SERVICE DATE – JULY 28, 2026

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 34342 (Sub-No. 1)

KANSAS CITY SOUTHERN—CONTROL—THE KANSAS CITY SOUTHERN RAILWAY COMPANY, GATEWAY EASTERN RAILWAY COMPANY, AND THE TEXAS MEXICAN RAILWAY COMPANY
(Arbitration Review)

Digest:[1] The Board denies a motion to temporarily stay implementation of an arbitration award pending the Board's consideration of a petition for review and/or a declaratory order. The Board also denies, in part, a motion to strike.

Decided: July 28, 2026.

On April 21, 2026, Daniel T. White (White) filed an "Emergency Motion for Stay and Interim Relief" (Motion for Stay), and on April 24, 2026, White filed a "Petition for Review and/or Declaratory Order" (Petition) (collectively, the April Filings), relating to an arbitration award dated April 1, 2026 (the Arbitration Award), which White seeks to temporarily stay and permanently set aside.[2] Canadian Pacific Kansas City (CPKC), which was a party to the Arbitration Award, filed a reply opposing the Motion for Stay, as well as a separate reply opposing the Petition.

The Motion for Stay will be denied. A motion to strike filed by CPKC will be denied in part. The Petition will be addressed in a separate decision.

BACKGROUND

In 2004, the Board approved the KCS/Tex-Mex Merger, subject to various conditions, including a condition for the protection of railroad employees set out in New York Dock—

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

[2] White filed the April Filings in Docket No. FD 34342, the docket in which the Board approved the control by Kansas City Southern (KCS) of The Texas Mexican Railway Company (Tex-Mex) in 2004 (the KCS/Tex-Mex Merger). See Kan. City S.—Control—Gateway E. Ry. (KCS/Tex-Mex Approval Decision), FD 34342 (STB served Nov. 29, 2004). The Board has created a new sub-docket, FD 34342 (Sub-No. 1), for the consideration of White's filings and placed the April Filings, along with all responsive filings and decisions, in the new sub-docket.

Control—Brooklyn Eastern District Terminal, 360 I.C.C. 60, 84-90 (1979). KCS/Tex-Mex Approval Decision, FD 34342, slip op. at 21, 24. Years later, in 2023, the Board approved, subject to conditions, the acquisition of control by Canadian Pacific Railway Limited of KCS and its railroad affiliates (the CP/KCS Merger), with the combined system to be known as CPKC.

Earlier this year, a dispute between the Brotherhood of Locomotive Engineers and Trainmen (BLET) and CPKC arising out of the implementation of the KCS/Tex-Mex Merger was brought to arbitration pursuant to Article 1, Section 4 of the New York Dock protective conditions imposed in that control proceeding. (White Suppl., Arb. Award 1, May 4, 2026; see id., Arb. Award 3, 14.) The dispute centered on CPKC's proposal to consolidate train operations and transportation assets of the Tex-Mex property under the collective bargaining agreement that has covered KCS operations over the remainder of its network following its acquisition of MidSouth Corporation and its rail subsidiaries in 1993 (the MidSouth CBA).[3] (White Suppl., Arb. Award 2.) The arbitration panel issued the Arbitration Award on April 1, 2026 (from which BLET's representative dissented) in favor of CPKC, subject to two modifications addressed therein. (Id. at 14.)[4]

After the Arbitration Award was issued, White filed the Motion for Stay, followed by the Petition. White states that he is "a locomotive engineer employed on the former Tex-Mex property," (Mot. for Stay 1), who is acting "solely in an individual capacity and does not purport to represent any labor organization or collective bargaining representative," (Pet. 1). According to White, the Board's approval of the KCS/Tex-Mex Merger in 2004 was explicitly conditioned on applicants' representations that existing agreements—including the Tex-Mex collective bargaining agreement (the Tex-Mex CBA)—would remain in force. (Pet. 3; see id. at 1 (referencing Tex-Mex agreement).) White argues that the Arbitration Award—which authorizes the elimination of the Tex-Mex CBA and imposition of the MidSouth CBA, (id. at 3)—"exceeds the lawful scope" of the labor protection conditions imposed when the Board approved the KCS/Tex-Mex Merger. (Mot. for Stay 1.) According to White, absent a stay, implementation of the Arbitration Award will cause him and similarly situated employees immediate and irreparable harm. (Id. at 2.)

CPKC filed a response in opposition to White's Motion for Stay on May 14, 2026. In addition to opposing White's request for a stay, CPKC provides background on the procedural history leading up to the April 1, 2026 Arbitration Award and notes that BLET did not seek review of the award. (CPKC Resp. to Mot. for Stay 2-5, May 14, 2026.) White replied to

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[3] See Kan. City S. Indus., Inc.—Control—MidSouth Corp., FD 32167, slip op. at 1 (ICC served June 4, 1993). KCS was then known as Kansas City Southern Industries, Inc.

[4] White's April Filings did not include a copy of the Arbitration Award. By decision served May 1, 2026 (May 1 Decision), White was directed to (1) file a copy of the Arbitration Award, and (2) serve copies of the Arbitration Award, the May 1 Decision, and the April Filings on all parties to the arbitration referenced in the April Filings, and certify to the Board that he had done so, by May 8, 2026. White filed in response to those directives on May 4, 2026 (White Supplement).

CPKC's response on May 20, 2026 (May 20 Surreply), arguing, among other things, that CPKC's response "rests on a fundamental mischaracterization of this proceeding by attempting to recast the Petition as a dispute concerning the merits of a labor agreement." (May 20 Surreply 1.)[5] On May 26, 2026, CPKC filed a motion to strike White's May 20 Surreply or, in the alternative, for leave to file a surrebuttal, which accompanied the motion. On May 28, 2026, CPKC filed a response in opposition to White's Petition.

DISCUSSION AND CONCLUSIONS

Motion for Stay

White's Motion for Stay contends that he "is directly and adversely affected by the arbitration award." (Mot. for Stay 1.) As noted above, White objects that the Arbitration Award authorizes the elimination of the Tex-Mex CBA and imposes a materially different collective bargaining agreement (the MidSouth CBA) that will involve "[c]onsolidation of seniority systems" and "[r]econfiguration of assignments and working conditions." (Id.) According to White, this action "exceeds the lawful scope of [New York Dock] authority and directly conflicts with the conditions upon which the Board approved the underlying transaction in [the KCS/Tex-Mex Merger]." (Id.) White asserts that "[a]bsent immediate relief, the Carrier will implement structural changes to agreements, seniority systems, and working conditions that cannot be readily undone, thereby rendering subsequent Board review [of the Petition] ineffective and depriving the Board of its ability to provide meaningful relief." (Id.) White argues that the criteria for a stay are satisfied. (Id. at 1-2 (contending that he is likely to succeed on the merits, that he will suffer irreparable harm absent a stay, that the balance of harms favors a stay, and that a stay serves the public interest).)

CPKC disputes these contentions and asserts that White's motion satisfies none of the criteria for a stay. (CPKC Resp. to Mot. for Stay 6-18, May 14, 2026.) Among other arguments, CPKC asserts that White has not shown that he will suffer irreparable harm upon implementation of the operational changes permitted by the Arbitration Award, absent a stay. (Id. at 13-17.)

Under 49 U.S.C. § 1321(b)(4), the Board may issue an appropriate order, such as a stay, when necessary to prevent irreparable harm. In ruling on a request 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 (4) the public interest in granting or denying the stay. See, e.g., Ind. Harbor Belt R.R.—

[5] Throughout the May 20 Surreply, White describes the New York Dock implementation authority reflected in the Arbitration Award as being asserted "in connection with" post-merger integration under the CP/KCS Merger. (See May 20 Surreply 1, 3, 4, 5, 10.) This characterization is erroneous. As reflected in the Arbitration Award, and as explained by CPKC in response to the Motion for Stay, the authority is being asserted in connection with post-merger integration associated with the KCS/Tex-Mex Merger proceeding. (CPKC Resp. to Mot. for Stay 3-5 & n.5.)

Trackage Rts.—Consol. Rail Corp., FD 36099 et al., slip op. at 4 (STB served Mar. 14, 2017) (citing Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977)). A party seeking a stay carries the burden of persuasion on all of the elements required for such extraordinary relief. Ind. Harbor Belt R.R., FD 36099 et al., slip op. at 4 (citing Canal Auth. of Fla. v. Callaway, 489 F.2d 567, 573 (5th Cir. 1974); Entergy Ark., Inc. v. Union Pac. R.R., NOR 42104, slip op. at 2 (STB served Apr. 25, 2011)).

The threshold consideration in deciding whether a stay is appropriate is whether the moving party will be irreparably harmed if a stay is not granted. Joint Pet. for a Rulemaking to Establish a Voluntary Arb. Program for Small Rate Disps., EP 765, slip op. at 3 (STB served Feb. 14, 2023) (citing R. J. Corman R.R. Prop.—Aban. Exemption—in Scott, Campbell, & Anderson Cntys., Tenn., AB 1296X, slip op. at 3 (STB served Dec. 1, 2020)). The party seeking a stay must demonstrate that the injury claimed is "imminent, 'certain and great.'" Sault Ste. Marie Bridge Co.—Acquis. & Operation Exemption—Lines of Union Pac. R.R., FD 33290, slip op. at 6 (STB served Jan. 24, 1997) (quoting Wis. Gas Co. v. FERC, 758 F.2d 669, 674 (D.C. Cir. 1985)). Where a petitioner does not demonstrate "that irreparable harm will occur if a stay is not granted, the petition for a stay will be denied and the Board need not address the remaining stay criteria." R. J. Corman R.R. Prop., AB 1296X, slip op. at 3.

The Board will deny the Motion for Stay because White has failed to demonstrate that he will suffer irreparable harm if a stay is not granted. See 49 U.S.C. § 1321(b)(4); R. J. Corman R.R. Prop., AB 1296X, slip op. at 3 (denying petition for stay based on petitioner's failure to show irreparable harm); Ind. Harbor Belt R.R., FD 36099 et al., slip op. at 5 (same). White fails to demonstrate that he would suffer any specific harm from implementation of the Arbitration Award—let alone harm that could be considered "imminent, 'certain and great.'" White alleges that absent a stay, he "will suffer immediate and irreparable harm"[6] because, as described by White, implementation of the Arbitration Award will result in "alteration or elimination of seniority rights," "changes to assignments and job structures," "replacement of governing contract protections," and "disruption of established working conditions." (Mot. for Stay 2.) However, these are generalized assertions of harm (some of which, on their face, do not necessarily imply harm) and White has not shown that he specifically will suffer these harms if the MidSouth CBA is implemented. See Wisconsin Gas Co., 758 F.2d at 674 ("[b]are allegations of what is likely to occur are of no value since the court must decide whether the harm will in fact occur. The movant must provide . . . proof indicating that the harm is certain to occur in the near future."); Richard Best Transfer, Inc. v. Union Pac. R.R., NOR 42149, slip op. at 4-5 (STB served Dec. 22, 2016) (reiterating that "bare allegations . . . are of no value" and finding that the petitioner's statements, "provided without evidentiary support, do not allow the Board to determine whether the harm alleged 'will *in fact* occur'"); Nken v. Holder, 556 U.S. 418, 434-35 (2009) ("simply showing some possibility of irreparable injury" is insufficient). White also does not explain how such harm would be irreparable. He claims that "allowing implementation to proceed would effectively moot the relief sought" and that "structural changes

[6] As noted above, White also claims that "similarly situated employees" will suffer irreparable harm. (Mot. for Stay 2.) Because White is acting "solely in an individual capacity," (see Pet. 1), assertions pertaining to "similarly situated employees" need not be addressed.

will . . . mak[e] restoration of the status quo impracticable." (Mot. for Stay 2). However, this assertion is unsupported. See City of Fishers—Pet. for Partial Revocation of Exemption, FD 36137 et al., slip op. at 7 (STB served Dec. 21, 2018) ("To show irreparable harm, the requesting party must demonstrate both the imminence and the irreparable nature of any purported harm. 'Bare allegations . . . are of no value . . . .'").

Moreover, in response, CPKC explains in specific detail how White will not be adversely impacted by implementation of the MidSouth CBA. (See CPKC Resp. to Mot. for Stay 13-15, May 14, 2026.) CPKC states that under the MidSouth CBA, White—who has more than 12 years of seniority as a Tex-Mex locomotive engineer—will not be required to work on territory other than Tex-Mex and will not be required to relocate; that White will be afforded expanded work opportunities because he will be able to choose to work at additional locations and over additional territory; and that the MidSouth CBA will preserve White's existing rights under the Tex-Mex CBA, including his seniority standing. (Id. at 13-14.) CPKC also asserts that White will be protected from loss of compensation for six years because New York Dock's monetary benefits will be available to him, and he will also receive new benefits, such as a 401K plan with an employer match. (Id. at 14.) According to CPKC, other changes in White's working conditions will be neutral in effect. (Id. at 15 (listing examples).) Lastly, CPKC indicates that, if the Board were to sustain White's appeal, it sees no significant administrative impediment to readjusting its working arrangements. (Id. at 16.) In sum, there is no basis in the record before the Board to conclude that White would be immediately and irreparably harmed in the absence of a stay.

Because White has not met his burden to demonstrate irreparable harm, the Board need not address his arguments regarding the other requirements for a stay, see R. J. Corman R.R. Prop., AB 1296X, slip op. at 3; accord City of Fishers, FD 36137 et al., slip op. at 7-8, and his request for a stay will be denied.

Motion to Strike

CPKC has moved to strike White's May 20 Surreply on the ground that it is a prohibited reply to a reply under the Board's rules. (CPKC Mot. to Strike 1 (citing 49 C.F.R. § 1104.13(c)). CPKC is correct that, as a general matter, the Board's regulations do not permit "replies to replies," 49 C.F.R. § 1104.13(c), and the Board does not favor such filings, see, e.g., Sunflower State Indus. Ry.—Pet. for Declaratory Ord., FD 36714 (Sub-No. 1), slip op. at 2 n.3 (STB served Mar. 28, 2025). However, the Board may accept a reply to a reply for good cause. See, e.g., Evergy, Inc. v. BNSF Ry., NOR 42180, slip op. at 4 n.8 (STB served Mar. 4, 2025).

Here, White's May 20 Surreply clarifies and narrows the scope of his claims in this proceeding. White's initial filing (the Motion for Stay) centered on the argument that the Arbitration Award he has challenged "authorizes the elimination of the [Tex-Mex CBA] and the imposition of a materially different agreement" that would result in a broad spectrum of alleged irreparable harms—including alteration or elimination of seniority rights, changes to assignments and job structures, replacement of governing contractual protections, and disruption of established working conditions. (Mot. for Stay 1-2.) However, in his May 20 Surreply, White states that he is not "seek[ing] to relitigate the arbitration award as a labor matter," (May 20

Surreply 1), or asking the Board "to resolve competing claims regarding wages, assignments, or working conditions," (id. at 4). White states in the May 20 Surreply that the question presented is "whether implementation authority asserted under [New York Dock] . . . has been lawfully exercised in a manner consistent with the framework approved by the Board in [the KCS/Tex-Mex Approval Decision]." (Id. at 4.) White has clarified that "[t]he issue before the Board" is only whether the Arbitration Award is foreclosed by the KCS/Tex-Mex Approval Decision, (id. at 6-7), and that he "does not seek to relitigate the arbitration award as a labor matter," (id. at 1).[7] The May 20 Surreply thus will be accepted into the record to that extent—and the motion to strike denied in part—because doing so will streamline and facilitate a more efficient resolution of this proceeding. See FMC Wyo. Corp. v. Union Pac. R.R., 2 S.T.B. 766, 767 n.2 (1997) (considering rebuttal statement to the extent it narrowed the scope of relief sought). CPKC's Motion to Strike otherwise will be granted, as the balance of the May 20 Surreply constitutes an impermissible reply to a reply.[8] CPKC's alternative request for leave to file a surrebuttal will be denied as moot.

It is ordered:

1. White's Motion for Stay is denied.

2. CPKC's Motion to Strike is denied to the extent the May 20 Surreply clarifies and narrows the scope of White's claim in this proceeding. In all other respects, the Motion to Strike is granted.

3. CPKC's alternative request for leave to file a surrebuttal is denied as moot.

4. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Kloster, and Schultz.

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[7] (See also May 20 Surreply 4 ("This proceeding does not turn on a comparative evaluation of the Tex-Mex and MidSouth agreements, nor does it require the Board to resolve competing claims regarding wages, assignments, or working conditions."); accord id. at 4 n.1 ("Petitioner does not ask the Board to adjudicate the comparative merits of competing labor agreements"); id. at 6 n.2 (same).)

[8] Even if the Board considered the May 20 Surreply in its entirety, that would not change the Board's decision to deny White's Motion for Stay. The May 20 Surreply does not dispute CPKC's factual showing that White will not be irreparably injured by implementation of the MidSouth CBA if a stay is not entered. It instead focuses on the merits of White's arbitration appeal, i.e., whether imposition of the MidSouth CBA was lawfully authorized.