



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
National Legislative Representative*

May 25, 2007

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

Re: Docket No. FRA-2007-27410

Dear Docket Clerk:

On February 16, 2007, Canadian National Railway Company (“CN” or “Petitioner”) petitioned¹ the Federal Railroad Administration (“FRA”) for a waiver from compliance with the requirements of 49 CFR Section 229.25(b). *See* DOT DMS FRA-2007-27410-1 (“Petition”). On April 13, 2007, FRA published notice of the filing of CN’s petition, soliciting comments thereon from interested parties. *See* FRA-2007-27410-3, 72 FR 18728.

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 CN. Consequently, the instant petition would have a significant impact upon our members. For the reasons set forth below, BLET opposes granting the requested relief.

The regulatory requirement from which Petitioner seeks relief mandates that “[a]ll electrical devices and visible insulation shall be inspected” at every periodic inspection.” 49 CFR § 229.25(b). Generally, periodic inspections must be made no less frequently than every ninety-two (92) days. 49 CFR § 229.23(a).

¹ CN has petitioned on its own behalf, and on behalf of its wholly owned U.S. railroad subsidiaries: Illinois Central Railroad Company; Wisconsin Central, Ltd.; Grand Trunk Western Railroad Company; Chicago Central & Pacific Railroad Company; Duluth, Winnipeg & Pacific Railway Company; Bessemer & Lake Erie Railroad Company; and Duluth Missabe & Iron Range Railroad Company.

The relief sought by Petitioner is described as “pertaining to the removal of DC traction motor covers” that is required during each periodic inspection. Petition. In actuality, Petitioner wishes to chop the number of traction motor inspections by half, and notes the following: assuming a 4-inspection cycle, current CN maintenance procedures require internal traction motor inspections every 182 days, and changing of all traction motor brushes every 364 days. Id. Under the conditions proposed by Petitioner, the quarterly internal traction motor inspections would be replaced by a semi-annual inspection, with the brushes changed during every other one of those inspections. The Railroad Safety Board should deny the Petition for several reasons.

First, the Railroad Safety Board should deny the Petition because it fails to comply with the requirements of FRA’s Rules of Practice. In order for the Railroad Safety Board to grant a petition for waiver of a safety rule, said petition must both comply with the requirements of Section 211.9 and be justified. 49 CFR § 211.41(c). Accordingly, either failure to comply with the requirements of Section 211.9 or lack of justification provides an independent basis to deny such a petition. 49 CFR § 211.41(d). Section 211.9 provides as follows:

§ 211.9 Content of rulemaking and waiver petitions.

Each petition for rulemaking or waiver must:

- (a) Set forth the text or substance of the rule, regulation, standard or amendment proposed, or specify the rule, regulation or standard that the petitioner seeks to have repealed or waived, as the case may be;
- (b) Explain the interest of the petitioner, and the need for the action requested; in the case of a petition for waiver, explain the nature and extent of the relief sought, and identify and describe the persons, equipment, installations and locations to be covered by the waiver;
- (c) Contain sufficient information to support the action sought including an evaluation of anticipated impacts of the action sought; each evaluation shall include an estimate of resulting costs to the private sector, to consumers, and to Federal, State and local governments as well as an evaluation of resulting benefits, quantified to the extent practicable. *Each petition pertaining to safety regulations must also contain relevant safety data.*

49 CFR § 211.9 (emphasis added).

CN’s Petition is nothing more than a single-page letter comprised of three paragraphs. Petitioner has failed to comply with subsection (c) of Section 211.9, because it failed to provide safety data relevant to its request. The Petition implies that the two annual inspections from which Petitioner seeks relief are unnecessary. However, Petitioner has provided no evidence whatsoever for the record establishing that no defects have been found during these inspections. Rather, it appears that Petitioner has halved the frequency of internal traction motor inspections conducted pursuant to its own maintenance and, now — nearly three years later — wants to reduce the frequency of federally-mandated inspections so that the two frequencies correlate once again.

DOT Docket Clerk
May 25, 2007
Re: Docket No. FRA-2007-27410
Page 3

In a different setting, FRA restated the following general policy, which is equally applicable to the instant matter:

In reaching the decision to deny the waiver petition, the Safety Board noted the importance of uniform and consistent regulation, the fact that the FRA regulations in question establish minimum standards, and that railroads are free to adopt and enforce additional or more stringent requirements that are not inconsistent with the regulations. Accordingly, FRA noted that a great deal of scheduling flexibility is already provided in the regulations. Further, the Safety Board noted that the purpose of the requirements ... is to ensure timely testing and inspection of safety-critical devices at regular intervals in order to ensure that those devices are able to perform their intended functions and, if they are not, that they are removed from service

See FRA-2006-25630-3 (citations omitted). The instant Petition should be denied for the same reasons.

Furthermore, even if granting the Petition was not contrary to FRA's general policy — and assuming that Petitioner had provided sufficient record data to establish no diminution of safety would result from the reduction in inspections — the timing of the specific relief sought militates against a grant. On February 22, 2006, FRA's Railroad Safety Advisory Committee ("RSAC") accepted Task No. 06-01, the purpose of which is to "review 49 CFR Part 229, Railroad Locomotive Safety Standards, and revise as appropriate."

Section 229.25 was highlighted in the Task Description as a portion of the rule that would receive "special emphasis." Indeed, the RSAC Part 229 Locomotive Safety Standards Working Group was specifically tasked with reporting back on "[w]hether current inspection intervals and procedures are appropriate to current conditions." To that end, the Working Group has formed a Task Force to review data and develop recommendations with respect to the frequency and composition of Section 229.25 inspections for various types of locomotives and locomotive subsystems.

Petitioner participated in the RSAC deliberations that led to the adoption of Task No. 06-01, and has participated at the Working Group and Task Force levels. Accordingly, Petitioner has the opportunity to influence those bodies to revise Section 229.25(b) consistent with its position in this matter. To the extent that Petitioner's position is legitimate and no safety risks are raised, any change in inspection frequency should be made through the RSAC process in order to preserve uniformity and consistency.

We strongly oppose disruption of the current inspection requirements via the waiver process, particularly when the underlying requirements are being studied and will, almost certainly, un-

DOT Docket Clerk

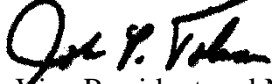
May 25, 2007

Re: Docket No. FRA-2007-27410

Page 4

dergo perhaps significant change themselves. For all of the above reasons, the Railroad Safety Board should deny the instant Petition.

Respectfully submitted,



Vice President and National Legislative Representative

cc: Grady C. Cothen, Jr., Esquire, FRA Deputy Associate Administrator for Safety Standards
and Program Development
All CN General Chairmen
All CN State Legislative Board Chairmen
Thomas A. Pontolillo, Director of Regulatory Affairs