

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FT. WORTH DIVISION**

BNSF RAILWAY COMPANY, )  
)  
Plaintiff-Counterclaim Defendant, )  
)  
v. )  
)  
INTERNATIONAL ASSOCIATION OF )  
SHEET METAL, AIR, RAIL AND )  
TRANSPORTATION WORKERS – )  
TRANSPORTATION DIVISION and )  
BROTHERHOOD OF LOCOMOTIVE )  
ENGINEERS AND TRAINMEN, )  
)  
Defendants-Counterclaim Plaintiffs. )  
\_\_\_\_\_ )

Civil Action No. 4:22-cv-052-P

**DEFENDANT-COUNTERCLAIM PLAINTIFF  
BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN’S  
MOTION FOR A PRELIMINARY INJUNCTION**

Pursuant to Fed. R. Civ. P. 65(a), Defendant-Counterclaim Plaintiff Brotherhood of Locomotive Engineers and Trainmen (“BLET”) hereby moves the Court for preliminary injunctive relief against Plaintiff-Counterclaim Defendant BNSF Railway Company (“BNSF”). BLET requests that the Court enjoin BNSF’s unilateral implementation of its new Hi Viz attendance policy (“Hi Viz policy”) because the policy violates the *status quo*, repudiates various provisions of the parties’ agreements, and interferes with employees’ right to designate their representatives all in violation of Sections 2 First, Third, Fourth and Seventh and Section 6 of the Railway Labor Act (“RLA”), 45 U.S.C. §§152, First, Third, Fourth and Seventh and 45 U.S.C. §156, as well as violates the Family Medical Leave Act, 29 U.S.C. § 2601, *et seq.* BLET further requests that, with respect to the unilateral changes to the *status quo* already made by BNSF, the Court order BNSF to restore the *status quo* and to abide by such *status quo* unless and until changed by mutual

agreement with the BLET through ongoing collective bargaining pursuant to Section 6 of the RLA, 45 U.S.C. § 156.

### **GROUND FOR RELIEF**

It is essential that the Court issue preliminary injunctive relief to prevent immediate and irreparable injury because, as explained more fully in the accompanying Memorandum:

1. BLET's members will suffer immediate, irreparable loss and damage to their rights to collectively bargain through the labor organization of their choice guaranteed, *inter alia*, by the Railway Labor Act ("RLA"), 45 U.S.C. §151, *et seq.*;

2. BLET is likely to prevail on the merits of this matter;

3. While BLET would be irreparably harmed by BNSF continuing to interfere with its and its members' rights under the RLA, BNSF would suffer no adverse consequences if required to comply with its obligations under the RLA and maintain the *status quo*; and

4. An injunction is in the public interest because the public has a strong interest in vindicating the RLA's public policy of permitting employees to organize, choose their own representatives and bargain collectively free from interference, influence, or coercion by carriers; hence, the interests of the public are aligned with BLET herein.

### **PROPOSED RELIEF**

BLET requests judgment against BNSF for the following preliminary relief:

A. That the Court grant immediate, preliminary injunctive relief enjoining BNSF and its agents, employees, representatives, and successors and predecessors in interest from:

1. Implementing the new Hi Viz attendance policy, and the Court order BNSF to rescind any portions of the policy already implemented;

2. Changing the *status quo* terms of the parties' CBAs and objective working conditions of BLET's members;
  3. Failing to bargain in good faith with the BLET and its representatives;
- B. That the Court order BNSF to restore the *status quo*;
- C. That the Court award adversely affected employees immediate reinstatement to work in their former positions of employment with all discipline related to these changes expunged, and all actual and compensatory damages arising from their unlawful disciplines, including but not limited to all lost pay and benefits;
- D. That the Court issue a declaratory judgment finding that the BSNF's conduct in breaching the *status quo* was in violation of Sections 2, First and Seventh and Section 6 of the RLA, 45 U.S.C. §§ 152, First and Seventh and 156.
- E. That the Court order BNSF to conspicuously post copies of this Court's order at its headquarters, and all rail yard operations at locations used by engineers for a period of one-hundred eighty (180) days: and
- F. That the Court award damages and monetary relief as follows:
1. Damages in an amount to be determined in the form of BLET's or its members' actual and non-economic damages as permitted by law; and
  2. BLET's attorney's fees;
  3. BLET's costs; and
  4. BLET's pre-judgment and post-judgment interest.
- G. That the Court set bond of \$1,000 pursuant to 29 U.S.C. § 107.

Dated: February 2, 2022

Respectfully submitted,

/s/ James Petroff

James Petroff (*Admitted Pro Hac Vice*)

Joshua D. McInerney (*N.D. Tex. Bar*

*Admission Pending*)

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*Counsel for Defendant-Counterclaim Plaintiff BLET*

**CERTIFICATE OF SERVICE**

I hereby certify that on February 2, 2022, I electronically filed the foregoing document(s) with the Clerk of the Court using the ECF System, which will provide electronic notice and copies of such filing to the parties.

/s/ James Petroff  
James Petroff

**CERTIFICATE OF CONFERENCE**

As certified in BNSF's motion for a preliminary injunction (ECF Doc. 39), counsel for the parties in this case have held several conferences in an attempt to resolve the matter, but have been unsuccessful. BLET's instant motion for a preliminary is opposed by BNSF.

/s/James Petroff  
James Petroff