

Mac A. Fleming  
President



202743

William E. LaRue  
Secretary-Treasurer

## Brotherhood of Maintenance of Way Employees

*Affiliated with the A.F.L.-C.I.O. and C.L.C.*

June 25, 2001

via messenger

Surface Transportation Board  
Office of the Secretary  
Case Control Unit  
1925 K Street, N.W.  
Washington, D.C. 20423-0001

Re: Finance Docket No. 34000

**ENTERED**  
**Office of the Secretary**

**JUN 25 2001**

**Part of**  
**Public Record**

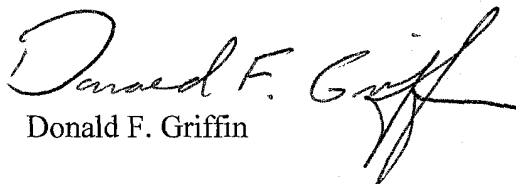


To whom it may concern:

Please accept for filing the original and 25 copies of the Brotherhood of Maintenance of Way Employees' "Comments" (BMWE - 2). A diskette containing the pleading in WordPerfect 9 format also is included.

I have included an extra copy and a postage prepaid return envelope. Please stamp the extra copy received and return it to me in the enclosed envelope. Thank you.

Respectfully submitted,

  
Donald F. Griffin

cc: service list

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BMWE - 2

BEFORE THE SURFACE TRANSPORTATION BOARD

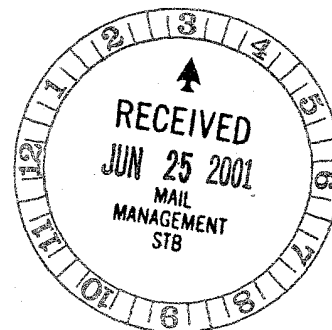
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Finance Docket No. 34000

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CANADIAN NATIONAL RAILWAY COMPANY, GRAND TRUNK CORPORATION, AND  
WC MERGER SUB, INC. – CONTROL – WISCONSIN CENTRAL TRANSPORTATION  
CORPORATION, WISCONSIN CENTRAL LTD., FOX VALLEY & WESTERN LTD.,  
SAULT STE. MARIE BRIDGE COMPANY, AND WISCONSIN CHICAGO LINK LTD.

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COMMENTS

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Attorneys for Brotherhood of Maintenance of Way  
Employees

June 25, 2001

## COMMENTS

Pursuant to the Board's instructions contained in Decision No. 2, the Brotherhood of Maintenance of Way Employees ("BMWE") respectfully submits its comments in this proceeding. The BMWE previously submitted a notice of intervention and intends to participate formally in this proceeding.

The BMWE neither supports nor opposes the proposed transaction. We do, however, have concerns regarding the transaction's impact on employees and collective bargaining relationships within the Canadian National Railway Company's ("CN") United States rail operations.

On March 21, 2001, the BMWE and several other labor unions reached an historic agreement with most of the nation's Class 1 carriers resolving the application of the immunity provisions of 49 U.S.C. §11321(a) in the context of *New York Dock*, *Mendocino Coast* and *Norfolk & Western* implementing agreement negotiations. CN has refused to sign that accord. Therefore, the implementing agreement process flowing from approval of this transaction will not take place under procedures voluntarily negotiated by BMWE and the other Class 1 carriers. Instead, this Board could well become involved in resolving collective bargaining agreement ("CBA") override issues that have been resolved on all other Class 1 carriers.

The proposed transaction contains a relatively unique factor, a substantial portion of the Wisconsin Central Ltd. ("WCL") workforce is unorganized. This fact raises several problems regarding the operational implementation of the transaction.

First, in the event of a *New York Dock*<sup>1</sup> transaction between an existing CN carrier and the former WCL, what group would bargain on behalf of the affected WCL employees? The former Interstate Commerce Commission ("ICC") confronted that problem during the merger between WCL and former Irel Corporation controlled railroads, the Green Bay & Western and FRVR. The ICC did not definitively resolve the question other than to hold that carrier management could not dictate implementing agreement terms to non-union employees. Absent guidance from the Board on this question, the operational implementation of the CN/WCL merger could be problematic. Given the service problems that occurred both with the split of the Consolidated Rail Corporation between the Norfolk Southern Railway and CSX Transportation, Inc. and the merger of the Union Pacific and Southern Pacific when all parties to the implementing agreement process were represented formally and possessed clear lines of internal communications, this merger of a carrier with many crafts or classes of employees being unrepresented with a larger unionized system raises unique questions regarding operational implementation.

Second, because CN has refused to sign the March 21, 2001 Agreement and WCL contains a sizeable group of unorganized crafts or classes of employees, the use, or misuse, of the immunity provisions of 49 U.S.C. §11321(a) could become an important issue. BMW E acknowledges that the previous CN/Illinois Central merger was implemented well for the maintenance of way craft as a result of a voluntary agreement. We also note that the application contains a statement "if Applicants require any changes to existing collective bargaining

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<sup>1</sup>The employee protective conditions contained in *New York Dock Ry.—Control—Brooklyn Eastern Dist. Term.*, 360 I.C.C. 60, *aff'd sub nom.*, *New York Dock Ry. v. U.S.*, 609 F.2d 83 (2d Cir. 1979).

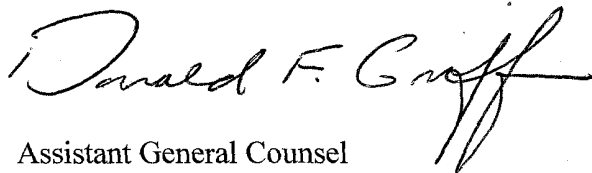
agreements to implement any of the operational changes necessary to achieve the efficiencies of this Transaction, they would seek to do so through negotiation.” CN/WC-2 at 413. However, that statement is really no more than a restatement of the Applicants’ obligations under *New York Dock*. The problem is that if agreement is not forthcoming, *New York Dock* mandates compulsory arbitration to resolve the parties’ dispute. Under the March 21, 2001 Agreement, the parameters of that arbitration are carefully set. Here, the standards applicable in any arbitration would be those in the Board’s *Carmen III* decision. Using that decision as their guideline, two arbitrators in the Conrail/NSR/CSXT split, sanctioned the wholesale abrogation of existing CBAs.

Finally, because the WCL maintenance of way craft or class is unorganized, there is the potential for CN to attempt to abrogate all existing CBAs and representation structures in the maintenance of way craft or class. That result would be impossible under the March 21, 2001 Agreement, however, under the *New York Dock* conditions a CBA and a union’s representation rights have been completely eliminated. *Brotherhood of Railroad Signalmen and Union Pacific R.R.*, (August 20, 1997)(Benn, Arb.)(Transfer of all ARTE represented employees and work to other positions coming under other CBA’s or unrepresented.) The last time a carrier attempted to use ICC/STB imposed employee protective conditions to rework its collective bargaining structure was the Springfield Terminal debacle in the late 1980’s. That dispute required the continuing involvement of the ICC/STB and was not fully resolved until the Board issued its decision in Finance Docket No. 30965 (Sub-Nos. 1 & 2), *Delaware & Hudson Ry.–Lease & Trackage Rights–Springfield Term. Ry.*, served September 25, 1998. While the Applicants certainly do not assert that result as their goal, because CN refused to sign the March 21, 2001

Agreement, such a course of action is not foreclosed. The Board's new merger procedures set forth in Ex Parte No. 582 (Sub-No. 1), *Major Rail Consolidation Procedures*, served June 11, 2001, do contain the policy statement that the Board "respects the sanctity of collective bargaining agreements and will look with extreme disfavor on overrides of collective bargaining agreements except to the very limited extent necessary to carry out an approved transaction." 49 C.F.R. 1180.1(e). Because that policy statement only applies to a merger between two or more Class 1 carriers, BMWWE requests the Board include that language in any order approving the proposed transaction.

The BMWWE does not request an oral hearing at this time.

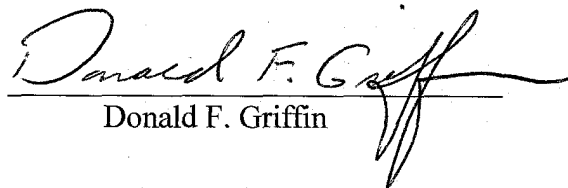
Respectfully submitted,

  
Assistant General Counsel

Dated: June 25, 2001

Certificate of Service

I hereby certify that today I served the Comments of the Brotherhood of Maintenance of Way Employees by first class mail delivery upon all parties identified in the service list in Finance Docket No. 34000.

  
Donald F. Griffin

Dated: June 25, 2001