

Transportation Communications Union/IAM

International Association of Machinists and Aerospace Workers



Arthur P. Maratea
National President

TCU-2

June 7, 2021

VIA E-FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, SW
Washington, DC 20423

Re: STB Docket No. FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

The Transportation Communications Union/IAM (“TCU”) respectfully submits these comments regarding the above-captioned potential transaction. The TCU represents approximately 200 active members across the clerk, carmen and ARASA crafts on Canadian Pacific Railway (“CP”), and 40,000 members across various U.S. railroads. The TCU submits these comments regarding Canadian National (“CN”) and Kansas City Southern’s (“KCS”) Joint Motion for Approval of Voting Trust Agreement (CN-18/KCS-1), which was filed on May 26, 2021, and urges the Surface Transportation Board (“Board”) to reject the proposed CN-KCS voting trust in connection with CN’s proffered acquisition of KCS.

The Board explained that it will adopt a “more cautious approach” to the proposed voting trust process under the 2001 Major Merger Rules and will consider whether allowing the use of a voting trust would be consistent with the public interest in light of the “potential benefits and costs of such use.” (Board Decision No. 3 at 7 (served May 17, 2001)). Indeed, the Board’s 2001 Major Merger Rules require that CN must explain “why their proposed use of the trust, in the context of their impending control application, would be consistent with the public interest.” 49 C.F.R. § 1180.4(b)(4)(iv). It is the TCU’s view that the use of a trust for any merger under the 2001 Rules would not be in the best public interest or the best interest of its Union Members.

As the Board acknowledged, those rules place “heavier burden[s] on merger applicants to show that a major rail combination is consistent with the public interest” and allows the Board a

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much greater discretion to disapprove proposed transactions or impose extensive conditions aimed at ensuring that they serve the public interest. (Board Decision No. 3 at 3).

Allowing CN to use a voting trust to complete its acquisition of KCS would have adverse effects on our membership through the loss of rail traffic, and the railway industry as a whole, as it would eliminate the opportunity for KCS to be acquired by CP and the strong competitive benefits that a CP/KCS transaction would yield.

Allowing CN to pursue its control of KCS through a voting trust transaction would greatly diminish, if not eliminate, this opportunity for enhanced competition and would disserve the public interest. CN's proposed acquisition of KCS is not an end-to-end transaction, but an overlap of largely parallel rail systems. CN would have no incentive to invest in new competitive routes and its network would become three (3) times the size of CP. This kind of competitive imbalance is bad for the United States rail network and most importantly, their customers, the consumer, and railway employees.

Among TCU's anti-competition concerns is the crushing amount of debt CN will need to take on to finance the premium stock price CN is offering to KCS. While the CN-KCS Motion asserts that a merger between CN and KCS would "mean additional jobs, not cuts," (CN-18 at 15), CN's debt will no doubt rear its head at the bargaining table and will eventually be shouldered by TCU's members and its other represented brothers and sisters working on the railroad in the form of cost cutting. Further, should the transaction fail, TCU has no way of knowing how CN will recoup this investment and how it will divest the shares, putting CN in an uncertain financial position which will undoubtedly be shared by labor.

Either way, railroad workers lose with CN's proposed voting trust. The consequences for TCU's members and Union Brothers and Sisters will likely be adverse and contrary to the public interest.

Accordingly, for the reasons described above and others, the TCU urges the Board to carefully consider the implications on this proposed transaction and those that will follow, both short-term and long-term. Therefore, on behalf of the TCU/IAM members, I urge the Board to reject CN's motion to approve its proposed voting trust.

Dated: June 7, 2021

Respectfully submitted,



Arthur Maratea

TCU/IAM National President

CERTIFICATE OF SERVICE

I certify that I have this day served copies of the above document by electronic mail per 49 C.F.R. § 1104.12 upon all parties of record in this proceeding.

Dated: June 7, 2021

/s/ Antonia Bird _____
Antonia Bird

Attorney for TCU