Tex-Mex; and that the MidSouth CBA would apply to the consolidated engineer work force in the Region, necessarily including work on the formerly separate 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. 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 certain entitlements already in place for current Tex-Mex employees, potentially including Mr. White.⁵

As we have noted, 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.

Petitioner's Allegations

Mr. White's petition for review 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 CBA will, upon combination of the Tex-Mex engineers with KCSR and MidSouth engineers, become subject to the MidSouth CBA, which, in accordance with the prior January 16, 2026 arbitration award, will also apply to KCSR's engineers working on the former MidSouth property in the Shreveport District.

⁵ The April 1, 2026 award modifies the MidSouth CBA in two respects, to the benefit of current Tex-Mex engineers including Mr. White, who will become subject to the MidSouth CBA. Those engineers will be allowed to (1) retain personal leave days that are in excess of the number of leave days they would otherwise 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.

Mr. White, a Tex-Mex locomotive engineer with over 12 years' seniority who is currently covered by the Tex-Mex CBA, would prefer to keep working under that agreement and not work under the MidSouth CBA. He asserts that the 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, imposition of a single CBA on a combined work force is beyond the authority of section 4 arbitrators generally, and also because, he asserts, the *Tex-Mex Control* decision withheld from KCSR and Tex-Mex the ability to combine their work forces under a single CBA, using the section 4 procedures.

Mr. White misunderstands the power of arbitrators under the *New York Dock* conditions, and he misreads *Tex-Mex Control*. As a result, his challenge to the award must necessarily fail because it does not satisfy this Board's standards for review of an arbitration award. However, his appeal should be *dismissed at the threshold* because the *New York Dock* conditions do not confer on Mr. White, an individual employee who is not a "representative" of employees, the capacity to participate in a section 4 arbitration as a party -- and therefore this Board should not entertain his appeal from a section 4 award.

ARGUMENT

I. MR. WHITE'S PETITION FOR REVIEW SHOULD BE DISMISSED BECAUSE MR. WHITE IS NOT A "REPRESENTATIVE" OF EMPLOYEES AND THEREFORE CANNOT BE A PARTY TO A NEW YORK DOCK SECTION 4 ARBITRATION OR AN APPEAL FROM A SECTION 4 ARBITRATION AWARD.

The text of *New York Dock* section 4 is clear; it affords an individual employee no role in the negotiation or arbitration of an implementing agreement. And it is important that the text be given its intended effect. For the Board to allow an individual employee, who was not involved and could not have been involved in the negotiations or arbitration, to seek modification of a generally applicable

section 4 award to suit his individual preferences would undermine the structure of labor relations, contradict the reason for requiring negotiations and arbitration exclusively with “representatives” in section 4 cases, and create uncertainty on the part of carriers (as well as employees) regarding the finality of arrangements agreed-to with labor unions. This concern is especially acute when, as here, the employees’ actual representative, their labor union, has elected not to appeal from the arbitration award.

Allowing the change in existing appellate procedure that Mr. White seeks would destabilize labor relations to the detriment of unions (and their members) as well as carriers. In contrast, as we will explain, these considerations are not present in either the text or the intent of *section 11* arbitration appeals where the individual employee is seeking to appeal an arbitral decision as to his individual, personal claim for *New York Dock* benefits. But a section 11 situation is not what we have here.

A. Petitioner White, an individual employee who is represented by a labor union, could not have been a party to the *New York Dock* section 4 proceedings in connection with CPKC’s MidSouth/Tex-Mex transaction.

The negotiation and arbitration of implementing agreements are governed exclusively by section 4 of the *New York Dock* conditions. Once a railroad has given notice under section 4(a) of its intent to carry out a “transaction” that may cause union-represented employees to be dismissed or displaced, or work forces to be “rearranged,”⁶ section 4(b) permits the transaction to be implemented only pursuant to an implementing agreement that has been negotiated or imposed by arbitration conducted under section 4(a). Section 4(a)

⁶ *New York Dock* Art. I, §1(a), 360 I.C.C. at 84, defines “Transaction” as “any action taken pursuant to authorizations of [the ICC] on which these provisions have been imposed.” Here, the *Tex-Mex Control* decision authorized KCSR’s acquisition of control of Tex-Mex and imposed the protective conditions, and the *New York Dock* transaction -- the “action taken pursuant to authorization(s)” -- is the set of operational changes on Tex-Mex and MidSouth that include the application of the MidSouth CBA to Tex-Mex engineers.

provides procedures for the conduct of negotiations and arbitration. It assigns responsibility for negotiating an agreement on behalf of the employees, or representing their interests in arbitration, exclusively to their “representative,” which, for employees represented by a labor union under the Railway Labor Act, necessarily means that labor union.

1. BLET is the exclusive “representative” of Tex-Mex locomotive engineers under the RLA, and accordingly, CPKC is barred by law from negotiating agreements covering rates of pay, rules, and working conditions of those employees with anyone other than BLET.

It has been settled for many years that when a representative of its employees has been designated for purposes of the RLA, a carrier is obligated to bargain with that representative, and exclusively with it, with respect to pay, rules, and working conditions. RLA, 45 U.S.C. §152 Ninth; *Virginian Ry. v. System Fed. No. 40*, 300 U.S. 515, 544-53 (1937); *Chicago & N.W. R.R. v. United Transp. Union*, 402 U.S. 570 (1971) (obligation to bargain in good faith is enforceable by injunction). Because BLET is the RLA representative of locomotive engineers on both Tex-Mex and MidSouth, CPKC is barred by law from negotiating with anyone else concerning collective agreements covering engineers. This includes Mr. White; we cannot bargain with him over labor agreements or their interpretation or application.

In contrast, the RLA does give certain rights to individual employees who are represented by labor unions in arbitration, but only with respect to their personal claims and grievances arising *under* existing collective bargaining agreements. Under the RLA, 45 U.S.C. §153, an individual employee may take his own claim or grievance to an established RLA adjustment board if his union does not, although he cannot force the creation of a new arbitration board as a union might do; once an award has been rendered, the employee may

individually ask a federal district court to enforce the award, or overturn it, if his union declines to pursue such a remedy. §153 First (p), (q); §153 Second.

In all circumstances, however, the RLA reserves the process of collective bargaining to the designated “representatives” of employees.

2. In this case, section 4 of *New York Dock* required CPKC to negotiate an implementing agreement, and if necessary go to arbitration to obtain such an agreement, with the RLA “representative” of Tex-Mex and MidSouth locomotive engineers, and with no other person.

Section 4(a) directs that after a railroad gives notice of its intent to implement a change in operations in the course of carrying out a transaction authorized by the STB, the railroad and the employees’ “representatives” will negotiate for the purpose of reaching an implementing agreement. If negotiations are unsuccessful, “either party to the dispute” may submit the matter to arbitration. The parties to this arbitration are the railroad and the representative(s). 360 I.C.C. at 85.

Here, the parties to the section 4 negotiations and arbitration were CPKC (specifically, KCSR and Tex-Mex) and BLET, which is the “representative” of locomotive engineers on Tex-Mex, MidSouth, and KCSR under the RLA and, *necessarily*, for purposes of section 4 itself.⁷ No

⁷ There is no reason to think that the meaning of “representative” in *New York Dock* is different from the definition of “representative” in the RLA, 151 U.S.C. §1 Sixth: “The term ‘representative’ means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.”

The *New York Dock* section 4(a) requirement that carriers contemplating a “transaction” notify and negotiate with employees’ “representatives” originated in section 4 of the

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individual employees participated in these negotiations or in this arbitration. Section 4, like the RLA generally, does not contemplate or provide a role to individual employees in the process of devising new collective bargaining agreements, or in arbitrating disputes over the creation of such agreements.

Section 4 naturally does not speak to the question of appealing arbitration awards to the STB, which was not addressed by the ICC until eight years after adoption of the protective conditions. Section 4's commands, however, extend to railroads and representatives of their employees; no role for individual employees is created.

B. As a non-party to the section 4 arbitration proceeding, Mr. White should not be allowed to appeal the resulting arbitration award.

The ICC and STB have allowed appeals from arbitration awards rendered under the protective conditions since 1987, *Chicago & N.W. Transp. Co.—Abandonment—near Dubuque & Oelwein, Iowa*, 3 I.C.C.2d 729 (1987) (“*Lace Curtain*”), *aff'd*, *Int’l Brotherhood of Elec.*

Washington Job Protection Agreement of 1936 (“WJPA”), a collectively bargained set of protections after which *New York Dock* and cognate protective conditions were patterned. WJPA section 4 requires each carrier contemplating a “coordination” (the prior term for “transaction”) give notice to, and negotiate with, the representatives of its affected employees, “for the purpose of reaching agreements with respect to the application thereto of [WJPA’s] terms and conditions”

WJPA implicitly defines the term “representatives” as meaning the unions that signed WJPA. The Agreement’s introductory paragraph recites that it was entered into by the signatory carriers and “employees of said carriers, *represented* by the organizations signatory hereto by their respective duly authorized executives,” and “in behalf of each of said carriers and its employees who are now or may hereafter be *represented* by any of said organizations” (emphasis added). WJPA was signed on behalf of many carriers and all of the then-prominent labor organizations representing railroad employees, including the grand chief engineer of the Brotherhood of Locomotive Engineers, as Mr. White’s union was then known. WJPA does not explicitly define “representative” but plainly was referring to the signatory labor organizations and any successors.

Workers v. ICC, 862 F.2d 330 (D.C. Cir. 1988), and appeals are now allowed by regulation, 49 C.F.R. §1115.8.

The first question necessarily presented by Mr. White's petition is whether Mr. White, who was not only not a party to the *New York Dock* section 4 arbitration but was *excluded* from being a party under the terms of section 4, should be allowed to pursue an individual appeal from the resulting award. To maintain fidelity to the protective conditions and to the structure of railroad labor relations generally, he should not be allowed to appeal.

1. The ICC decided in 1989 that it would entertain arbitration appeals by individual union-represented employees. CPKC submits that this decision necessarily extended only to awards deciding the claims of such individual employees arising under the protective conditions or under the provisions of existing implementing agreements, and not to section 4 awards that imposed new implementing agreements following negotiations and arbitration between a railroad and one or more labor unions.

The *New York Dock* conditions provide for two different kinds of arbitration: determination of an implementing agreement in accordance with section 4, and resolution of claims arising *under* the protective conditions or implementing agreements, which is subject to Article I, section 11 ("section 11"). As we have seen, section 4 limits participation to "representatives." Section 11, in contrast, applies to disputes between "the railroad and its employees or their authorized representatives":

11. Arbitration of disputes. -- (a) In the event the railroad and its employees or their authorized representatives cannot settle any dispute or controversy with respect to the interpretation, application or enforcement of any provision of this appendix, except sections 4 and 12 of this article I, within 20 days after the dispute arises, it may be referred by either party to an arbitration committee. . . .

* * *

(e) In the event of any dispute as to whether or not a particular employee was affected by a transaction, it shall be his obligation to identify the transaction and specify the pertinent facts of that transaction relied upon. It shall then be the railroad's burden to prove that factors other than a transaction affected the employee.

New York Dock, 360 I.C.C. at 87-88.

Section 11 does not apply to disputes over the making of new implementing agreements, which is the subject of section 4; section 4 disputes are explicitly excluded from section 11 arbitration. Typical section 11 disputes include such matters as whether particular employees have been “adversely affected” by a transaction and thereby have become eligible for monetary benefits; the calculation of benefits due; and whether particular employees are subject to obligations assertedly imposed on them by the protective conditions or implementing agreements, such as the obligation to follow their work to a new location.

We do not dispute the long-settled proposition that labor unions, like railroads, may seek review of both section 4 and section 11 arbitration awards; moreover, for purposes of dealing with Mr. White’s appeal from a *section 4 award*, it is unnecessary to reach the question whether, and in what circumstances, individual employees may seek review of *section 11 awards* deciding their own individual claims. Section 4 and section 11 arbitrations decide very different things, and there are good reasons why the STB, as an appellate authority, should accept individual employee appeals in section 11 cases.

The ICC addressed the issue of individual employee appeals in *Norfolk & Western Ry. and New York, C. & St. L. R.R.—Merger, etc.*, 5 I.C.C.2d 234, 1989 ICC LEXIS 13* (1989) (“*N&W Arbitration Review*”). There, the Commission decided that it would entertain appeals from

arbitration awards submitted by individual union-represented employees, but it did not specify the types of cases in which such appeals might be considered.

We acknowledge that this decision's language, which we will set forth below, appears on first reading to be broad. However, the case itself involved only the claims of individual employees arising *under* implementing agreements, not the creation or imposition of an implementing agreement. In our view, *N&W Arbitration Review* is not authority for disregarding a labor union's exclusive role in *making* new agreements, either by negotiation or through arbitration.

N&W Arbitration Review also did not involve the *New York Dock* conditions or any other protective conditions authored by the ICC. Rather, it decided an appeal from an award rendered under the privately negotiated 1962 Merger Agreement, which the ICC had imposed, at the request of the railroads and unions, as protective conditions in its 1964 decision approving the merger of N&W with the "Nickel Plate" Railroad. The Merger Agreement contemplated that the parties would enter into various "implementing agreements," which they did during the period 1962-1976. The Merger Agreement did not provide a specific method for imposition of an implementing agreement through arbitration but contained a single arbitration provision that applied to all unresolved disputes.

In any event, the case did not involve the creation of a new implementing agreement in arbitration. In 1988, 24 years after the merger of N&W and Nickel Plate had been consummated, two employees in N&W's accounting department -- represented by the Brotherhood of Railway, Airline, and Steamship Clerks ("BRAC") and entitled until retirement to the protections of the Merger Agreement, contended that they should not be required to

relocate when their office was moved from Cleveland to St. Louis. The employees contended they were entitled, *under the relevant implementing agreements*, to remain in place drawing full monetary benefits. BRAC took the employees' claims to arbitration, but the arbitrator's award denied the claims, and the union declined to pursue them any further. The two employees then appealed the arbitration award on their own, invoking *Lace Curtain* -- and the ICC accepted the petition (and denied it on the merits).

The substantive question that had been presented to the *N&W* arbitrator was whether the employees were right or wrong in their interpretation of the terms of the applicable implementing agreements. That arbitrator was not asked to devise an implementing agreement. Rather, he was asked to interpret and apply the terms of pertinent existing, voluntarily negotiated implementing agreements. On appeal, the ICC had no occasion to consider whether the implementing agreements themselves had been appropriate in the context of the N&W-Nickel Plate merger that was consummated 24 years previously.

In explaining its decision to hear the employees' appeal, the ICC acknowledged the exclusive role of unions as representatives of employees in ordinary collective bargaining, and what the ICC also thought was their exclusive role in cases challenging arbitration awards in court. The Commission also acknowledged the case authority, notably *Anderson v. Norfolk & W. Ry.*, 773 F.2d 880 (7th Cir. 1985), and cases cited in that decision, that bars judicial review of a labor arbitration award where the party seeking review is an individual employee who had not been a party to the arbitration. However, the Commission said that its role in reviewing arbitration awards "is different from that of the courts," which "have no labor protection responsibility." *N&W Arbitration Review*, 1989 ICC LEXIS 13, *5. The Commission reasoned

that the arbitration process under ICC-imposed protective conditions “is, in essence, our delegation to the arbitrator(s) to implement the labor protective conditions we have imposed,” *id.*, and therefore the ICC’s role in reviewing an arbitration award “is fundamentally one of considering whether our labor protective conditions have been properly interpreted and carried out,” *id.* at *5, *6 (citing *Lace Curtain* and what is now 49 U.S.C. §11327, which requires the ICC to impose employee protection in its orders approving certain railroad transactions). Because of the ICC’s different role, the cited precedent barring employees from appealing “does not accommodate our mandate and is not binding in this context.” *Id.* at *6.

We have not found a case in which either the ICC or this Board has expressly held that an individual employee may appeal from an arbitration award imposing an implementing agreement under *New York Dock* section 4 or any comparable provision of other protective conditions. Mr. White’s attempted appeal provides an appropriate vehicle for the Board’s giving attention to this specific question and concluding that the decision in *N&W Arbitration Review* should be limited to its facts (individual claim arbitration and appeal).

First, we suggest that the ICC too easily brushed aside the Seventh Circuit’s *Anderson* decision. The *Anderson* court was presented with an attempted appeal by a railroad employee from a *New York Dock* section 4 arbitration award (rendered five years before the ICC announced in *Lace Curtain* that it would accept arbitration appeals). Citing numerous cases, the court articulated and applied a general principle that, absent a breach by the union of its duty of fair representation, an individual employee cannot seek review of an arbitration award rendered in a proceeding to which only management and the employee’s labor union were parties. 773 F.2d at 881-82. The court held that in such a circumstance, the employee lacked

standing to appeal, so the court must dismiss for lack of subject matter jurisdiction.

The issue we raise with respect to Mr. White’s capacity is not a constitutional “standing” issue. The “standing” doctrine is premised on U.S. Const. Art. III, §2, which confines the jurisdiction of federal courts to deciding “cases” and “controversies.” This Board is not a federal court, and its decision authority is not limited to “cases” and “controversies.” So, our position is not that this Board lacks subject matter jurisdiction over Mr. White’s appeal.⁸ Rather, the relevance of *Anderson* is that it recognizes that someone who was not a party to an arbitration proceeding does not, as a general rule, have a cognizable basis for obtaining review of the resulting award. The ICC gave inadequate attention to that principle, which supports barring section 4 appeals even if subject matter jurisdiction is not the question.

The ICC concluded in *N&W Arbitration Review* that its statutory responsibility to impose and oversee application of employee protective conditions warranted the acceptance of appeals from nonparties. This may seem reasonable in the context of appeals from awards

⁸ In his unauthorized Reply to Opposition filed May 20, 2026 (at 1), possibly prompted by a footnote in our Opposition to Stay Motion (at 2 n.2) in which we reserved our defenses including whether Mr. White’s petition for review should be entertained, Mr. White asserted that “Respondents argue that Petitioner lacks standing” in this proceeding. As we have said in the text, that is not our position.

Our position is that the Board should *decide*, at the threshold, that it will not entertain Mr. White’s petition, because *New York Dock* does not allow him a role in connection with a section 4 proceeding. The Board might dismiss the petition as not allowed by the protective conditions; or it might simply deny review of the arbitration award on this ground. Such an action would not be part of *Lace Curtain* review, because Mr. White’s problem in this regard is not the arbitrator’s doing (Mr. White did not seek party status until he appealed from the award), but is caused by the section 4 scheme itself, which allows a role only to “representatives.” Therefore, our threshold argument does not implicate Mr. White’s failure, which we will explain in Part II of the Argument, to satisfy the Board’s standards for obtaining review of an award on the merits.

dealing with individual employee claims under the protective conditions or implementing agreements; action taken in such cases immediately and directly affects particular employees. Moreover, as we have explained, section 11 allows individual employees to have a role in the handling of their claims. However, in cases arising under section 4, which excludes individual employees from the process, it does not serve the ICC's professed oversight responsibility to allow nonparty employees to enter at the appellate stage, strangers to the prior negotiations and arbitration, and (as in this case) speaking only for themselves and expressing only their individual opinions and preferences.

Additionally, allowing an appeal by an individual employee would not serve the purposes of section 4. The idiosyncratic complaint of one employee does not merit the institution of an administrative proceeding the purpose of which is supposedly to determine whether the Board's protective conditions have been properly interpreted. One employee is unlikely to have had any exposure to the negotiating and arbitration history of the case; he may simply dislike one of many provisions in the imposed implementing agreement. Even if the Board should entertain such an appeal and find fault with some feature of the arbitrated section 4 implementing agreement, it is highly unlikely that the Board will, on its own, undertake to rewrite and impose a better implementing agreement. Inevitably, there would be further negotiations between union and railroad, and perhaps renewed proceedings before the arbitrator -- section 4 proceedings in which the appellant individual employee is still afforded no role by the protective conditions themselves.⁹

⁹ Finally, we have found one case in which this Board did rule upon an appeal by individual union-represented employees from a section 4 arbitration award but did not actually decide

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Because the ICC did not, in *N&W Arbitration Review*, consider the differences between *New York Dock's* section 4 and section 11, the Board should act now to preserve the process of reaching implementing agreements through negotiation and arbitration.

2. Allowing a union-represented employee like Mr. White to appeal from a section 4 arbitration award that the union has elected not to appeal would dispossess the union from its appropriate role as exclusive representative of employees and destabilize the intended operation of the *New York Dock* conditions. Unions are entrusted with the responsibility of representing all employees in a particular craft, and part of exercising this responsibility is knowing which potential appeals might benefit their membership generally, and which ones (like Mr. White's) are unrooted in the law and history of protective conditions. They might decide -- and both the RLA and section 4 give them the power to decide -- that the collective interest of the craft outweighs a given employee's preferences as to what contract terms should be adopted. Unions also have greater resources than individuals and can present

the point we are raising. *Union Pacific--Control & Merger--Southern Pacific*, F.D. No. 32760 (Sub-No. 33), 4 S.T.B. 604 (2000), *aff'd*, *Swonger v. STB*, 265 F.3d 1135 (10th Cir. 2001) ("*Swonger*"). The carrier and the union, parties to the arbitration, both appeared in the STB appeal proceeding, *arguing in defense* of the award. Applying the *Lace Curtain* standard, the Board denied the employees' petition for review of the award, and the Tenth Circuit affirmed that denial. Apparently no party raised the question whether an individual represented employee can be heard to appeal from a section 4 award; nor was it mentioned by either the STB or the reviewing court of appeals. Similarly, it does not appear that any party pointed out the anomalous situation of having individual employees and their labor union taking opposite positions on the merits before the STB. Finally, the case involved an unusual circumstance in that petitioners' labor union had itself been divided in negotiating the agreement provisions in question; petitioners own union representatives had originally opposed it.

In any event, the Board's decision in *Swonger*, which denied review solely on *Lace Curtain* grounds, has no precedential value with respect to an alternative ground for threshold dismissal or denial of review that was never considered.

meritorious cases with better effect. Moreover, the pursuit of an arbitration appeal is just one of the tools a union might choose to use in the general course of its ongoing bargaining relationship with a carrier. Forgoing a potential appeal might affirmatively serve the union's overall purposes, even if an individual employee might have preferred to press his own personal concerns.

From the carrier's standpoint, an appeal by a represented individual creates a particular problem. The carrier cannot bargain with the appellant employee in regard to pursuit of the case, because the carrier is legally bound to negotiate only with the employee's union.

Most importantly, if individual represented employees are allowed to pursue section 4 appeals, a union's decision not to appeal will not provide the certainty of outcome that the union has decided to accept. If a section 4 arbitrator's award is of uncertain effect, particularly if the appellant employee seeks a stay of its effectiveness, as Mr. White has done here, the premise -- the basis -- for future collective bargaining is uncertain. Neither union nor carrier can negotiate, or expect the other party to negotiate future agreements, if, for example, the basic question of which CBA will be in effect is unresolved and neither party has the power to resolve it.

II. MR. WHITE'S PETITION FOR REVIEW SHOULD IN ANY EVENT BE DENIED BECAUSE THE ARBITRATION AWARD CORRECTLY APPLIES THE LAW AND SATISFIES THIS BOARD'S STANDARDS.

Mr. White asserts that the April 1, 2026 award is inconsistent with the *New York Dock* standards in one respect: it directs that when Respondents implement their proposed consolidation of operations, the combined work force should be subject to the MidSouth CBA. This would cause Mr. White, currently a Tex-Mex engineer working under the Tex-Mex CBA, to begin working under the

MidSouth CBA – and Mr. White objects to this change. He asserts that this change is beyond the authority of a *New York Dock* arbitrator to order.

Mr. White also asserts that when this Board approved KCSR's acquisition of control of Tex-Mex in 2004, it imposed a condition requiring KCSR and Tex-Mex to keep the existing Tex-Mex CBA in effect -- apparently forever.

Both of Mr. White's assertions are groundless. The arbitrator performed his function in strict compliance with applicable law, exercising authority that was plainly assigned to him; and his findings reflect such compliance. The Board's standards for section 4 arbitration awards are fully satisfied. Moreover, the Board's decision in *Tex-Mex Control* plainly does not contain the "condition" on *New York Dock* perceived by Mr. White.

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

Mr. White contends that the April 1, 2026 award exceeds the authority of an arbitrator under *New York Dock*; this 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.

This *New York Dock* "transaction" involves the merger of properties and train operations and for its realization requires the consolidation of previously separate locomotive engineer work forces of Tex-Mex, MidSouth, and KCSR into a single work force. The purpose of these measures is to enable the railroad system to realize service improvements and operational efficiencies that will benefit its customers. To make these public benefits possible, the carriers proposed that the MidSouth CBA will apply to all engineer work in the consolidated work force.

The implementing agreement for this transaction would provide for a “dovetailing” of seniority for all engineers, with engineers also being given “prior rights” to assignments on their former territories.

Mr. White appears to take the position, first, that an arbitrator acting under authority of protective conditions imposed on a control transaction by this Board lacks the power, as a matter of law, to substitute one collective bargaining agreement for another -- more specifically, to select a single agreement to cover all the employees in a consolidated work force created in implementation of a control transaction. The Supreme Court disposed of any such contention 35 years ago in *Norfolk & W. Ry. v. American Train Dispatchers’ Ass’n*, 499 U.S. 117 (1991) (“*Dispatchers*”), holding that what is now 49 U.S.C. §11321(a) means what it says: “A rail carrier . . . participating in [an] approved . . . transaction is exempt from the antitrust laws and from all other law, . . . as necessary to let that rail carrier . . . carry out the transaction, hold, maintain, and operate property, and exercise control or franchises acquired through the transaction.” Moreover, this exemption includes the power to override the Railway Labor Act and labor agreements entered into under the RLA, as necessary to carry out the approved transaction. Mr. White’s basic premise has not been the law since *Dispatchers*. See also, 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*”).

The arbitrator’s award makes plain that he correctly understood the extent of his authority and the findings he is required to make in support of the exercise of that authority.

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. 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 fulfill the purposes of the principal transaction” – in this case, KCSR’s 2004 acquisition of control of Tex-Mex. *Id.*¹⁰ 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.*¹¹

¹⁰ *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).

¹¹ *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.*, *Carmen III*, 3 S.T.B. at 719-20, 727-28 (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

(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 (*id.*):

. . . 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.

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, as described in our note 5, above. See Award at 13.

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 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 KCSR's acquisition of control of Tex-Mex, subject to the standard application of *New York Dock* procedures.

There is no substance to Mr. White's assertion that the arbitration award conflicts with limitations supposedly imposed on applicants KCSR and Tex-Mex 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." Petition 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 special limitation exists with respect to 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) standard *New York Dock*, 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 in one respect -- to protect employees in the

event work is moved to Mexico). In reading the “five representations,” note that 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 Transportación Ferroviaria Mexicana, the Mexican railroad that at the time of the application owned Mexrail, a 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 additional commitments regarding CBAs conjured up by Mr. White are not found in the applicants’ submissions in the control case.

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, which has no application to this case. 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 applicants’ understanding that *New York Dock* would apply – not as a proposal that *New York Dock*’s effect be limited, but rather as applicants’ 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 is erroneous on its face, but postulates an inconceivable result: that the *New York Dock* conditions would be imposed on KCSR and Tex-Mex, and those railroads would be prohibited – and that they *volunteered* to be prohibited -- supposedly in perpetuity, from implementing necessary changes in working conditions through the established (and unmodified) procedures of *New York Dock*. Of course, the railroads did not volunteer for such treatment, and it was not ordered by this Board. *Tex-Mex Control* orders no such thing; rather, the decision recites and recognizes applicants’ expectation that over time, they will identify ways to improve their operations, subject of course to *New York Dock*.

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 in section 4 a procedure

for proposing, negotiating, and, as required, arbitrating the changes necessary to realize those benefits.

C. Canadian Pacific's acquisition of Kansas City Southern, approved by this Board in a different Docket, has no bearing on this arbitration appeal proceeding conducted under sole authority of *Tex-Mex Control*.

Mr. White's petition for review, filed in this *Tex-Mex Control* docket, does not mention the separate proceeding in which the Board authorized Canadian Pacific to acquire control of KCSR and its subsidiaries, including KCSR and Tex-Mex, *CPKC Control*, F.D. No. 36500 (decision served March 15, 2023). The Carriers did not mention *CPKC Control* in their *New York Dock* notices dated February 18, 2025, in the instant case. The arbitration below was conducted under authority of *Tex-Mex Control* only; the railroad parties were Tex-Mex and KCSR, which controls Tex-Mex (MidSouth was merged into KCSR long ago, as a corporate matter; but the "MidSouth CBA" survives). These carriers collectively refer to themselves as "CPKC" because that is the name under which the entire railroad system operates. We are using "CPKC" here, in this appeal proceeding, for the same reason. In his April 1, 2026 award, the arbitrator mentioned *CPKC Control* only for the purpose of describing CPKC's operations in the United States; he also stated that the carriers' proposed transaction involving Tex-Mex engineers was entirely within the scope of, and authorized by the Board's decision in *Tex-Mex Control*, and did not depend on authority conferred in *CPKC Control*. Award at 10.

Mr. White also did not mention *CPKC Control* in his motion for a stay filed on April 24, 2026.

However, in his unauthorized Reply to Opposition in support of his motion for a stay, filed on May 20, 2026, Mr. White adopted a new approach. In that filing, he refers to STB

Finance Docket 36500 -- the *CPKC Control* proceeding -- no fewer than 28 times. He seems to be asking the Board to invoke some kind of roving oversight power in *that* proceeding to investigate whether the imposition of the MidSouth CBA in place of the Tex-Mex CBA *in this Docket* is somehow unauthorized. Although Respondents have never, at any point in this proceeding, invoked *CPKC Control* as authority for our proposed operational changes affecting Tex-Mex or MidSouth, Mr. White even asserts that *our* supposed reliance on *CPKC Control* as authority for our operational changes on Tex-Mex is futile.

This proceeding is an attempted appeal from an arbitrator's award rendered under section 4 of the *New York Dock* conditions as imposed in the above-captioned docket, F.D. 34342, *Tex-Mex Control*. Mr. White's new approach is not presented in his petition for review and is unrelated to any issue relating to the arbitrator's authority under *New York Dock*. Whatever may be the intended point of Mr. White's 28 references to F.D. 36500 in his unauthorized May 20, 2026 filing, the point is immaterial in this proceeding. The Board should give it no attention.

CONCLUSION

The Board should dismiss or deny the petition for review outright, on the ground that Mr. White, an individual union-represented employee, should not be heard to appeal from a section 4 arbitration award. If the Board decides not to dispose of the petition on that ground, then the Board should deny the petition, including any and all requests for relief it may contain, for failure to satisfy the Board's standards for review of an award.

Respectfully submitted,

/s/ Charles W. Webster

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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of May, 2026, I caused a copy of the foregoing Respondents' Reply to Daniel T. White's Petition For Review And/Or Declaratory Order to be served by email on the Petitioner, and by email on:

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