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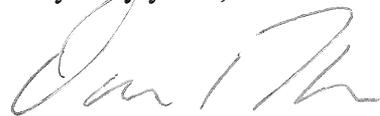
Ms. Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

**Re: CSX Transportation, Inc. – Acquisition of Operating Easement – Grand
Trunk Western Railroad Company (Docket No. FD 35522)**

Dear Ms. Brown:

Enclosed for filing in the above-referenced docket please find Grand Trunk Western
Railroad Company's Response to Comments of American Train Dispatchers Association.

Very truly yours,



David A. Hirsh

*Counsel for Grand Trunk Western Railroad
Company*

Enclosure

cc: Louis E. Gitomer, Esquire
Michael S. Wolly, Esquire

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 35522

CSX TRANSPORTATION, INC. – ACQUISITION OF OPERATING EASEMENT –
GRAND TRUNK WESTERN RAILROAD COMPANY

RESPONSE TO COMMENTS OF AMERICAN TRAIN DISPATCHERS
ASSOCIATION

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November 28, 2012

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 35522

CSX TRANSPORTATION INC. – ACQUISITION – GRAND TRUNK WESTERN
RAILROAD COMPANY

RESPONSE TO COMMENTS OF AMERICAN TRAIN DISPATCHERS
ASSOCIATION

Grand Trunk Western Railroad Company (“GTW”) hereby responds to the Comments of the American Train Dispatchers Association (“ATDA”). As set forth in the Application filed by CSX Transportation, Inc. (“CSXT”), this proceeding involves CSXT’s acquisition of an exclusive, perpetual non-assignable railroad operating easement over approximately 22.37 miles of GTW’s Elsdon Subdivision.¹ Through its acquisition of this operating easement, CSXT will obtain control over operations on the Elsdon Line and become the primary user of that line. Application at 15-16. CSXT will assume responsibility for maintenance, dispatching, and capital improvements on the Elsdon Line. Application at 4, 15-16. By acquiring this operating easement, and with its control over operations on the Elsdon Line, CSXT expects to be able to re-route traffic that now operates over lines of other carriers, and more efficiently move traffic through the congested Chicago Terminal area. Application at 20-22. For CSXT, a key aspect of the transaction is its acquisition of the ability to control traffic over the Elsdon Line,

¹ For ease of reference, the portion of the Elsdon Subdivision covered by this transaction is referred to herein as the “Elsdon Line.”

making control over the dispatching function especially important. Once the transaction is completed, CSXT will, for all practical purposes, own the Elsdon Line, subject only to the possibility of having to return the line to GTW if it ever abandons the line or ceases to conduct regular rail operations over it.

In the Application, CSXT requested that the Board impose the labor protective conditions under *New York Dock—Control – Brooklyn Eastern Dist. Term.*, 360 I.C.C. 60 (1979), as modified by *Wilmington Terminal R.R. Inc. – Purchase and Lease – CSX Transp. Inc.*, 6 I.C.C.2d 799 (1990). Application at 30. ATDA does not dispute that the *New York Dock* conditions should apply to this transaction, and ATDA does not otherwise take a position either in favor of or in opposition to the transaction. Indeed, like CSXT, ATDA reiterates that *New York Dock* applies to this transaction. Comments at 2. However, ATDA further states that “the STB should impose the *New York Dock* labor protective conditions and should expressly state that those conditions are to be applied to CSXT and former GTW, now Wisconsin Central, train dispatchers impacted by the transaction.” Comments at 2.

To the extent ATDA seeks imposition of the *New York Dock* conditions (as modified by *Wilmington Terminal*), ATDA does not seek any relief beyond what CSXT has already requested in its Application, and GTW has no issue with ATDA’s position. Eligible employees in any craft (whether specifically mentioned in the application or not) who are adversely affected by the transaction will be covered by the applicable protective conditions. To the extent, however, that ATDA’s Comments can be read as requesting that the Board require any sort of “umbrella implementing agreement” covering CSXT, GTW, and their respective employees in this transaction, that request should be rejected

under the ICC's decision in *Wilmington Terminal*. See *Wilmington Terminal*, 6 I.C.C.2d at 815-16. Under *Wilmington Terminal*, to the extent any rearrangement of forces is required by this transaction, and any changes to collective bargaining agreements may be necessary, CSXT will be responsible for the agreements with its employees, and GTW (or one of its affiliates) will be responsible for the agreements with its employees. There is no need for the Board to single out the train dispatchers on either railroad for special treatment under *New York Dock*.²

ATDA also asserts that CSXT's application has not made "an adequate showing that transfer of train dispatching responsibilities is necessary to effectuation of the transportation efficiencies CSXT declares is the objective of the transaction," and urges the Board to "condition the transaction on the preservation of the train dispatchers' rights under the ATDA-WC CBA." Comments at 3. The Organization's request is inappropriate, and should be denied. First, no override of collective bargaining agreements is necessary to allow this transaction to proceed. Once GTW conveys this permanent, exclusive easement to CSXT, GTW employees will have no contractual right to perform work over the Elsdon Line. The applicable collective bargaining agreement between ATDA and Wisconsin Central Ltd. ("WC"), cited by ATDA in its Comments (at

² ATDA finds significant that "[t]here is no mention in CSXT's application of the effect the proposed acquisition of the GTW line will have on train dispatchers," nor "any information in the Application from GTW, or its parent Canadian National or Wisconsin Central, whose employees are now responsible for train dispatching on the line, regarding the effects of the transaction on those employees" (Comments at 3). In fact, the Application made clear that the only anticipated adverse employee impact with respect to the GTW property is the loss of no more than four maintenance-of-way positions (tower operators) held by employees of Illinois Central Railroad Company, a GTW affiliate (Application at 30 & Appendix 1). CN does not plan to abolish any dispatching positions as a result of the transaction in this case.

2-3), does not prohibit GTW from selling lines or granting permanent easements over them, nor does it require GTW to force the acquirer of such lines to let GTW employees (or the employees of GTW's WC affiliate) continue to perform work over them.³

Instead, the ATDA-WC agreement merely makes CN dispatchers responsible for dispatching “on their assigned territory.” Once CSXT acquires the exclusive operating easement that is the subject of this transaction, CSXT will have control over and be the primary user of the Elsdon Line, and hold a property interest in that line sufficient for the property to cease to be part of the “assigned territory” for any GTW or WC dispatchers. In this respect, the conveyance of such an easement is no different from the sale of a rail line.⁴ After the transaction, CN dispatchers will continue to be subject to the same rates of pay, rules, and working conditions set forth in the applicable ATDA-WC collective

³ In a case comparable to this one, CSXT conveyed its “South Coast Lines” to the Commonwealth of Massachusetts, retaining a permanent rail freight easement in the lines. *Mass. Dep’t of Transp. – Acquisition Exemption – Certain Assets of CSX Transp., Inc.*, Docket No. FD 35312 (STB served May 3, 2010) (dismissing notice of exemption for lack of jurisdiction on ground that acquirer would not become a common carrier). CSXT then transferred its freight easement to Massachusetts Coastal Railroad, LLC, a short line. Just as in the present case, the parties structured their transaction so that the holder of the freight easement, rather than the underlying property owner of the line, would be responsible for dispatching the line. Motion to Dismiss at 17, 37, *Mass. Dep’t of Transp. – Acquisition Exemption – Certain Assets of CSX Transp., Inc.*, STB Finance Docket No. 35312 (filed Nov. 24, 2009). (The conveyance of the easement to Massachusetts Coastal was approved in *Mass. Coastal R.R. – Acquisition – CSX Transp., Inc.*, STB Finance Docket No. 35314 (STB served Mar. 29, 2010) (“*Mass Coastal*”).)

⁴ *Cf. Mass Coastal*, slip op. at 4-5 (“A freight rail easement gives the holder the right to conduct freight railroad operations on the specified railroad tracks for the purpose of providing common carrier rail freight service to all of its customers”); *Wisconsin & Southern R.R. Co. – Acquisition and Operation Exemption – Union Pacific R.R. Co.*, STB Finance Docket No. 35144 (STB served April 22, 2009), slip op. at 2-3 (treating acquisition of operating easement by Class II carrier as the equivalent of a line sale for purposes of 49 U.S.C. 10902(d)).

bargaining agreement, and no change to that agreement should be necessary at all. *See Wilmington Terminal*, 6 I.C.C.2d at 817.

Moreover, *Wilmington Terminal* makes clear that collective bargaining agreements are not portable, and the purchaser of a rail line (or in this case, an exclusive operating easement) is not required to assume the seller's collective bargaining agreements or employees. *Id.* at 819-20. Thus, to the extent ATDA is requesting that the Board condition its approval of this transaction on the continued application of the ATDA-WC agreement to CSXT's operation of the Elsdon Line following completion of this transaction, that request is contrary to the longstanding precedent of *Wilmington Terminal*, and must be rejected.

Furthermore, even if there is a dispute over whether a CBA override is necessary, this is not the correct forum to decide it; such an issue should be decided, in the first instance, through arbitration. As the Board has explained in the *Conrail* transaction and elsewhere: "In approving a rail merger or consolidation such as this, ***we have never made specific findings in the first instance regarding any CBA changes that may be necessary to carry out a transaction***, and we will not do so here. Those details are best left to the process of negotiation and, if necessary, arbitration under the *New York Dock* procedures." *CSX Corp. – Control and Operating Leases/Agreements – Conrail, Inc.*, 3 S.T.B. 196, 329 (1998) (emphasis supplied); *see also Canadian National Ry. Co. – Control – Illinois Central Corp.*, 4 S.T.B. 122, 163 (1999). The Board should apply the same approach here. If, in implementing the transaction, either CSXT or GTW should take action that ATDA believes would violate its rights under any collective bargaining agreement, ATDA will have ample opportunity at that time to seek a determination

regarding the necessity of that action and to request appropriate relief preserving its rights under the agreement.

GTW agrees with ATDA that “the Board must assure that no train dispatcher affected by the transaction is deprived of the protection the law requires” (Comments at 4), but points out that in order to assure that outcome the only action presently required of the Board is imposition of *New York Dock* conditions (modified by *Wilmington Terminal*), as requested by CSXT (Application at 30). *See Mass Coastal*, slip op. at 7 (imposing no labor protection, other than standard *New York Dock* conditions, on a transaction in which the acquirer of a freight rail easement would dispatch the line).

Respectfully submitted,



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Counsel for Grand Trunk Western Railroad Company

November 28, 2012

CERTIFICATE OF SERVICE

I certify that I have this 28th day of November, 2012, served the foregoing Response to Comments of American Train Dispatchers Association on all parties to this proceeding by sending a copy by first-class mail, or a more expeditious method of delivery, to each of the following:

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A handwritten signature in cursive script, appearing to read "Christine A. Mellen", written over a horizontal line.

Christine A. Mellen