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BY E-FILING

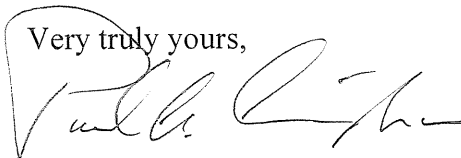
The Honorable Anne K. Quinlan, Esq.
Acting Secretary
Surface Transportation Board
Office of the Secretary
395 E Street, S.W.
Washington, DC 20423-0001

**Re: *Canadian National Railway Company and Grand Trunk Corporation –
Control – Wisconsin Central Transportation Corp.* (STB Finance Docket No.
34000)**

Dear Ms. Quinlan:

Enclosed for filing in the above-referenced docket is Wisconsin Central Ltd.'s Motion to Strike, or, in the Alternative, for Permission to Respond to the Reply of the American Train Dispatchers Association.

Very truly yours,



Paul A. Cunningham

Counsel for Wisconsin Central Ltd.

Enclosure

cc: Michael S. Wolly

BEFORE THE
SURFACE TRANSPORTATION BOARD

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.

WISCONSIN CENTRAL'S MOTION TO STRIKE, OR, IN THE ALTERNATIVE,
FOR PERMISSION TO RESPOND TO THE REPLY OF THE AMERICAN
TRAIN DISPATCHERS ASSOCIATION

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ALTERNATIVE, FOR PERMISSION TO RESPOND TO THE REPLY OF THE
AMERICAN TRAIN DISPATCHERS ASSOCIATION

Wisconsin Central Ltd. (“WC”) hereby moves to strike the 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, filed June 4, 2008 (“ATDA Reply”). The ATDA Reply was filed “in response to” WC’s reply to ATDA’s original petition (“WC’s Reply”).¹ However, Board rules do not permit a petitioner to reply to a reply.² Insofar as the ATDA reply is impermissible under Board rules, it should be stricken. In the alternative, if the Board denies WC’s motion to strike the pleading, WC respectfully requests leave to file the following response.

¹ ATDA tries to make a point about the fact that the reply to its petition for injunctive relief was submitted by WC and not by CN. ATDA Reply at 1. The reply was submitted by WC because it is the one whose relocation of employees is the subject of the ATDA petition. However, we can represent that CN concurs in WC’s submissions.

² 49 C.F.R. § 1104.13(c).

ATDA's reply does not rebut WC's contention that the conditions set forth in *New York Dock Ry. – Control – Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979) (“*New York Dock*”) do not apply to the employee relocation that gives rise to ATDA's petition.

First, ATDA is correct that “[t]here is no dispute” as to what WC intends to do: it intends to relocate its train dispatch employees from one location within its service area to another location within its service area. For the reasons set forth in WC's Reply, however, ATDA is incorrect in asserting that *New York Dock* applies to that relocation.

Second, ATDA is incorrect when it states that WC is “going to do exactly what it could not have done had WC not been acquired by CN.” ATDA Reply at 2. As WC made clear in its filing, even absent control by CN, WC could have relocated its dispatch employees to Homewood, where it now seeks to relocate those employees. ATDA is also incorrect that the “crossing [of] former discrete property lines” triggers *New York Dock* conditions.³ ATDA Reply at 2. Instead, as discussed in WC's Reply, *New York Dock* is

³ Citing no authority, ATDA makes the novel suggestion that the application of *New York Dock* to a move of an employee's work station to a new location may depend upon whether the employer railroad is crossing “discrete property lines” and moving its operations “into [another railroad's] house,” ATDA Reply at 2, or whether it had, *e.g.*, a fee simple ownership interest, or, as here, a lease, whether from IC (as here) or a third party. ATDA cites no support for contending that application of *New York Dock* turns on such metaphors or niceties of real estate law. Indeed, in ATDA's unsupported view, moving across such property lines within a building would evidently be more important than moving “across the country or across the street.” ATDA Reply at 2-3. In any event, dispatchers of independent railroads are sometimes co-located within the same building. *See, e.g.*, Ramona Vassar Isbell and Larry Gibson, *Communicating Down the Line*, MRT Magazine, Sep. 1, 1999, *available at* http://mrtmag.com/mag/radio_communicating_down_line (noting that UP and BNSF dispatchers are co-located at a buildings in San Bernardino, CA and Fort Worth, TX); Robert C. Leachman, et al., *Inland Empire Railroad Main Line Study* 27 (Jun. 30, 2005), *available at* <http://www.ieor.berkeley.edu/People/Faculty/leachman-pubs/InlandEmpire.pdf> (noting that co-locating dispatchers from two railroads allows them to converse and jointly plan the movement of trains needing to exercise trackage rights).

triggered when the job functions of the relocated employees are coordinated with those of another railroad, or when seniority lists are integrated or consolidated. WC Reply at 4-6. WC's Reply explained that no such coordination or consolidation is occurring.⁴

Third, ATDA is incorrect that the relocation agreements were signed "under considerable duress." ATDA Reply at 3. As WC discussed in its reply, the relocations involved fair and reasonable discussions between employer and employees, and allowed the dispatchers a choice between a standard management relocation package or a separate relocation package created specifically for the dispatchers.⁵ ATDA cites no authority for its suggestion that WC (or CN) had a duty to notify the WC employees that, if dissatisfied with the proposed arrangements, they could invoke arbitration under the CN/WC control decision, ATDA Reply at 2, a conclusion for which no authority is cited and with which neither WC nor CN agrees.

Finally, in responding to WC's contention that ATDA's claim must be addressed, in the first instance, through arbitration even if *New York Dock* applied, ATDA concedes that Board authority is contrary to its position, for it urges that the Board's governing decisions cited in WC's Reply at 6 n.6 "should not be followed." ATDA Reply at 3 n.2.

⁴ ATDA refers to WC's move several years ago to the same Digicon and GBO systems used by another CN subsidiary (IC), ATDA Reply at 3 n.1, but cites no authority suggesting any impropriety or *New York Dock* consequences. ATDA cites no support for suggesting that the currently proposed relocation was planned then as a next step to switching dispatch systems.

⁵ Whether the individual relocations derived from "arms-length bargaining," ATDA Reply at 3, is not dispositive because the arrangements that were reached provided terms that were likely better than the employees could have received under *New York Dock*. In any event, the discussions were clearly understood to be between parties with potentially different, independent interests. ATDA cites no authority for the separate proposition which it apparently seems to espouse that the bargaining power of opposing parties must be equivalent.

The fact that ATDA's success on the merits would depend on the Board not following its present case law shows that ATDA has not shown the requisite likelihood of success needed for interlocutory relief. In any event, those Board decisions squarely support WC's position on this matter, and ATDA provides no reason why the Board should overrule or disregard this settled precedent.

For the foregoing reasons, ATDA's Reply, which is impermissible under the Board's rules, provides no support for granting the stay or applying *New York Dock* to the relocation. The Board should deny ATDA's petition.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul A. Cunningham", written over a horizontal line.

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Counsel for Wisconsin Central Ltd.

CERTIFICATE OF SERVICE

I certify that I have this 5th day of June, 2008, served copies of the foregoing Motion to Strike, or, in the Alternative, for Permission to Respond to the Reply of the American Train Dispatchers Association, by hand delivery to:

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Christine A. Mellen