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December 29, 1899

Transportation Communications International Union

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of pride!*



Robert A. Scardelletti, *International President*

LEGAL DEPARTMENT

Mitchell M. Kraus, *General Counsel*

Christopher Tully, *Assistant General Counsel*

January 21, 2004

The Honorable Vernon A. Williams
Office of the Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

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Office of Proceedings

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Public Record

RE: *Canadian National Railway Company and Grand Trunk
Corp.-Control-Duluth, Missabe and Iron Range
Railway Co., Bessemer and Lake Erie Railroad
Co., and the Pittsburgh & Conneaut Dock Co.*

STB Finance Docket No. 34424

Dear Secretary Williams:

In connection with the Surface Transportation Board's (STB or Board) December 1, 2003 decision in the above-referenced matter (Decision No. 2), please accept the following as the written comments of the Transportation•Communications International Union (TCU) in connection with this matter. TCU is the collective bargaining representative for approximately 700 employees employed in the carmen, clerical and supervisor crafts and class by the Bessemer & Lake Erie Railroad Company (B&LE), the Duluth, Missabe & Iron Range Railway Company (DMIR), and the Grand Trunk Western Railroad (GTW), a U.S. railroad controlled by the Canadian National Railway Company (CN).

TCU is not prepared at this time to state whether it supports or opposes the control proceeding. CN has acknowledged that the labor protections set forth in *New York Dock Ry.-Control-Brooklyn Eastern Terminal Dist.*, 360 I.C.C. 60 (1979) are appropriate to this transaction. See CN-2 (Application), at 175. However, due to the international nature of this proceeding, these labor protections should be modified to address the concerns of employees whose work may be transferred across the U.S.-Canadian border. Specifically, TCU requests that, with respect to work transferred over the Canadian border, employees not be required to follow their work to Canada as a condition of receiving *New York Dock* benefits.

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



January 21, 2004

Page 2

The Board dealt with this precise issue when it approved CN's acquisition of the Illinois Central Railroad in 1999 (CN-IC Transaction). See STB Finance Docket No. 33556, Decision No. 37 (decided May 21, 1999). CN had proposed to consolidate clerical work from IC's Chicago headquarters to a CN facility in Montreal. Although employees seeking to receive protective benefits under *New York Dock* usually are required to follow their work, the Board found that employees could not be required to cross international borders to preserve *New York Dock* benefits:

A basic part of the bargain embodied in the Washington Job Protection Agreement, upon which the *New York Dock* conditions are based, is that rail carriers are permitted to move employees from one work site to another in order to achieve the benefits of a merger transaction. Such displacements do result in hardships for employees whenever they are required to move their place of residence, and *New York Dock* this compensates the employee for the cost of the move. Ordinarily, applicants are not required to make protective payments to these employees who are offered continued employment, but decline to take advantage of it.

That being said, we do not believe it would be appropriate for us to require employees to move to Canada or else forfeit their *New York Dock* protections. Such a move could be impeded by Canadian immigration laws, and could create unusually harsh dislocation problems for the families of these employees. We will not construe our conditions to have this effect. Instead, where work is moved to Canada, employees cannot be required to follow their work to Canada or else be deemed to have forfeited their *New York Dock* benefits.

STB Finance Docket No. 33556, Decision No. 37, at 44 (internal citations omitted).

The current proceeding presents the same issues as those in the CN-IC Transaction. For example, in its operating plan, CN states that

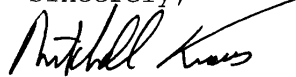
January 21, 2004
Page 3

dispatching and crew calling offices may be combined with those in other CN locations, resulting in some job reductions. Some employees would have the opportunity to relocate to follow this work. . . .

See CN-2 (Application), at 174-75. It is unclear from the operating plan whether the "CN locations" referred to are located in the United States or in Canada. Further, CN acknowledges that changes in addition to those described in the Operating Plan may be necessary to implement the transaction - one such change could very well involve the movement of work from the United States to Canada.

This Board has already recognized the harsh dislocation that would be suffered by employees and their families as a result of having to follow work to Canada. In the CN-IC Transaction, it relied upon this factor to hold that employees are not required to follow their work across the Canadian border to retain their entitlement to *New York Dock* benefits. TCU asks that the Board follow its own precedent, and impose the same terms in the instant proceeding.

Sincerely,



Mitchell M. Kraus
General Counsel

MMK:fm

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Comments of the Transportation Communications International Union this 21st day of January, 2004, via first-class mail, postage prepaid, to all known parties of record.