



U.S.C. § 153 First. Because the present dispute is over the proper interpretation of the terms of the parties' collective bargaining agreements, Defendants' threatened strike is enjoined as a violation of the RLA's minor dispute resolution process.

BNSF satisfies this Circuit's other standards for emergency injunctive relief. Defendants' threatened work stoppage will cause irreparable harm to BNSF by interfering with its operations and disrupting BNSF's ability to serve customers that depend on it to move goods in interstate commerce. Moreover, BNSF has no adequate remedy at law to address the harms that Defendants' threatened actions would inflict.

The public interest also supports an emergency injunction. Any work stoppage would be contrary to the interest of shippers and the public in uninterrupted rail operations. Indeed, a work stoppage, especially in current circumstances where the supply chain is already strained, could cause significant disruption in the delivery of critical supplies of fuel, food, mail, military equipment, and other vital materials. In contrast, if enjoined, Defendants will suffer no injury. Defendants will simply be forced to comply with the RLA's mandatory dispute resolution procedures. Furthermore, if Defendants' arguments in support of their interpretations of the parties' agreements ultimately prevail, they can be made whole through the RLA's dispute resolution procedures.

The Defendants' threatened use of self-help could begin at any time. The Unions have already publicly called for strike authorization votes, and BNSF has received indications that the Unions or their members may take action prior to the implementation of the Hi Viz policy on February 1, 2022, and potentially as soon as January 26, 2022.

Counsel for Defendants have been informed of this motion in an email today, January 18, 2022, and has been provided with copies of Plaintiff's First Amended Complaint, this motion, the

Plaintiff's Memorandum of Points and Authorities in Support of Motion for Temporary Restraining Order and/or Preliminary Injunction, the Appendix, the Certificate of Compliance with Rule 65(b), and the accompanying documents that have been concurrently filed with this Court.

For the foregoing reasons, Plaintiff BNSF respectfully requests that the Court enter an order temporarily enjoining SMART-TD and BLET—as well as their officers, members, employees, and others acting in concert with them—from calling, encouraging, or otherwise engaging in a strike, picketing, a work stoppage, sick out, or slowdown, or otherwise exercising coercive self-help against Plaintiff BNSF, its subsidiaries and/or affiliates, or encouraging others to do so in violation of the RLA until a hearing can be held and a ruling issued on a motion for preliminary injunction. A proposed order is attached.

Dated: January 18, 2022

Respectfully submitted,

/s/ Russell D. Cawyer

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1. Plaintiff is a rail carrier in interstate commerce as defined by the Railway Labor Act (“RLA”).

2. On January 10, 2022, BNSF announced new attendance standards—the “Hi Viz” policy—to replace its existing attendance rules, effective February 1, 2022.

3. In response, SMART-TD and BLET have called for strikes or other forms of self-help, for the purpose of forcing BNSF to rescind its change in attendance rules. A strike or other self-help could occur at any time prior to or after implementation of the new attendance program on February 1, 2022.

4. Plaintiff is likely to succeed on the merits of its argument that the threatened self-help is unlawful under the Railway Labor Act (“RLA”), 45 U.S.C. § 151 *et seq.*, because the parties’ dispute over the Hi Viz policy is a minor dispute subject to mandatory and binding arbitration. Plaintiff’s interpretation of the parties’ express and implied agreements to permit it to implement the Hi Viz policy is at least “arguable.” *RLEA v. Consolidated Rail Corp.*, 491 U.S. 299 (1989).

5. Absent a temporary restraining order, Plaintiff will suffer substantial, immediate, and irreparable harm that will also adversely affect its customers and the general public. Conversely, Defendants will not suffer any harm if a strike is enjoined. The balance of harms thus weighs in favor of granting temporary injunctive relief.

6. A strike would harm BNSF’s employees, customers, and the general public that relies on rail transportation. The public interest therefore also favors a temporary injunction.

In light of these findings, IT IS HEREBY ORDERED THAT Plaintiff’s Motion for Temporary Restraining Order is granted; and it is further

ORDERED that Defendants SMART-TD and BLET, their divisions, lodges, locals, officers, agents, employees, members, and all persons acting in concert or participation with any of them, are hereby restrained for the duration of this Order from authorizing, encouraging, permitting, calling, engaging in or continuing any strikes, work stoppages, picketing, slowdowns, sickouts, or other self-help against Plaintiff or its operating rail subsidiaries over any dispute relating to the Hi Viz attendance standards; and it is further

ORDERED that Defendants SMART-TD and BLET, and their national and local officers, shall immediately initiate undertake all reasonable efforts to prevent and discourage their respective divisions, lodges, locals, officers, agents, employees, members, and all persons acting in concert with any of them, from engaging in conduct enjoined by this Order, including but not limited to the following specific efforts:

- (a) Immediately instruct in writing all SMART-TD and BLET members employed by Plaintiff to refrain from self-help against the Plaintiff railroad, and provide Plaintiff with a copy of all such instructions;
- (b) Notify all SMART-TD and BLET members employed by Plaintiff by the most expeditious means possible of the issuance, contents, and meaning of this Order, and provide Plaintiff with a copy of all such notices;
- (c) Include in such notice a directive from SMART-TD and BLET to those members who are or may in the future engage in any conduct enjoined by this Order to immediately cease and desist all such activity and to immediately cease and desist all exhortations or communications encouraging same upon pain of fine, suspension, or other sanction by SMART-TD and BLET;
- (d) Invoke union discipline and punish individual officers, agents, employees, or members who engage in any conduct enjoined by this Order;
- (e) Include copies of this Order in all SMART-TD and BLET publications, post it on all SMART-TD and BLET bulletin boards at Plaintiff's facilities, and transmit the contents of the ordering paragraphs on any recorded telephone hotlines, web sites, or other methods of electronic communication used by SMART-TD and BLET to communicate with their represented employees;



- (f) Contemporaneously furnish all copies and other materials required to be furnished to Plaintiff to the Court; and
- (g) To report to the Court by \_\_\_\_\_ p.m. on February \_\_\_, 2022, by sworn affidavit or declaration, the steps SMART-TD and BLET have taken to comply with this Order.

IT IS FURTHER ORDERED that this order is granted upon the condition that an undertaking in the sum of \$\_\_\_\_\_, or cash in that amount, be filed within five days from the time and date of this order to make good such damages not to exceed said sum as may be suffered or sustained by anyone who is found to be wrongfully restrained; and it is further

ORDERED that this injunction shall continue until such time as the Court may rule upon Plaintiff's request for a preliminary injunction, which is set for hearing on February \_\_\_, 2022, at \_\_\_ o'clock; and it is further

ORDERED that a certified copy of this order, in lieu of a formal notice, be served upon the Defendants; and it is further

ORDERED that for the purpose of providing for service of notice of this injunction, in addition to the methods of service of process provided by statute, notice may be given to Defendants SMART-TD and BLET, their members, and all other persons by the posting of copies of this injunction at the entrances of the Plaintiff railroad's premises, which shall be considered prima facie evidence of notice and knowledge of this injunction to and by all persons who may commit, or attempt to commit, any act or acts in violation thereof at or near the said premises of the Plaintiff railroad.

Signed on this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

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The Hon. Barbara M. G. Lynn  
Chief Judge