



A bold voice for transportation workers

May 23, 2022

Surface Transportation Board
395 E Street SW
Washington, DC 20423-0001

**RE: Regulations for Expedited Relief for Service Emergencies
Docket No. EP 762**

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I am pleased to respond to the Surface Transportation Board's proposed rule regarding Expedited Relief for Service Emergencies. TTD consists of 37 affiliate unions representing the totality of rail labor in the U.S.¹

The proposed rule would amend procedures for parties seeking a board order directing an incumbent carrier to take action to remedy a service emergency. The rule would allow the board to initiate an emergency order without external appeal. The rule also would shorten the filing deadlines for parties subject to the emergency order and other participants. Finally, the rule would establish procedures for a new, accelerated emergency order petition option that would be used if petitioners could demonstrate that the existing process would be too slow to adequately ensure priorities such as food security, public health, or high probability of business closures.

TTD supports STB's proposed rule; however, we strongly counsel the Board to consider further action because we do not believe that the provisions of this rule will adequately address the current problems plaguing the rail industry that are primarily caused by staffing, equipment, and scheduling decisions made without oversight by the railroads. In 2019, before the pandemic began, TTD identified the [coming storm caused by precision scheduled railroading](#) that has only worsened with the introduction of [draconian attendance policies](#) that strain an already [over-fatigued workforce](#).

¹ Attached is a list of TTD's 37 affiliated unions.



As STB Chairman Oberman stated, “Over the last 6 years, the Class Is collectively have reduced their workforce by 29% – that is about 45,000 employees cut from the payrolls. In my view, all of this has directly contributed to where we are today – rail users experiencing serious deteriorations in rail service because, on too many parts of their networks, the railroads simply do not have a sufficient number of employees.”

Despite the claims made by the Class I carriers, it is simply impossible to provide an equivalent level of service after eliminating a third of the workforce in less than a decade. These cuts have guaranteed that adequate crews will be unavailable, that equipment and infrastructure will not be adequately maintained, and that critical inspections will be deferred. TTD categorically rejects the absurd claim that the hard work of 45,000 employees had no demonstrable impact on the quality of service offered by Class I railroads. These cuts have occurred with complete impunity for the railroads, and we continue to urge the Board to consider the impacts of these ill-considered mass layoffs on service quality.

Railroads have long engaged in a concerted effort to cut headcount to the absolute minimum. They have created a degraded safety culture that has driven away experienced employees, and in many cases second or third-generation railroaders. These employees have chosen to walk away from what were “jobs for life” in previous generations. The employees who remain are forced to do “less with less,” and subject to increasingly [punitive and abusive policies](#) meant to replace meaningful hiring and workforce development efforts with impossible demands on the existing workforce. TTD is well aware that the STB does not regulate the safety conditions faced by rail workers, nor does it impose staffing minimums for carriers. However, the link between service quality, including reliability and frequency, and adequate employment is clear. Simply, Class I railroads have spent years pursuing a model that ensured that they would be unable to provide quality service. The fact that the nation’s too-small and too-fatigued rail workforce is reaching a breaking point is unequivocally a crisis of the railroads’ own making.

The lack of available equipment to move carloads is further evidence that these struggles are not an artifact of pandemic conditions. While CSX and others have claimed that they have all the equipment they need for their operations, these claims do not comport with the experiences of the shippers here today, who are reporting that they are being told that locomotives are unavailable and/or that they will be served by fewer (but longer) trains on a schedule that may or may not be reasonable for the customer. In 2020, UP reduced its active locomotive fleet by 24% and only managed to keep 58% of its remaining locomotives in service. UP described this state of affairs as part of a well-considered capital strategy. When record cargo volumes descended at U.S. ports in 2021, UP continued to decrease fleet size, and only managed to increase its locomotive service utilization to 62%. Any claim that railroads operated at maximum capacity during the peak of the supply chain crisis (or today) should be considered alongside the fact that they have chosen to artificially reduce available locomotive power to better suppress labor and maintenance costs, as they have laid off thousands of employees who work to maintain and repair equipment like locomotives.

Unfortunately, we cannot rely on the Class I railroads to address these issues. They have acted with impunity, both in deleterious and dangerous job cuts and attendant decline in service quality. Left to their own devices, circumstances will not meaningfully improve. The workforce will continue to be pushed well past its breaking point, shippers will struggle to get product in and out of their facilities, and the American consumer will suffer for all of it.

It is for these reasons that the Board must exercise its authorities to reign in the unacceptable state of freight rail service. Current law requires railroads to provide reasonable service at reasonable rates, known as the common carrier obligation. Since STB's creation in 1996, there have been 51 cases brought to the Board concerning "reasonable rates", with shippers noting that they frequently find the process to challenge a rate to be prohibitively costly and time-consuming. The process to challenge the reasonable nature of service is even more opaque. Neither the statute nor the Board's regulations speak to a framework by which to bring such a case. In 1998, when the Board considered what deteriorated service meant within STB Ex. Parte No. 628, it declined to provide a definition, stating that it did "not list particular factors to be used in making that assessment, or propose a specific test period, but rather sought to retain the flexibility needed to address widely varying circumstances".

TTD calls on the Board to forcefully apply the service requirements of the common carrier obligation in circumstances in which service has been degraded and cannot be considered reasonable. In doing so, the Board should consider a number of factors, including the impacts of reductions to the workforce and the existence of a workforce that can be meaningfully expected to provide requested service. The Board should also consider the impacts of reductions in equipment, the availability of equipment, and the maintenance of equipment or railroad infrastructure. TTD believes firmly that the Board has the statutory authority to apply the common carrier obligation in this manner. However, if the Board determines that it requires additional authorities or legislative direction to allow it to ensure the provision of reasonable service, then it should promptly make this known to Congress.

TTD believes that the provisions of the proposed rule may provide an additional way for entities suffering due to the misbehavior and poor service caused by railroads decisions to reduce staffing and equipment to sound an alarm and identify immediate problems. We further encourage the STB to explore all avenues available to enforce Common Carrier obligations that would benefit shippers, consumers, and workers who have suffered under a problem of railroads' own making that has led to delays, supply chain breakdowns, and dangerous conditions for frontline workers who have been asked to do less with less.

We appreciate the opportunity to comment and look forward to working with the STB in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Regan", written over a circular stamp or seal.

Greg Regan
President