



Brotherhood of Locomotive Engineers and Trainmen

A Division of the Rail Conference — International Brotherhood of Teamsters

NATIONAL LEGISLATIVE OFFICE

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*Vice President and
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July 2, 2007

Docket Clerk
DOT Central Docket Management Facility
Room PL-401
400 7th Street, SW (Plaza Level)
Washington, DC 20590-0001

Re: Docket No. FRA-2006-24646

Dear Docket Clerk:

On April 11, 2006, Union Pacific Railroad Company (“UP”) petitioned the Federal Railroad Administration (“FRA”) for a waiver from compliance with the requirements of 49 CFR Section 236.586(a). *See* DOT DMS FRA-2006-24646-1 (“Petition”). On June 23, 2006, FRA published notice of the filing of UP’s petition, soliciting comments thereon from interested parties. *See* FRA-2006-24646-3.

These comments are submitted by the Brotherhood of Locomotive Engineers and Trainmen, a Division of the Rail Conference of the International Brotherhood of Teamsters (“BLET”), which is the duly designated and recognized collective bargaining representative for the craft or class of Locomotive Engineer employed on UP. Consequently, UP’s Petition would have a significant impact upon our members. For the reasons set forth below, BLET opposes granting the requested relief.

On August 4, 2006, we filed preliminary comments in opposition to the petition. *See* FRA-2006-24646-4. We incorporate those preliminary comments by reference as if fully set forth herein. The Railroad Safety Board conducted a public hearing in this matter on May 31, 2007, the transcript of which is a part of this docket. *See* FRA-2006-24646-10 (hereinafter “Tr.”). These supplemental comments have been guided by the testimony presented at the public hearing, and by the additional information Petitioner has provided at the request of the Railroad Safety Board. *See* FRA-2006-24646-9.

UP Locomotive Superintendent Estes testified at the public hearing that the petition was driven by (1) a claim that the 60-day inspection cycle was “disruptive to train operations,” (2) that the

DOT Docket Clerk

July 2, 2007

Re: Docket No. FRA-2006-24646

Page 2

alternative daily or after trip test prescribed by Section 236.586(a) was “an unnecessary burden on our operating employees,” and (3) Petitioner’s desire to have the inspection “coincide with the ninety-two day maintenance that’s done like everything else on a locomotive.” Tr. at pp. 14–15; *see also* pp. 17–19. Petitioner produced no evidence whatsoever — either at the public hearing or in its post-hearing submission — that the 60-day inspection cycle was disruptive to train operations. Accordingly, this basis for the waiver must be denied as unproven.

With respect to the so-called “burden” on operating employees, we agree wholeheartedly with United Transportation Union Alternative National Legislative Director James A. Stem, Jr., who thoroughly refuted UP’s claim at the public hearing as follows:

That comment taken in a vacuum might have some relevance to someone, but when you consider the requirements of Part 229 on daily locomotive inspections, what the operating crews are required to do today, if you consider what Union Pacific’s protocol is today that requires those operating crews to perform pre-departure tests on that existing equipment, you will find that not only there’s no undue burden, but the crew’s already doing what Union Pacific contend would become an undue burden.

Id. at p. 64.

Thirdly, UP’s posture that it is seeking a 50% lengthening of the period during which an inspection and test must be performed is disingenuous. As was pointed out at the public hearing — and as the Safety Board knows — Petitioner is part of an effort led by the Association of American Railroads to extend the 92-day periodic inspection to 184 days for microprocessor-based locomotives. Id. at p. 63. Thus, the potential import of the Petition is that two-thirds of current inspections and testing could be eliminated in the future. In the absence of any demonstration that Petitioner’s proposed alternative would be at least as safe as the current requirements, the Petition should be denied.

Furthermore, UP’s testimony at the public hearing with respect to a claimed redundancy in FRA requirements because of the self-monitoring and diagnostic capabilities of solid state, microprocessor-based cab signal systems was misleading. Data provided by Petitioner subsequent to the public hearing establish that over 1,350 cab signal systems that are included in the waiver — comprising nearly one-fourth of the total — are not solid state systems. *See* FRA-2006-34646-9 at p. 3. Relay-based cab signal systems have been governed by Section 236.586 since it was promulgated and there can be no justification for departing from this standard.

In addition, and assuming for the moment that UP has proven that justification exists for treating the solid state systems differently — which it has not, as we demonstrate below — the significant number of relay-based cab signal systems should cause the Safety Board to decline to permit different standards. In a different setting, the Safety Board noted “the importance of uniform

DOT Docket Clerk
July 2, 2007
Re: Docket No. FRA-2006-24646
Page 3

and consistent regulation.” *See* FRA-2006-25630-3 (citations omitted). We strongly believe that one testing and inspection schedule for 75% of the fleet and another for the remainder is a prescription for confusion and disaster. Accordingly, the current standard should continue and the Petition should be denied.

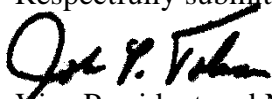
Lastly, we believe the record evidence establishes that even the solid state systems should not be granted a waiver. At the public hearing, representatives from the manufacturers acknowledged that the self-monitoring and diagnostic systems do not check for chassis grounds. *Tr.* at pp. 38–39, 41. Moreover, Petitioner’s post-hearing submission establishes that in over 40% of situations in which there was a necessity to invoke Absolute Block operations the fault indicated could not be correlated with a defect. *See* FRA-2006-24646-9 at p. 3. Similarly, more than 21% of reported cab signal failures could not be correlated with a defect. *Id.*

Even though Petitioner did not distribute these data between relay-based and solid state systems, they raise serious questions about whether the self-monitoring and diagnostic systems are sufficiently robust. Consequently, we were stunned to learn that Petitioner “does not specifically track FRA defects on [cab signal] inspections,” particularly because the component replacement rate indicated in the 200 most recent cab signal inspection reports was 14%. *Id.* at p. 2. Presumably, this replacement rate would rise to over 20% if inspections were performed every 92 days instead of on a 60-day cycle, and to more than 40% if Petitioner’s efforts to increase the 92-day inspection cycle to 184 days succeeds.

Our review of Petitioner’s data also indicates that the 200 inspections were made over a period slightly over 311 hours, or just less than 13 days. *See id.* at pp. 6–8, 46–50. During this period a total of 28 components were found to be defective and requiring replacement. *Id.* at p. 2. The mean time between failures was approximately eleven hours and six minutes, a rate that would produce nearly 800 failures requiring component replacement per year.

Petitioner already has ample flexibility under the regulation as written. If a 60-day cycle is disruptive, which has been alleged but not proven, and if UP prefers to perform the tests prescribed by Section 236.588, then the requirements of Section 236.586 — which comprise but a small part of terminal inspections and tests currently required of crews and mechanical forces — should be fulfilled. There is no justifiable basis for the instant Petition and we, again, strongly urge the Safety Board to deny it.

Respectfully submitted,



Vice President and National Legislative Representative

DOT Docket Clerk

July 2, 2007

Re: Docket No. FRA-2006-24646

Page 4

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