

# BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN

## NATIONAL DIVISION

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## DENNIS R. PIERCE

National President

July 10, 2018

The Honorable Donald J. Trump  
President of the United States  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, DC 20500

Dear Mr. President:

This letter is to inform you about a serious situation that has developed on our southern border. In late May we were informed that on or after July 7, 2018, train crews of U.S. workers employed by Texas Mexican Railway ("Tex Mex") — a subsidiary of Kansas City Southern Railway ("KCS") — will be replaced by crews of Mexican workers employed by Kansas City Southern de México ("KCSM"), another KCS subsidiary to operate trains between the U.S./Mexico border at the International Bridge in Laredo, Texas and KCS Laredo Yard, approximately 9 miles inside the U.S. This plan to use Mexican workers to operate trains in the U.S. is moving forward in spite of the fact that NAFTA prohibits the U.S. workers from operating trains in Mexico. In order to protect the good American jobs held by our members, we notified KCS that we will strike if it carries out its plan. KCS requested that the federal court in Laredo enjoin this strike, which the court did on July 6.

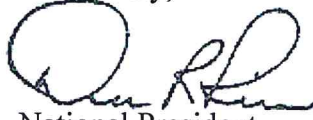
Based on the information available to us, it appears these plans violate numerous federal laws because:

- No trackage rights agreement between Tex Mex and KCSM to permit movement of KCSM trains between the interchange point and Laredo Yard has been submitted to and approved by the Surface Transportation Board, which has jurisdiction over the U.S. railroad industry. *See* 49 U.S.C. § 11323. Instead, the railroads entered into what they call an "Interchange Agreement," under which (1) the U.S./Mexican border remains the interchange point, (2) all KCSM trains become Tex Mex trains as soon as they enter U.S. territory, and (3) instead of KCSM paying a fee for operating its own trains over the Tex Mex line, KCSM would be paid a fee for each Tex Mex train it operates over the Tex Mex line.
- Insufficient steps have been taken to comply with the requirements of federal law (49 U.S.C. §§ 20135 and 20163) or associated Federal Railroad Administration ("FRA") regulations (49 C.F.R. Parts 240 and 242) regarding crewmember certification as locomotive engineers and train conductors.

- Insufficient action has been taken to assure Mexican workers comply with federal hours of service laws (49 U.S.C. ch. 211) and FRA hours of service regulations (49 C.F.R. Part 228).
- No effort has been made to change collective bargaining agreements that have been in place since 1950 and which require the use of crews staffed by U.S. workers in the movement of all freight trains between the International Bridge and Laredo Yard.
- KCSM and its Mexican employees are exempt from compliance with critical alcohol and drug and KCSM has not petitioned FRA for recognition of a workplace testing program promulgated under the laws of Mexico as a compatible alternative to Part 219, consistent with 49 C.F.R. § 219.4.
- The replacement of U.S. crews with Mexican crews would violate portions of a 2018 FRA waiver from compliance with certain FRA locomotive, freight car and air brake safety regulations.
- U.S. regulations (49 C.F.R. § 241.7(c)(3)(B)(iii)) require that communications between train dispatchers and train crews be made “in the English language and, when referencing units of measurement, ... English units of measurement.” 49 C.F.R. Part 220 similarly contemplates that all wireless communications in connection with railroad operations, including via radio, be made in the English language. We are unaware of any steps the railroads have taken to ensure English fluency on the part of KCSM crews (which is particularly frustrating because Spanish-speaking Tex Mex employees have been disciplined by the railroad for communicating in Spanish in the past.)
- While U.S. workers who are certified as locomotive engineers and conductors have spent their entire careers being subject to and having complied with FRA regulations, unlike foreign nationals, the most recent KCS Program filed with FRA *does not* require proficiency in English.
- KCS’s current Certification Program for conductors contains *no provisions whatsoever* pertaining to the training or certification of foreign nationals, much less provisions that explain how they will become imbued with a career-long familiarity with FRA regulations, willful violation of which could subject them to individual liability for civil penalties.

Mr. President, we believe the railroads’ actions to give the jobs of American workers to foreign workers run counter to your own trade goals, and to your commitments to all American workers. It certainly is contrary to the joint position of the representatives of railroad train crew employees in the U.S., Canada and Mexico. A 10-mile retreat from our borders, as the railroads intend to do as this is being written, is certainly inconsistent with keeping work in the hands of American workers. On behalf of our nearly 37,000 working members — and particularly those who stand to lose the work they perform today — I respectfully request that you assist the affected American workers by giving this critical matter your personal attention.

Yours truly,



National President

cc: The Hon. Robert E. Lighthizer, U.S. Trade Representative  
The Hon. Ann D. Begeman, Chairman, U.S. Surface Transportation Board  
The Hon. Elaine L. Chao, Secretary, U.S. Department of Transportation  
The Hon. Ronald L. Batory, Federal Railroad Administrator  
Robert C. Lauby, Associate Administrator for Railroad Safety and Chief Safety Officer,  
Federal Railroad Administration  
The Hon. John Cornyn, III, Senator  
The Hon. Rafael Edward Cruz, Senator  
The Hon. Henry Cuellar  
The Hon. Pete Saenz, Mayor of Laredo  
The Hon. Kyle Fortson, Chairman, National Mediation Board  
J. P. Hoffa, IBT General President  
J. F. Murphy, Director, IBT Rail Conference  
D. O. Cameron, Assistant to the Director, IBT Rail Conference  
John Previsich, President, Transportation Division of the International Association of Sheet  
Metal, Air, Rail, and Transportation Workers  
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M. K. Ball, Local Chairman, Division 244  
V. G. Verna, Director of Regulatory Affairs