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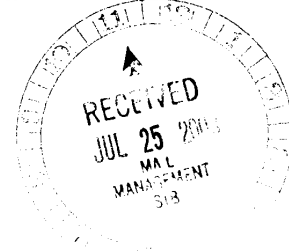
Transportation Communications International Union

Robert A. Scardelletti, *International President*
LEGAL DEPARTMENT
Mitchell M. Kraus, *General Counsel*
Christopher J. Tully, *Assistant General Counsel*

July 24, 2003

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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**RE: Kansas City Southern-Control-The Kansas City
Southern Railway Company, Gateway Eastern
Railway Company, and The Texas Mexican Railway
Company
STB Finance Docket No. 34342**

Dear Secretary Williams:

In connection with the Surface Transportation Board's ("STB" or "Board") July 9, 2003 Public & Media Advisory, please accept the following as the written comments of the Transportation Communications International Union ("TCU") in connection with the above-captioned proceeding. TCU is the collective bargaining representative for approximately 400 employees of the Kansas City Southern Railway ("KCSR") and the Texas Mexican Railway ("Tex-Mex") working in the clerical, carmen and supervisory crafts.

TCU is not prepared at this time to state whether it supports or opposes the control proceeding. Kansas City Southern ("KCS") has taken important steps in its application by stipulating that the existing collective bargaining agreements between TCU and the KCSR and between TCU and the Tex-Mex will remain in force. See KCS-3/TM-3, at 158 (Verified Statement of Emerson M. Bouchard ("Bouchard Statement")).

With respect to labor protection, KCS is correct in stating that the protections set forth in *New York Dock Ry.-Control-Brooklyn Eastern Term. Dist.*, 360 I.C.C. 60 (1979) ("*New York Dock Conditions*") are appropriate to this transaction. 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.-Mexico border. Specifically, TCU requests that the Board to hold that

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employees would not be required to follow their work to Mexico as a condition of receiving *New York Dock* benefits.

In its approval of the acquisition of control by the Canadian National Railway Company, et al., of the Illinois Central Railroad ("CN-IC Transaction"), see STB Finance Docket No. 33556, Decision No. 37 (decided May 21, 1997), the Board dealt with precisely this issue. In that case, CN had specifically proposed to consolidate certain clerical work from IC's headquarters in Chicago to a CN site in Montreal. Although the *New York Dock* Conditions require employees (as a condition of receiving protective benefits) to follow their work, Canadian immigration laws would have made this impossible, as those laws prohibited non-Canadians from working in the country if their doing so would "adversely affect employment opportunities for Canadian citizens or permanent residents of Canada. . . ." See Immigration Regulations, SQR/78-172, §20(1)(a). Further, requiring employees to move across international borders to preserve their *New York Dock* protections would cause particularly harsh dislocation for such employees and their families.

In its approval of the CN-IC Transaction, the Board agreed that employees should 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 thus 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,

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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). Further, the Board noted that employees would not be required, as a condition of preserving their New York Dock benefits, to show that they were precluded from moving to Canada by Canadian immigration law. Id., at 44 n.102.

The situation in the current proceeding is the same. The applicants have indicated that they intend to consolidate various functions including, for example, timekeeping and payroll between the Tex-Mex, KCS, and Gateway Eastern Railway ("GWER"), see KCS-3/TM-3, at 142 (Verified Statement of James L. Riney ("Riney Statement")), 158 (Bouchard Statement), and that additional "significant changes" may occur as the implementation of the transaction moves forward. See KCS-3/TM-3, at 158 (Bouchard Statement). If this transaction were approved, KCS would not only become the corporate parent of the Tex-Mex, but also of TFM, S.A. de C.V. ("TFM"), a railroad located solely in Mexico, id., at 9, 22; and certain Tex-Mex functions (e.g., marketing and customer service) are already coordinated with TFM. KCS-3/TM-3, at 142 (Riney Statement). Consequently, although the applicants have not given any specifics about the movement of work, implementation of this transaction could very well lead to further coordinations of work among KCS, Tex-Mex, GWER and TFM that result in work being moved over the U.S.-Mexico border.*

TCU understands that Mexican law has similar restrictions on the performance of work in Mexico by individuals who are not Mexican nationals, warranting that the Board take a position similar to the one it took in the CN-IC transaction. Equally important, the dislocations that would be suffered by employees and their families as the result of having to follow work to Mexico equally - if not more - harsh as those that would be suffered by

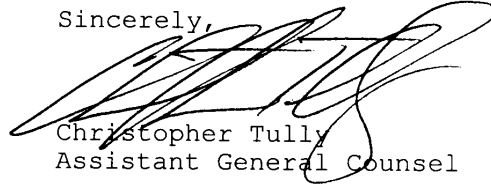
* We also note that work which has been moved across the border may become especially difficult to identify, making it difficult for labor organizations to try and enforce the requirements of Article I, §4 of the New York Dock Conditions.

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employees who would otherwise have had to follow work on the IC from Chicago to Montreal. Consequently, the Board should restate and apply its holding in the CN-IC transaction to the instant transaction - i.e., "employees cannot be required to follow their work to [Mexico] or else be deemed to have forfeited their New York Dock benefits." STB Fin. Docket No. 33556, Decision No. 37, at 44. Likewise, the Board should restate its earlier holding that an employee whose work is moved over U.S. borders is not required to show that he or she was precluded from following the work by Mexican law. Id., at 44 n.102.

TCU appreciates the opportunity to participate in this proceeding. If the Board has any further questions or inquiries, please do not hesitate to contact the undersigned at (301)948-4910.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher Tully", is written over the typed name and title.

Christopher Tully
Assistant General Counsel

cc: R. Scardelletti, IP
R. Johnson, GP, BRC
J. Parker, IVP
Industry Relations