

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

CSX TRANSPORTATION, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Civil Action No. 04-0611 (RWR)
NATIONAL MEDIATION BOARD,	)	Hon. Richard W. Roberts
	)	
	)	
Defendant.	)	
	)	

**MOTION FOR EXPEDITED CONSIDERATION OF  
PARTIES' CROSS-MOTIONS FOR SUMMARY JUDGMENT**

Defendant National Mediation Board ("NMB") respectfully moves, pursuant to Federal Rule of Civil Procedure 7(b) and under this Court's inherent authority to control its docket, for expedited consideration of the pending cross-motions for summary judgment. In accordance with Local Civil Rule 7.1(m), undersigned counsel for the NMB conferred with Plaintiff's counsel regarding this motion on February 7, 2005. On February 9, 2005, Counsel for the CSX stated that Plaintiff is unable to take a position on the NMB's motion at this time, but reserves the right to respond fully after reviewing it.

Dated February 9, 2005

Respectfully submitted,

PETER D. KEISLER  
Assistant Attorney General

KENNETH L. WAINSTEIN  
United States Attorney

OF COUNSEL:



**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

CSX TRANSPORTATION, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Civil Action No. 04-0611 (RWR)
NATIONAL MEDIATION BOARD,	)	Hon. Richard W. Roberts
	)	
	)	
Defendant.	)	
	)	

**MEMORANDUM IN SUPPORT OF MOTION FOR EXPEDITED CONSIDERATION  
OF PARTIES' CROSS-MOTIONS FOR SUMMARY JUDGMENT**

**INTRODUCTION**

This Court's expedited consideration of the pending cross-motions for summary judgment is warranted both because of intervening events occurring since the parties completed briefing on these motions and because of the harm that is caused by the continued maintenance of the status quo. As described below, and in the attached Fifth Declaration of Roland Watkins, a decision in this lawsuit would greatly impact the financial resources of the NMB and would allow resolution of numerous grievances that have been held in abeyance due to this litigation, which would aid the parties to the underlying arbitration.

**BACKGROUND**

The issues pending before this Court are Plaintiff's challenge to the NMB's power under the Railway Labor Act ("RLA"), 45 U.S.C. § 151 *et seq.*, to consolidate thirty Public Law Boards ("PLBs") into a consolidated PLB, known as PLB 6511, and whether the Court even has jurisdiction to consider Plaintiff's challenge to the NMB's exercise of its authority. Before the

consolidation decision, individual PLBs had been considering a total of 290 cases between Plaintiff and members of the Brotherhood of Maintenance and Way Employees ("BMWE") over the issue of subcontracting. Relying upon its budget authority under the RLA – 45 U.S.C. § 154, Third – and in an effort to promote economy and efficiency in this dispute resolution system in April 2004, the NMB consolidated all 290 then-existing cases between Plaintiff and BMWE on this subcontracting issue into consolidated PLB 6511. Plaintiff originally applied for a preliminary injunction to challenge this consolidation as beyond the NMB's power under the RLA. Following briefing on the preliminary injunction request, the Court issued an order to show cause as to why the matter of the preliminary injunction should not be consolidated with the merits. See May 4, 2004, Order of the Court, Docket Entry 8. As part of its response, the NMB stated that it would delay certification of an arbitrator – the first step in the PLB grievance-resolution mechanism under the RLA – if the Court so-requested, which preserved the status quo. See May 7, 2004, Response of the Parties to May 4 Order, Docket Entry 10. Because the NMB has held the certification of an arbitrator in abeyance, the preservation of the status quo has frozen the 290 cases pending on consolidated PLB 6511.

### **ARGUMENT**

#### **THIS COURT SHOULD GRANT EXPEDITED CONSIDERATION OF THE PENDING CROSS-MOTIONS FOR SUMMARY JUDGMENT**

Since the parties completed briefing on summary judgment in June 2004, intervening events have led the NMB to conclude that the status quo's continued maintenance – without judicial resolution of the jurisdictional issues or the NMB's authority to consolidate PLBs – is harmful to both the NMB and the parties to the arbitration system (Plaintiff, BMWE, and its members). Due to the NMB's growing concern over the status quo, the NMB has filed the instant

motion for expedited consideration to both advise the Court of its concerns and inform the Court of intervening events and the NMB's conclusion that expedited consideration is warranted.

The parties filed cross-motions for summary judgment on June 4, 2004, and these cross-motions for summary judgment have been fully briefed for nearly eight months. The NMB has delayed appointing an arbitrator for consolidated PLB 6511, but this has meant, in effect, that the 290 cases pending on consolidated PLB 6511 have not moved towards resolution. This Court's resolution of the NMB's authority to consolidate PLBs would allow these 290 cases to progress before an arbitration panel and would therefore allow the parties to those 290 cases to receive a decision on those grievances. But the absence of a resolution to the issues of this Court's jurisdiction and the NMB's authority to consolidate these 290 cases has had several effects.

First, the issue of subcontracting between Plaintiff and BMW has generated additional cases since the parties completed briefing on this lawsuit. BMW has filed 125 new cases on the subcontracting issue and has an additional 109 cases to be filed Fifth Declaration of Roland Watkins dated February 7, 2005, ("Watkins Decl."), ¶¶ 6, 10. These cases are similar to those pending before consolidated PLB 6511, but are before a different arbitration forum known as the National Railroad Adjustment Board ("NRAB"). In total, there are 524 cases that are (or will be) pending on the subcontracting issue before either the consolidated PLB or the NRAB.<sup>1</sup>

The filing of these new cases will have a significant financial impact on the NMB because the NMB pays for arbitration services. *Id.* at ¶8. If the NRAB requests that the NMB appoint an arbitrator to decide these cases, the NMB compensates the arbitrator, just as in the case of the arbitrator for the PLB arbitration process. Because the NMB pays for arbitration

---

<sup>1</sup> New cases on the subcontracting issue have grown at a rate of 20 cases per month over the past year. See Watkins Decl., at ¶ 8.

services in all these cases, a judicial decision on the NMB's authority to consolidate cases will have a significant impact on the manner in which these cases are resolved – future cases and future arbitrations may not be necessary once a decision is reached in consolidated PLB 6511.

Thus, a judicial decision on the jurisdictional issues in this case or the NMB's authority to consolidate cases will have a great effect on the NMB and the parties to those grievance procedures – Plaintiff, BMW, and BMW's members – who have seen no progress in resolving the pending 290 cases in the consolidated PLB that have been held in abeyance due to this litigation. A decision would allow the 290 cases on consolidated PLB 6511 to proceed and perhaps provide a "template" to the resolution of future grievances, thereby making the expenditure of the NMB's limited arbitration funds unnecessary.

Second, NMB believes that this delay in the resolution of these cases before consolidated PLB 6511 has been detrimental to BMW and is affecting the relationship between the parties to the arbitration. Id. at ¶¶ 3, 11. In many situations where parties have cases pending before an arbitration body, those parties would agree to hold future cases in abeyance pending a decision. Id. at ¶ 7. However, the parties here have not been able to come to an agreement on holding off on the prosecution of these cases, and this has required BMW to file new cases before the NRAB to reserve its rights. BMW is concerned about the status of the 290 cases pending before consolidated PLB 6511. See id. at ¶11. That organization has, on a weekly basis, inquired with the NMB on the status of the consolidated PLB, because the 290 cases lodged in that PLB are not being resolved due to NMB's decision not to appoint an arbitrator the instant litigation. Id. For these reasons, the NMB believes, the status quo has begun to harm the parties to these grievance resolution procedures because the grievances have "piled up" with no

resolution.

Although the NMB does not intend to alter the status quo by proceeding with the certification of an arbitrator for consolidated PLB 6511, a judicial decision in this case would allow the 290 frozen cases to proceed, could make arbitration of newly filed cases unnecessary, thereby saving the scarce arbitration funds of the NMB, and would likely ease some of the tensions between Plaintiff and the BMW.

**CONCLUSION**

For the reasons stated above, the NMB requests that the Court grant expedited consideration of the pending cross-motions for summary judgment.

Dated February 9, 2005

Respectfully submitted,

PETER D. KEISLER  
Assistant Attorney General

KENNETH L. WAINSTEIN  
United States Attorney

OF COUNSEL:

MARY L. JOHNSON  
General Counsel  
National Mediation Board  
Washington, D.C. 20572

/s/  
THEODORE C. HIRT (DC Bar # 242982)  
ALEXANDER K. HAAS (Cal. Bar No. 220932)  
Trial Attorney, Federal Programs Branch  
U.S. Department of Justice, Civil Division  
20 Massachusetts Ave., N.W., Room 6134  
Washington, D.C. 20001  
Tel: (202) 307-3937  
*Counsel for Defendant*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

CSX TRANSPORTATION, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Civil Action No. 04-0611 (RWR)
NATIONAL MEDIATION BOARD,	)	Hon. Richard W. Roberts
	)	
	)	
Defendant.	)	
	)	

**[Proposed] ORDER**

Upon consideration of the National Mediation Board’s Motion to Dismiss, or in the alternative, it is hereby ORDERED that the motion is GRANTED.

Dated: \_\_\_\_\_.

\_\_\_\_\_  
Richard W. Roberts  
UNITED STATES DISTRICT JUDGE