



U.S. Department
of Transportation

**Federal Railroad
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

November 18, 2022

VIA EMAIL ONLY

Mr. Mark Redd
Executive Vice-President Operations
Canadian Pacific Railway
mark_redd@cpr.ca

Dear Mr. Redd,

In October 2022, the Federal Railroad Administration (FRA) audited the Canadian Pacific Railway's (CP) Hours of Service (HOS) program covering its dispatchers. This audit was conducted in response to an increased number of instances of excess service for dispatchers being reported. Specifically, CP reported 34 instances of excessive service in August 2022, and 26 in September 2022.

FRA's audit of CP's HOS program reviewed hours of service records for the previous 90 days (August – October 2022) and uncovered 130 occurrences of excess service in violation of 49 U.S.C. § 21105, with 26 occurrences of dispatchers working 16-hour shifts and 104 occurrences of dispatchers working 12-hour shifts. Under 49 U.S.C. § 21105, dispatchers can work no more than 9 hours in a regular 24-hour period and no more than 13 hours for not more than 3 days in a period of 7 consecutive days in an emergency.¹ CP has not provided any evidence of an emergency that would allow dispatchers to work up to 13 hours and 49 U.S.C. § 21105(d) limits the availability of the not more than 4 additional hours to not more than 3 days in a period of 7 consecutive dates. Further, the statute does not allow a dispatcher to work more than 13 hours in a 24-hour period under any circumstances.

The results of FRA's audit of CP's HOS program demonstrate an egregious disregard for the HOS laws. Further, dispatchers perform critical safety-sensitive functions and having dispatchers work such long hours raises a serious safety concern. CP must immediately cease such a practice and comply with 49 U.S.C. § 21105.

FRA will seek civil penalties for all occurrences of excess dispatcher service discovered as part of the audit, up to the maximum amount permitted by law. Further, if this practice continues, FRA may impose further civil penalties against CP (which would be characterized as willful) or

¹ Under 49 USC § 21105(d), a railroad could permit a dispatcher to work up to 4 additional hours (i.e., 13 hours in a 24-hour period) for not more than 3 days in a period of 7 consecutive days in an emergency. Emergencies are unforeseen events such as severe weather or an unexpected workforce shortage, such as a dispatcher unable to report to duty due to a motor vehicle accident en route. It is not unforeseen or unexpected each time an employee is unavailable for a scheduled shift. In addition, even in an emergency, a railroad is expected to make reasonable efforts to relieve an employee, which is not demonstrated by splitting a shift between the two dispatchers scheduled before and after it, or having a dispatcher work two consecutive shifts. See 49 C.F.R. part 228, Appendix A.

may seek to hold CP managers individually liable (disqualification or individual civil penalty) for permitting, directing, or otherwise perpetuating the practice of having dispatchers work in excess of the statutory limit, or both.

In addition to completing the remedial actions outlined in FRA's inspection reports, by Wednesday, November 23, 2022, provide FRA a written plan documenting how CP will come into immediate compliance with 49 U.S.C. § 21105. Should you have any questions regarding this letter, please contact Christian B. Holt, Staff Director, Operating Practices Division, at Christian.Holt@dot.gov or 202-366-0978.

Sincerely,

CAROLYN ROSE Digitally signed by CAROLYN
HAYWARD-WILLIAMS ROSE HAYWARD-WILLIAMS
Date: 2022.11.18 13:17:03 -05'00'

Carolyn Hayward-Williams
Director, Office of Railroad Systems and Technology

Cc:

Tracy L. Miller, Senior Vice President Operations Southern and Eastern Regions, Canadian Pacific Railway, tracy_1_miller@cpr.ca

Hunt Cary, General Manager, Canadian Pacific Railway, hunt_cary@cpr.ca