



Electronic Memorandum

To: Advisory Board; All General Chairmen; All State Legislative Board Chairmen
Cc: National Division Executive Staff (via e-mail); John Bentley, Editor (via e-mail); Kathleen N. Policy, Legislative, Political & Regulatory Coordinator (via e-mail)
From: Thomas A. Pontolillo, Assistant to the President and Director of Research, and Stephen J. Bruno, Director of Regulatory Affairs
Date: September 11, 2009
Re: New HOS Laws and Deadheading

We continue to get reports from all segments of the industry about problems with how deadhead trips are being treated for HOS recordkeeping purposes and in the application of the law. Some of these problems appear to be related to various carriers' electronic timekeeping systems, while others seem to flow from a misinterpretation of the law.

This is intended to be a single-source document that will answer all questions related to deadheading and how it should be treated. This Memorandum expressly supersedes Brother Pontolillo's July 15th Memorandum entitled "New HOS Laws re Deadheading and Starts," and we request that you provide a copy of this Memorandum to anyone who received the prior Memorandum from you.

Before analyzing the law and current FRA interpretations, we want to define some terms that will be used in this Memorandum:

- "Aggregate service" means one or more periods of time on duty within a single duty tour separated by one or more interim release periods.
- "Commingled service" means any non-covered service that is not separated from covered service by a statutory off-duty period; such commingled service is counted as time on duty.
- "Consecutive service" means a period of unbroken total time on duty during a duty tour.
- "Covered service" means the portion of someone's time on duty during which (s)he is engaged in, or connected with, the movement of a train.
- "Excess limbo time" means the limbo time past the 12th hour when the sum of on-duty time and limbo time exceeds 12 hour in a duty tour.
- "Interim release period" means an off-duty period of at least 4 hours undisturbed, but less than a statutory off-duty period, which occurs at a designated terminal and which temporarily suspends the accumulation of time on duty, but does not start a new duty tour.

- “Limbo time” means time spent waiting for deadhead transportation or time spent in deadhead transportation.
- “Start” means the initiation of an on-duty period.
- “Statutory off-duty period” means a period of 10 hours undisturbed time off duty, plus — where applicable — the additional undisturbed time off duty mandated when the sum of on duty time and limbo time in the preceding duty tour exceeded 12 hours.

The most important factor in accurately classifying and tracking time spent in deadheading is to remember that pay status (i.e., separate service or combined service) is irrelevant. What matters is how the time spent deadheading relates to the duty tour prior to the deadhead and to the duty tour following the deadhead.

There are nine possible combinations of service and deadheading. Each of them — and the service and reporting ramifications of each — are shown on the attached table. There are a fairly complicated set of provisions that interact with one another, but the following general rules apply:

1. A deadhead is considered time on duty only when it is followed by covered service and no statutory off-duty period is provided between the two (i.e., deadheading to a duty assignment).
2. Unless a statutory off-duty period is provided on both ends of a deadhead, it will commingle with the covered service on the end(s) not having a statutory off-duty period.
3. If the deadhead is both preceded and followed by statutory off-duty periods, it is stand-alone limbo time. If only an interim release period is provided, the deadhead aggregates with the covered service. If neither a statutory off-duty nor an interim release period is provided, the deadhead time is consecutive with the covered service.
4. The only time a deadhead, itself, constitutes a start is if it occurs on the 7th day.¹ A deadhead that is followed by covered service performed without an intervening statutory off-duty period would count as a start, but the covered service, itself, would not, because it either aggregates with or is consecutive service with the deadhead. No other deadhead would count as a start.
5. All deadheading time counts towards the 276-hour calendar month cap.
6. Only excess limbo time counts towards the monthly limbo time cap.

The above explanations and table only apply in situations where the service performed before or after the deadhead is covered service as a “train employee” (i.e., the member is engaged in or connected with the movement of a train, including as a hostler (49 U.S.C. § 21101(5))). If other mandatory service for the carrier or time covered by HOS provisions pertaining to dispatching service (e.g., certain yardmasters) is involved, the application of the law is significantly more complicated and questions related thereto should be directed to Steve or me.

¹ We have asked FRA to change this interpretation so as to treat no stand-alone deadhead as a start, and we will attempt to push a technical correction to the RSIA if FRA fails to do so.

Key: A = statutory off-duty period (10 hours UDR plus any additional UDR equal to excess limbo time);

B = interim release period at designated terminal; C = less than 4 hours UDR at designated terminal

NOTE 1: does not apply in cases of “other mandatory service” (e.g., rules class) or when other work is not as a train employee.

NOTE 2: if “time off” is at other than a designated terminal it cannot be considered off-duty time.

Before DH	After DH	Time On Duty	Com-mingled service	Type of service	Is it a start?	Counts towards 276-hour cap	Excess limbo time counts towards limbo time cap
A	A	No	No	Stand alone limbo time	Only on 7th consecutive day	Yes	No
A	B	Yes	Yes	Aggregates with next covered service	Yes, because it initiates an on-duty period	Yes	No, it is a deadhead to duty, which is time on duty
A	C	Yes	Yes	Consecutive with next covered service as a train employee	Yes, because it initiates an on-duty period	Yes	No, it is a deadhead to duty, which is time on duty
B	A	No	Yes	Limbo time, aggregates with prior covered service as a train employee	No; it piggybacks with prior tour	Yes	Only if sum of deadhead and on-duty time exceeds 12 hours
B	B	Yes	Yes	Aggregates with both periods of covered service as a train employee	No; it piggybacks with prior tour	Yes	No, it is a deadhead to duty, which is time on duty
B	C	Yes	Yes	Aggregates with prior covered service as a train employee; consecutive with next covered service as a train employee	No; it piggybacks with prior tour	Yes	No, it is a deadhead to duty, which is time on duty
C	A	No	Yes	Limbo time, consecutive with prior covered service as a train employee	No; it piggybacks with prior tour	Yes	Only if sum of deadhead and on-duty time exceeds 12 hours
C	B	Yes	Yes	Consecutive with prior covered service as a train employee; aggregates with next covered service as a train employee	No; it piggybacks with prior tour	Yes	No, it is a deadhead to duty, which is time on duty
C	C	Yes	Yes	Consecutive with both periods of covered service as a train employee	No; it piggybacks with prior tour	Yes	No, it is a deadhead to duty, which is time on duty