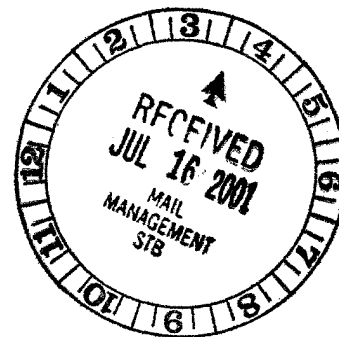


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Rail Labor Division



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Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 33388

CSX Corporation et al., Norfolk Southern Corp. et al.--Control and Operating
Leases/Agreements--Conrail Inc. and Consolidated Rail Corp.

JOINT PETITION OF VARIOUS UNIONS
AND THE COMMONWEALTH OF PENNSYLVANIA
FOR ENFORCEMENT OF ORDER, OR ALTERNATIVELY TO REOPEN FOR ORDER
DIRECTING COMPLIANCE WITH COMMITMENTS,
OR ALTERNATIVELY FOR RELIEF NOT OTHERWISE PROVIDED-FOR

**REPLY OF THE RAIL LABOR DIVISION
OF THE TRANSPORTATION TRADES DEPARTMENT, AFL-CIO
TO RESPONSE OF NORFOLK SOUTHERN CORP. TO
DECISION NO. 186**

The Rail Labor Division of the Transportation Trades Department, AFL-CIO ("RLD") and its affiliated organizations¹ submit this reply to the Response of Norfolk Southern Corp. to the Board's show cause order in its Decision No. 186. The RLD supports the Joint Petition of the Union Petitioners and the State of Pennsylvania in this matter, and the RLD urges the Board to Order

¹ American Train Dispatchers Department; Brotherhood of Locomotive Engineers; Brotherhood of Maintenance of Way Employees; Brotherhood of Railroad Signalmen; Hotel Employees and Restaurant Employees Union; International Association of Machinists and Aerospace Workers; International Brotherhood of Boilermakers, Blacksmiths, Forgers and Helpers; International Brotherhood of Electrical Workers; Service Employees International Union; Sheet Metal Workers International Association; Transportation • Communications International Union; Transport Workers Union of America

Norfolk Southern ("NS") to retain the Hollidaysburg Car Shop ("HCS") at no less than its present capacity for a significant period of time beyond September 1, 2001 as is contemplated in Decision No. 186.

In addition to the Union Petitioners in this matter, many other RLD affiliates were parties to this proceeding and they were fully aware of NS' repeated clear representations that it would retain and invest in the HCS and Juniata Locomotive Shop. The RLD concurs with the Petitioners' reply to NS' response to Decision No. 186 and will not repeat their arguments but will highlight several important points.

It is outrageous for NS to contend that it did not make commitments to retain, operate and invest in the HCS. NS' many statements to that effect are set forth in the filings of the Joint Petitioners. It is especially disturbing that NS would distort the record with respect to commitments it made about the HCS as part of a full-scale political and public campaign to obtain support for and ultimately gain approval of the Conrail carve-up transaction.

After gaining the Board's approval to acquire and operate a substantial share of Conrail, NS now expects the agency to ignore NS' express, clear and repeated representations and commitments that were made as part of its carefully orchestrated campaign to influence the views of many public officials and, of course, to gain Board approval of the transaction. It is most significant that the NS carried out this effort despite the Board's unambiguous Order binding the applicants "to all of the representations they made during the course of this proceeding, whether or not such representations are specifically referenced in" Decision No. 89.

The indifference of NS to its own commitments and the carrier's callous disregard for the future of hundreds of employees and the communities in which they live, make it painfully clear that

NS believes the Board's role is to simply approve transactions and then walk away from its responsibility to assert its oversight authority and to ensure that applicants live up to the commitments and representations they make to the Board in seeking agency approval.

NS has attempted to justify its actions by claiming financial hardship generally, and that it is supposedly losing money at the HCS. But NS' financial arguments are irrelevant because the representations it made were not contingent on the HCS regularly running a profit in the manner calculated by NSR, and because changed financial circumstances are not a sufficient basis for NSR to unilaterally repudiate its commitments a mere year and one-half or two after Day One.

As demonstrated in the filing by several union petitioners, much of NS' financial woes can be attributed to its own missteps in implementing the Conrail transaction. Moreover, the Petitioners demonstrated that the percentage of capacity of the HCS currently utilized by NSR is essentially similar to the utilization of the Shop when NSR made its commitments, the number of cars worked is not dramatically lower, and the reduction in work performed there is due in large part to NSR's furloughs, deferral of maintenance, and refusals of work. Accordingly, even if NSR's claim of financial losses were relevant, similar financial conditions applied when NSR made its commitments; therefore, NSR has no basis for asserting that changed financial circumstances at the HCS justify its repudiation of its commitments.

NS has argued that it has acted in good faith with regard to the HCS, but the Petitioners have shown that NS' words are contradicted by its actions. It has misrepresented what it said while seeking approval of the Conrail Transaction, and it seeks to walk away from commitments made to its employees and to elected officials from Pennsylvania. NS claims that jobs will be available for

all HCS workers but it has identified only 156 jobs for over 300 current HS employees, and it has not described the work that it is supposedly transferring to other shops. NS claims that it is now seeking to find a buyer for the Shop but that can not be regarded as genuine when it has turned away business and is supposedly looking for a buyer after it has closed the Shop and when there is no work for the Shop to do.

The most galling aspect of NS' response to the Board's show cause order is its claim that it should be free to walk away from the commitments it made because enforcement of the order binding it to its representations would impose restriction on NS that are not imposed on other businesses. But NS could not have acquired Conrail's lines without the STB's approval, and that approval came with the conditions that were attached to it. Moreover, the approval provided NS with an extraordinary self-executing immunity from other laws in the carrying-out of the transaction -- immunity that NS has already invoked. As the Board is aware, rail employees have been the victim of the governmentally sanctioned "cram down" authority exercised by carriers, including NS. Implementation of the Conrail Transaction has therefore not been a pure "free market" business action, a fact that NS fully appreciates and enjoys. It is therefore disingenuous for NS to complain that an order enforcing the requirement that it comply with the representations it made in obtaining approval of the Conrail Transaction would be inconsistent with common notions about the ability of businesses generally to make entrepreneurial decisions and react to changed circumstances. NS simply has no right whatsoever to now complain that the government would be interfering in its affairs if the Board enforces its Order binding NS to its commitments and representations.

The RLD agrees with the Petitioners that the Board must act to hold applicants in major rail consolidations accountable for the commitments that they make in seeking and obtaining STB approval of their transactions. The Board must be able and willing to enforce clear and unequivocal commitments made repeatedly and unconditionally to the Board, in public statements, and before legislative bodies. Indeed the RLD submits that the effort expended by the Board in its recent revision of the Major Rail Consolidation Procedures will be for nought if the Board does not grant the relief requested in the Joint Petition. If the basic rule is going to be that regardless of what carriers may say in order to obtain support for and approval of a transaction, they are free to ignore their commitments at their whim, then new procedures will not provide real protection for workers, communities, state governments and shippers.

The RLD also notes that two key elements of Board decisions in recent control/merger decisions have been 1) inducements for concerned parties and transaction opponents to address their concerns and resolve their differences with the applicants, without direct STB involvement; and 2) the promise of Board post-transaction oversight. These two elements of the recent policy will be completely undone if NS is allowed to renege from its commitments in this case. If the sort of statements made and understandings reached in the case of the HCS mean nothing, then nobody will want to enter any arrangement with merger/control applicants; instead, objectors and even interested parties who do not object to the transaction will engage in full litigation, and seek formal STB orders on matters of concern to them; and the promise of post-transaction oversight will be rendered meaningless.

The RLD respectfully submits that proper functioning of the Statute, and the nature of the duty of this agency under the Statute mandate that the Board enforce its Order in Decision No. 89 by directing NS to adhere to the representations it made regarding the Hollidaysburg shops and that NS must retain and continue to operate the shops as it repeatedly represented it would.

Respectfully submitted,

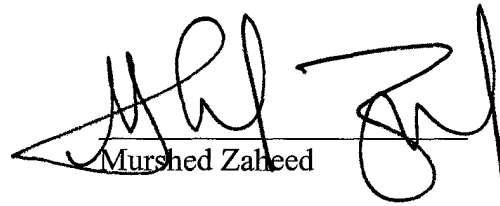
A handwritten signature in black ink, appearing to read "Mark Filipovic", with a stylized flourish at the end.

Mark Filipovic
Chair
Rail Labor Division of the
Transportation Trades Department, AFL-CIO
888 16th Street, NW, Suite 650
Washington, DC 20006

CERTIFICATE OF SERVICE

I hereby certify that I have caused to be mailed copies of the foregoing by First Class Mail upon the persons listed on the current official service list in Finance Docket No. 33388. Because of the length of the service list in this proceeding representatives of the Applicants and as many other parties as possible were served by mail on July 16, 2001, other parties will be served on July 17, 2001.

7/16/01
Date


Murshed Zaheed