ARBITRATION PURSUANT TO
ARTICLE I, SECTION 4 OF THE NEW YORK DOCK PROTECTIVE CONDITIONS

PARTIES	)	BROTHERHOOD OF LOCOMOTIVE
	)	ENGINEERS AND TRAINMEN
	)	
TO	)	AND
	)	
DISPUTE	)	CANADIAN PACIFIC KANSAS CITY RAILWAY
	)	

Michael D. Phillips, Arbitrator

Background:

In Finance Docket No. 32167, the Interstate Commerce Commission approved the acquisition by Kansas City Southern Industries, Inc. of common control of Kansas City Southern Railway Company ("KCS"), MidSouth Rail Corporation "(MidSouth"), MidLouisiana Rail Corporation ("MidLouisiana"), SouthRail Corporation ("South Rail"), and TennRail Corporation ("TennRail"). That approval, rendered in a decision served June 4, 1993, was subject to the employee protective conditions described in New York Dock Railway – Control – Brooklyn Eastern Dist., 360 I.C.C. 60 (1979) (*"New York Dock"*).

MidLouisiana, SouthRail, and TennRail have since been merged into KCS. At the time of the ICC decision, the Louisiana & Arkansas Railway ("L&A") was controlled by KCSR, but it also has been merged into KCS.

In 2023, KCSR merged with Canadian Pacific Railway, forming a combined system known as Canadian Pacific Kansas City Railway ("CPKC" or "Carrier"). The locomotive engineer workforces on the former KCS, L&A and MidSouth properties are represented by the Brotherhood of Locomotive Engineers and Trainmen ("BLET" or "Organization").

On February 19, 2025, the Carrier served a notice to the Organization General Chairmen, in accordance with Article I, Section 4 of *New York Dock*, to coordinate and merge the entirety of the properties, train operations, and associated engineer workforces of the former KCS, MidSouth and Tex-Mex properties.[1] The notice proposed consolidation of train operations and transportation assets into a newly formed Shreveport Hub Operating District, with a single seniority district and single locomotive engineer seniority roster. It proposed that all locomotive engineer positions headquartered within the Shreveport District would be established pursuant to the MidSouth collective bargaining agreement. Among other things, the notice stated that the consolidation was necessary to achieve the benefits of common control approved by the ICC, including increased throughput on the Shreveport District and to decrease congestion and promote more efficient movement of rail traffic in the District.

The Organization responded that it was not agreeable to the Carrier's suggested changes outlined in the Section 4 notice, and the parties agreed to extend the time frame set forth in Article I, Section 4 while they were also engaged in bargaining pursuant to Section 6 of the Railway Labor Act. That bargaining apparently also involved potential consolidation of operations and workforces. The record indicates that a tentative Section 6 agreement was reached in April of 2025.

A dispute about portions of the tentative agreement arose, however, and the Carrier withdrew the proposal and indicated it would proceed with the *New York Dock* notice. By letter dated May 9, 2025, the Organization informed that Carrier that it believed the "Cramdown Agreement," discussed in more detail below, was in effect for the *New York Dock* notice. The Organization stated that, pursuant to that agreement, it chose the KCS agreement for those employees who were currently under the KCS and MidSouth agreements.

The Carrier responded that the Cramdown Agreement did not apply, but that it was willing to discuss proposals the Organization wished to make. The record confirms that the parties met several times thereafter, but they were unable to reach agreement on either the Section 6 or Section 4 notices.

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[1] The Tex-Mex is not involved in this proceeding.

The parties agreed on the selection of this arbitrator to handle the dispute, and a hearing was held in Kansas City, Missouri on December 8, 2025. Both parties submitted comprehensive briefs and supporting documents prior to the hearing, and during the hearing both parties were capably represented by counsel and by experienced advocates. The parties agreed to waive the 30-day requirement set forth in Article 4 of *New York Dock* for issuance of the instant award. The following constitutes the Arbitration Award resolving the parties' dispute.

<u>Statement of Issues</u>:

The issues formulated by the Carrier are as follows:

1. Does the Implementing Agreement proposed by the Carrier provide an appropriate basis for the selection and assignment of forces made necessary by the transaction described in the Carrier's *New York Dock* Article I, Section 4 notice of February 19, 2025?

2. If the answer to the above question is no, what is the appropriate basis for selection and assignment of forces?

The issues formulated by the Organization are as follows:

1. Does the Anti-Cramdown Agreement apply to the consolidation of forces of CPKC's KCSR and MidSouth territories proposed by CPKC in its February 19, 2025, NYD Article I, Section 4 Notice to the BLET such that BLET may choose which CBA, KCSR or MidSouth, will apply to the consolidation?

2. If the Anti-Cramdown Agreement does not apply to the consolidation of forces of CPKC's KCSR and MidSouth territories proposed by CPKC in its February 19, 2025, NYD Article I, Section 4 Notice to the BLET, what CBA, KCSR or MidSouth, should apply to the consolidation?

The Organization further submits that once those threshold questions are answered, the Board should remand the matter to the parties to negotiate application of the chosen CBA to the consolidation, with the Board retaining jurisdiction in the event the parties are not able to reach a voluntary implementing agreement.

Positions of the Parties:

The Carrier first states that the planned consolidation of train operations in the Shreveport District is an exercise of authority conferred in the ICC's control order, and that it was properly undertaken pursuant to *New York Dock*, Article I, Section 4. It points to portions of the control order which recognized that shippers and the public would benefit from the operating efficiencies made possible, and it asserts that the planned consolidation of train operations will promote precisely such efficiencies in operations and improved rail service.

The Carrier states that there is nothing unusual about its plan to conduct operations under a single set of work rules with a unified work force. It states that it is well understood that to achieve the public benefits made possible by consolidation of train operations, it is nearly always necessary to provide for the application of a single labor agreement to govern the consolidated operations. The Carrier cites prior ICC decisions and court cases which have found appropriate implementing agreements providing that employees would be placed onto a consolidated roster, subject to a single labor agreement, when a carrier consolidates train operations of separate properties under its common control.

The Carrier asserts that the passage of time does not restrict it from making the proposed changes. It states that the issue of a time limit has been raised in prior cases, but that the ICC has held that the initial approval of a merger or control extends to subsequent transactions that fulfill the purposes of the principal transaction. The Carrier avers that passage of time alone is a settled issue where there is a nexus between the proposed changes and the initially approved transaction, and it submits that the record here confirms there is a direct connection between the proposed operational changes and the transaction approved by the ICC in the control order.

The Carrier denies that the Cramdown Agreement provides the Organization with the option to select which collective bargaining agreement will apply to the consolidated operations. The

Cramdown Agreement, also known as the Anti-Cramdown Agreement, or ACA, is a March 21, 2021, agreement formally titled "Revised Standards of Collective Bargaining Agreements for Transactions Initiated Pursuant to Section 11323 of the Interstate Commerce Act," between the class I carriers, including the Kansas City Southern Railway, and multiple unions, including the BLET. It sets forth "standards to be applied by such Carriers and the involved Labor Organizations when the Carriers seek to override or modify Collective Bargaining Agreements in the implementation of consolidations, mergers, and acquisitions of control ('Major Transactions') pursuant to Section 11323 of the Interstate Commerce Act."

The Carrier states that, by its terms, the Cramdown Agreement only applies to "Major Transactions" under Section 11323, but that the proposed consolidation at issue here is not a "Major Transaction." It cites the regulations pertaining to Section 11323 which state that "a major transaction is a control or merger involving two or more class I railroads," and it points out that the 1993 KCS-MidSouth control order did not involve class I railroads. It cites the portion of the control order which stated that it was a "significant" transaction, and it posits that any follow-up transactions should continue to be categorized as "significant" rather than "major" transactions, for which the Cramdown Agreement is not applicable.

The Carrier maintains that its proposed implementing agreement is an appropriate basis for the selection and rearrangement of forces for the planned consolidation of train operations and transportation assets. It states that the proposed agreement specifies the employees who will be selected for the consolidated operations, and that they will be dovetailed onto a new consolidated seniority roster for each Zone therein, Louisiana and Mississippi, based on their earliest engineer seniority date. The Carrier states that the agreement specifies the collective bargaining agreement that will apply, and that the employees will be governed by the MidSouth agreement. It adds that the availability of compensatory benefits for individual employees, in accordance with the protective conditions, is assured.

The Carrier asserts that this is a standard, fair, and appropriate method for the selection and assignment of forces, comparable to the procedures which have been adopted in numerous prior *New York Dock* implementing agreements. It notes that the proposed agreement provides for prior rights, and it states that the proposal creates potential unassigned freight pool operations that will increase efficient use of freight crews and minimize deadheading and held trains. The Carrier contends that this methodology serves the objective of the transaction by prescribing workable procedures calculated to provide adequate train crews for the operating needs in the District, while at the same time minimizing employee disruption, honoring and preserving employee seniority, and otherwise being fair to the affected employees.

The Carrier also contends that the MidSouth agreement has elements which are better for employees than the KCS agreement. For example, it states that yard service engineers working under the MidSouth agreement are paid 19% more per day than yard service engineers working under the KCS agreement. As another example, it states that engineers subject to the MidSouth agreement are eligible for nine personal leave days per year from the beginning of their employment, while engineers working under the KCS agreement have to work ten years before being eligible for ten personal leave days. It states that if the MidSouth agreement applied to all current engineers currently working under the KCS agreement, 120 of those engineers would see an increase in personal leave days. The Carrier further observes that the MidSouth agreement has a 401(k) match, while the KCS agreement has no 401(k) at all.

The Carrier avers that its selection of the MidSouth agreement is appropriate to the transaction, as the MidSouth agreement is consistent with the practical operational needs of the District, and its application will permit effective implementation of consolidated operations. It states that application of the KCS agreement, in contrast, would prevent achievement of the service improvements the Carrier seeks to achieve through consolidation, and that it is therefore inappropriate.

The Carrier maintains that the KCS agreement would not allow the flexible use of crews in the District, as it does not permit the use of road crews of one legacy carrier to take a train beyond Shreveport Terminal onto another legacy carrier, or even through the terminal onto its own home network. It also states that the KCS agreement limits work that road crews can perform in yards, and that it inhibits flexible use of crews by bracketing start times for assignments, thus restricting the launching of trains consistent with the needs and requests of shippers. The Carrier submits that, in view of the operational difficulties which would be created by imposing the KCS agreement on the District, application of the MidSouth agreement is essential to the realization of service improvements and operational efficiencies, and resultant benefits to customers, made possible by consolidation.

The Carrier states that the ICC and STB's unequivocal instruction, expressed in numerous cited decisions, is that labor agreements must yield as necessary to the achievement of public transportation benefits of a transaction. It also cites prior arbitration awards for the principle that it would be inappropriate to impose a collective bargaining agreement that would have the effect of impeding the intended operational and service improvements, and resultant benefits to customers, and it urges that we employ a similar analysis here.

The Carrier maintains that no additional terms are required or appropriate. It states that there is no legitimate objection to its plan to create consolidated, dovetailed rosters and to award positions based on seniority rank on the consolidated roster, especially since prior rights will be recognized. The Carrier emphasizes that any employees who may be adversely affected by the consolidation are assured compensatory benefits as provided in *New York Dock*, which protect employees from being placed in a worse position with respect to their compensation. The Carrier concludes that its first issue presented for review should be answered in the affirmative, and that its proposed implementing agreement should be adopted.

The Organization, on the other hand, maintains that the Carrier does not have the right to impose the MidSouth agreement on the proposed consolidated territory. It states that, by its plain language, the Cramdown Agreement applies to the consolidation of workforces proposed by the Carrier in its *New York Dock* notice, and that accordingly, the BLET is permitted to choose which collective bargaining agreement will apply to the consolidation. The Organization states that it chooses the KCS CBA.

The Organization states that prior to the Cramdown Agreement, carriers enjoyed broad power to abrogate CBA provisions, and even entire CBAs, via the *New York Dock* Section 4 process. It asserts that this changed with the adoption of the Cramdown Agreement, however, as that agreement greatly limits a carrier's prerogatives in that area. The Organization points to the opening paragraph of the Cramdown Agreement, quoted in part above, and its reference to "Major Transactions" and Section 11323 of the Interstate Commerce Act. It quotes Section 11323 of the Interstate Commerce Act, which lists six categories of transactions that may only be carried out with the approval and authorization of the STB, and it asserts that the transaction cited by the Carrier as the basis for its *New York Dock* Section 4 notice is indeed a transaction covered by Section 11323.

The Organization states that the plain language of the Cramdown Agreement identifies all of the transactions in which a carrier seeks to override or modify a CBA in the implementation of consolidations, mergers, and acquisitions of control as "Major Transactions" covered by the Cramdown Agreement. It avers that the transaction relied on by the Carrier is therefore a "Major Transaction," because it is covered by Section 11323.

In response to the Carrier's assertion that the Cramdown Agreement does not apply because the transaction at issue did not involve two class I railroads, the Organization states that the Cramdown Agreement makes no reference to any regulations or any other definition of what a "Major Transaction" means beyond plainly stating that it means situations in which a carrier seeks to override or modify a CBA in the implementation of a consolidation, merger, or acquisition of control pursuant to Section 11323. The Organization says the Cramdown Agreement does not in any way place labels on the six identified transactions which require STB approval.

The Organization states that the parties to the Cramdown Agreement were all experienced negotiators, and it posits that if the parties had intended "Major Transactions" as used in the Cramdown Agreement to mean anything more or less than the transactions identified in Section 11323, they certainly would have said so. It notes that the parties did include language adding to the definition of "Major Transaction" of "a lease, grant of trackage rights and/or contract to operate by one or more Class I Carrier(s) of all or substantially all of its/their track and/or operations to another carrier or non-carrier in one or more transactions." The Organization states that this clarification was needed to cover transaction involving a non-carrier, which would not be covered by Section 11323, but that the negotiators chose not to reference STB regulations for the definition of a “Major Transaction,” so there is no reason to conclude that the Cramdown Agreement does not apply here based on uncited or unreferenced regulations.

The Organization next cites the language of the opening paragraph as subjecting to the terms of the Cramdown Agreement those notices where the Carrier is “seeking to override or modify an existing collective bargaining agreement.” The Organization states that, because the Carrier’s notice is clearly a notice served pursuant to the *New York Dock* protective conditions imposed by the STB in approving the KCS-MidSouth transaction in FD 32167, and because this represents a situation in which the Carrier is seeking to override or modify the existing KCS and MidSouth CBAs, the notice falls squarely within the coverage of the Cramdown Agreement.

The Organization also cites portions of the Cramdown Agreement which state that it applies to “any notice for an implementing agreement by any carrier party that seeks to override or modify collective bargaining agreements, whether under existing merger, control or acquisition authority or any such authority sought or granted in the future by the STB or any successor agency.” It states that CP and KCSR are two of the signatory railroads, so this provision confirms that the Cramdown Agreement applies, regardless of the fact that the transaction cited by the Carrier occurred well before the Cramdown Agreement was finalized. The Organization asserts that the Cramdown Agreement shifted the decision-making powers from the carriers to the organizations in broad fashion, and it reiterates that it chooses to use its right thereunder to choose the KCS CBA.

The Organization further states that if we find that the Cramdown Agreement does not apply to the transaction cited by the Carrier in its *New York Dock* notice (FD 32167), CPKC nevertheless agreed to, and the STB imposed adherence to the Cramdown Agreement as a condition of approving Canadian Pacific’s merger and control over KCSR in FD 36500, which resulted in the creation of CPKC. It states that in basing the present *New York Dock* Section 4 notice on the earlier transaction, the Carrier is improperly attempting to obtain a financial windfall and to cram down an inferior CBA on the impacted employees.

The Organization cites to a Verified Statement from the Vice President of Labor Relations at Canadian Pacific, who holds the same title with CPKC, as confirming that “CP will extend similar assurances that, following CP's acquisition of control, KCSR will honor any protective agreements it has entered into with labor unions, including but not limited to the Cramdown Agreements." The Organization also points to the portion of the STB's decision approving the merger which stated, "As applicants have represented that they will honor the obligations established in the Cramdown Agreement, the Board will grant the rail unions' request to impose a condition holding Applicants to that representation." The Organization argues that the Carrier should not now be able avoid that commitment by claiming that the Cramdown Agreement does not apply to this case.

Next, the Organization goes on to state that, even if we find that the Cramdown Agreement does not apply to the Carrier's proposed consolidation of workforces, we should still find that the KCS CBA is the appropriate CBA to apply. It cites caselaw, including *Norfolk & Western R. Co. v. Train Dispatchers*, 499 U.S. 117 (1991) and *Railway Labor Executives' Ass'n v. U.S.*, 987 F.2d 806 (D.C. Cir. 1993) ("RLEA"), for the principle that modifications to an existing CBA using the *New York Dock* Section 4 process should be "limited to those necessary to permit the approved consolidation."

The Organization asserts that to satisfy its burden of establishing that a particular change is necessary, the Carrier must prove that it will "secure to the public some transportation benefit that would not be available if the CBA were left in place, not merely to transfer wealth from the employees to their employer." *RLEA*, 987 F2d at 815. It states that a board such as this should identify which changes are necessary to secure public benefits of a transaction, and which are not, and that the transaction should accommodate existing CBA rights to the extent that they do not substantially impede the transaction, citing among others *CSX Corp. – Control – Chessie System, Inc. and Seaboard Coast Line Industries, Inc.,* 3 S.T.B. 701 (1998).

Applying those standards, the Organization argues that the Carrier's *New York Dock* Section 4 notice is improper because it does not involve a change that is necessary to secure a public transportation benefit that would not be available if the KCS CBA were left in place. It contends, rather, that the notice is merely intended to transfer wealth from the employees to the Carrier.

The Organization points to a prior arbitration award as being particularly instructive. As set forth in that award, prior to the merger of Union Pacific and Southern Pacific, each carrier had separate yards in the Kansas City Terminal, where TCU-represented employees performed crew hauling duties, among other things. UP proposed to consolidate crew hauling operations under the UP agreement, which permitted contracting of some work, while the SP agreement did not allow contracting. The pay rate under the UP agreement was 34-36% less than under the SP agreement, and the UP agreement allowed for a lesser percentage of employees to be maintained on a guaranteed extra board.

The board there denied the UP's request, finding that the proposed changes were not necessary to effectuate the consolidation and rearrangement of crew hauling in the Kansas City Terminal. The board held that "the same public transportation benefit can be attained by placing positions involved in crew hauling under the SP CBA," and it held that the SP CBA therefore could not be overridden. The Organization contends that, as in that case, the efficiencies sought by the Carrier here can just as easily be obtained by applying the KCS CBA to the consolidated workforces.

The Organization cites several differences between the KCS and the MidSouth CBAs which it maintains demonstrate that the KCS CBA is more beneficial to the employees. Among those differences include potential reduction from current trip rates paid under the KCS agreement if the MidSouth provisions become applicable. It states that both CBAs have thru-freight service governed by trip rates, and that the KCS CBA has multiple assignments with varying rates of pay based on the trip rate calculation formulae. In particular, it cites the trip rates for the Shreveport to Beaumont ID pool and the Shreveport to Baton Rouge ID run.

The Organization contrasts those rates with the MidSouth CBA, which it says has only a single trip rate for all thru-freight service and local service regardless of any agreements or mileage. It asserts that when the single rate is compared to similar runs under the KCS CBA, the MidSouth CBA falls short in almost every instance, with all but one of the KCS ID runs exceeding the MidSouth CBA's trip rates.

Other differences cited by the Organization include how held away time is paid. It states that, regardless of whether employees may receive a calendar day's pay under the MidSouth CBA regardless of whether service is performed, that does not make up for the potential loss of earnings should the Carrier mismanage its crew base, so the continuous held away pay provisions of the KCS CBA are superior.

The Organization also cites a loss under the MidSouth CBA pertaining to additional compensation when ID crews are used for other than ID work, such as hours-of-service relief. Likewise, it states that the KCS CBA provisions pertaining to rates of pay, call windows, and meal periods for yard assignments are better, especially when comparing what a yard employee could make on a twelve-hour day, which includes overtime, to the single rate of pay for local service under the MidSouth CBA.

Another item of concern involves extraboards. The Organization notes that the KCS CBA has provisions for guaranteed extraboards, but that the MidSouth CBA does not have language for guaranteed extraboards. It notes that the Carrier's proposal indicates it will consolidate extraboards, which would force employees to cover more territory, while allowing the Carrier to inflate the extraboards without consideration of the impact on employee earnings.

The Organization further cites provisions regarding vacations and personal leave days which would result in an overall loss if the MidSouth CBA is imposed. It states that, while both properties fall under the National Vacation Agreement, the KCS CBA allows employees to take one week of their vacation in single day increments, while the MidSouth CBA does not allow single day usage. The Organization states that the loss of single day vacation rights, which employees might use to attend to personal obligations which do not require a full week of vacation, could expose employees to discipline over attendance issues.

With respect to personal leave, the Organization states that KCS engineers fall under the 1996 National Agreement, which provides engineers, depending on years of service, the ability to obtain up to 11 personal leave days per year, and the ability to carry over up to 30 days from year to year. It contrasts that with the provisions of the MidSouth CBA, which provides for 7 personal leave days per year, and which only allows carryover personal leave days in even years. The Organization submits that, while MidSouth engineers receive their full allotment of PLDs on employment, the overall loss to KCS engineers would be substantial, considering the yearly loss of 4 personal leave days.

The Organization maintains that the consolidation of properties and seniority can be obtained without forcing a substantially inferior agreement on the majority of the employees involved, as was found in the UP-SP crew hauling case. It states that prior rights should be recognized, and that the results of the National Agreement reached following PEB 250 have given the Carrier the flexibility it seeks, even under the KCS CBA. The Organization also avers that the Carrier can use the provisions of Article IX of the 1986 National Agreement to seek to establish ID runs to accomplish what it seeks in the *New York Dock* Section 4 notice.

The Organization characterizes the Carrier's attempt to force the MidSouth CBA onto the consolidated District as a money grab that does not involve a change that is necessary for the Carrier to obtain a public transportation benefit that would not be available if the KCS CBA were left in place. It states that the Carrier's proposal is intended "merely to transfer wealth from the employees to their employer," a concept found to be impermissible in *RLEA* and other cases. It further asserts that the Carrier's attempt to impose the MidSouth CBA is contrary to the spirit of what every class I carrier, including CP and KCSR, agreed not to do in the Cramdown Agreement, which CPKC agreed to apply in the merger case that led to its creation.

The Organization concludes that it has acted in good faith in an attempt to negotiate an agreement which would address seniority consolidation, but that the Carrier employed the *New York Dock* Section 4 process to force changes it could not obtain at the bargaining table. It requests that if we deem the Carrier's notice to be proper and valid, that we find that the Carrier cannot obtain seniority efficiencies and a financial windfall by imposing an inferior CBA. The Organization submits that whether we do so because the Cramdown Agreement requires it, or due to equitable principles, we should find that the KCS CBA applies to the proposed consolidation, and that we should remand the matter to the parties to negotiate application, retaining jurisdiction in the event the parties are not able to reach a voluntary implementing agreement.

Findings:

Both parties have cited multiple administrative, arbitral and judicial opinions to support their positions. We have carefully reviewed the entire record, and the absence of a detailed recitation of each argument should not be taken as any indication that the materials were not fully considered.

We initially address the Organization's arguments about the Carrier's handling of the *New York Dock* notice. Although the Organization asserts that the Carrier only pursued the Article I, Section 4 notice in an attempt to influence the Section 6 negotiations, and that the negotiations regarding the instant notice were not meaningful, we are not in position to say that they were not in good faith. The fact that no agreement was reached is in itself no indication to the contrary, nor does it bar us from addressing the matter. Otherwise, there could never be arbitration regarding a *New York Dock* notice. We also find that the Carrier has complied with the notice requirements of Article I, Section 4, and that the negotiations required by that section took place over several sessions before the matter was progressed to arbitration. The matter is properly before this panel.

We also find that the Carrier's proposed consolidation of territories currently covered by both KCS and MidSouth agreements into a single Shreveport District constitutes a transaction within the meaning of *New York Dock*. There is no real question that the Carrier's proposed consolidation is appropriate pursuant to the ICC's control order. Although considerable time has passed, it has been held in many prior awards that mere passage of time is not a barrier to transactions that are directly related to and fulfill the purposes of the principal transaction. See, e.g., *CSX Corp. – Control – Chessie System, Inc, et al.*, 8 I.C.C.2d 715 1992 WL 20617 (1992), *aff'd* 26 F.3d 1157 (D. C. Cir. 1994). As noted by the ICC in that decision, there may be "any number of reasons why an entity formed as a result of a Commission-approved transaction might wish to postpone a coordination which could have been taken earlier."

While the Organization posits that the subsequent transaction involving creation of CPKC is the driver of the instant consolidation, we note that the consolidation proposed here does not involve combination of any territories or agreements other than those completely contained within the

KCSR itself, so that no new authority for this transaction was required from the order allowing formation of the CPKC. As discussed below, the Carrier has established a direct connection between the proposed operational changes and the transaction approved by the ICC in the initial control order, and we do not find that the passage of time has impacted that proven nexus.

We also find that the Carrier has demonstrated necessity of operating under a single collective bargaining agreement in the consolidated District. Many prior awards, ICC and STB decisions, and court cases have confirmed that, for carriers to achieve the public benefits made possible by a consolidation of operations, it is appropriate to provide for application of a single labor agreement to govern the consolidated operations. We believe this concept is so well recognized that it is not necessary to quote numerous prior decisions, but a representative example is found in *United Transportation Union v. STB*, 108 F.3d 1425, 1431 (D.C. Cir. 1997), where the court stated "there is little point in consolidating railroads on paper if a consolidation of operations cannot be achieved. It is obvious that separate and distinct parts, operating separately and distinctly, will not generate the value of consolidation."

In fact, the Organization does not dispute the Carrier's right and need to consolidate operations and forces at Shreveport. As noted above, its statement of issues does not raise any question about whether the proposed consolidation at Shreveport is appropriate, nor does it dispute that a single collective bargaining agreement is necessary to govern the employees working there. Rather, the Organization's sole focus is on which collective bargaining agreement should be chosen for that purpose. We agree that adoption of a single collective bargaining agreement for the Shreveport District is necessary to effectuate the transaction.

The Organization maintains that it has the right to select which collective bargaining agreement will apply pursuant to the terms of the Cramdown Agreement. The Cramdown Agreement begins as follows:

> "This Agreement made March 21, 2001 by and between the labor organizations listed in Attachment A hereto, and the Class I Carriers listed in Attachment B hereto, is intended to set forth standards to be applied by such Carriers and the

> involved Labor Organizations when the Carriers seek to override or modify Collective Bargaining Agreements in the implementation of consolidations, mergers, and acquisitions of control ('Major Transactions') pursuant to Section 11323 of the Interstate Commerce Act. The term 'Major Transactions' as used in this Agreement and for the purposes herein only will also include a lease, grant of trackage rights and/or contract to operate by one or more Class I Carrier(s) of all or substantially all or its/their track and/or operations to another carrier or non-carrier in one or more transactions. This Agreement does not apply when a Carrier is not seeking to override or modify Collective Bargaining Agreements in such circumstances."

It also provides in Conditions – 3, that the procedures therein apply:

> "[T]o any notice for an implementing agreement by any carrier party that seeks to override or modify collective bargaining agreements, whether under existing merger, control or acquisition authority or any such authority sought or granted in the future by the STB or any successor agency."

Inasmuch as the Cramdown Agreement procedures apply to proposed modifications of CBAs under existing authority, the fact that the control order relied on by the Carrier preceded the Cramdown Agreement does not in itself mean that the Cramdown Agreement is not applicable here.

Nevertheless, we concur with the Carrier that the Cramdown Agreement does not apply to this proposed consolidation. The Cramdown Agreement specifies that it applies to collective bargaining modifications involved with "Major Transactions."

In this case, however, the ICC control order did not find the initial consolidation to be a "Major Transaction." Rather, the ICC deemed the initial consolidation to be a "<u>significant transaction</u> within the meaning of our rail consolidation regulations at 49 CFR 1180.2(b)." (FD 32167, emphasis added).

The CFR provision cited in the ICC's control order, 49 CFR Section 1180.2, distinguishes between four types of transactions proposed under Section 11323. The two types relevant here are defined as follows:

(a) A major transaction is a control or merger involving two or more class I railroads.
(b) A significant transaction is a transaction not involving the control or merger of two or more class I railroads that is of regional or national transportation significance . . . .

The transaction approved in FD 32167 did not involve two or more class I railroads.

The Organization maintains, however, that the parties did not intend to use the definitions set forth in the regulations when they used the term "Major Transactions" in the Cramdown Agreement, but rather they intended that any transaction listed in Section 11323 would fall within its coverage. It posits that the parties were experienced negotiators who could have referred to the regulations in defining "Major Transactions," but because they did not do so, those definitions are not relevant here.

We concur that the parties to the Cramdown Agreement were experienced negotiators, but we believe that they intended when they chose the term "Major Transactions" to mean what the Carrier urges. If they had intended that all transactions subject to ICC approval were to be covered by the Cramdown Agreement, they could have easily said so. Instead, they chose the term "Major Transactions," which in our view was intended to conform with the ICC's well-established definition thereof. The fact that they added specific other transactions, which otherwise would not be covered by the ICC's definition of "Major Transaction," reinforces in our view that they meant to add only those limited exceptions to the definition. As the underlying transaction in question here is a "significant" transaction, not a "Major Transaction," we find that the Cramdown Agreement is inapplicable to the consolidation proposed here.

With respect to the Organization's argument that the Carrier's Vice President of Labor Relations promised during the CPKC merger application that the Carrier would honor the Cramdown

Agreement, we do not read his statement as saying the Carrier would extend application of the Cramdown Agreement to transactions which do not fall within its coverage. The STB's order likewise refers to the Carrier honoring "the obligations established in the Cramdown Agreement," but it did not extend such obligations beyond what was established in the Cramdown Agreement itself.

The Organization goes on to state that, even if the Cramdown Agreement is found to be inapplicable, it should still have the right to select the KCS CBA to apply to the consolidated District. It asserts that, because in its view the KCS CBA is better for the employees, the Carrier's proposal to impose the inferior MidSouth CBA is merely an attempt to transfer wealth from the employees to the Carrier, which we should not permit. The Carrier denies that this is the case, stating that selecting the KCS CBA would impede its ability to improve operations and to better serve customers. It also points to elements of the MidSouth CBA which it maintains are better for the employees than the KCS CBA.

As noted above, the Organization likens this situation to one which was presented in the UP-SP crew hauling case. In that case, Arbitrator O'Brien agreed with the carrier that the operational efficiencies contemplated by the consolidation warranted application of a single collective bargaining agreement to the employees engaged in crew hauling in the Kansas City Terminal. He found, however, that the carrier had not established that it was necessary to override the SP agreement to effectuate the transaction. He cited a reduction of wages of between 34 and 36% from the SP rates, elimination of a prohibition against subcontracting from the SP agreement, and a reduction in the percentage of positions on a guaranteed extra board.

Arbitrator O'Brien held that no public transportation benefits would be achieved by overriding the SP CBA, and that the efficiencies of operations that would result from the coordination of crew hauling functions could just as easily be obtained by placing all of the positions under the SP agreement. That decision was upheld by the STB.

We have carefully reviewed that award, and while we take no exceptions to its conclusions, we do not find that it was addressing circumstances similar to what are presented here. In denying the carrier's request to impose the UP CBA, the arbitrator found that "the Carrier has not demonstrated any 'necessity' to override the SP Agreement to effectuate the rearrangement and coordination of crew hauling work at the Kansas City Terminal." The award there is in fact devoid of any indication that the SP agreement imposed any impediment to the consolidation or that selecting it for the single applicable agreement would deprive the carrier or the public of any transportation benefits. That is far different from the circumstances presented here.

As was held in *American Train Dispatchers Ass'n v. I.C.C.*, 26 F.3d 1157 (D.C. Cir. 1994), a transaction "must yield enhanced efficiency, greater safety, or some other gain." Unlike the situation presented in the UP-SP crew hauling case, we find that the record in this case reveals that the Carrier has articulated the transportation benefits necessary to meet that standard.

"Arbitrators should not require the carrier to bear a heavy burden (for example, through detailed operational studies) in justifying" changes that are necessary to make a merged entity operate efficiently as a merged operation. *CSX Corp. – Control – Chessie System, Inc, et al.*, 4 S.T.B. 701 (1998), internal citation omitted. Here, among other things, the Carrier has supplied confirmation that application of the KCS CBA impedes its ability to promptly serve its customers, as confirmed by correspondence from one such customer, and that it slows its service of military trains, impacts which can be reduced or eliminated if the MidSouth CBA is applied to the consolidated District. And as the customer who complained about delays observed, its own customers would benefit if delays attributable to the current arrangement are eliminated.

The Organization has not really disputed those attributes of the KCS CBA. Instead, it suggests that the Carrier can overcome those operational impediments via methods such as establishment of interdivisional runs in accordance with Article IX of the 1986 National Agreement. Whether such options are available, however, is not in our view relevant to how the existing agreements should be addressed in this proceeding, especially since there is no guarantee as to the outcome of the procedures suggested by the Organization.

Although the Organization urges that the KCS CBA is better for the employees than the MidSouth CBA, we cannot say that one is empirically superior to the other. While it seems that some aspects of the KCS CBA could be preferable to some employees, the Carrier has pointed to aspects of the MidSouth CBA which appear to be better. As was observed in an Article I, Section 4 arbitration award involving CSX, IBEW and TCU (Ref. Simon), "it would be an impossible task to determine which agreement, taken in its entirety, is 'the best.' Some 'better' provisions of one agreement may be outweighed by 'better' provisions on different matters in another agreement. Furthermore, what may be beneficial for one employee may be immaterial to another."

We note that subsequent to the hearing of this matter, the Organization submitted an arbitration award (PLB 7635, Award No. 1) in support of its argument that the terms of the Cramdown Agreement should be applied even if we deem that the specific language of the Cramdown Agreement renders it inapplicable. The Carrier objects to the Organization's attempt to add materials not exchanged prior to the hearing, and which were not even introduced at the hearing. It also asserts that the award has no relevance to this matter.

We share the Carrier's concerns for the manner in which this award was presented to us, as we have been offered no compelling reason why it could not have been submitted when the submissions and supporting materials were exchanged. Even if we do consider that award, however, we do not believe it requires us to afford the Organization rights comparable to those found in the Cramdown Agreement.

We note that the award in question involved a Section 3 matter, and that the dispute resolution processes of New York Dock applicable here were not implicated. It also appears that the board there fashioned a unique remedy applying the concepts of the Cramdown Agreement because the agreement at issue did not afford the carrier sole discretion to select an applicable agreement. It is unclear how the board there arrived at that decision, especially after it said that the Cramdown Agreement was not applicable, but in any event we do not think we are required to reach a similar conclusion, as the facts are not comparable and the Carrier here does have rights in this instance which apparently were not applicable there.

On this record, we find that the implementing agreement proposed by the Carrier, with its prior rights and dovetailing of seniority provisions, is appropriate for the transaction, subject to the amendments described below. The Carrier has sufficiently established that applying the MidSouth CBA to the consolidated District is not merely an attempt to transfer wealth from the employees to the employer, but that it is necessary to produce efficiencies and to better serve its current and potential customers. We find that allowing the Organization to select the KCS CBA would impede operational efficiencies and benefits obtained by merging the territories. The New York Dock protective conditions are in place to address claims of employees who allege they have suffered wage loss as a result of changes in operations and agreements.

There are two aspects of the Carrier's proposal, however, which we do not believe will be adequately addressed by those conditions. First is the difference between the KCS and the MidSouth CBAs pertaining to personal leave days. The KCS agreement allows engineers to qualify for up to 11 personal leave days, depending on length of service, while the MidSouth CBA caps the number of personal leave days at seven.[2] We find that the appropriate way to address those differences is that engineers currently working under the KCS CBA who qualify for more personal leave days than what is afforded under the MidSouth CBA will be entitled to retain the number of personal leave days they currently receive, which will not increase with additional service. The MidSouth CBA will apply to those engineers working under the KCS CBA who currently qualify for less than or equal to the number of days afforded under the MidSouth CBA.

Second, the Organization avers that engineers currently working under the KCS CBA are allowed to take one week of vacation in single day increments, while the MidSouth CBA does not allow for any single days of vacation. We believe that this is a substantial benefit that cannot be addressed by the protective conditions. Therefore, we find that the appropriate way to address this matter is to allow engineers currently working under the KCS CBA to continue to be permitted to take one week of vacation in single day increments. Neither of the modifications set forth above in any way impede the Carrier's ability to obtain the benefits of consolidating the District, and we believe it is within our broad discretion to formulate those conditions.

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[2] The Carrier stated during the hearing that MidSouth engineers receive nine personal leave days. Whether they receive seven or nine personal leave days, the KCS allows for more if an engineer has sufficient years of service.

Award:

The Carrier's first question at issue is answered in the affirmative, subject to the two specific modifications set forth above. Its second question at issue is addressed by those specific modifications.

The Organization's first question at issue is answered in the negative. The Cramdown Agreement does not apply to this consolidation. Its second question at issue is addressed in the findings.

Michael D. Phillips
Chairman and Neutral Member

Dated: January 16, 2026