

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS**

UNION PACIFIC RAILROAD COMPANY  
1400 Douglas Street  
Omaha, NE 68179

Plaintiff,

v.

Civil Action No. \_\_\_\_\_

INTERNATIONAL ASSOCIATION OF SHEET  
METAL, AIR, RAIL AND TRANSPORTATION  
WORKERS – TRANSPORTATION DIVISION  
24950 Country Club Blvd., Suite 340  
North Olmsted, OH 44070-5333

and

ROY DAVIS  
GENERAL CHAIRPERSON, GO-577  
1776 Woodstead Court, Suite 202  
Woodlands, TX 77380

and

LUKE EDINGTON  
GENERAL CHAIRPERSON, GO-953  
5990 SW 28<sup>th</sup> Street, Suite F  
Topeka, KS 66614

and

SCOTT CHELETTE  
GENERAL CHAIRPERSON, GO-927  
1101 ESE Loop 323, Suite 180  
Tyler, TX 75701

and

TERRY DIXON  
GENERAL CHAIRPERSON, GO-569  
12200 NW Ambassador Drive, Suite 236  
Kansas City, MO 64163

and

BROTHERHOOD OF MAINTENANCE OF  
WAY EMPLOYEES, DIVISION – IBT  
41475 Gardenbrook Road  
Novi, MI 48375

Defendants.

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## COMPLAINT

This Complaint arises out of an announcement by Plaintiff Union Pacific Railroad Company (“Union Pacific” or “Carrier”) that it will comply with the Executive Order issued by President Biden on September 9, 2021 and subsequent guidance issued by the President’s Safer Federal Workforce Task Force (“Task Force”) requiring all “covered employees” of federal contractors, including Union Pacific, to be fully vaccinated against the virus that causes COVID-19 no later than December 8, 2021 (referred to herein as the “Mandate”). For the duration of the Mandate, it is essential that Union Pacific’s rail transportation network continue to function to protect the Nation’s supply chain.

In response to Union Pacific’s announcement, Defendant International Association of Sheet Metal, Air, Rail and Transportation Workers – Transportation Division (“SMART-TD” or the “Union”) and the four named General Chairpersons have objected to Union Pacific’s compliance with the Mandate using terms of art under the Railway Labor Act, 45 U.S.C. § 151, *et seq.* (“RLA”) indicating Defendants view such compliance as a “major dispute” under the RLA over which they would have the right to strike. In addition, while not threatening a strike, Defendant Brotherhood of Maintenance of Way Employees Division/IBT (“BMWED”) has objected in writing to Union Pacific’s compliance with the Mandate and has previously sought to negotiate changes to existing collective bargaining agreements in connection with COVID-related subjects.

To ensure its ability to comply with the Mandate, and to prevent further disruption to the Nation's supply chain, Union Pacific has filed this action to ensure compliance with the mandatory dispute resolution procedures of the RLA. Under the RLA, Defendants have obligations to (1) make every reasonable effort to make and maintain agreements with railroad carriers under 45 U.S.C. §§ 152, First, (2) refrain from the exercise of self-help over disputes concerning the negotiation of collective bargaining agreements ("major disputes") unless and until the mandatory procedures for negotiation of collective bargaining agreements have been exhausted under 45 U.S.C. §§ 152, First, 153 and 156, and (3) resolve all disputes concerning the interpretation or application of existing collective bargaining agreements ("minor disputes") through the mandatory grievance and arbitration procedures set forth in Section 3 of the RLA, 45 U.S.C. §§ 153.

### **PARTIES**

1. Plaintiff Union Pacific Railroad Company ("Union Pacific") is a Class I railroad that provides freight transportation services in 23 States in the western half of the United States. Union Pacific is a Carrier within the meaning of the RLA, 45 U.S.C. § 151, First. Union Pacific's headquarters building and principal place of business is 1400 Douglas Street, Omaha, Nebraska 68179.

2. Defendant SMART-TD is an unincorporated labor organization in which employees participate and that exists for the purpose of, among other things, dealing with carriers pursuant to the RLA concerning rates of pay, rules and working conditions, including negotiation and administration of CBAs. SMART-TD is a "representative" within the meaning of Section 1, Sixth of the RLA, 45 U.S.C. § 151, Sixth. SMART-TD represents Union Pacific employees in the craft or class of "Conductors and Trainmen," which consists of Conductors,

Brakemen and Switchmen. SMART-TD was formerly known as the United Transportation Union (“UTU”).

3. The individually named General Chairpersons are named in their official capacities as agents and representatives of SMART-TD.

4. Defendant BMWED is an unincorporated labor organization in which employees participate and that exists for the purpose of, among other things, dealing with carriers pursuant to the RLA concerning rates of pay, rules and working conditions, including negotiation and administration of CBAs. BMWED is a “representative” within the meaning of Section 1, Sixth of the RLA, 45 U.S.C. § 151, Sixth. BMWED represents Union Pacific employees in the craft or class of “Maintenance of Way Employees.” SMART-TD and BMWED are referred to herein as “the Unions.”

#### **JURISDICTION AND VENUE**

5. Jurisdiction exists pursuant to the RLA, 45 U.S.C. §§ 151-188 and 28 U.S.C. §§ 1331, 1337.

6. Venue over this action properly lies in this Judicial District pursuant to 28 U.S.C. §§1391(b)(1) and (2) because a substantial portion of the events giving rise to the claim took place in this Judicial District and Plaintiff operates within this Judicial District substantial rail properties that would be affected by any disruption to rail operations.

#### **THE RLA’s DISPUTE RESOLUTION PROCEDURES**

7. The Unions represent Union Pacific employees in the RLA crafts and classes described above. Other labor unions represent Union Pacific employees in other crafts and classes. Union Pacific and the Unions are parties to multiple collective bargaining agreements. Under the RLA, collective bargaining agreements do not expire; they become “amendable” after

the expiration of contractual “moratorium” agreements through which the parties agree not to seek changes to their agreements for specified periods of time.

8. Section 2 First of the RLA, which has been described as the “heart of the Railway Labor Act,” *Brotherhood of R.R. Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369, 377-78 (1969), imposes an affirmative duty on the parties to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

9. Union Pacific and the Unions have served notices upon each other under Section 6 of the RLA formally beginning the process that will lead to a new collective bargaining agreement. Disputes over the negotiation of collective bargaining agreements are referred to as “major disputes” under the RLA. In the current round of collective bargaining, Union Pacific is represented by a multi-employer bargaining association, the National Carriers’ Conference Committee, for negotiation of certain subjects through national negotiations known as “national handling.”

10. Under the RLA, the parties are prohibited from exercising self-help such as strikes or lockouts, and are required to observe the status quo, during the mandatory negotiation process and, if requested by either party, mediation process conducted by the National Mediation Board (“NMB”). During the period after the parties have exchanged Section 6 notices and until a “release” from bargaining by the NMB, the parties have the duty to maintain the status quo and refrain from engaging in self-help including any strike, work stoppage or lockout under Sections 2 First and 6 of the RLA, 45 U.S.C. §§ 152 First and 156.

11. The RLA provides a separate dispute resolution procedure for disputes concerning the interpretation or application of existing collective bargaining agreements, which are not resolved in conferences between the parties or through the parties' grievance procedures. Such disputes, known as "minor disputes," are subject to mandatory arbitration. Section 3 of the RLA requires such disputes to be resolved exclusively through arbitration before the National Railroad Adjustment Board ("NRAB"), or before an arbitration panel of coordinate jurisdiction established by the parties pursuant to the RLA (known as a Public Law Board or a Special Board of Adjustment). 45 U.S.C. § 153. The characterization of a dispute as a "minor dispute" does not reflect the importance or value of the dispute. Rather, the term "minor dispute" reflects that the nature of the dispute is one over the interpretation or application of an existing agreement, rather than a dispute over the formation or change to an agreement.

12. A union may not strike over a minor dispute. *Bhd. of R.R. Trainmen v. Chicago R. & I.R.R. Co.*, 353 U.S. 30, 39-42 (1957).

13. Under the RLA, a dispute is a "minor dispute" subject to mandatory arbitration so long as the rail carrier's position with respect to the merits of the dispute is not "frivolous or obviously insubstantial." *Consolidated Rail Corp. v. Ry. Labor Executives' Ass'n.*, 491 U.S. 299, 303-05 (1989).

#### **DISPUTE CONCERNING COMPLIANCE WITH THE MANDATE**

14. On September 9, 2021, President Biden issued an Executive Order titled, "Executive Order on Ensuring Adequate COVID Safety Protocols for Federal Contractors," which requires all federal contractors to comply with all guidance published by the Task Force regarding the COVID-19 pandemic, and set a deadline of September 24, 2021 for the Task Force to issue such guidance.

15. On September 24, 2021, the Task Force issued the guidance required by the Executive Order. The Task Force guidance requires all “covered employees” of federal contractors to be fully vaccinated against the virus that causes COVID-19 no later than December 8, 2021.

16. Union Pacific is a federal contractor subject to the Executive Order and the guidance issued by the Task Force.

17. On October 11, 2021, Union Pacific announced it will comply with the Mandate and so advised the defendants and other labor organizations representing Union Pacific employees. Union Pacific’s compliance with the Mandate is underway and ongoing.

18. On October 12, 2021, the four named General Chairpersons sent a letter to Union Pacific on behalf of SMART-TD in which they stated that SMART-TD opposed Union Pacific’s efforts to comply with the vaccine Mandate. A copy of that October 12, 2021 letter is attached hereto as Exhibit A. In that letter, SMART-TD stated that it “strongly disagrees with Carrier’s action to unilaterally require a vaccination as a condition of employment.” SMART-TD further advised Union Pacific that SMART-TD’s position is that Union Pacific’s effort to comply with the Mandate “does not meet the standards as contained in the Railway Labor Act.” SMART-TD asserted that Union Pacific cannot take the actions described in Union Pacific’s letter until completion of the RLA bargaining process. SMART-TD further stated that SMART-TD opposed “any changes to the requirements for employment by the members represented by SMART-TD.” Finally, SMART-TD threatened that if Union Pacific “unwisely decides to continue this or similar activities, this Organization will exercise its full rights under the law.”

19. On October 1, 2021, BMWED sent a letter to Union Pacific’s Chairman and CEO protesting any effort to comply with the Mandate, saying, “The railroads that are actively

enforcing COVID-19 Vaccine mandates will be opposed. All necessary action will be taken to prevent such Vaccine Mandates ...” A copy of that letter is attached as Exhibit B. On October 14, 2021, BMWED sent a letter to its members emphasizing that the Union is “preparing for all necessary action that can be legally taken to stop the unprecedented mandates.” A copy of that letter is attached as Exhibit C.

20. BMWED’s General Chairman, Tony Cardwell, has informed Union Pacific’s Labor Relations Department that while BMWED is aware of and will comply with its obligation to provide ten (10) days’ notice of any planned strike action (*see Burlington N. & Santa Fe Ry. v. Maintenance of Way Employees*, 143 F. Supp. 2d 672 (N.D. Tex. 2001)), it remains opposed to and will continue to protest Union Pacific’s compliance with the Mandate. BMWED previously served Union Pacific with a Section 6 notice specifically seeking to bargain over the impact of the COVID-19 pandemic on its members.

21. Union Pacific has informed Defendants that it remains willing to meet with the Union to discuss any concerns related to Union Pacific’s compliance with the Mandate for federal contractors.

**COUNT I – USE OF SELF-HELP OVER NON-MANDATORY  
SUBJECT OF BARGAINING  
SMART-TD AND GENERAL CHAIRPERSONS**

22. Union Pacific incorporates by reference as if fully set forth herein each of the preceding paragraphs of this Complaint.

23. This Cause of Action arises under Sections 2 First of the Railway Labor Act, 45 U.S.C. §§152 First, and is brought against SMART-TD and the individually named SMART-TD General Chairpersons.

24. Compliance with the Mandate is not a mandatory subject of collective bargaining; it is a legal obligation. To the extent that any collective bargaining agreement contains



provisions contrary to Union Pacific's efforts to comply with the Mandate, they are not enforceable as a matter of law.

25. Notwithstanding the legal effect of the Mandate, SMART-TD has threatened to use the RLA's minor dispute procedure to enforce collective bargaining agreement provisions they claim are contrary to the Mandate, and to use self-help, including strikes, in protest over Union Pacific's compliance with the Mandate.

26. SMART-TD's letter of October 12, 2021 states, "By what authority does the Carrier purport to act?" It also states that "if Carrier unwisely decides to continue this or similar activities, this Organization will exercise its full rights under the law."

27. By demanding to know "[b]y what authority" Union Pacific purports to act, and threatening to use "its full rights under the law," SMART-TD's letter uses well-recognized terms of art under the RLA. These statements signify that the Union takes the position that the Carrier's actions amount to a unilateral change to existing agreements and that the Union has the right to strike against Union Pacific, without prior notice, unless Union Pacific desists from its compliance efforts.

28. A strike by SMART-TD against Union Pacific would cause substantial disruption to Union Pacific and to the national freight transportation system.

29. Union Pacific has been willing at all times to comply with its duties under Section 2 First and has exercised and is continuing to exercise reasonable efforts to resolve this dispute with Defendants.

**COUNT II – MINOR DISPUTE  
SMART-TD AND GENERAL CHAIRPERSONS**

30. Union Pacific incorporates by reference as if fully set forth herein each of the preceding paragraphs of this Complaint.

31. This Cause of Action arises under Sections 2 First and 3 of the Railway Labor Act, 45 U.S.C. §§152 First, 153, and is brought against SMART-TD and the individually named SMART-TD General Chairpersons.

32. There exists a current, live and ripe controversy that warrants declaratory relief from this Court.

33. Union Pacific has collective bargaining agreements with SMART-TD, which remain in full force and effect. These agreements, together with other established working conditions, set forth the terms and conditions of employment of Union Pacific's employees represented by the Union.

34. SMART-TD maintains that Union Pacific's intention to comply with the Mandate violates their agreements. Union Pacific disputes that claim, and maintains that an implied term of its agreements with SMART-TD allows Union Pacific to set fitness for duty standards for employees, which Union Pacific has done numerous times over the course of decades without objection from SMART-TD. It is Union Pacific's position that its implied right to set fitness for duty standards includes the right to require employees to comply with the requirements of the Mandate. Union Pacific's position is supported by decades of past practice, and is, at a minimum, not frivolous or obviously insubstantial.

35. The dispute between SMART-TD and Union Pacific is a minor dispute under the RLA, and thus subject to mandatory arbitration.

36. SMART-TD's threat to strike Union Pacific over its views about the Mandate violate its duty under the RLA to pursue and exhaust the exclusive, administrative remedies for minor disputes which are set forth in Section 3 of that Act, including final and binding

arbitration. The RLA precludes strikes, work stoppages, or other forms of self-help over minor disputes.

37. Union Pacific has at all times been willing to comply with the procedures of the RLA and has exercised and is continuing to exercise reasonable efforts to resolve this dispute with the SMART-TD.

**COUNT III – PREMATURE EXERCISE OF SELF HELP  
SMART-TD AND GENERAL CHAIRPERSONS**

38. Union Pacific incorporates by reference as if fully set forth herein each of the preceding paragraphs of this Complaint.

39. This Cause of Action arises under Sections 2 First and 6 of the RLA, 45 U.S.C. §§152 First, 156, and is brought against SMART-TD and the individually named SMART-TD General Chairpersons.

40. Union Pacific and SMART-TD are currently engaged in bargaining for a new collective bargaining agreement. The parties are presently in “direct negotiations.” That is, the parties are bargaining directly with each other and have not yet sought the mediation services of the NMB. The parties have not been released from bargaining by the NMB.

41. While the parties are engaged in the bargaining process, the RLA requires the parties to maintain the status quo and prohibits the Unions from engaging in self-help.

42. SMART-TD’s letter to Union Pacific recognizes that the parties are currently engaged in bargaining for new collective bargaining agreements under the RLA.

43. SMART-TD’s demand to bargain over the effects of Union Pacific’s compliance with the federal Vaccine Mandate, including any demands for additional compensation, time off or other benefits not contained in existing collective bargaining agreements is subject to the major dispute resolution procedures set forth in the RLA.

44. Union Pacific has at all times been willing to comply with the mandatory collective bargaining procedures of the RLA and has exercised and is continuing to exercise all reasonable efforts to resolve this dispute with the Defendants.

**COUNT IV – VIOLATION OF SECTION 2 FIRST  
SMART-TD AND GENERAL CHAIRPERSONS**

45. Union Pacific incorporates by reference as if fully set forth herein each of the preceding paragraphs of this Complaint.

46. This Cause of Action arises under Section 2 First of the RLA, 45 U.S.C. §152 First, and is brought against SMART-TD and the individually named SMART-TD General Chairpersons.

47. Section 2 First imposes an affirmative duty on the parties:

to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

45 U.S.C. §152 First.

48. SMART-TD has breached its duty under Section 2 First to make and maintain collective bargaining agreements with Union Pacific by: (a) threatening to strike Union Pacific over the dispute concerning compliance with the Mandate, (b) demanding that Union Pacific change the terms and conditions of employment of employees represented by SMART-TD, which terms are established by existing collective bargaining agreements, prior to exhaustion of the RLA's mandatory major dispute resolution procedures, and (c) seeking to enforce any provisions of existing collective bargaining agreement that prevent Union Pacific from complying with the federal Mandate.

49. A strike by SMART-TD against Union Pacific would cause substantial disruption to Union Pacific and to the national freight transportation system.

50. Union Pacific has been willing at all times to comply with its duties under Section 2 First and has exercised and is continuing to exercise reasonable efforts to resolve this dispute with Defendants.

**COUNT V – MAJOR DISPUTE  
BMWED**

51. Union Pacific incorporates by reference as if fully set forth herein each of the preceding paragraphs of this Complaint.

52. This Cause of Action arises under Sections 2 First and 6 of the RLA, 45 U.S.C. §§152 First, 156, and is brought against BMWED.

53. Union Pacific and BMWED are currently engaged in bargaining for a new collective bargaining agreement. The parties are presently in “direct negotiations.” That is, the parties are bargaining directly with each other and have not yet sought the mediation services of the NMB. The parties have not been released from bargaining by the NMB.

54. While the parties are engaged in the bargaining process, the RLA requires the parties to maintain the status quo and prohibits the Unions from engaging in self-help.

55. While BMWED has acknowledged its obligation to provide Union Pacific with ten (10) days’ notice of any strike action, there remains a live and ripe controversy over whether Union Pacific is obligated to bargain with BMWED regarding compliance with the Mandate.

56. Moreover, BMWED has specifically demanded that Union Pacific provide its members with additional compensation, time off or other benefits not contained in existing collective bargaining agreements in connection with the COVID-19 pandemic. Those demands remain subject to the major dispute resolution procedures set forth in the RLA, and any actions

by BMWED to resolve their demands for compensation and other benefits, or to otherwise protest Union Pacific's compliance with the Mandate outside the Section 6 bargaining process would violate the Union's obligation to maintain the status quo.

57. Union Pacific has at all times been willing to comply with the mandatory collective bargaining procedures of the RLA and has exercised and is continuing to exercise all reasonable efforts to resolve this dispute with BMWED.

### **PRAYER FOR RELIEF**

WHEREFORE, Union Pacific respectfully requests that the Court grant the following relief:

1. Issue a Judgment declaring that the present dispute concerning the SMART-TD Defendants' threats to engage in a strike or other work stoppage employees is a "minor dispute" under the RLA, and is subject to the compulsory and exclusive arbitration mechanisms set forth in section 3 of the RLA, 45 U.S.C. § 153;

2. Issue a Judgment declaring that the SMART-TD Defendants' threats to engage in a strike or other work stoppage against Union Pacific violates the RLA by seeking to circumvent the mandatory and exclusive authority of the National Railroad Adjustment Board;

3. Issue a Judgment declaring that, by threatening to exercise self-help before exhaustion of the RLA's major dispute procedures, the SMART-TD Defendants have breached their obligation to maintain the status quo;

4. Issue a Judgment declaring that, by threatening to exercise self-help over a non-mandatory subject of bargaining, the SMART-TD Defendants have breached their duty under Section 2 First of the RLA to make and maintain agreements;

5. Issue a Judgment declaring that BMWED must resolve any disputes over Union Pacific's compliance with the Mandate and its demands for additional compensation and other

benefits for BMWED members must be resolved exclusively through the bargaining process under Section 6 of the RLA;

6. Order defendants to pay the costs of these proceedings, including reasonable attorneys fees; and

7. Grant Union Pacific such other and further relief as the Court may deem proper and just in the circumstances.

Respectfully submitted,

/s/ Jeremy Glenn  
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Date: October 15, 2021