

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

BNSF RAILWAY COMPANY,	§	
	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. 4:22-cv-00052-P
	§	
INTERNATIONAL ASSOCIATION OF	§	
SHEET METAL, AIR, RAIL AND	§	
TRANSPORTATION WORKERS –	§	
TRANSPORTATION DIVISION and	§	
BROTHERHOOD OF LOCOMOTIVE	§	
ENGINEERS AND TRAINMEN	§	
	§	
Defendants.	§	

**PLAINTIFF’S MOTION FOR
PRELIMINARY INJUNCTION**

Pursuant to Rule 65(a) of the Federal Rules of Civil Procedure, Plaintiff BNSF Railway Company (“BNSF”) hereby moves for a preliminary injunction against strikes or other work stoppages 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.

On January 25, 2022, this Court issued a Temporary Restraining Order preventing the Unions from striking in response to BNSF’s announcement of a modified attendance policy called “Hi Viz”. *See* ECF No. 30. The Court reasoned that BNSF had “established a substantial likelihood of success on the merits that implementing the Hi Viz attendance standard is ‘arguably

justified by the terms of the parties collective bargaining agreement’ such that the dispute is minor.” *Id.* at 2 (quoting *Consol. Rail Corp. v. Ry. Lab. Execs. ’ Ass’n*, 491 U.S. 299, 307 (1989)). When an illegal strike occurs over a minor dispute, the employees or the union violate both § 152 First and § 153 First (i). *Id.* As a result, there was “a substantial likelihood that any resort to self-help by the Unions would violate the RLA.” *Id.* Turning to the remaining elements for obtaining injunctive relief, the Court found that “BNSF would suffer substantial, immediate, and irreparable harms” if injunctive relief did not issue, but that the Unions would not suffer any irreparable harm from an injunction. *Id.* Finally, the Court determined that, because “a strike would exacerbate our current supply-chain crisis,” the balance of harms weighed in favor of injunctive relief and a temporary restraining order would serve the public interest. *Id.*

Motions for preliminary injunctive relief are governed by the same standards as motions for temporary restraining orders. *See Greer’s Ranch Cafe v. Guzman*, 540 F. Supp. 3d 638, 644–45 (N.D. Tex. 2021). Having granted BNSF’s motion for a temporary restraining order, the Court should, for the same reasons, likewise grant this motion for a preliminary injunction.

Indeed, BNSF satisfies each element of this Circuit’s standards for injunctive relief. As this Court has already determined, BNSF is substantially likely to succeed on the merits of its claim that the dispute over its adoption of Hi Viz is “minor” under the RLA, such that any resort to self-help by Defendants would be unlawful.

The remaining elements, too, weigh strongly in favor of injunctive relief. Defendants’ threatened work stoppage would 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 a preliminary

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, and will be able to obtain a full remedy if they prevail in that forum.

Counsel for Defendants were served with this motion today, January 31, 2022, and have been provided with copies of Plaintiff's First Amended Complaint, Plaintiff's Memorandum of Points and Authorities in Support of Motion for Preliminary Injunction, 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 preliminarily 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 permanent injunction. Moreover, to the extent the Court deems it appropriate to do so under Federal Rule 65, a preliminary injunction in this matter can and should be converted to a permanent injunction. A proposed order is attached.

Respectfully submitted,

Dated: January 31, 2022.

/s/ Russell D. Cawyer

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CERTIFICATE OF SERVICE

On January 31, 2022, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Russell D. Cawyer
Russell D. Cawyer

CERTIFICATE OF CONFERENCE

On January 26, 2022, counsel for Plaintiff, Donald J. Munro, conferred with counsel for Defendants, Kevin C. Brodar, Erika Diehl, Joshua McInerney and James Petroff, regarding the motion for a preliminary injunction filed today. Representatives of both Plaintiff and Defendants also conferred on January 28, 2022, and again on January 30, 2022, in an attempt to reach agreement that would obviate the need for this motion. Counsel for Plaintiff also contacted Defendants' counsel on Monday, January 31, 2022 regarding this motion.

The parties were unable to reach agreement. Plaintiff and Defendants continue to disagree about whether Plaintiff may implement new attendance standards. Plaintiff's motion for a preliminary injunction is opposed.

/s/ Russell D. Cawyer
Russell D. Cawyer