IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

BNSF RAILWAY COMPANY	§	
Plaintiff,	§ 8	
	§	
v.	§ e	
DITERNATIONAL ACCOCIATION OF	8	Civil Action No.
INTERNATIONAL ASSOCIATION OF	8	er in richem rich
SHEET METAL, AIR, RAIL AND	§	3:22-CV-00083-M
TRANSPORTATION WORKERS –	§	
TRANSPORTATION DIVISION and	§	
BROTHERHOOD OF LOCOMOTIVE	§	
ENGINEERS AND TRAINMEN,	§	
	§	
Defendants.	§	

PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER

Pursuant to Rule 65(a) and (b) of the Federal Rules of Civil Procedure, plaintiff BNSF Railway Company ("BNSF") hereby move for a temporary restraining order against an imminent work stoppage threatened by International Association of Sheet Metal, Air, Rail, and Transportation Workers — Transportation Division ("SMART-TD") and Brotherhood of Locomotive Engineers and Trainmen ("BLET") (collectively, "Defendants" or the "Unions"), in violation of Section 2 First, and Section 3 First, of the Railway Labor Act ("RLA"). 45 U.S.C. § 152 First, 45 U.S.C. § 153 First.

As explained in detail in Plaintiff's Memorandum of Points and Authorities and Appendix, Defendants are threatening to strike in response to BNSF's announcement of a modified attendance policy called "Hi Viz." This dispute, which is more fully described in Plaintiff's First Amended Complaint, arises from conflicting interpretations of the terms of the parties' collective bargaining agreements. The RLA requires that such disputes be resolved through binding arbitration. *See* 45

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 enjoinable 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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ATTORNEYS FOR PLAINTIFF BNSF RAILWAY COMPANY

CERTIFICATE OF CONFERENCE

On January 18, 2022, attorneys for Plaintiff conferred with Kevin C. Brodar and James Petroff, attorneys for Defendants, regarding the motion for a temporary restraining order filed today. An agreement could not be reached, as Plaintiff and Defendants disagree about whether Plaintiff may unilaterally implement the new attendance standards. Plaintiff's motion for a temporary restraining order is opposed.

/s/ Donald J. Munro
Donald J. Munro

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion, along with the supporting Memorandum and Proposed Order, were served upon counsel for Defendants (listed below) by electronic means on January 18, 2022.

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/s/ Russell D. Cawyer
Russell D. Cawyer

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BROTHERHOOD OF LOCOMOTIVE	§	
ENGINEERS AND TRAINMEN,	§	
	§	
Defendants.	§	

[PROPOSED] TEMPORARY RESTRAINING ORDER

Having considered Plaintiff BNSF Railway Company's ("Plaintiff") First Amended Complaint, Motion for Temporary Restraining Order, and the documentation filed in support of and opposition to this request, the Court hereby GRANTS Plaintiffs' Motion. For the reasons provided below, Defendants International Association of Sheet Metal, Air, Rail, and Transportation Workers – Transportation Division and Brotherhood of Locomotive Engineers and Trainmen, as well as their officer, employee, members, and all others acting in concert therewith, shall be temporarily enjoined from calling, organizing, or otherwise engaging in strikes, pickets, work stoppages, sick outs, or slowdowns, or otherwise exercising any form of coercive self-help against Plaintiff, its subsidiaries and/or affiliates, or encouraging others to do so in relation to any dispute over Plaintiff's adoption of the "Hi Viz" attendance standards.

The bases for this Order are as follows:

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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

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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;

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(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 ir	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 sus	stained by anyone who is found to be wrongfully restrained; and it is further
ORDE	RED that this injunction shall continue until such time as the Court may rule upon
Plaintiff's requ	uest for a preliminary injunction, which is set for hearing on February, 2022, at
o'clock; an	d it is further
ORDE	RED that a certified copy of this order, in lieu of a formal notice, be served upon
the Defendant	s; and it is further
ORDE	RED that for the purpose of providing for service of notice of this injunction, in
addition to th	ne methods of service of process provided by statute, notice may be given to
Defendants SM	MART-TD and BLET, their members, and all other persons by the posting of copies
of this injunct	ion at the entrances of the Plaintiff railroad's premises, which shall be considered
prima facie ev	vidence of notice and knowledge of this injunction to and by all persons who may
commit, or att	tempt to commit, any act or acts in violation thereof at or near the said premises of
the Plaintiff ra	uilroad.
Signed on this	day of, 2022.
	The Hon. Barbara M. G. Lynn Chief Judge

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