



Brotherhood of Locomotive Engineers and Trainmen

A Division of the Rail Conference — International Brotherhood of Teamsters

NATIONAL LEGISLATIVE OFFICE

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JOHN P. TOLMAN

Vice President and

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September 15, 2006

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

Re: Docket No. FRA-2006-24918

Dear Docket Clerk:

On May 12, 2006, NJ Transit (“NJT”) petitioned the Federal Railroad Administration (“FRA”) for a waiver from compliance with the requirements of 49 C.F.R. Sections 238.231(b), 238.313(g)(1), 238.313(g)(2), 238.313(g)(3), 238.313(g)(5), and 238.313(g)(9). *See* DOT DMS FRA-2006-24918-1 (“Petition”). On August 2, 2006, FRA published notice of the filing of NJT’s petition, soliciting comments thereon from interested parties. *See* FRA-2006-24918-3.

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 NJT. NJT’s petition would have a significant impact upon our members and, for the reasons set forth below, BLET opposes granting the requested relief.

NJT seeks a permanent waiver from compliance with a key design standard for passenger equipment and nearly a half-dozen provisions that form the cornerstone of a Class I brake inspection. The former is the requirement that “[t]he brake system design of passenger equipment ordered on or after September 8, 2000 or placed in service for the first time on or after September 9, 2002, shall not require an inspector to place himself or herself on, under, or between components of the equipment to observe brake actuation or release.” 49 CFR § 238.231(b).

The latter involves the following requirements set forth in the calendar day Class I brake test:

(g) A Class I brake test shall be performed at the air pressure at which the train's air brakes will be operated, but not less than 90 psi, and shall be made to determine and ensure that:

(1) The friction brakes apply and remain applied on each car in the train until a release of the brakes has been initiated on each car in response to train line electric, pneumatic, or other signals. This test shall include a verification that each side of each car's brake system responds properly to application and release signals;

(2) The brake shoes or pads are firmly seated against the wheel or disc with the brakes applied;

(3) Piston travel is within prescribed limits, either by direct observation, observation of an actuator, or in the case of tread brakes by determining that the brake shoe provides pressure to the wheel. For vehicles equipped with 8½-inch or 10-inch diameter brake cylinders, piston travel shall be within 7 to 9 inches. If piston travel is found to be less than 7 inches or more than 9 inches, it must be adjusted to nominally 7½ inches. Proper release of the brakes can be determined by observation of the clearance between the brake shoe and the wheel or between the brake pad and the brake disc.

* * *

(5) Each brake shoe or pad is securely fastened and correctly aligned in relation to the wheel or to the disc;

* * *

(9) Each brake shoe or pad is not below the minimum thickness established by the railroad. This thickness shall not be less than the minimum thickness necessary to safely travel the maximum distance allowed between Class I brake tests;

49 CFR § 238.313(g).

According to NJT, the scope of the waiver, initially, would be two hundred thirty-four (234) cars: 33 cab cars, 86 toilet-equipped coaches, and 115 coaches not equipped with toilets. Petition at p. 2. However, the scope of the waiver could expand in the future, because NJT's contract with the manufacturer "includes provisions for up to an additional forty-five (45) cars" of unspecified type. Id. NJT states that it contracted for 100 in March of 2003, and exercised an option for an additional 134 coaches in January of this year. Id. NJT projects that this equipment will be ready for integration into service this month. Id.

The design restriction mandated by Section 238.231(b) — including the September 8, 2000 deadline governing ordering equipment — has been in existence since at least May 12, 1999, when FRA’s Final Rule was first published. *See* 64 Fed. Reg. 25677. As FRA noted in its Section-by-Section Analysis,

Paragraph (b) requires that passenger equipment ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002 be designed not to require an inspector to place himself or herself on, under, or between components of the equipment to observe brake actuation or release. The requirement allows railroads the flexibility of using a reliable indicator in place of requiring direct observation of the brake application or piston travel, because the current designs of many passenger car brake systems make direct observation extremely difficult without the inspector placing himself or herself underneath the equipment. Brake system piston travel or piston cylinder pressure indicators have been used with satisfactory results for many years. FRA recognizes the concerns raised by certain labor representatives regarding the use of piston travel indicators, and although such indicators do not provide 100 percent certainty that the brakes are effective, FRA believes that they have proven themselves effective enough to be preferable to requiring an inspector to assume a dangerous position.

64 Fed. Reg. 25612.

NJT’s ability to influence Section 238.231(b) began nearly four years earlier, on June 7, 1995, when the Passenger Equipment Safety Standards Working Group (“PESS WG”) of FRA’s Railroad Safety Advisory Committee (“RSAC”) met for the first time to assist FRA in developing standards that include Part 238. The American Passenger Transportation Association (“ATPA”), of which NJT is a member, serves on the RSAC and participated in the Working Group. 64 Fed. Reg. 25541. In fact, when NJT commented on FRA’s 1997 Notice of Proposed Rulemaking (“NPRM”) that followed the PESS WG’s consideration of these issues, it voiced no complaint concerning Section 238.231(b). *See* 64 Fed. Reg. 25542, 25550.

When FRA published its Final Rule on July 3, 2000, no change was made to Section 238.231(b). *See* 65 Fed. Reg. 41307. Further, NJT did not file a petition for reconsideration concerning this section, or any other portion of the Final Rule. 65 Fed. Reg. 41284. Nor did NJT file a petition for waiver from compliance with Section 238.231(b) during the two and one-half years between the September 8, 2000 deadline governing ordering equipment and its initial order of 100 coaches in March of 2003. Likewise, NJT did not file a petition for waiver from compliance with Section 238.231(b) during the more than three years since that order was placed. Indeed, NJT waited until the last possible moment to seek relief.

NJT states that it does not intend to use a piston travel indicator because the model it originally considered will not — according to the supplier — “operate reliably in the harsh operating environments of the railroads.” Petition at p. 2. Instead, NJT proposes to use a “brake indicator” that

“confirms the presence of air at the disc brake cylinder.” Id. However, NJT has provided no details establishing how the “brake indicator” functions, or how the appurtenance will bring about compliance with Section 238.313(g). Indeed, it is unclear whether the equipment identified in the petition — which is scheduled for introduction into service this month — has been modified to include these “brake indicators,” because NJT refers to the appurtenance as a “proposal.” Id.

Complicating matters further is NJT’s admission that

neither a[piston travel indicator] nor [NJT’s proposed brake] indicator fully satisfies all the requirements of a Class 1 brake test. Presently, there is no design that will fully comply with the FRA’s new requirement; this can only be accomplished by getting underneath the car.

Id. For this reason, NJT also seeks a permanent waiver from compliance with five of the fifteen requirements that comprise the calendar day Class I brake test.

The first test requirement from which NJT seeks relief is the one establishing that the “brakes apply and remain applied on each car in the train until a release of the brakes has been initiated on each car in response to train line electric, pneumatic, or other signals[, including] a verification that each side of each car’s brake system responds properly to application and release signals.” 49 CFR § 238.313(g)(1). Including this test requirement in the petition leads to no other conclusion than that NJT’s proposed “brake indicator” does not, in fact, verify the real-time status of the brakes.

The second test requirement included in the waiver petition is confirmation that “brake shoes or pads are firmly seated against the wheel or disc with the brakes applied,” and the third establishes permissible piston travel limits that must be maintained. 49 CFR §§ 238.313(g)(2), 238.313(g)(3). These requirements could be met by installation of a piston travel indicator, as FRA anticipated when it promulgated Section 238.231(b). In fact, FRA noted that piston travel indicators “have been used with satisfactory results for many years.” 64 Fed. Reg. 25612. However, NJT claims that the piston travel indicators it sought to use are unreliable.

NJT also seeks relief from the requirements that the calendar day Class I brake test verify that: (1) “[e]ach brake shoe or pad is securely fastened and correctly aligned in relation to the wheel or to the disc”; and (2) that “[e]ach brake shoe or pad is not below the minimum thickness established by the railroad[, which] shall not be less than the minimum thickness necessary to safely travel the maximum distance allowed between Class I brake tests.” 49 CFR §§ 238.313(g)(5), 238.313(g)(9). Again, an appropriate piston travel indicator should provide information that a particular brake is outside acceptable tolerances.

In lieu of compliance with these five testing requirements, NJT essentially proposes that the calendar day Class I test be conducted every five days, which reduces the number of inspections by 80%. NJT tacitly acknowledges that this vastly reduced inspection schedule will result in passenger trains being operated with brake systems that are functioning at less than 100%, but tries to “spin” the consequences thusly:

Brake loss studies reveal that even with the loss of a disc brake in a two (2) car consist, the train would still maintain greater than 90% of its braking effort. Therefore, the loss of braking capacity with the failure of a disc brake on a NJ Transit train would have minimal consequences in the braking capability of the train.

Petition at p. 3.

This claim offers no comfort for several reasons. First, it is unsubstantiated by any data whatsoever. Second, NJT offers no evidence as to the effect of such a failure on stopping distances at various speeds.¹ Third, NJT fails to disclose whether these “studies” were conducted on empty passenger trains, partially loaded passenger trains, fully loaded passenger trains, or some combination thereof. Fourth, NJT does not operate two-car trains in revenue passenger service; some train consists have twelve cars, and NJT offers nothing to correlate these purported two-car train consist studies with a 12-car consist.

The purpose of a Class I brake test is “to ensure that the air brake system is 100 percent effective.” 49 CFR § 238.5. NJT concedes that the waiver, if granted, cannot meet this requirement 80% of the time. This is a shocking admission, considering the volume of trains and passenger travel on NJT’s system.² Given the complete lack of safety data and the acknowledged shortcomings of NJT’s proposed “alternative” to compliance, we submit the petition should be denied on its merits.

Without retreating from the above, we also are compelled to point out that the petition raises policy implications that are, perhaps, even more troubling than the diminution of safety that would follow, should the instant petition be granted. Not only did NJT fail to assert an issue with respect to the requirements of Sections 238.231 and 238.313 during the lengthy period when they were discussed, drafted, and made subject to comment and reconsideration, NJT sat on its hands for nearly six full years: two and one-half between the effective date of Section 238.231(b) and

¹ NJT trains operate at speeds of up to 100 mph.

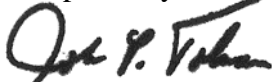
² The Trenton, NJ, to Penn Station, NY segment of the Northeast Corridor carries more weekday trains than any other segment. Alan M. Voorhees Transportation Center, *Northeast Corridor Action Plan*, February 2006, at p. 10. Moreover, NJT’s estimated 2002 weekly ridership of 161,000 was second only to the Long Island Railroad among the nine passenger carriers who utilize the Corridor. Id. at p. 9.

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when the acquisition of the coaches was contracted; almost three and one-half more years between execution of the contract and the filing of the petition. Now — at literally the eleventh hour — NJT petitions for relief from deliberate acts of its own choosing.

The purpose of Part 238 is to facilitate the introduction of next-generation equipment while, at the same time, ensuring that current braking standards would be maintained. NJT's petition, if granted, would nullify both the letter and the spirit of Part 238. Indeed, other passenger railroads could conclude from the granting of the petition that Section 231.231(b) and its underlying rationale can be simply ignored, and — in the process — the Class I brake test requirements can be diluted to the point where they no longer a recognizable. Accordingly, the petition should be denied for this independent reason.

Respectfully submitted,



Vice President and National Legislative Representative

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