



A bold voice for transportation workers

November 7, 2022

Mr. Karl Alexy
Associate Administrator for Railroad Safety & Chief Safety Officer
Federal Railroad Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

**RE: Illinois Central Railroad Company, Canadian National Railway Company
Waiver of Compliance
Docket No. FRA-2020-0087**

Dear Mr. Alexy,

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I am pleased to provide comments on the Canadian National Railway's (CN) petition for a waiver of compliance from the "hands-on" component of periodic refresher training required by 49 CFR 232.203(b)(8). By way of background, TTD consists of 37 affiliate unions, including the totality of rail labor¹. We endorse the comments of our affiliates, the Transport Workers Union of America (TWU) and the Sheet Metal, Air, Rail and Transportation Workers (SMART), that are also posted in this docket.

As discussed below, TTD opposes CN's resubmitted waiver request and urges the FRA to reject the request because it jeopardizes the safety of rail labor employees and the public.

Current regulations require refresher training every three years for railroad employees that perform brake system inspections, tests, or maintenance. In this petition, Illinois Central Railroad and CN are requesting to use software technology to implement a virtual three-dimensional simulation as an alternative to the hands-on training. This petition is a resubmission of a petition that [FRA rejected](#) earlier this year concluding that replacing hands-on training with simulated training was not consistent with railroad safety. In the denial letter, FRA directed CN to work with labor organizations prior to re-submitting the petition. TTD is strongly concerned that FRA stepped beyond its role by encouraging SMART to find a way to reach an agreement with CN on the waiver. It is not FRA's role, as the independent federal regulator of the railroad industry, to

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

facilitate agreements on regulatory waivers when stakeholders have legitimate safety concerns with those waivers.

TTD notes that CN has not worked with rail labor organizations prior to re-submitting this petition. In its new petition, CN stated that TTD and our affiliate, TWU, do not represent transportation employees. This is insulting and a bald-faced lie. In fact, the TWU represents 155,000 transportation employees. Moreover, TTD represents more than half a million transportation workers, including the operating employees that are required to undergo this specific training. CN's malcontent comments prove that they have not worked in good faith with labor or transportation workers on this revised request, thus ignoring FRA's suggestion.

TTD's position on hands-on training has not changed from the many, many times we have opposed such video and simulated refresher training in the past.² We have reviewed the explanations CN included in the resubmitted petition, but we do not find their arguments convincing. We maintain that hands-on training is a critical safeguard to ensure safety in our rail system. When protocols are revisited, it is imperative to recognize and retain, not weaken or waive, the very requirements that are core to the safety of our system. CN's request also comes at a time when the railroad industry accident and incident rates have not improved since 2009 per FRA's own data.³

Further, TTD disagrees with many of the specific rationales that CN uses to justify the safety and efficacy of simulation training.

Monitoring

In its 2022 denial letter, FRA stated that CN's waiver request would limit the ability of the instructor to monitor employee behavior during the training. In its resubmitted petition, CN states that simulation training would be conducted with the use of cameras to monitor employees individually, but this is not a substitute for hands-on training. Electronic devices present a number of distractions on their own, and a camera cannot fully assess a worker's environment the way that an in-person instructor can. Workers need training in real-world, hands-on situations especially as working conditions become more dangerous because of policies implemented by the Class I railroads.

Equipment Staging

Further, TTD disagrees with many of the rationales that CN uses to justify the safety and efficacy of simulation training. As FRA suggested in its 2022 denial letter, CN cites difficulty staging live equipment for variable and atypical scenarios. The need to stage equipment for the purposes of training has been present for generations, and CN has provided no evidence that this requirement

² [TTD TO FRA: HANDS ON TRAINING IS NOT REPLACEABLE
HANDS-ON TRAINING IS ESSENTIAL FOR RAIL SAFETY
REPLACING HANDS-ON TRAINING FOR RAIL EMPLOYEES IS UNSAFE AND UNWARRANTED
FRA MUST REJECT UNJUSTIFIED TRAINING WAIVER](#)

³ <https://railroads.dot.gov/safety-data/accident-and-incident-reporting/accidentincident-dashboards-data-downloads>

is more difficult now than it was anytime in the past 50 years. This is not a logical reason to abandon hands-on refresher training.

Controlled Environment

Many of the other reasons that CN uses to justify this waiver are similarly illogical. As noted in the waiver request, CN cites that simulation training provides controlled, safe environments. However, this is not the purpose of training. Training should be conducted in real-world, hands-on situations so workers can learn in the actual environment that they will be working in. Risk exposure is a very real part of the job for rail workers, and workers need to be trained to safely mitigate that risk.

Muscle Memory

The waiver petition falsely claims that simulation training builds muscle memory. The simulation training that CN is proposing would be conducted on a standard computer with a mouse and keyboard. Moving a mouse is very different from manually checking brake components and truly getting the muscle memory needed to complete inspections safely and effectively. A keyboard and mouse can never provide the same experience as manipulating and inspecting equipment in person.

Human Error

CN's request letter also maintains that simulation training can simulate human error in consist setup and increase confidence in workers who receive training; however, hands-on training does both of these things far better than simulated training. A worker who has physically performed inspection tasks during a training session will have even more confidence and familiarity with the equipment. The request letter states that students can perform tasks multiple times during simulation training to increase knowledge and confidence, but there is no reason that such tasks cannot be performed multiple times during hands-on training.

Individualized Feedback

Similarly, CN states that simulation training provides individualized feedback on performance. However, this does not provide any logical basis to support the use of simulation training over hands-on training because an in-person instructor can provide similarly individualized feedback with the benefit of experience rather than a pre-programmed script delivered by a computer. CN uses the same argument in stating that simulation training provides an active learning environment that is not time-limited. But there is no reason that in-person instruction needs to be time-limited, and a higher level of active learning could be achieved through hands-on training where students are able to see and feel brake mechanisms in action.

Rail safety regulations exist for a reason and waivers should not be granted unless exceptional circumstances exist. Such circumstances do not exist here.

Extension Process

CN originally submitted this waiver petition on November 5, 2020. FRA then subsequently denied their waiver petition on January 20, 2022. In its decision denying the original petition, FRA

encouraged CN to work with labor unions on the training waiver. CN subsequently filed a resubmitted petition for consideration on June 28th, 2022. CN then filed a comment date extension request on the grounds they needed more time to meet with labor. While TTD and its affiliates did not hear from CN, SMART did hear directly from FRA staff in the Office of Railroad Safety who encouraged SMART to get to “yes” with CN. Furthermore, that outreach from FRA went to one of SMART’s local chapters, and not through the national union, which has been consistently engaged on this issue for many years.

TTD notes its dismay that, in its denial letter from earlier this year, FRA provided CN a detailed roadmap of changes to make when re-submitting this waiver petition. It is not FRA’s role to tell applicants how to successfully apply for waivers from critical safety regulations. If there are changes needed to safety regulations, such proposals should go through the Railroad Safety Advisory Committee (RSAC) and the normal regulatory process that includes labor representatives.

TTD is strongly concerned that FRA stepped beyond its role by encouraging SMART to find a way to reach an agreement with CN on the waiver. It is not FRA’s role, as the independent federal safety regulator of the railroad industry, to facilitate agreements on safety waivers when stakeholders have legitimate safety concerns with that waiver. Furthermore, it appears that FRA staff, knowing that the national union had consistently raised concerns about CN’s waiver, deliberately chose to go to the local chapter in order to go around the national union. Deliberately bypassing internal union communication channels in order to achieve a result that the national union opposes is unacceptable.

For these reasons, TTD requests that FRA reject this waiver and others like it. Simulation training simply cannot provide an equivalent level of safety as hands-on training. Simulation training will not benefit the interest of workers or the public.

TTD also urges FRA to not repeat the missteps it made in its process considering this waiver in future decisions regarding waivers.

We appreciate the opportunity to comment on this waiver and look forward to working with FRA in the future on this issue.

Sincerely,

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

Greg Regan
President