



Brotherhood of Locomotive Engineers and Trainmen

A Division of the Rail Conference — International Brotherhood of Teamsters

NATIONAL LEGISLATIVE OFFICE

25 Louisiana Avenue, NW, Room A-704 • Washington, DC 20001
Phone: (202) 624-8776 • Fax: (202) 624-3086 • tolman@ble-t.org

JOHN P. TOLMAN

Vice President and

National Legislative Representative

January 26, 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-2006-25706

Dear Docket Clerk:

On July 26, 2006, Norfolk Southern Railroad (“NS”) petitioned the Federal Railroad Administration (“FRA”) for a permanent waiver from compliance with the requirements of 49 CFR Section 232.205(a)(3) for certain en route trains assembled on NS’s Pocahontas Division in West Virginia. *See* DOT DMS FRA-2006-25706-1 (“Petition”). On December 12, 2006, FRA published notice of the filing of NS’s petition, soliciting comments thereon from interested parties. *See* FRA-2006-25706-3.

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 NS. Consequently, NS’s petition would have a significant impact upon our members. BLET respectfully requests that FRA dispose of the petition as indicated below, for the reasons set forth.

The regulatory requirement from which NS seeks relief is as follows:

§232.205 Class I brake test-initial terminal inspection.

(a) Each train and each car in the train shall receive a Class I brake test as described in paragraph (c) of this section by a qualified person, as defined in § 232.5, at the following points:

* * *

(3) A location where the train is off air for a period of more than four hours[.]

According to NS, the waiver request is limited to cars left on main track sidings at Buck, Luke and Lindsey, after receiving a Class I test at either Gilbert Yard or Weller Yard. These cars are later incorporated into another train from these yards; however, they may be left on the siding for as much as twenty-four hours and none of the sidings are presently equipped to maintain air in the braking systems of the cars. NS further proposes that a Class III test be substituted for the Class I test when the trains are finally assembled at the sidings, and represents that there have been no incidents of vandalism at any of the sidings. Petition.

The stated basis for the NS request is “to reduce the exposure of our employees at these locations while performing a redundant walking inspection.” Id. Of specific relevance to the instant waiver, a Class I inspection requires that each car be observed, while a Class III inspection verifies trainline continuity, and can be accomplished from the locomotive cab if the train is equipped with a two-way end-of-train telemetry device. However, NS has failed to support its position by informing FRA why (1) it is not possible to equip these sidings with an apparatus to provide stored cars with air, and (2) the asserted exposure risk to employees cannot be mitigated in any other way than by granting the waiver.

Furthermore, FRA’s Railroad Safety Board currently is considering a joint petition by NS and BNSF Railway (“BNSF”) for waiver from various FRA safety regulations in order to test an Electronically Controlled Pneumatic (“ECP”) brake system, which has been docketed as FRA-2006-26435. At a public hearing conducted on January 16, 2007, NS Manager of Car Administration John D. Sigler testified that the ECP testing would be conducted on trains that would be loaded, assembled and operated over the Pocahontas Division. Sigler Testimony at p. 3.¹

The joint NS/BNSF ECP waiver petition also requested relief from Section 232.205(a)(3). *See* FRA-2006-26435-1 at p. 2. At the public hearing, BLET opposed that aspect of the petition. *See* FRA-2006-26435-5 at p. 3. We also stated, concerning several requests for relief, that establishing different standards when they are not operationally required is a recipe for confusion and could set the stage for an unsafe outcome, if a crew inadvertently or mistakenly applies the wrong standard. *See, e.g., id.* at p. 2.

The context for the concern expressed at the public hearing — different standards for different equipment sets that are not operationally required — is somewhat different than the situation presented by the instant petition. That said, our concern is heightened when different standards are applied to the same equipment when they are not operationally necessary.

¹ Because the public hearing transcript has not yet been posted in the DOT’s Docket Management Service online docket, the written document containing Mr. Sigler’s testimony, which was submitted for the record, is attached hereto as Exhibit BLET-1.

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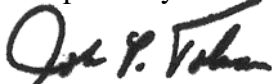
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FRA's concern over the number and percentage of reportable accidents/incidents that are attributed to human factors resulted in publication last fall of a Notice of Proposed Rulemaking that would "federalize" three industry operating procedures. 71 FR 60372, 60373-75. While the instant petition, if granted, would provide NS with an additional operational convenience, it also could lead to a diminution of safety in the event a crew inadvertently conducts a Class III test under similar circumstances after a train is assembled at a Pocahontas Division siding other than the three specified in the petition.

In view of these concerns, and particularly because NS has failed to provide any evidence why a waiver is the only viable option, we urge FRA to deny the petition. In the alternative, we request that the petition be disposed of in the same manner as the Safety Board disposes of the joint NS/BNSF ECP waiver petition request with respect to Section 232.205(a)(3).

Respectfully submitted,



Vice President and National Legislative Representative

cc: W. E. Knight, General Chairman
L. B. Boggs, WV State Legislative Board Chairman
T. R. Hanely, OH State Legislative Board Chairman
Thomas A. Pontolillo, Director of Regulatory Affairs