



A bold voice for transportation workers

STOPPING THE UNSAFE OUTSOURCING OF U.S. RAIL JOBS

In recent months, an American rail carrier, Kansas City Southern Railway (KCSR), has launched a two-pronged effort to move rail operations and jobs to Mexico. KCSR has already received permission from the Federal Railroad Administration (FRA) to begin replacing American train crews with crews from Mexico on trips across the border. KCSR also recently requested that FRA allow brake inspections to be conducted by Mexican workers in Mexican rail yards prior to those trains crossing the border and travelling through communities throughout the United States. TTD and our affiliated unions strongly oppose both efforts.

Both instances represent a complete disregard for the set of laws, regulations and standards that work to promote rail safety. KCSR's plans fail to comply with U.S. safety standards, introducing new and unnecessary risks to rail transportation. KCSR also places unfounded trust in the ability of the nascent Mexican regulatory body, Agencia Reguladora del Transporte Ferroviario (ARTF) to promulgate and enforce rail safety. Created only two years ago, ARTF is still developing its own rail regulations, and its enforcement capability is entirely unproven.¹ Additionally, KCSR and FRA have attempted to draw parallels between these proposals and existing U.S./Canada cross-border rail operations. However, FRA/Transport Canada regulatory cooperation is predicated on decades of careful collaboration and a commitment to safety that Mexico cannot currently demonstrate.

KCSR claims that outsourcing brake inspections to Mexico and allowing non-U.S. crews to enter the U.S. is necessary to avoid delays at the border. We agree that delays at the border are a problem due to unmet infrastructure needs. Flouting safety standards for U.S.-bound trains that often transport hazardous materials, however, is not the antidote to deficient infrastructure investment by the federal government or the carriers. Furthermore, we suspect that KCSR is equally motivated by an opportunity to lower labor costs and avoid its current collective bargaining obligations as it seeks to maximize profit from expanding cross-border operations. While U.S. railroads are free to pursue lucrative business models, we reject the notion our safety standards and U.S. jobs should be jettisoned in that pursuit.

We call on the Trump Administration to stop KCSR from continuing its practice of using Mexican train crews to operate into the southern border region. The FRA should also release any internal records detailing the specific authorization of this practice including the vetting of non-U.S. crewmembers entering this country. We also call on the FRA to reject the pending petition to perform brake inspections in Mexico and to hold a robust public hearing on this request. Finally, Members of Congress must provide oversight and be prepared to legislate to ensure that efforts to outsource U.S. rail operations do not jeopardize safety or place U.S. workers at an impossible and unfair competitive disadvantage

¹ FRA International Border Passenger and Freight Rail Study, June 2017

Unsafe Brake Inspection Waiver Must Be Rejected

Existing regulations require carriers to perform a rigorous Class I brake inspection at the border when crossing into the U.S.² Citing congestion, KCSR previously requested and received permission from FRA to conduct the Class I inspection in the Laredo Yard, nine miles further north. As a condition of that waiver, FRA stipulated that a basic test (Class III) was still required at the border before a train would be allowed to proceed onto U.S. rail tracks. Now, in a May 2018 petition to the FRA, KCSR is asking to be relieved of even this limited responsibility, and be permitted to have the Class III inspection performed in either its Nuevo Laredo or Sanchez Yards, both located in Mexico. This proposed modification further removes brake inspections from FRA oversight and safety protocols and undermines the intent of current regulations.

To defend introducing new safety risks to the U.S. transportation network, KCSR has provided data which it claims demonstrates that observed brake failure and defect rates for Mexican trains are equally safe. However, KCSR fails to provide any data comparing those rates to those for domestic freight service. With no contextual proof, the data as submitted does not make an argument for equivalent safety outcomes.

Further, current law provides clear conditions under which any class of brake inspection for U.S. bound trains can be conducted in Mexico. Section 416 of the Rail Safety Improvement Act of 2008 (RSIA) requires that such inspections be performed under regulations and standards equivalent to those in the U.S., and that employees conducting inspections receive similar training to U.S. railroad employees. Given the aforementioned status of the ARTF, we have no confidence in the ability of Mexico to set and enforce such requirements.

Historically, several requests from carriers for materially similar waivers have been turned down on these exact grounds. In 2005, FRA denied Union Pacific's (UP) request to perform inspections in Mexico, finding that UP was unable to properly document crew training and qualification, that certain trains inspected by Mexican personnel were unsatisfactory, and specifically that "general manifest trains were notably inferior in quality."³ These concerns also generated Congressional opposition, and a bipartisan group of members submitted a letter to FRA stating strong objections to UP's request.

In order to ensure compliance with Section 416 of RSIA, FRA inspectors must be permitted to perform onsite inspections of Mexican facilities. However, in rejecting a similar waiver from Burlington Northern Santa Fe Railway Company (BNSF) in 2011, FRA noted that it lacks the authority to perform this function without a separate international agreement between Mexico and the U.S. FRA stated in its ruling that the statutory requirements in Section 416 "necessitate coordination with the Mexican Government, since under international law, the U.S. Government may not enforce its laws in a sovereign country's jurisdiction without a bilateral agreement or treaty in place." As no such agreement has been reached, fulfilling this requirement is currently impossible.

² 49 C.F.R. § 232.205 Class I Brake test-initial terminal inspection

³ FRA-2004-18746

Finally, we note that efforts to conduct a Class III brake inspection in Mexico are undoubtedly part of a larger strategy to expand inspections in that country at the expense of U.S. workers. In the unlikely event RSIA certification is granted to a Mexican yard, that yard may also be able to perform the more rigorous Class I inspection. While KCSR's waiver request only deals with Class III inspections, certifying Mexican yards would lay the groundwork for Class I inspections to be performed in Mexico, easily and predictably leading to job loss in the U.S. rail sector.

Mexican Crews Entering the U.S.

Similarly, KCSR has been granted permission by FRA, and has begun operating service across the US/Mexico border. A crew from Mexico will operate this service rather than changing to a U.S. crew at the border. Inexplicably, KCSR and FRA negotiated this agreement for years behind closed doors without public input or review. FRA's failure to notify the public to this process has denied stakeholders, including rail workers and their unions, border communities, law enforcement and others the ability to offer valuable insight and feedback. Because of this decision, we have numerous unanswered concerns and call on FRA to cease all operations in which a crew from Mexico is permitted to travel into the United States.

When Congress and the Federal Motor Carrier Safety Administration (FMCSA) faced similar questions concerning cross-border trucking, Congress and the Agency spent several years examining the issue and gathering stakeholder feedback. Eventually, FMCSA embarked on a Congressionally-mandated pilot project to examine the safety of long haul trucking operating emanating from Mexico.⁴ Upon completion of the pilot, the results were analyzed by FMCSA, and carriers whom the Agency determined had shown the ability to operate in the U.S. safely, and in compliance with applicable regulations, were permitted to continue doing so. Given the safety and security implications of rail transportation, it would be a serious oversight not to hold cross-border rail to a similar level of scrutiny.

The impact of this lack of review is evident in KCSR's certification training proposals for engineers and conductors. KCSR is obligated to ensure that engineers and conductors coming from Mexico are trained and qualified to the same standard as U.S. domiciled crews. However, it appears that KCSR's plan includes less rigorous testing and reduced skills testing for engineers, no certification at all for conductors, and does not require English proficiency, which is necessary to communicate with English-speaking rail personnel. Even items KCSR appears to have addressed are inadequate upon further inspection. For example, while KCSR claims its crew will comply with federal requirements that the FRA review personal vehicle driving records of locomotive engineers, it will only provide U.S. driving records.⁵ As these engineers live, and likely do most (if not all) of their personal driving in Mexico, checking only U.S. records is essentially a meaningless check the box exercise. It also violates current law, which does not make exceptions for engineers whose driving records are not held in the U.S. KCSR's plan blatantly reduces rail safety and attempts to manipulate federal law for convenience.

⁴ <https://www.fmcsa.dot.gov/international-programs/mexico-cross-border-trucking-pilot-program>

⁵ 49 USC 20135(b)(4)

Of further concern is the existence of Department of Transportation (DOT) regulations that allow foreign railroad workers to operate up to 10 miles into the United States without being subject to any drug and alcohol testing.⁶ At worst, this means trains may travel through communities in the U.S. with no assurance that the crewmember is not under the influence of drugs or alcohol. Even if ARTF or the carrier claims they are conducting a drug and alcohol-testing program, we are concerned that there is no evidence demonstrating that these workers are held to the same testing standards as U.S. transportation workers. For example, any drug and alcohol program that sends specimens to Mexican labs that are not certified by the Department of Health and Human Services (HHS) under the National Laboratory Certification Program, like U.S. labs, would be faulty.⁷ FRA must prohibit cross-border crews from Mexico as there is not an absolute assurance of a robust and HHS/DOT-approved drug and alcohol testing program. In addition to FRA's actions on this particular matter, it is incumbent on legislators and the FRA to stop this ill-conceived process.

Allowing Mexican citizens to operate trains into this country without adhering to the highest safety and regulatory requirements threatens the safety of U.S. locomotive engineers and conductors and puts them at a competitive disadvantage which will threaten these important jobs. As with brake inspections, KCSR's agreement with FRA is a canary in the coalmine for future displacement of rail workers. FRA's apparent willingness to overlook significant regulatory barriers means that there is little preventing rail carriers from replacing broad swaths of American railroaders with crews emanating from Mexico. This would prove disastrous to thousands of engineers and conductors nationwide who may suddenly find themselves replaced by lower-paid, undertrained and unqualified foreign crew members.

These workers are also placed at risk due to inequitable NAFTA provisions. Despite KCSR's promises of "equivalent work" for displaced U.S. crews, NAFTA currently prevents US train crews from crossing the border into Mexico.⁸ The United States has no such provision. Therefore, any arrangement like the one granted to KCSR inherently benefits the Mexican rail sector and economy at the expense of our own. Allowing Mexico to provide service into the United States is thus a simple question of economic fairness.

Finally, we note that the FRA report cited above makes clear the underlying principle for success for cross-border operations. When discussing U.S.-Canada operations, FRA writes of the importance of "agreements between the railroads and their respective labor unions to operate trains into either the U.S. or Canada with foreign crews". In this instance, KCSR initiated this process without the knowledge of its unions, and ultimately over their strong objections. KCSR ignored both the safety concerns of frontline railroad workers, and further chose to neglect its workers by seeking to abrogate binding requirements in its collective bargaining agreement. Ignoring the concerns of frontline railroad workers in attempting to establish a new and novel operation is a grave mistake.

⁶ 49 CFR 219.3(d)(i)

⁷ 49 CFR 40.81

⁸ Annex II: Reservations for Future Measures (Chapters 11, 12, and 14), Schedule of Mexico, Sub-Sector: Postal Services, Telecommunications and Railroads

In sum, KCSR's current efforts to move brake inspections and operations to Mexico must cease. Like previous attempts by other carriers, KCSR has failed to surmount the regulatory and statutory requirements designed to prevent dangerous behavior in the rail industry. Further, both plans amount to little more than a long-term strategy to cut labor costs by eliminating jobs in the U.S. KCSR's plans, and materially similar plans from other carriers in the future, should be a non-starter for FRA, Congress, and this Administration.

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