

BEFORE THE SURFACE TRANSPORTATION BOARD

222525

ATDA - 2

In the Matter of

STB 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

-- EXPEDITED CONSIDERATION REQUESTED --

**REPLY OF THE AMERICAN TRAIN DISPATCHERS ASSOCIATION
IN SUPPORT OF EMERGENCY PETITION
TO STAY TRANSFER OF WORK AND EMPLOYEES
PENDING COMPLIANCE WITH *NEW YORK DOCK* CONDITIONS**

The American Train Dispatchers Association ("ATDA") hereby submits this Reply in support of its ATDA's Emergency Petition to Stay Transfer of Work Pending Compliance with the conditions set forth in New York Dock Rv. — Control — Brooklyn Eastern Dist., 360 I.C.C. 60 (1979) ("New York Dock") and in response to Wisconsin Central Ltd.'s ("WC") Reply to that petition. Although WC is now controlled by Canadian National Railway Company ("CN"), with the approval of the Board, and although the WC train dispatchers are being transferred to CN property, only WC has responded to ATDA's Emergency Petition.

There is no dispute here as to what CN/WC intends to do. Nor is there any dispute that New York Dock requires that implementing agreements be negotiated in advance of covered transactions and that they address issues of how forces will be moved and rearranged, assignment of work, moving expenses, real estate benefits related to the sale of a home, and displacement, dismissal, and separation allowances. Nor is there any dispute that the options CN presented to

the WC train dispatchers did not address all of these issues and did not notify the employees that if they were dissatisfied, they could invoke arbitration, even though this Board's Decision in the control transaction said they could.

WC's justification for ignoring New York Dock and going forward with the move of its train dispatching and train dispatcher from WC offices at Stevens Point, WI, to CN offices at Homewood, IL, is two-fold. First, WC says that because it possesses the right to move train dispatching anywhere on its own property without complying with the requirements of New York Dock, it may move that work and those employees on to CN's property without following the New York Dock procedures, as long as it does not integrate its dispatching system with CN's. Second, WC asserts that, even if New York Dock does apply, the carrier has complied with that obligation. Both of these arguments must be rejected.

WC says that it is free from New York Dock obligations because WC could have moved the work/employees somewhere else (even via a lease with CN) and because the new dispatching location is "not far from WC's former offices in Rosemont." WC Reply at 4-5. Whether the carrier could have done something else is irrelevant. The point is that CN/WC is not going to do something else; it is going to do exactly what it could not have done had WC not been acquired by CN. The two carriers are going to avail themselves of what they must believe are the efficiencies of the acquisition by moving WC's operations into CN's house. That fact is what triggers New York Dock. The proximity of the new CN location to a *former* WC office that WC *might otherwise have chosen* deserves no weight. It is, of course, the fact that the transfer is crossing former discrete property lines that generates the obligation. Whether those lines are

across the country or across the street is not a controlling factor¹

As for WC's assertion that it already has negotiated individual agreements that satisfy NYD, the Board is reminded that those agreements were signed not in arms-length bargaining as WC suggests, but under considerable duress, as the employees were told to take one of two options or be considered to have resigned. This WC makes no attempt to refute.

In short, ATDA has shown that this is a control-related transaction to which New York Dock applies. The stay the union seeks should be granted.² CN/WC should be directed not to proceed with the transfer of WC train dispatching and train dispatchers to Homewood, IL, until an implementing agreement in compliance with New York Dock has been reached with ATDA.³

¹ Insofar as WC says that the transferred dispatchers will continue to use the same equipment, the Board should know that prior to CN's acquisition of control, WC dispatchers used TrainTrak C1C and TWC equipment, which was located in the Stevens Point Depot. After the acquisition, CN switched the WC dispatchers to the same Digicon and GBO systems that were being used by the CN's Illinois Central Railroad train dispatchers in Homewood, where CN/WC now intends to move the WC dispatchers. CN runs the WC's equipment off the IC's server in Homewood. In other words, CN already has begun to integrate the two dispatching systems.

² WC's argument that the Board should let the transaction go forward and have an arbitrator sort out the pieces later also should be rejected. *Chicago & N.W. Transp. Co. - Abandonment - Near Dubuque & Oelwein* 11, 3 I.C.C.2d 729, 732 & n. 5 (1987), *aff'd sub nom. IBEW v ICC*, 862 F.2d 330 (D.C. Cir. 1988), involved the agency's authority to review a post-transaction arbitration award addressing an employee's entitlement to certain moving and real estate benefits. Insofar as WC relies on the Board's decisions in *Kansas City S. Indus., Inc. - Control - Gateway W. Ry.* F.D. No. 33311 (December 4, 1997) and *Illinois Cent. Corp. - Control - CCP Holdings, Inc.*, F.D. No. 32858 (June 2, 1998), we respectfully submit that those decisions should not be followed. Those holdings permit carriers to frustrate New York Dock because by the time arbitration awards (or decisions of this Board) are rendered finding that transactions *are* governed by the conditions, the covered transactions have been completed and the pre-transaction negotiations required by NYD have become an impossibility.

³ In the alternative, the Board should stay the move until an arbitrator has decided that New York Dock does not apply.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that a copy of the attached Reply in Support of Emergency Motion was served upon Canadian National Railway Company and Wisconsin Central in the manner shown below this 4th day of June 2008 to:

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