

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Chief Counsel
May 26, 2026
Part of
Public Record

Kansas City Southern--Control--The Kansas City Southern
Railway Company, *et al.*

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Finance Docket No. 34342

**RESPONDENTS' MOTION TO STRIKE PETITIONER DANIEL T. WHITE'S
UNAUTHORIZED "REPLY TO RESPONDENTS' OPPOSITION"
OR, IN THE ALTERNATIVE, FOR LEAVE TO FILE SURREBUTTAL**

Respondents Kansas City Southern Railway Company ("KCSR"), The Texas Mexican Railway Company ("Tex-Mex"), and Canadian Pacific Kansas City Limited, collectively "CPKC," move this Board to strike Petitioner Daniel T. White's "Reply to Respondents' Opposition (May 14, 2026)," filed May 20, 2026 (hereinafter "Reply to Opposition"), on the ground that the document is a reply-to-reply that is prohibited by the Board's rules, 49 C.F.R. §1104.13(c).

In the alternative, if the Board should decide to accept Mr. White's unauthorized Reply into the record, CPKC moves the Board for leave to file a Surrebuttal to the Reply, as submitted herewith.

Mr. White initiated this proceeding on April 24, 2026, by filing a petition for review of an arbitration award rendered on April 1, 2026, in a proceeding conducted under Article I, section 4 of the Board's "*New York Dock*" employee protective conditions.¹ The award resolved a dispute between CPKC and Mr. White's labor union, the Brotherhood of Locomotive Engineers and Trainmen ("BLET"), as to what the appropriate implementing agreement should

¹ These are the conditions imposed in *New York Dock Ry.--Control--Brooklyn Eastern Dist.*, 360 I.C.C. 60, 84-90 (1979), *aff'd*, *New York Dock Ry. v. United States*, 609 F.2d 83 (2d Cir. 1989).

be in connection with the combination of the locomotive engineer work force on Tex-Mex with the locomotive engineer work force on the territory of KCSR. KCSR controls Tex-Mex.²

Together with his petition for review of the award, Mr. White filed an “Emergency Motion For Stay And Interim Relief.” CPKC filed its Opposition to that motion on May 14, 2026, demonstrating that Mr. White has not satisfied the Board’s established criteria for a stay, most notably by failing to show that implementation of CPKC’s proposed operational changes will cause him any harm, much less irreparable harm; and also that he has essentially no chance of prevailing on the merits of his petition. Now, without asking for leave, Mr. White has filed his Reply to Opposition, in which he appears to abandon the Board’s stay criteria and falls back on the assertion that in *Tex-Mex Control*, the Board modified the *New York Dock* conditions *for this one case*, in a manner that is nowhere stated in the decision and, indeed, that is refuted by the language of the decision itself – as CPKC showed in its Opposition to the stay motion.

The Board’s ongoing review of the question of allowing replies-to-replies does not serve to legitimize Mr. White’s unauthorized filing. In an advance notice of proposed rulemaking published just last week, *Review of Replies to Replies*, Docket No. EP 790 (decision served May 18, 2026), 91 Fed. Reg. 28520 (May 18, 2026) (“ANPRM”), the Board said it “is considering whether to modify its rules to allow replies to replies (and if so, to what extent) and seeks comments as to how the rules would best promote fairness, efficiency, and predictability for all parties” Slip op. at 1. The Board noted that allowing a reply to a reply (called “rebuttal” in the ANPRM) might in some cases serve to crystalize arguments and clarify ambiguities; but also

² *Kansas City Southern--Control--The Kansas City Southern Ry., et al.*, F.D. No. 34342 (served Nov. 29, 2004) (“*Tex-Mex Control*”).

that such replies “might be used inappropriately to introduce new evidence or argument that was not, but could have been, included with the proponent’s opening pleadings, creating unfair surprise for litigants.” *ANPRM*, slip op. at 2. Certainly, Mr. White’s unauthorized reply-to-reply neither crystalizes nor clarifies anything; however, it does attempt to shift argument away from the Board’s established standards for grant of a stay, denying that those standards matter in this case because, in Mr. White’s view, the decision in *Tex-Mex Control* itself prohibits the operational changes that were presented to the arbitrator. On that basis, the reply-to-reply asserts, CPKC should be enjoined from proceeding with its operational changes on terms allowed by the arbitrator. Both Mr. White and CPKC presented argument regarding the language of *Tex-Mex Control* in their prior submissions, and Mr. White’s unauthorized filing serves no purpose except as an effort to obtain the last word on that point.

Mr. White’s unauthorized filing does, however, make explicit his failure to show the critical element of irreparable harm, and if the filing is permitted, then fairness dictates that CPKC be allowed the opportunity to respond on that one point.³

CONCLUSION

For the foregoing reasons, the Board should apply its long-standing published rule and strike Mr. White’s unauthorized May 20, 2026 Reply to Opposition. However, in the event that

³ Mr. White asserts that “Respondents argue that Petitioner lacks standing” in this proceeding. Reply to Opposition at 1. That is not our position, and we have not yet presented argument as to Mr. White’s capacity to appeal his union’s arbitration award. The “standing” doctrine is premised on the provisions of U.S. Const. Art. III, §2, which confines the jurisdiction of federal courts to deciding “cases” and “controversies.” This Board is not a federal court. We expect to show, in our Reply to Mr. White’s petition to review the arbitration award, that the Board should decide not to entertain his petition, for reasons which we will explain. Consideration of the instant Motion to Strike does not require a determination as to whether Mr. White should be heard to seek review of the arbitration award in question.

the Board should accept Mr. White's filing, then CPKC asks the Board to accept a very short Surrebuttal limited to a single issue that is critical to the Board's consideration of Mr. White's stay motion – whether Mr. White will suffer irreparable harm if CPKC implements its proposed operational changes as allowed by the April 1, 2026 award. We are submitting our Surrebuttal herewith.

Respectfully submitted,

/s/ Charles W. Webster

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of May, 2026, I caused a copy of the foregoing Respondents' Motion To Strike Petitioner Daniel T. White's Unauthorized "Reply To Respondents' Opposition" Or, In The Alternative, For Leave to File Surrebuttal to be served by email on:

the Petitioner; and by email on:

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/s/ Charles W. Webster

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