



U.S. Department
of Transportation

**Federal Railroad
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

JAN 15 2010

Mr. Jim Vena
Senior Vice President, Southern Region
Canadian National Railway Company
935 de La Gauchetiere Street West
Montreal-Quebec, H3B 2M9 Canada

Mr. Malcolm B. Futhey
International President
Union Transportation Union
14600 Detroit Avenue
Cleveland, OH 44107

Mr. Paul Sorrow
National President
Brotherhood of Locomotive Engineers and Trainmen
137 Ontario St. - Mezzanine
Cleveland, OH 44113

Re: Docket Number FRA-2009-0074

Dear Messrs. Vena, Futhey, and Sorrow:

This letter constitutes an initial response to the July 10, 2009, petition filed jointly by the Canadian National Railway Company, the United Transportation Union, and the Brotherhood of Locomotive Engineers seeking a waiver from compliance with the provisions of 49 U.S.C. § 21103(a)(4) of the Rail Safety Improvement Act of 2008 (Act) which mandates 48 and 72-hour off duty periods following qualifying number of 6 or 7 days in which an on duty period was initiated.

Specifically, the petitioners state that the provisions of their collective bargaining agreements (CBA) allowing an employee to work for 6 consecutive days and be off work 1 day in a 7-day period *or* 11 consecutive days and be off 3 days “provide a level of safety greater than that imposed by the Act and that continuance of this enhanced level of safety is in the public interest and adequately protects the safety of the employees and the public in general.” The petitioners have also stated that their waiver request will *not* impact upon the requirements related to uninterrupted 10 hours rest, monthly caps on limbo time, and total hours of service per month (276 hours).

The petitioners in their waiver request cite the distinction between the work schedules of regularly assigned employees and those of extra board employees. Both categories of employees, under the provisions of the CBA, may be assigned 6 consecutive work days and 1 assigned day of rest in a 7-day period. However, regularly assigned employees are “covered” by calling windows wherein employees arrive for work at the same time each day *or* are provided with a designated 4-hour call window for each day. This feature is not available for extra board employees. Still, another difference between the two categories is that extra board employees in addition to the 6/1 schedule may work *either a 11/3 or 5/2 schedule*.

The Federal Railroad Administration (FRA) conducted analyses of the various schedules incorporated in the waiver request for possible ramifications in terms of fatigue or effectiveness, as measured by the Fatigue Avoidance Scheduling Tool (FAST), which executes a validated fatigue model. FRA has also considered general principles of sleep science and practical issues arising in railroad operations in making this initial decision.

Overall, FRA applauds the efforts of the petitioners to improve the safety of this work force and their attention to the use of calling windows and scheduling assignments to address issues related to fatigue. FAST results do support, without apparent exception, relief for a 6/1 work pattern for scheduled assignments that do not extend into the early morning hours (i.e., midnight to 6:00 am). Accordingly, the petition is approved to the extent it requests relief for an employee to receive 24 rather than 48 hours off where that employee has initiated job assignments including covered service that did not extend into the early morning hours for 6 consecutive calendar days.

As information, it does not appear that analysis will support relief for extra board employees either as to 6/1 or 11/3 work patterns. We will explain in a further communication why that is the case.

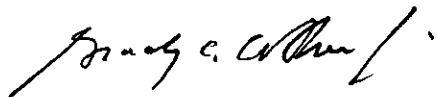
FRA is also exploring whether it may be possible to extend relief with respect to the 6/1 work pattern for employees that have limited service in the early morning hours. Again, you will receive an additional communication reflecting our decision on this issue. In order to ensure that any further relief is appropriate and helpful, we will request a teleconference or meeting to further develop the issues.

I regret that it has required such a long period to advance to this point in resolving your requests. However, given the freshness of the statutory requirements and our limited experience in working with them, it is obligatory that FRA make certain that it is acting consistent with safety in providing relief. Developing a sound methodology for making these decisions has proven to be a significant challenge.

FRA reserves the right to modify or rescind this waiver upon receipt of information pertaining to the safety of railroad operations or in the event of a noncompliance with any condition of this waiver. The forthcoming final decision will vacate the terms of this waiver, set forth FRA’s full rationale, and perhaps provide additional relief.

In any future correspondence regarding this waiver, please refer to Docket Number FRA-2009-0074.

Sincerely,

A handwritten signature in black ink, appearing to read "Grady C. Cothen, Jr.", with a stylized flourish at the end.

Grady C. Cothen, Jr.
Deputy Associate Administrator
for Safety Standards and Program Development