



May 14, 2008

The Honorable Joseph H. Boardman
Federal Railroad Administrator
U. S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Re: Railroad Operating Rules: Program of Operational Tests and Inspections;
Railroad Operating Practices: Handling Equipment, Switches and Fixed Derails
Docket No. FRA-2006-25267

Dear Administrator Boardman:

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I am writing in support of the Petition jointly filed by several of our rail affiliates and other rail unions in the above captioned proceeding. Through its 32 member unions, TTD represents workers across all modes of transportation, including our 10 rail affiliates that make up our Rail Labor Division, who are directly affected by this Final Rule.¹

TTD has a long record of advocating for policies that will enhance the safety of our rail system. Clearly, we support the purpose of this final rule: to establish greater accountability for the implementation of sound operating rules necessary for safety. Furthermore, we oppose the Association of American Railroads' (AAR) proposal to eliminate the good faith challenge procedures included in this Final Rule. Granting AAR's request for reconsideration would significantly undermine both the intent of the Final Rule and the level of safety that it is intended to promote.

We are disappointed that the FRA has chosen to ignore the National Transportation Safety Board's (NTSB) assertion that the FRA's imposition of civil penalties against individual frontline workers would have an unintended impact on safety. Rather than creating a higher level of accountability, FRA's proposal will instead foster deniability, and generate fear and mistrust of the FRA. In fact the NTSB in its report on the Graniteville accident noted that a significant civil penalty may have an unintended impact on safety under some circumstances:

[T]he Safety Board does not believe that employees forget to reline switches because the existing penalties are inadequate. Employees are acutely aware that an improperly lined switch, in addition to being a rule violation that could lead to removal from service, is likely to result in significant property damage or the injury or death of fellow employees or innocent bystanders. A substantial financial penalty is unlikely to be more

¹ A list of TTD affiliated unions and RLD affiliated unions is attached.

Transportation Trades Department, AFL-CIO

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effective than this sobering prospect in preventing these types of accidents....Moreover, the Safety Board is concerned that the significant civil penalty may have an unintended impact on safety under some circumstances. That is, an employee who, after leaving a work site, realizes that a switch has been left improperly lined may be made more reluctant than in the past to immediately report the error to train dispatchers. The threat of the severe fine may prompt the employee to attempt a remedy (such as returning later to reline the switch) before the mistake can become known. As happened in the September 2005 fatal collision in Shepherd, Texas, such action on the part of the employee could contribute to an accident that might otherwise have been avoidable.²

Furthermore, the FRA acknowledges that self-reporting is not a defense in an individual liability action, and self-reporting does not preclude FRA from taking enforcement action. A worker is left with little or no incentive to report an error when he/she is faced with a potential FRA civil penalty and a railroad's disciplinary sanction. Since the purpose of the Final Rule is to address these types of human factor errors, we must create an atmosphere where workers can make the correct decision for safety without fear of economic retribution.

FRA's proposed good faith challenge procedures aid in the creation of a more positive atmosphere by allowing employees to challenge orders issued by an operations manager where the employee believes that by obeying the order, he or she will be violating an operating rule. If an employee believes that he or she would violate an operating rule by obeying a particular order issued by a railroad official, the employee can voice his or her concern to the railroad official. If a dialogue or a compromise between the employee and the railroad official does not solve the discrepancy, the good faith challenge allows the employee to appeal the first official's order to a second official. This mechanism would assist in preventing supervisors from coercing subordinates to sidestep clear and narrowly-drawn operating rules to artificially increase productivity.

Compliance with the operating rules, which have safety as a core concern, is the basis of the good faith challenge, as well as the intent of this Final Rule. For these reasons we strongly oppose AAR's proposal to eliminate the good faith challenge and find that AAR's proposed alternative insufficient as it would ignore the advancement that have occurred in the last ten years, while developing this procedure.

Transportation labor appreciates the opportunity to comment. Thank you in advance for your consideration of our views.

Sincerely,



Edward Wytkind
President

² **NTSB Report Number:** RAR-05-04, adopted on 11/29/2005

TTD MEMBER UNIONS

Air Line Pilots Association (ALPA)
Amalgamated Transit Union (ATU)
American Federation of State, County and Municipal Employees (AFSCME)
American Federation of Teachers (AFT)
Association of Flight Attendants-CWA (AFA-CWA)
American Train Dispatchers Association (ATDA)
Brotherhood of Railroad Signalmen (BRS)
Communications Workers of America (CWA)
International Association of Fire Fighters (IAFF)
International Association of Machinists and Aerospace Workers (IAM)
International Brotherhood of Boilermakers, Blacksmiths, Forgers and Helpers (IBB)
International Brotherhood of Electrical Workers (IBEW)
International Federation of Professional and Technical Engineers (IFPTE)
International Longshoremen's Association (ILA)
International Longshore and Warehouse Union (ILWU)
International Organization of Masters, Mates & Pilots, ILA (MM&P)
International Union of Operating Engineers (IUOE)
Laborers' International Union of North America (LIUNA)
Marine Engineers' Beneficial Association (MEBA)
National Air Traffic Controllers Association (NATCA)
National Association of Letter Carriers (NALC)
National Conference of Firemen and Oilers, SEIU (NCFO, SEIU)
National Federation of Public and Private Employees (NFOPAPE)
Office and Professional Employees International Union (OPEIU)
Professional Aviation Safety Specialists (PASS)
Sailors' Union of the Pacific (SUP)
Sheet Metal Workers International Association (SMWIA)
Transportation · Communications International Union (TCU)
Transport Workers Union of America (TWU)
United Mine Workers of America (UMWA)
*United Steel, Paper and Forestry, Rubber, Manufacturing, Energy,
Allied Industrial and Service Workers International Union (USW)*
United Transportation Union (UTU)

RLD MEMBER UNIONS

***The following labor organizations are members of and represented by
the Rail Labor Division of the Transportation Trades Dept, AFL-CIO***

American Train Dispatchers Association (ATDA)

Brotherhood of Railroad Signalmen (BRS)

International Association of Machinists and Aerospace Workers (IAM)

International Brotherhood of Boilermakers, Blacksmiths, Forgers and Helpers (IBB)

International Brotherhood of Electrical Workers (IBEW)

National Conference of Firemen and Oilers, SEIU (NCFO, SEIU)

Sheet Metal Workers International Association (SMWIA)

Transportation•Communications International Union (TCU)

Transport Workers Union of America (TWU)

United Transportation Union (UTU)