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Transportation Communications International Union

208649

Robert A. Scardelletti, International President
LEGAL DEPARTMENT
Mitchell M. Kraus, General Counsel
Christopher J. Tully, Assistant General Counsel

August 5, 2003

VIA OVERNIGHT MAIL

The Honorable Roger Nober
Chairman
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423

Office of Proceedings

AUG 06 2003

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Public Record



**RE: Kansas City Southern-Control-The Kansas City
Southern Railway Company, Gateway Eastern
Railway Company and The Texas Mexican Railway
Company**

STB Finance Docket No. 34342 (TCU-4)*

Dear Chairman Nober:

I am writing in follow-up to the questions you posed at the Board's July 31 hearing. Specifically, you inquired as to whether the protection sought by the Transportation Communications International Union ("TCU") (i.e., not requiring employees to follow work to Mexico in order to maintain eligibility for New York Dock benefits) had ever been imposed by the Board in any cross-border merger proceedings prior to the Board's 1999 approval of the merger of the Illinois Central Railroad with Canadian National.

TCU Requests Leave to Late-File Its Response to the Board's Inquiry

As an initial matter, TCU requests leave to late-file this document. Although comments on the KCS-TexMex merger proceeding were supposed to be submitted on Monday, August 4, 2003, see STB

* In preparing these comments, the undersigned realized that TCU had failed to identify (1) its July 22, 2003 notice of intent to speak at the July 31 hearing, and (2) its July 24, 2003 written comments regarding this proceeding by identification acronym and number. For purposes of reference, these documents should be referred to as TCU-2 and TCU-3, respectively.

♦ 3 Research Place ♦ Rockville, Maryland 20850-3279 ♦
Phone-301-948-4910 ♦ FAX-301-330-7662 ♦ Website-www.tcunion.org



The Honorable Roger Nober
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Fin. Docket 34342, Decision No. 2 (service date June 9, 2003), at 14, the question addressed in this document was first raised to TCU at the Board's July 31, 2003 hearing. TCU has researched the Board's question and responded to its inquiry within a reasonable period. Accordingly, TCU should be granted leave to late-file its response.

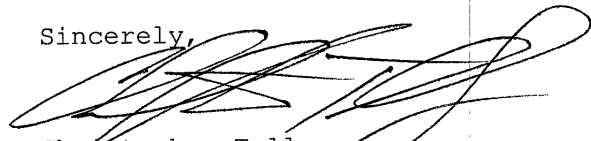
TCU's Response to the Board's Inquiry

Aside from the 1999 CN-IC merger, there appears to be only one other post-New York Dock merger transaction which involved the potential for movement of work over international borders and, in that case, the parties opted to address the protective issues through negotiation between the parties rather than through the Board. See, e.g., Canadian Pacific Ltd., et al.-Purchase and Trackage Rights-Delaware & Hudson Ry. Co., 7 I.C.C.2d 95, 123 n.27, 127 (1990) (approving transaction pursuant to New York Dock, and noting that rail labor filed no comments in this proceeding, preferring instead to negotiate outstanding issues with CN). With respect to the CP's acquisition of the Soo Line and CN's acquisition of the GTW and DWP, these appear to have occurred long before the New York Dock Conditions were imposed.

Indeed, TCU and other unions sought the protection obtained in the CN-IC proceeding because of a subsequent situation in which Canadian Pacific attempted in 1998 and 1999 to move all of the dispatching work for D&H into Canada. In that case, while the dispute was pending before the Board and the courts, the Federal Railroad Administration expressed concerns about the safety implications of extraterritorial dispatching of trains on U.S. soil; subsequently, it commenced a rulemaking proceeding which eventually precluded CP doing so, except under limited circumstances.

I hope this information proves helpful. If the Board has any further questions, please do not hesitate the undersigned at (301) 948-4910.

Sincerely,



Christopher Tully
Assistant General Counsel

The Honorable Roger Nober

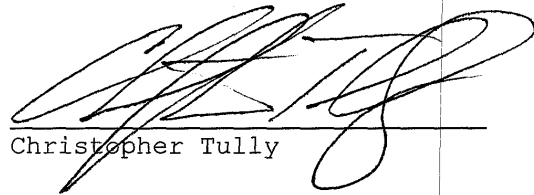
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cc: J. Parker, IVP
R. Johnson, GP, BRC
T. Stafford, Pres., ASD
J. Lydon, GC, SB 106
J. Derillo, Pres., ARASA
All Parties of Record

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Transportation• Communications International Union's August 5, 2003 written response to questions posed by the Board during its July 31, 2003 hearing in connection with Finance Docket No. 34342, has been served this 5th day of August, 2003, via first-class U.S. mail, postage prepaid, upon all parties of record to this proceeding, as listed in Decision No. 4 to STB Finance Docket No. 34342.



Christopher Tully