

202715

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

UTU-3

Finance Docket No. 34000

**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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JUN 22 2001

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COMMENTS OF UNITED TRANSPORTATION UNION

Pursuant to the Board's Decision No. 2, served May 9, 2001, the United Transportation Union ("UTU") respectfully submits the following comments in the above-captioned proceeding. UTU intends to participate formally in this proceeding. UTU has some obvious employee protection and specific safety concerns regarding this transaction which it intends on discussing with the Applicants in hopes of achieving satisfactory commitments from them, but until they are achieved, UTU conditionally opposes the Railroad Control Application. UTU will advise the Board of its support of the application if the outcome of its discussions with the Applicants is favorable.

BACKGROUND

Canadian National Railway Company ("CNR"), Grand Trunk Corporation ("GTC"), and WC Merger Sub., Inc. ("Merger Sub"),¹ Wisconsin Central Transportation Corporation ("WCTC"), Wisconsin Central Ltd. ("WCL"), Fox Valley & Western Ltd. ("FVW"), Sault Ste. Marie Bridge

¹CNR, GTC and Merger Sub are referred to collectively as "CN."

Company ("SSMB") and Wisconsin Chicago Link, Ltd. ("WCLL")² filed a joint Railroad Control Application (the "Application") pursuant to 49 U.S.C. § 11323-25 and Railroad Consolidation Procedures of the Surface Transportation Board (the "Board" or "STB"), 49 C.F.R. Part 1180, for approval of a proposed transaction (the "Transaction") by which CNR and GTC would acquire control of WCTC and through it of WCTC's rail carrier subsidiaries WCL, FVW, SSMB, and WCLL.

The purpose of the Transaction from Applicants' perspective is to integrate the rail operations of CN with those of WC for the purpose of securing a component in CN's rail network, which Applicants believe will help to provide and enhance CN & WC's service and enable them to offer their customers expanded single-line service options.

The Summary of Benefits Exhibit in Appendix A of the Application claims that the total quantifiable benefits of the Transaction would be approximately \$52.0 million in a normal year.

Applicants allege rail service over this network would be improved because of the transaction. Applicants also claim that the transaction will provide shippers with an extended unified network, offering new single-line routing linking markets in the United States and Canada, improving or eliminating interchanges, and reducing both car handling and car transit time. Applicants also claim that this expanded and improved single line service will enable Applicants to improve equipment utilization, which will reduce the railroads' operating costs, reduce terminal dwell time and overall cycle times for both cars and locomotives.

POSITION OF THE UTU

49 U.S.C. § 11324(d) provides that, in a proceeding under this section which does not

²WCTL, WCL, FVW, SSMB and WCLL are referred to collectively as "WC."

involve the merger or control of at least two Class I railroads, as defined by the Board, the Board shall approve such an application unless it finds that - (1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of monopoly, or restraint of trade in freight surface transportation in any region of the United States; and (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

At this time, UTU has some concerns regarding the Applicants' ability to satisfy this standard set forth in this statutory provision. Specifically, UTU is concerned about whether the typical labor protective conditions normally imposed in control transactions, *New York Dock Ry. – Control – Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), will adequately protect the interests of UTU-represented employees adversely affected by the proposed transaction. The adequacy of the labor protective conditions are an important consideration when examining the public interest of a transaction. The UTU and many of the major carriers have entered into a landmark agreement which addresses some of these concerns. However, the Applicants are the only major carriers who have not signed onto this arrangement. As a result, UTU is seriously concerned about the “cram down” issues involved in this transaction. UTU's concerns can be satisfied if the Applicants make an adequate commitment to a form of heightened labor protection with respect to the manner in which *New York Dock* conditions will be applied. While this type of commitment appears possible, unfortunately it has not been agreed upon before the filing of these Comments. Therefore, UTU for the present conditionally opposes the application as a general matter.

Moreover, UTU is somewhat troubled by the potential safety ramifications of this transaction for the employees it represents in light of the safety problems arising out of implementation of other major merger transactions in the recent past. Significant evidence of ineffective crew utilization,

which leads directly to crew fatigue, stress, a lowering of morale, violations of the Hours of Service Act, and a reduced ability to comply with operating rules, was found by the Federal Railroad Administration ("FRA") to exist on UP post-merger. Further, after the merger, the FRA found that at nearly all management levels on up, supervisors performed a multitude of tasks that are not directly related to their supervisory responsibilities, thereby contributing to a breakdown in the safety process. Also, UP supervisors were found by the FRA to be unfamiliar with the territories of the dispatchers that they supervise, causing problems with rule compliance.

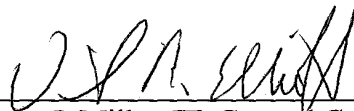
These problems after the UP merger, in addition to a heavy dispatchers' workload, an inadequate operational compliance process, harassment and intimidation of employees, and improper mechanical inspections caused questions with regard to safety from the FRA and the UTU.

UTU believes that the Applicants intend to address these serious safety issues before implementation of the transaction, if approved. This too will be a significant factor in any eventual support by UTU of the application, but for the present, as noted above, UTU is in conditional opposition.

CONCLUSION

Based on the foregoing discussion, UTU conditionally opposes the Application at this time. However, UTU intends to support the Application if discussions with the Applicants regarding UTU's concerns yield commitments from them as to labor protection and safety sufficient to permit such support.

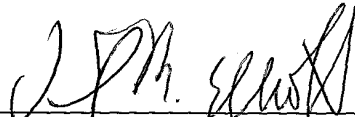
Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. R. Elliott, III", written over a horizontal line.

Clinton J. Miller, III, General Counsel
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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Comments of United Transportation Union have been served this 25th day of June, 2001 via first-class, postage pre-paid mail on all parties of record.



Daniel R. Elliott, III