

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

RECEIVED  
U.S. DISTRICT COURT  
DISTRICT OF COLUMBIA

2004 APR 14 PM 10: 23

NANCY M.  
MAYER-WHITTINGTON  
CLERK

\_\_\_\_\_  
CSX TRANSPORTATION, INC.,  
500 Water Street  
Jacksonville, Florida 32202,

Plaintiff,

v.

Case No.: \_\_\_\_\_

NATIONAL MEDIATION BOARD  
1301 K Street NW  
Suite 250 East  
Washington, DC 20005-7011,

Defendant.  
\_\_\_\_\_

VERIFIED COMPLAINT

CSX Transportation, Inc. (“CSXT”) brings this action under the Railway Labor Act (“RLA”), 45 U.S.C. §§ 151-88, and Declaratory Judgment Act, 28 U.S.C. § 2201, against the National Mediation Board (“NMB”), a federal agency, seeking declarative and emergency preliminary and permanent injunctive relief arising from NMB’s unprecedented attempt to consolidate and cancel thirty arbitration boards that were established by agreement between CSXT and the Brotherhood of Maintenance of Way Employees (“BMWE”), pursuant to Section 3, Second of the RLA. The NMB has wrongfully attempted to consolidate all of the cases scheduled before these thirty contractually-agreed to boards into one board. In so doing, NMB not only exceeded its delegated authority under the RLA, but also affirmatively and directly violated the language of the statute.

## PARTIES

1. Plaintiff CSXT is a corporation organized and existing under the laws of the Commonwealth of Virginia, with its principal offices located at 500 Water Street, Jacksonville, Florida 32202. CSXT is a common carrier by railroad engaged in interstate commerce and is a “carrier” within the meaning of RLA Section 1, First, 45 U.S.C. § 151, First. CSXT operates an interstate railroad system of approximately 23,400 miles in this judicial district, 23 other states, and the Canadian provinces of Ontario and Quebec.

2. Defendant National Mediation Board (“NMB”) is a federal agency with its principal offices located at 1301 K Street, NW, Washington, DC 20005. The NMB is a specialized tribunal created by the 1934 amendments to the RLA. Its principal functions are to conduct union elections and to supervise mediation of collective bargaining disputes.

## JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of CSXT’s Verified Complaint under 28 U.S.C. § 1331, because the Complaint arises under the RLA, a federal statute. This Court also has subject matter jurisdiction under 28 U.S.C. § 1337.

4. Venue is proper in this judicial district under 28 U.S.C. § 1391(b), because Defendant resides, is found, and transacts business in this judicial district.

## FACTS

5. Labor relations in the railroad and airline industries are governed by the RLA. The majority of CSXT’s employees are represented by 13 different unions. CSXT is party to collective bargaining agreements with these unions covering the various crafts and classes of its employees.

6. BMW is the collective bargaining representative for CSXT's employees who work in the maintenance of way craft. Maintenance of way employees are involved in the repair and maintenance of CSXT's tracks, bridges, buildings, and related structures. CSXT is party to collective bargaining agreements with the BMW, including the June 1, 1999 system agreement ("the System Agreement").

7. The RLA requires that disagreements over the interpretation or application of collective bargaining agreements be resolved first "in the usual manner," which typically means handling pursuant to a multi-step grievance procedure set forth in the collective bargaining agreement. 45 U.S.C. § 153, First (i). If, at the end of this handling, the dispute remains unresolved, either party may submit it for final and binding arbitration to the National Railroad Adjustment Board ("NRAB") or another arbitration board established by the parties pursuant to Section 3, Second of the RLA. 45 U.S.C. § 153, Second. Disagreements over the interpretation or application of collective bargaining agreements are referred to as "minor" disputes.

8. CSXT and BMW have been involved in a dispute over the proper application of the scope rule in the System Agreement. A scope rule lists the kinds of work that may be done by employees in the maintenance of way craft. CSXT interprets the scope rule to allow it to contract out work covered by that rule to outside contractors in certain circumstances. BMW disagrees, taking the position that the scope rule prohibits contracting out of any such work unless the union consents.

9. BMW has filed numerous grievances under the parties' collective bargaining agreement, challenging instances of contracting out by CSXT. When these grievances were not resolved to BMW's satisfaction, BMW has progressed these grievances to the NRAB. The NRAB is a permanent arbitration board established by the RLA.

10. As an alternative to arbitration before the NRAB, the second unnumbered paragraph of Section 3, Second of the RLA, 45 U.S.C. § 153, Second allows a carrier and union by agreement to establish an arbitration board to hear disputes that they agree be submitted to that board. Such boards are commonly referred to as “public law boards” (“PLBs”) They take this name from the fact that the RLA was amended in 1966 by Public Law 89-456 to allow the creation of such boards as an alternative to arbitration before the NRAB.

11. A PLB consists of one member chosen by the carrier and one member chosen by the union. Such members are referred to as the partisan members of the board. If they are unable to resolve the dispute, either party can request the NMB to appoint a neutral member of the PLB. The neutral typically is an arbitrator selected from a list of approved arbitrators maintained by the NMB. The only role given to the NMB by Section 3, Second of the RLA is the appointment of a neutral when the parties cannot agree and a party requests such an appointment, and the requirement to pay the neutral, whether selected by the parties or appointed by the NMB.

12. BMW and CSXT entered into an agreement on March 21, 2002 to create eight separate PLBs and transfer arbitration cases initiated by BMW at the NRAB to those eight PLBs. CSXT and BMW subsequently entered into eight PLB agreements pursuant to Section 3, Second of the RLA to hear those cases. Copies of the March 21 agreement and the eight PLB agreements are attached as Exhibit Nos. 1 - 9. These PLBs received numerical designations by the NMB -- PLB Nos. 6508-6515.

13. The parties selected Arbitrator Robert Douglas to be the neutral member of PLB No. 6508. PLB No. 6508 held its hearing on August 19, 2002. Although the PLB agreement called for the neutral to issue the Board’s decision within sixty days of the hearing, that did not

happen. Arbitrator Douglas held several sessions in which he tried to mediate the dispute over the interpretation of the scope rule. Upon information and belief, the NMB authorized and paid Arbitrator Douglas for these mediation sessions. When the parties were unable to settle their contract interpretation dispute, Arbitrator Douglas issued a final award dated October 14, 2003.

14. CSXT and BMWWE selected Arbitrator Ann Kenis as the neutral member of the next public law board, PLB No. 6509. An arbitration hearing was scheduled for February 18, 2004. The parties agreed to settle the eight cases to be heard by PLB No. 6509 and used the time scheduled for the arbitration to try to reach an overall settlement of their contracting out disputes. The parties, however, did not reach an overall settlement.

15. CSXT and BMWWE selected Arbitrator Elliot Goldstein to be the neutral for the next public law board, PLB No. 6510. The arbitration hearing for this arbitration board is set for April 21, 2004.

16. On March 1, 2004, the NMB sent a letter to CSXT and BMWWE asking them to show cause why the NMB should not order the cancellation of thirty of the parties' PLBs and the consolidation of all of the cases pending before thirty-one arbitration boards into a single PLB. A copy of the NMB's March 1 letter is attached as Exhibit No. 10. The NMB stated that it was concerned that the payment of the neutrals for these boards would impose too large a burden upon the NMB's budget for arbitrators.

17. CSXT and BMWWE each responded to the NMB's show cause letter. Copies of CSXT's and BMWWE's responses are attached as Exhibit Nos. 11 and 12. Both explained that the NMB lacked any statutory authority to abolish established public law boards or order the transfer and consolidation of cases from one public law board to another.

18. In their letters, both CSXT and BMWWE also noted that, as a practical matter, the factual distinctions in the cases to be heard by the various PLBs would preclude arbitration on a consolidated basis, and would not advance the NMB's concerns regarding the efficiency of the arbitration process.

19. In its letter, BMWWE went on to suggest an "expedited dispute resolution procedure," in which PLB members would attempt to resolve cases applying uniform procedural principles, and expedited, non-precedential awards would be issued.

20. Over the parties' objections, on April 7, 2004, the NMB issued an Order consolidating all of the cases before the thirty-one arbitration boards established by the parties with one PLB and canceling all of the other boards. A copy of the NMB's April 7th Order is attached as Exhibit 13.

21. In its April 7th Order, the NMB essentially adopted the arbitration procedures proposed by BMWWE, attempting to impose this unagreed-upon procedure on CSXT. The Order provided that a neutral arbitrator would be selected for the consolidated PLB, and would set unspecified "guidelines" for the resolution of the consolidated cases. The Order further provided that expedited, non-precedential one-page awards would be issued by the arbitrator if CSXT and BMWWE were unable to resolve the cases pursuant to the guidelines.

22. The April 7th Order also provides that if "the parties [do not] agree upon an arbitrator for this board, a list of eleven (11) arbitrators will be provided ... [by April 14, 2002]. The parties are to *immediately* confer for the purpose of the selection of an arbitrator." The BMWWE contacted CSXT within five minutes of CSXT's receipt by fax of the NMB's April 7th Order wanting to pick a neutral. Moreover, on April 14, 2004, BMWWE sent a letter to the NMB indicating that CSXT and BMWWE were unable to agree on an arbitrator. A copy of BMWWE's

April 14th letter is attached as Exhibit No. 14. BMW also stated that it “anticipates that a list of eleven arbitrators will be provided within 7 calendar days of the date of the April 7, 2004 Consolidation Order.”

23. In an attempt to justify its April 7th Order, the NMB postulates that, because it paid the arbitrator in the first of the CSXT-BMW public law boards (PLB No. 6508) approximately \$18,600, the remaining thirty-one PLBs will cost the NMB \$576,000 in arbitrators’ salaries – too much for the agency to pay in one year. The NMB’s analysis is no more complicated than multiplying 31 times \$18,600 to get \$576,000. See Exhibit No. 12. However, the fees paid Arbitrator Douglas, the arbitrator in PLB No. 6508, were higher than normal because, as described above, he did more than act as the arbitrator in the first PLB. He held two sessions in which he tried to mediate the underlying dispute between CSXT and BMW. After issuing his award, Arbitrator Douglas scheduled another day-long session to go over what he then termed a draft award. Only after these additional efforts did Arbitrator Douglas issue his final award. It is CSXT’s information and belief that the NMB paid Arbitrator Douglas for all of these additional sessions which is a reason why Arbitrator Douglas’ fees exceeded the norm. The typical cost of a contracting out arbitration between CSXT and BMW is approximately \$3,000-\$5,000.

#### BASIS FOR RELIEF

##### I. CSXT Satisfies The Prerequisites For Injunctive Relief

##### A. CSXT Is Likely To Prevail In Its Argument That The NMB’s April 7, 2004 Order Is A “Gross Violation” Of The RLA

24. The NMB’s April 7th Order exceeds the NMB’s delegated powers and is contrary to the clear language of the second unnumbered paragraph of Section 3, Second of the RLA and the parties’ arbitration agreements entered pursuant to Section 3, Second.

25. The NMB's only roles under Section 3, Second are limited to: (1) to appoint a partisan member for a party if that party refuses to participate in the establishment of a requested PLB and the other party requests the NMB to do so; (2) to appoint a neutral to address procedural issues if the partisan members of a PLB cannot agree upon the terms or procedures for the PLB and one party requests the NMB to do so; (3) to appoint a neutral member (arbitrator) to a PLB if the partisan members cannot agree upon an award, and one party requests the NMB to do so; and (4) to compensate neutrals selected or appointed pursuant to Section 3, Second.

26. In issuing its April 7 Order, the NMB far exceeded its statutory authority concerning PLBs pursuant to RLA Section 3, Second, as set forth above. Instead of restricting its activities to the appointment and payment of neutrals, NMB took the extraordinary step, unprecedented in the history of the RLA, of purporting to cancel thirty PLBs that the parties (i.e., the carrier and union) had established by agreement under Section 3, Second. The NMB did this without the consent of the parties. The NMB also purported to enlarge the jurisdiction of the PLB not cancelled and transfer the cases that were before the canceled PLBs to that PLB, again without consent of the parties. Finally, the NMB purported to create an entirely new procedure for this remaining PLB to follow in deciding the consolidated cases without the consent of the parties.

27. There is simply no language in the RLA that even remotely states or implies that NMB has the statutory authority to cancel PLBs or transfer cases from several PLBs to another without consent of the parties that established those PLBs.

28. In attempting to cancel established PLBs and transfer cases from several PLBs to another PLB, NMB not only acted beyond the scope of its authority delegated to it by Congress, the NMB also affirmatively violated multiple provisions of the RLA.

29. First and foremost, in purporting to cancel the PLBs, the NMB violated the express and unambiguous requirement in RLA Section 3, Second that only *carriers and unions* have the power to establish PLBs, not the NMB. Here, CSXT and BMWWE agreed to establish the PLBs at issue, and NMB has no authority to void these PLBs or the PLB agreements establishing them.

30. In addition, the NMB's attempt to transfer the cases between PLBs without the consent of the parties violated the provision in RLA Section 3, Second which specifies that "[t]he cases which may be considered by such board shall be defined in the agreement establishing it."

31. The NMB's April 7th Order also effectively eliminates CSXT's statutory right, pursuant to Section 3, First (q), to appeal an arbitration award, because of the NMB's requirement that the neutral issue a "one page award" for each case. Such an award, NMB states will "(1) identify the case; (2) state whether the case is sustained, sustained in part, denied or dismissed; and (3) if sustained or sustained in part, the monetary remedy due to the claimants," will be void of any description as to the reasoning behind the arbitrator's result in the cases. Thus, CSXT would not be permitted an adequate review in the federal courts of the arbitrator's award, pursuant to Section 3, First (q) of the RLA, 45 U.S.C. § 153, First (q).

32. The NMB's April 7th Order also violates the provision in Section 3, Second that requires that, if the carrier and union members of a PLB cannot agree regarding the procedures of a PLB and a party requests the NMB to do so, the NMB will appoint a neutral to resolve only those procedural matters. Section 3, Second also indicates that such an arbitrator appointed to

address procedural issues shall “cease to be a member of the board when he has determined such matters” so that he/she will not be involved in the decision on the merits of the case(s).

33. In its April 7th Order, the NMB violates this statutory provision because neither CSXT nor BMW E ever requested that the NMB appoint a procedural arbitrator. Indeed, neither party requested such a procedural arbitrator because CSXT and BMW E agreed to the procedure for the PLBs in their PLB agreements. For example, these PLB agreements set forth the procedures to be followed with respect to how the neutrals would be appointed, the cases over which each PLB had jurisdiction (limited to those cases listed on the Attachment A to each agreement), how the parties designate partisan members of the PLB, and how the briefing is to be handled, among other issues. Nevertheless, NMB violated RLA Section 3, Second by creating out of “whole cloth” an entirely new procedure for the resolution of these cases that is directly contrary to the procedures that CSXT and BMW E agreed to in their PLB agreements. Thus, the NMB has no authority with respect to a “procedural” arbitration. The NMB also violated Section 3, Second of the RLA by requiring that the arbitrator who addresses these procedural issues will then remain on the board to resolve the consolidated cases on the merits.

34. RLA Section 3, Second also requires that a PLB shall consist of one person designated by the carrier and one person designated by the representative of the employees, in addition to a neutral, if a neutral becomes necessary. In addition, Section 3, Second states that any two members of PLB are competent to issue an award. However, contrary to these statutory provisions, the NMB’s April 7th Order permits the neutral board member alone to issue awards concerning the consolidated cases.

B. Absent Injunctive Relief, CSXT Will Suffer Irreparable Harm

35. Absent injunctive relief, CSXT will be forced either to participate in the NMB's unauthorized consolidated proceedings, which are in violation of Section 3, Second of the RLA, or to refuse to participate in the procedure and face immediate prejudice in the cases that NMB purports to consolidate. Indeed, as noted above, on April 14, 2004, BMW sent a letter to the NMB indicating that the parties could not agree on the arbitrator and stating that it "anticipates that a list of eleven arbitrators will be provided within 7 calendar days of the date of the April 7, 2004 Consolidation Order," which is April 14, 2004. Accordingly, time is of the essence.

36. Moreover, CSXT also will suffer irreparable harm if the multiple PLB agreements reached between CSXT and BMW, pursuant to the RLA, are voided by the NMB's consolidation process, in light of the fact that the parties have spent considerable time and effort reaching agreement on how the contracting out claims are to be arbitrated.

37. CSXT would also suffer irreparable harm if the NMB's consolidation proceeds, because the "one page award" contemplated by the NMB's April 7th Order will be void of any description as to the reasoning behind the arbitrator's result in the cases, and thus would not permit an adequate review in the federal courts of the arbitrator's award, pursuant to Section 3, First (q) of the RLA.

38. Finally, absent emergency injunctive relief, CSXT will suffer irreparable harm because, as a result of the NMB's cancellation of PLBs and the consolidation of these cases, CSXT is effectively being pressured by the NMB to settle its contracting out cases on unfavorable terms. CSXT simply does not have an adequate remedy at law to remedy the harm summarized above.

C. Injunctive Relief Will Not Injure NMB

39. Injunctive relief merely will require NMB to comply with its statutory obligations under the RLA.

40. Indeed, the withholding of injunctive relief from CSXT will cause much greater harm to CSXT than the granting of such relief will cause to the NMB, because an injunction against the enforcement of its order of consolidation will merely require the NMB to follow the RLA's statutory requirements. Moreover, the NMB's stated premise for canceling thirty of the PLBs, namely, that the cost of the PLB arbitrators' salaries is too great a drain on the NMB's funds, clearly does not justify withholding of injunctive relief for CSXT. As explained in CSXT's Memorandum, very few PLBs will be heard during the pendency of any preliminary injunction that this Court might enter. Furthermore, the NMB has drastically overestimated the forecasted cost-per-PLB by assuming that the unusually high cost of PLB No. 6508 would be the norm.

D. Injunctive Relief Is Necessary To Protect The Public Interest

41. A main purpose of the RLA is to provide for the "prompt and orderly settlement of disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay rules, or working conditions

42. However, if the parties to contract interpretation disputes cannot rely on the process for establishing PLBs under Section 3, Second -- and cannot rely on the PLB agreements reached pursuant to that process -- this will severely disrupt the minor dispute resolution procedures required by the RLA.

