

**In the Matter of:**

**STB Finance Docket No. 35522**

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

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**COMMENTS OF AMERICAN TRAIN DISPATCHERS ASSOCIATION**

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In this proceeding, CSX Transportation (“CSXT”) has filed an Application seeking approval to acquire from Grand Trunk Western Railroad Company (“GTW”) “an exclusive, perpetual non-assignable railroad operating easement” over certain trackage in GTW’s Alston Subdivision (“the Proposed Transaction”). As part of the Proposed Transaction, CSXT says it will assume responsibility for train dispatching and rail traffic control over the line. In its Application, CSXT expressly requested that the Board impose on the Proposed Transaction the labor protective conditions required by *New York Dock Ry – Control – Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), as modified by *Wilmington Term. RR, Inc. – Pur. & Lease–CSX Transp., Inc.*, 6 I.C.C.2d 799 (1990) for the benefit of CSXT and certain GTW employees. CSXT does not, however, identify any train dispatchers as falling within that group. The train dispatchers who presently control rail traffic over the Elsdon Line are employed under a collective bargaining agreement with Wisconsin Central, Ltd., (“WC”) negotiated pursuant to an implementing agreement in Finance Docket No. 33556, Sub No. 6, which allowed for the transfer of GTW train dispatchers to Homewood, IL, where they became employees of WC, GTW’s successor.<sup>1</sup>

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<sup>1</sup> Pursuant to authority granted in *Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated – Control – Illinois Central Corporation, Illinois Central Railroad Company, etc.*, 4 S.T.B. 122 (1999) and *Canadian National, et al.–Control–Wisconsin Central Transp. Corp., et al.*, 5 S.T.B. 890 (2001), Canadian National transferred responsibilities for train dispatching over the GTW and Wisconsin Central (“WC”) lines, and employees who perform those responsibilities, to Homewood, IL. Following implementing agreement arbitration (See STB Decision (Arbitration Review) in Docket No. FD 33556 (Sub-No. 5) (Service Date October 4, 2011)), the train dispatching workforces of GTW, WC, and Illinois Central Railroad have been merged under the WC collective bargaining agreement with ATDA, which is the certified representative of the consolidated workforce. The  
(continued...)

ATDA takes no position – either in favor of or in opposition to – the Proposed Transaction. However, ATDA files these Comments to underscore its view that, if the Application is approved, the Order issued by 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.

As the Board is well aware, a contract to operate property of another rail carrier, in this case a rail line, carries with it the potential for adverse effects on employees beyond those who physically maintain the line. Train dispatchers who control traffic over the line also will be affected. CSXT here says even though it is not acquiring ownership of the line itself, “[a]s the primary user, CSXT will be responsible for dispatching...the line.” Application p. 16.

The effect on the dispatchers of acquiring operational authority for a line can be quite significant depending on the length of the line and the amount of traffic that traverses it, whether that traffic is initiated by the owner of the line or other carriers who have rights to use the line. Traditionally, it is the owner who controls rail traffic over its own lines.

Train dispatchers’ positions are defined by territories assigned to desks. The less territory or traffic covered by a desk, the more likely the loss of that territory will result in that desk being abolished and the remaining responsibilities (if any) assigned to a different desk or divided amongst other desks. Every time a desk is abolished, jobs may be, and often are, lost as the workforce is rearranged. Most train dispatching desks are covered around the clock. Consequently, the abolishment of a desk often results in the loss of four jobs (three shift jobs and a relief position).

In this case, the collective bargaining agreement between ATDA and Wisconsin Central, Ltd., (“WC”), the successor employer to GTW, provides that “rail traffic controllers<sup>[2]</sup> in the

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<sup>1</sup>(...continued)  
dispatchers responsible for controlling traffic on former GTW lines are now WC employees.

<sup>2</sup> The term “rail traffic controller” is synonymous with “train dispatcher.”

service of Wisconsin Central” “are to be responsible for, but not limited to, the movement of trains, the issuance of work authorities for the protection of maintenance of way, signal and other employees working on or near the tracks, and the keeping of necessary records incident thereto shall be performed by RTCs on their assigned territory.” The line which CSXT is seeking the Board’s permission to operate falls within the territory assigned to WC train dispatchers.

There is no mention in CSXT’s application of the effect the proposed acquisition of the GTW line will have on train dispatchers nor is there 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. Perhaps this is calculated, perhaps it is innocent. We submit that there has not been 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.<sup>3</sup> Before a collective bargaining agreement is overridden, the law places the burden on the Applicant to show that the override is “necessary in order to secure to the public some transportation benefit flowing from the underlying transaction.” *Railway Labor Executives’ Assn. v. U.S.*, 987 F.2d 806, 814-815 (D.C. Cir. 1993).

If the Board determines that the transfer of train dispatching responsibility is not necessary to the effectuation of the transaction and that this aspect of CSXT’s contract to operate GTW’s property is nothing more than an attempt to override the WC’s contractual obligations under its collective bargaining agreement with ATDA, the Board should condition the transaction on the preservation of the train dispatchers’ rights under the ATDA-WC CBA.

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<sup>3</sup> All CSXT has said is that it “will no longer have to secure GTW dispatcher approval prior to operating over the Elsdon Line. By dispatching both the [CSXT’s] Monon Subdivision and the Elsdon Line, CSXT will be able to integrate the use of the two lines to optimize efficiency.” Application p. 17. These are conclusory statements. The Application contains no factual showing that continuing dispatching as-is will prevent achievement of the efficiencies CSXT hopes to obtain by the shifting of trains from other lines to the Elsdon Line. The evidence CSXT relies upon shows that the efficiencies will be achieved by the rerouting, not the transfer of dispatching.

In any event, whatever CSXT's reasons, the Board must assure that no train dispatcher affected by the transaction is deprived of the protection the law requires.

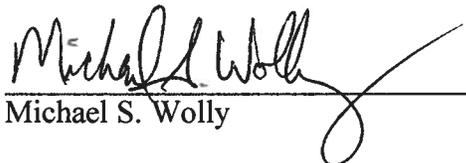
Respectfully submitted,



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**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing Comments of American Train Dispatchers Association was served upon all known parties of record by first class mail, postage prepaid, this 8th day of November, 2012.



Michael S. Wolly