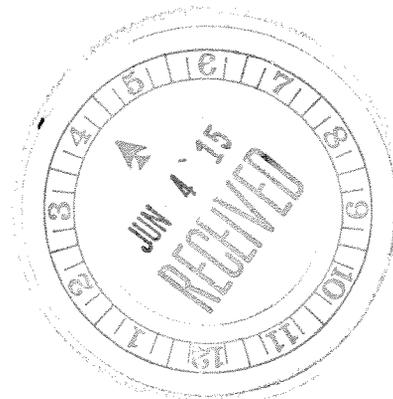


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June 4, 2015
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Public Record

Before the
SURFACE TRANSPORTATION BOARD



Finance Docket No. 35873^{*/}

NORFOLK SOUTHERN RAILWAY COMPANY-ACQUISITION AND OPERATION-
CERTAIN RAIL LINES OF THE DELAWARE AND HUDSON RAILWAY COMPANY,
INC.

PETITION FOR STAY

GORDON P. MacDOUGALL
1025 Connecticut Ave., N.W.
Washington DC 20036

June 4, 2015

Attorney for Samuel J. Nasca

*/Embraces also FD 34209 (Sub-No. 1), Norfolk S. Ry. Trackage
Rights Exemption-Delaware & Hudson Ry., and FD 34562 (Sub-No. 1)
Trackage Rights Exemption-Delaware & Hudson Ry.

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PETITION FOR STAY

Preliminary Statement

Samuel J. Nasca,^{1/} for and on behalf of SMART/Transportation Division, New York State Legislative Board SMART/TD-NY) submits this petition for stay, of Decision No. 6), by the Surface Transportation Board (STB or Board), dated and served May 15, 2015, in the captioned proceeding, and embraced notices. The contents of the contemporaneously filed Petition for Reconsideration, due and filed June 4, 2015, are deemed embraced also in this request for stay. (Decision, 37 Cond. 14).

The duration of the stay request is pending disposition of the petition, or petitions, for reconsideration by the Board with respect to its 37-page Decision dated and served May 15, 2015.

*/Embraces also FD 34209 (Sub-No. 1), Norfolk S. Ry. Trackage Rights Exemption-Delaware & Hudson Ry., and FD 34562 (Sub-No. 1) Trackage Rights Exemption-Delaware & Hudson Ry.

^{1/}New York State Legislative Director for SMART/TD, with offices at 35 Fuller Road, Albany, NY 12205.

REASONS FOR STAY

1. Strong Likelihood of Success on Merits. Petitioner has a strong likelihood of success on the merits, certainly with respect to the necessary employee protective conditions. The Board's decision does not mention the anticipated impact on railroad employees if the purchase transaction is approved--by aggregate number of railroad employees by specific craft or class or by location. Moreover, the time frames for various impacts are not mentioned in the 37-page decision.

However, the Board's action in imposing New York Dock, as modified by Wilmington Terminal,^{2/} employee protection, for the purchase transaction, to mean the transaction can be consummated without pre-consummation employee agreements, most likely will not be followed by the STB on reconsideration.^{3/} Pre-consummation agreements between Norfolk Southern Railway Company (NSR) and its employees, and similar agreements between Delaware & Hudson Railway Company (D&H) and its employees are required, even under New York Dock-Wilmington Terminal, contrary to the Board's imputation of an additional sentence in Wilmington Terminal indicating consummation need not await employee agreements. (Decision, 29).

^{2/}New York Dock Ry.-Control-Brooklyn Eastern Dist., 360 I.C.C. 60 (1979), aff'd New York Dock Ry. v. U.S., 609 F.2d 83 (2d Cir. 1979), mod. Wilmington Term. RR, Inc.-Pur. & Lease-CSX Transp., Inc., 6 I.C.C.2d 799 (1990), aff'd Railway Labor Executives' Ass'n v. I.C.C., 930 F.2d 511 (6th Cir.1991).

^{3/}The predecessor I.C.C., and NSR's predecessor, had a disastrous experience in following outside carrier counsel and I.C.C. staff in misreading protective conditions as not to require pre-consummation implementing agreements, inter alia. See: Southern Ry. Co.-Control-Central of Georgia Ry. Co., 331 I.C.C. 351, 189-94 (1967).

Moreover, so-called "umbrella" agreements between NSR, D&H, and employees of both railroads, are necessary in view of the NSR/D&H contract and their representatives during the STGB proceedings, to employees and the public, that job offers and referential hiring would be made by NSR for D&H employees.

The SMART/TD-NY petition for reconsideration (incorporated herein) indicates 254 D&H employees stand to be adversely affected, all presently without the pre-consummation agreement necessary to carry out the mandatory protections of 49 U.S.C. 11326(a).

In addition to the almost virtual certainty SMART/TD-NY will prevail on the merits concerning the employment protection provisions required by the purchase transaction, the same should be true for the two trackage rights revisions embraced in FD Nos. 34209 (Sub-No. 1) and 34562 (Sub-No. 1), where the NSR trackage segments rights segments to be discontinued should be covered by Oregon Short Line. The revision of the active trackage right agreements to provide that portions are to be discontinued, require Oregon Shore Line protection. United Transp. Union v. Surface Transp. Bd., 363 F.3d 465 (D.C.Cir. 2004).

Petitioner anticipates it will prevail on the merits, at the minimum on employee protection issues, and perhaps also setting aside the entire transaction. See: SMART/TD-NY Pet. for Reconsideration.

2. Irreparable Injury Without a Stay. Railroad employees would suffer irreparable injury without a stay pending reconsideration. Some 254 D&H employees would be adversely affected if the transaction is permitted to be consummated pending reconsideration. The loss of jobs would affect their standard of living and

that for members of their families. Monetary compensation, even if legally capable of according some relief, could not restore the status quo and are insufficient. The employer rail carriers most likely would assert the action had been authorized by a U.S. Government agency and lawful at the time.

The attached verified statement of Samuel J. Nasca demonstrates that the rail carriers have not issued notices under Article I, section 4 of New York Dock, as mandated by those conditions, or as modified by Wilmington Terminal; moreover, voluntary negotiations have not been instituted for implementing agreements.

3. Other Parties Would Not Be Harmed. A stay pending disposition of reconsideration would not harm other parties. The rail carriers thus far have not taken action to expedite consummation, or to expedite the process of implementation notices. There would be no harm to the carriers if the Board's effective date is postponed during the reconsideration process.

4. The Public Interest Warrants a Stay. The proposed displacement and/or relocation of 254 or more employees would affect their families as well as local business concerns in the small communities served by D&H. The irreparable location changes and commercial revisions should not be undertaken absent a final agency order after reconsideration.

WHEREFOR, the Board should stay the effective date of its May 15, 2015 decision pending disposition of this and any other petitions for reconsideration.

Respectfully submitted



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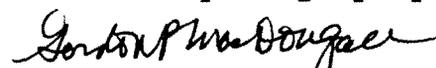
June 4, 2015

Attorney for Samuel J. Nasca

Certificate of Service

I hereby certify I have served a copy of the foregoing upon
all parties of record by first class mail postage-prepaid

Washington DC



Gordon P. MacDougall

VERIFIED STATEMENT
OF SAMUEL J. NASCA

My name is Samuel J. Nasca. I previously filed a verified statement in these proceedings as part of the SMART/TD-NY January 21, 2015 Opposition submission.

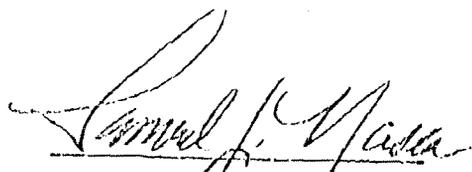
This second verified statement is concerned with developments subsequent to the Board's May 15, 2015 decision.

The carriers have not served the 90-day notices specified by Article I, section 4, of New York Dock, or other agreements, upon Canadian Pacific Railway Company employees regarding the transaction approved by the Board.

The carriers have not advised Canadian Pacific Railway Company employees the start-up of any negotiations concerning implementation of the transaction approved by the Board.

STATE OF NEW YORK
COUNTY OF ALBANY

Under the penalties of perjury, I affirm the foregoing verified statement is true and correct as stated.


SAMUEL J. NASCA

Dated at
Albany, NY
June 4, 2015