

SERVICE DATE – MARCH 3, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36500

CANADIAN PACIFIC RAILWAY LIMITED; CANADIAN PACIFIC RAILWAY
COMPANY; SOO LINE RAILROAD COMPANY; CENTRAL MAINE & QUEBEC
RAILWAY US INC.; DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION;
AND DELAWARE & HUDSON RAILWAY COMPANY, INC.

—CONTROL—

KANSAS CITY SOUTHERN; THE KANSAS CITY SOUTHERN RAILWAY COMPANY;
GATEWAY EASTERN RAILWAY COMPANY; AND
THE TEXAS MEXICAN RAILWAY COMPANY

Decision No. 34

Digest:¹ The Board approves both the appointment of Ronald L. Batory as
successor trustee of the independent voting trust in this proceeding and the related
assumption agreement.

Decided: March 3, 2023

By letter filed February 28, 2023, the applicants in this proceeding (Applicants)² propose
to appoint Ronald Batory as the successor trustee of the independent voting trust formed
pursuant to the Voting Trust Agreement approved by the Board,³ following the recent death of

¹ The digest constitutes no part of the decision of the Board but has been prepared for the
convenience of the reader. It may not be cited to or relied upon as precedent. See Pol’y
Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² Applicants are Canadian Pacific Railway Limited, Canadian Pacific Railway Company,
and their U.S. rail carrier subsidiaries, Soo Line Railroad Company, Central Maine & Quebec
Railway US Inc., Dakota, Minnesota & Eastern Railroad Corporation, and Delaware & Hudson
Railway Company, Inc. (collectively, Canadian Pacific) and Kansas City Southern and its U.S.
rail carrier subsidiaries, the Kansas City Southern Railway Company, Gateway Eastern Railway
Company, and the Texas Mexican Railway Company (collectively, KCS).

³ By decision served May 6, 2021, the Board found that, subject to certain required
modifications described in that decision, Applicants’ proposed placement of KCS into a voting
trust during the pendency of the control proceeding would comply with the guidelines at
49 C.F.R. part 1013, comport with past agency policy and practice, and sufficiently ensure that
the day-to-day management and operation of KCS would not be controlled by Canadian Pacific

the original trustee, David Starling. Applicants assert that Mr. Batory satisfies the independence criteria of Paragraph 10 of the Voting Trust Agreement⁴ and 49 C.F.R. part 1013, as he owns no stock or securities of Canadian Pacific or its affiliates and he has advised Applicants that he has no direct or indirect business arrangements or dealings, financial or otherwise, with Canadian Pacific or its affiliates. (Applicants Letter 1, Feb. 28, 2023.) With their letter, Applicants submit a proposed Assumption of Voting Trust Agreement that would appoint Mr. Batory as successor trustee and establish that he is assuming the Voting Trust Agreement on its original terms. (See id., Attach. A.) Applicants request that the Board formally approve Mr. Batory's proposed appointment and the proposed Assumption of Voting Trust Agreement.

For the reasons Applicants note in their February 28 letter, the Board finds that the appointment of Mr. Batory as trustee satisfies the independence criteria of 49 C.F.R. § 1013.1 and Paragraph 10 of the Voting Trust Agreement and accordingly approves his appointment as successor trustee. The Board approves the Assumption of Voting Trust Agreement for the same reasons.

It is ordered:

1. The appointment of Ronald L. Batory as successor trustee is approved.
2. The Assumption of Voting Trust Agreement is approved.
3. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz. Board Member Primus concurred with a separate expression.

Board Member Robert Primus, concurring:

I concur with the approval of Mr. Batory's appointment. However, I maintain my objections to the standard that the Board applied in approving the voting trust, as stated in my September 30, 2021 dissent.

or anyone affiliated with Canadian Pacific while KCS remains in trust. See Canadian Pac. Ry.—Control—Kan. City S. (Decision No. 5), FD 36500, slip op. at 6 (STB served May 6, 2021); see also Canadian Pac. Ry.—Control—Kan. City S., FD 36500, slip op. at 3-5 (STB served Sept. 30, 2021) (finding that the approval granted in Decision No. 5 for Applicants to use a voting trust applied to the voting trust described in Applicants' amended prefiling notification filed on September 15, 2021).

⁴ (See Applicants Notice, Dec. 13, 2021, Ex. 1, Voting Trust Agreement.)