

BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON RAILROADS, PIPELINES,
AND HAZARDOUS MATERIALS

HEARING ON
FATIGUE IN THE RAILROAD INDUSTRY

FEBRUARY 13, 2007

TESTIMONY OF
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BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN
A DIVISION OF THE TEAMSTERS RAIL CONFERENCE



United States House of Representatives
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Director of Regulatory Affairs, Brotherhood of Locomotive Engineers and Trainmen

Thank you and good afternoon Chairwoman Brown, Ranking Member Shuster, and Members of the Subcommittee. My name is Tom Pontolillo, and I am Director of Regulatory Affairs for the Brotherhood of Locomotive Engineers and Trainmen Division of the Teamsters Rail Conference. On behalf of the Conference — and the more than 70,000 men and women we represent — I want to thank the Subcommittee for holding today's hearing and for providing us with the opportunity to present you with our views concerning fatigue in the railroad industry.

I also want the Subcommittee to know that we have coordinated our work on this subject with my good Brother Brunkenhoefer from the United Transportation Union, and that the Conference fully supports and endorses his testimony before you today. I hope that our joint work has eliminated much unnecessary duplication of information and of the positions that we share. Further, we want you to know that we support and endorse the testimony of the Brotherhood of Railroad Signalmen.

There is no question in our minds that safety degradation because of fatigue is a ticking time bomb in the railroad industry. The National Transportation Safety Board has, on numerous occasions, pointed to crew fatigue as a potential contributing factor in an accident. Indeed, just last year the NTSB adopted a report determining that the 2004 Macdona, Texas, collision and toxic chlorine release, which killed three people, was caused by a fatigued crew's failure to respond to wayside signals. The crew was criticized for failing to effectively use off-duty time, thereby not obtaining sufficient restorative rest prior to reporting for duty, and Union Pacific was criticized for train crew scheduling practices that created inverted crew members' work/rest patterns.

This hearing will provide you with significant scientific research and opinion, some of it going back many years, that establishes beyond any reasonable doubt that fatigue in the industry poses a significant safety risk. One factor that aggravates fatigue is the industry's manipulation of the Hours of Service Act by leaving crews stranded for unconscionable lengths of time under the Supreme Court's 1996 "limbo time" decision.

I could not hope to improve on the legal and statutory analysis concerning limbo time that Brother Brunkenhoefer provides today. However, I do want to provide the Subcommittee with some shocking facts that expose the depth of the limbo time crisis.

For the past year and one-half, we have been collecting data from BLET field officers concerning excessively long work tours. The data provided to us has been gathered from railroad records, and is stunning.

We have data from one Class I railroad — which I will refer to as Railroad “A” — showing that nearly 335,000 crews had work tours in excess of 14 hours during the years 2001 through 2006. This is an average of over 150 crews exceeding the Hours of Service by two hours every day for six years. However, during the past three years, the average is over 205 crews per day. During that same period, an average of about 94 crews per day had work tours longer than 15 hours.¹

The breakdown by length of work tour for last year on this railroad is as follows:²

Length of Work Tour	Number of Crews
over 14 hrs.	76,268
over 15 hrs.	34,854
over 16 hrs.	15,815
over 17 hrs.	7,251
over 18 hrs.	3,529
over 20 hrs.	1,003

We also have two full years of data covering a single terminal on another Class I railroad — which I will refer to as Railroad “B” — where approximately 110–115 BLET members work in two pools and on one extra board. The breakdown by length of work tour for these engineers is as follows:³

Length	2005	2006
over 13 hrs.	1,189	1,928
over 14 hrs.	331	593
over 15 hrs.	141	231
over 16 hrs.	39	73
over 17 hrs.	13	29
over 18 hrs.	7	8
over 19 hrs.	2	4
over 20 hrs.	1	2

Lastly, we have data for the entire Railroad “B” system, covering two days in mid-September of last year. The breakdown by length of work tour for Railroad “B” for these two days is as follows:

¹ A graph showing the increase in limbo time on Railroad “A” is attached to this testimony as Exhibit BLET-1.

² A graphical representation of this breakdown is attached as Exhibit BLET-2.

³ A graphical representation of a portion of these data is attached as Exhibit BLET-3.

Length	Day #1	Day #2	Total
over 12 hrs.	1,249	1,381	2,630
over 13 hrs.	443	559	1,002
over 14 hrs.	144	177	321
over 15 hrs.	61	66	127
over 16 hrs.	18	21	39
over 17 hrs.	9	5	14
over 18 hrs.	8	2	10
over 20 hrs.	6	1	7

Of the six work tours in excess of 20 hours on Day #1, three were an incredible 32 hours long. The work tour in excess of 20 hours on Day #2 totaled 23 hours and 15 minutes.

The decade since the Supreme Court’s decision has seen both the number of crews stranded waiting for transportation and the length of limbo time increase. Indeed, the problem has become so prevalent in recent years that the December 16, 2003 BLE National Agreement included language committing that participating carriers would “make reasonable efforts to relieve and expeditiously transport [outlawed crews] to the tie-up point.” Unfortunately, things have only deteriorated since that commitment was made, as the data from Railroad “A” clearly demonstrate.

The industry makes two responses to its self-created limbo time crisis. One is that crews are not disadvantaged because they are paid for their excessively long work tours. Very frequently that is not the case. Under existing national agreements, road freight crews are not entitled to overtime until they have “run off” the mileage for their trip. The table below shows when a crew will be entitled to overtime under current national agreements, based on the length of their run:

Length	Time
195	12:00:00
200	12:18:28
225	13:50:46
250	15:23:05
275	16:55:23
300	18:27:42
325	20:00:00
350	21:32:18

Thus, a crew in a 325-mile pool must accrue more than 8 hours of limbo time before they would be entitled to overtime. Some system and local agreements provide for overtime at a point prior to when the miles have been “run off,” but many do not. The undisputable fact is that crews do not receive any compensation for this time in a large percentage of cases.

The other industry response is that safety is not diminished because the crews are not performing service while in limbo. This claim is misleading, at best. Many times, a crew will be instructed to not secure their train when the railroad plans to not remove that crew until its relief

has arrived. This is done so that the train can be further advanced toward its destination during the period when the crew would otherwise be securing the train.

Furthermore, whether the train has been secured or not, the crew continues to be governed by operating rules requiring that they remain alert and observant, and that they take any action necessary to protect the train against unanticipated mechanical problems or vandalism. In a November 21, 2001 Opinion Letter, FRA's Assistant Chief Counsel for Safety stated that requiring a crew to attend to its train in this manner will be considered limbo time provided that the crew is permitted to leave the train when its relief arrives. Significantly, it was after the issuance of this Opinion Letter that the frequency of excessive limbo time skyrocketed.

There is but one lesson to learn from the industry's abuse of limbo time: If you give the industry a carrot, the railroads will chomp it down without a second thought. Nothing short of legislatively correcting the Supreme Court's 1996 error will resolve this problem and I cannot urge the Subcommittee strongly enough to include a limbo time fix in the rail safety package you send to the House floor.

The NTSB's determination in the Macdona accident also illustrates a problem that has increased in severity in recent years. For many decades, industry practices worked to minimize or camouflage potential fatigue problems. Much larger crew sizes greatly reduced the likelihood that an entire crew would be working while fatigued. Moreover, collective bargaining agreements contained maximum mileage regulations — that were strictly enforced — under which a worker would be marked off for the remainder of the month when the maximum was exceeded.

Over the past 50 years, technology has reduced crew size from five or six to two or three. Notwithstanding this fact, the supply of locomotive engineers, conductors and brakeman has not kept up with demand, creating enormous pressure on the industry to work crews above agreement-based mileage levels. The desire of railroad workers to improve, and not just maintain, their standards of living created similar pressure on unions to permit crews to continue working when those mileage levels were exceeded. As a result of these factors, today's smaller crews work far more trips and miles than their historical predecessors.

This leads to a question posed by Representative LaTourette last week. Namely, how much fatigue is caused by so-called "mileage hogs" who deliberately place themselves, their crews, and the communities through which they traverse at risk by working too much?

The fictitious "mileage hog" is nothing more than the creation of an industry that cannot stoop low enough to camouflage its own responsibility for causing fatigue. Beginning in the latter part of the 1800s, most operating crews were paid on the basis of miles run, with 100 miles comprising the basic day, and slightly lower rate — about 91½% of the daily rate — for each additional mile.⁴ The typical operating division also was roughly 100 miles in length.

⁴ Prior to 1964 the mileage rate was identical to the daily rate. However, in the aftermath of the Presidential Railroad Commission and Arbitration Board No. 282, the June 25, 1964 National Agreement involving all operating crafts froze the mileage rate for a 3-year period, creating the 8½% difference.

Part of the industry's response to the deregulation created by the Staggers Act was to intensify its pressure for an end to the 100-mile day. This directly led to a strike by the Brotherhood of Locomotive Engineers in 1982, which was ended when Congress passed — and President Reagan signed — Public Law 97-262, imposing the recommendations of Presidential Emergency Board No. 194 as the basis for settlement.

Included among those recommendations was adoption of the industry's proposal to establish a Study Commission to investigate and consider a number of collective bargaining matters, including the basis of pay for locomotive engineers. A similar Study Commission — pursuant to a recommendation made by Presidential Emergency Board No. 195 — was empanelled pursuant to the UTU National Agreement that was reached shortly after the BLE strike ended.

The Study Commissions, both chaired by Arthur T. Van Wart, issued their reports in late 1983. Of particular interest to this Subcommittee are recommendations that (1) the mileage comprising the basic day be increased, (2) that pay rates for overmiles, special allowances and arbitraries be frozen, (3) that special allowances and arbitraries be eliminated for future hires, and (4) that the waiting time for final terminal delay payments to begin be extended from 30 minutes to 75 minutes.

These proposed changes began impacting locomotive engineers less than 2½ years later, when Arbitration Board No. 458 issued its award. The mileage comprising the basic day was increased, the rate paid for miles in excess of the basic day was frozen, special allowances and arbitraries were eliminated for future hires and frozen for current employees, and the final terminal delay waiting time was doubled from 30 to 60 minutes. As a result of the 1991 legislative imposition of the recommendations of Presidential Emergency Board No. 219 — via Public Law 102-29 — the mileage comprising the basic day was further increased to 130, where it stands today. In mid-1996 the rate for overmiles was unfrozen; however, special allowances and arbitraries continue to be paid at the rate in effect in May of 1986.

The impact of these changes on earnings of operating crews has been staggering. The change from a 100-mile basic day to a 130-mile basic day devalued the basic day by over 23%. Moreover, while the rate of pay of the basic day has increased by nearly 75% over the past 24½ years, the overmile rate has increased only 58%, because of the decade-long freeze in the rate from the mid-1980s until the mid-1990s. Thus, whereas the overmile rate was 91.5% of the daily rate in 1982, it is less than 83.2% of the daily rate today.

For a crew on a 130-mile run, replacement of the 100-mile day with the 130-mile day has caused a pay cut in excess of 21½%. Crews on a 150-mile run saw a 20% reduction, and even a crew on a 350-mile run makes nearly 14% less because of the 130-mile day and the freeze in the overmiles. An engineer on a 150-mile run makes over \$100 less per round trip, and must work six trips to equal what he or she used to make in five trips. An engineer on a 325-mile run makes over \$150 less per round trip, and must work seven trips to equal what he or she used to make in six.

These losses do not include the impact of freezing duplicate time payments at 1982 rates, doubling the waiting time for final terminal delay, and even more draconian cuts for post-1985 hires, which only recently have begun to be ameliorated. For a quarter of a century, operating crews have had to run faster and faster just to remain in place. To us, the “hogs” are not the men and women who must work extra trips to maintain their standard of living, they are those at the top who have skimmed the savings from these changes and stuffed that money into their own pockets.

In addition to forging permanent and fundamental changes to pay scales that forced locomotive engineers to work more and more just to remain in the same place, Arbitration Board No. 458 also placed control of work allocation even more firmly in the industry’s hands. Existing agreement provisions were overridden to give railroads broad latitude to establish and abolish extra boards at will. Instead of regulating these extra boards consistent with historic mileage minima and maxima, the Award decreed that these boards would be guaranteed the equivalent of 3,000 miles per month in earnings, and that the railroad would have the sole and absolute right to determine the number of extra engineers.

This shift in control of extra board staffing combined with austere hiring practices over the past 20 years to produce consistent shortages of operating crews throughout the industry. Thus, not only did we lose the ability to regulate extra boards to mitigate fatigue, deliberate understaffing by railroads bled over into pool regulation because it was impossible to add pool turns at locations where there was insufficient manpower.

These problems were exacerbated by the manner in which mergers were carried out during the 1990s. First the Interstate Commerce Commission and, later, the Surface Transportation Board reversed decades of precedent by legalizing and permitting the practice of “cram down,” whereby merged carriers were granted almost absolute rights in consolidating work essentially on any terms they chose. As a result of “cram down,” the BNSF and UP mergers produced a large number of pools that were created by estimating how far a crew could operate in 12 hours, and some pools now operate nearly the entire length of three “divisions” of yesteryear. In many of these pools, crews will only have two opportunities to work a trip out of their home terminal in a given week.

Then, within the past decade, one railroad after another imposed attendance policies. Typically, these policies require an operating employee to work or be available for work 85% of the time or face discipline — up to and including dismissal — for a failure to do so. Even worse, I was recently informed that one Class I railroad has increased its availability requirements to 95%. The 85% standard is more than reasonable when applied to a five day, 40-hour work week, because it equates to availability for just over 20% of the total number of hours in a week. However, it is absurd in a 24/7 setting like the railroad industry, where, for example, our divorced members are regularly forced to choose between seeing their children within the limits imposed by divorce custody orders and facing discipline for poor attendance.

We believe that another contributor to fatigue is the railroad industry’s failure to accommodate cultural changes over the past 30 years. Dual earners in a family has become an absolute necessity for the large majority of Americans; this is no less true for BLET members

and other railroad workers as it is for people in other occupations. This reality, combined with historically high divorce rates, means that railroad workers have far more direct domestic responsibility than their predecessors. However, the industry has not only failed to meet its workers halfway in responding to these cultural changes, railroads demand more work from today's workforce than in the past.

Fatigue is not a function of "mileage hogs" running rampant throughout the industry. Rather, it is a result of men and women who (1) must operate the nation's freight trains for more trips and over longer distances just to stay even with their predecessors from a quarter century ago, (2) cannot mark off work from a guaranteed extra board or guaranteed pool when maximum mileage is reached, (3) have fewer work opportunities in those areas where "super pools" operate, and (4) essentially must work every time the telephone rings in order avoid discipline.

You will no doubt hear the industry repeat past promises to make significant headway in the battle against fatigue, and you may even hear that the Hours of Service Act is an impediment to a solution. However, the real problem is the industry's continuing denial of any responsibility towards its workers in mitigating or preventing fatigue. In fact, the Act was amended over a dozen years ago to include a process whereby labor and management could jointly petition FRA for a waiver of the Act's requirements, for up to two years, for purposes of implementing a pilot program to achieve the Act's goals by alternative measures. No railroad has made any proposal to us that would justify such a petition for waiver during this period.

Indeed, although AAR regularly appears before this Subcommittee touting the sincerity of its member railroads in combating fatigue, the reality is far different. As just one example, Railroad "A" — whose limbo time data I cited before — is currently attempting to use a merger implementing agreement it obtained under "cram down" to actually reduce our members' ability to combat fatigue. This railroad is attempting to use the implementing agreement to eliminate pools and replace them with identical pools operating between the same points that this railroad claims are "new," and, thereby, not subject to 25-year old agreements allowing locomotive engineers to take extra rest beyond that required by the Hours of Service Act at their home terminal.

It bears repeating: of all the various factors that can cause and contribute to fatigue among operating crews, the one that can be resolved today — and simply by better management — is excessive limbo time. To the extent that some crews in some areas are receiving additional pay for this time, curbing limbo time abuse also contributes to the industry's bottom line. We believe the industry's position concerning this subject is indefensible, and it has become clear that the only effective remedy at this point is legislative.

Like operating crafts, maintenance of way (MW) forces are also affected by fatigue. However, the causes of maintenance of way employee fatigue — or MW fatigue — and the solution to the problem for MW employees is very different than the causes and solutions for operating craft employees. In the Maintenance of Way craft, fatigue is most often caused by long commutes, inadequate overnight lodging and lack of manpower.

The extremely long commutes for MW employees are a direct result of rules sought by the railroads before Presidential Emergency Board No. 219 in 1991. PEB-219 essentially removed contractual territorial limits for many MW employees engaged in programmed production maintenance work such as rail and tie replacement. As a result, approximately 25-30 percent of MW employees are required to travel the entire railroad system to work and an additional 20-25 percent are working away from home in other traveling gangs that cover smaller distances.

For example, a MW worker employed on a BNSF System Production Crew is required to report for assignments anywhere on the 32,000+ route mile system covering two-thirds of the territory of the United States from New Orleans to Los Angeles and from Los Angeles to Seattle or Chicago. The same holds true for all the other major freight railroads. System Production Crews must travel the entire railroad system to work.

As a result, at the beginning of the work period, these workers are forced to travel on their scheduled days off, their “rest days,” in order to reach a job location which is usually hundreds, and often times over 1,000, miles from home. These excessive commutes have been independently documented in a December 2006 FRA-sponsored report (DOT/FRA/ORD-06/25) conducted by Foster-Miller.

The methodology for this study was a survey of a random sample of working MW employees who completed a background survey and kept a daily log over a two-week period. The published report includes employee comments on fatigue related matters such as travel, sleep location, etc. Small samplings of these published comments are reproduced below:

Travel

“It was a typical Monday after traveling. It was 9 hours to the motel and between that and getting up between 2-3 a.m. I am very tired. On this job we are working early Monday hours because that is the only time that we can get the track.”

“It seems Monday’s I am usually more tired than any other day of the week. It takes me 8 hours to drive from home to my lodging motel.”

“I left home at 0400. How do you expect me to keep my family together? My mother is also in the hospital. Drove 900 miles just to get to work.”

“My drive home was 1,000 miles which is a 14 hour drive.”

Sleep Location

“I have difficulty sleeping at times due to noise in the motel.”

“Did not sleep good at camp (car). There were passing trains that woke me up 2 times. And a co-worker woke up and opened the door and it woke me up.”

“Employees opening and closing the camp (car) door as they come in. Employees snoring very loudly after being out late.”

The Teamsters Rail Conference believes that the solution to these excessive fatigue-inducing conditions is to reinstate some reasonable limits on the size of the territory these workers have to cover. It is simply unreasonable to expect people to commute in excess of 8-14 hours and be alert and attentive upon arrival. Couple the long commutes with noisy double occupancy lodging, or even worse, 8-10 persons lodged together in a decrepit and unclean camp car, it is little wonder why we have fatigue-related safety issues in the MW craft. Smaller territories, better overnight lodging with single occupancy, and the elimination of camp cars are the keys to reducing fatigue and improving safety for MW employees and railroad operations.

Camp cars exacerbate fatigue by forcing up to eight individuals to share cramped quarters for days at a time. Norfolk Southern Railroad is the only Class I Railroad in the country that still houses MW employees in camp cars. All other Class I rail carriers abandoned the camp cars years ago because lodging employees in hotels or providing them with a cash per diem payment was both economical and the “right thing to do” to treat their workers better than before. However, Norfolk Southern has not followed this trend and continues to use camp cars.

The Norfolk Southern camp cars the workers return to at the end of an exhausting and punishing day are small, cramped facilities — measuring ten feet by forty feet — that must be shared by up to eight grown men. The men sleep in small bunk beds (measuring 2’8” x 6’), smaller than a twin sized mattress, much like one would find today in a summer camp for children. The men generally sleep four on each end of the camp car, with sinks and showers in the middle. The water in most camps cars is non-potable, meaning it is not fit for drinking, but it is the only water available for brushing their teeth, washing their face and showering.

The NS camp cars provide the eight men with 400 square feet of living space — 50 square feet each — but given most of the room is taken up with the bunk beds, showers, sinks, hot water heater and lockers, there is essentially less than 20 square feet per person. This is less space than in a death row prison cell in Florida, where each death row inmate has 54 square feet of living space and an indoor toilet. MW workers living in NS camp cars have to walk outside, through the elements — whether it be rain, snow, sleet, or hail — to use an often dark and dirty outhouse or porta-john.

After a grueling day’s work, a worker has to compete with seven other workers for shower time, eat in the camp’s often unsanitary dining car and then attempt to get a restful night’s sleep in a crowded camp car with seven other workers, next to an operating train track where mile-long freight trains roar by regularly throughout the night, sounding their horn and shaking the camp car as it passes. It makes for fitful night’s rest under the best of circumstances.

In 1988, the FRA issued “Guidelines for Clean, Safe, and Sanitary Railroad Provided Camp Cars” as Appendix C to 49 CFR Part 228. These guidelines are not enforceable regulations and, therefore, have no teeth. While FRA will respond to complaints, their enforcement is basically reduced to making recommendations and facilitating quick fixes. Furthermore, the FRA guidelines do not provide FRA with authority to require such essentials as potable water for bathing, cleaning eating surfaces and washing utensils. The discharge of “gray water” from sinks and showers onto the ground is also not prohibited by FRA Guidelines.

To address these health issues, the union must often try to find a sympathetic city, county or state health department to conduct an inspection and force compliance with city, county or state public health ordinances. Many times these agencies are denied access and jurisdiction. And in the rare instances where jurisdiction is rightfully claimed by a local agency, NS simply moves the cars to another location outside the jurisdiction in order to evade local health authorities and enforcement of local ordinances and law.

Camp cars are a health hazard and a blight which must be once and for all eliminated. The union has repeatedly requested NS to abandon camp cars and place workers in hotels like every other rail carrier in the U.S. However, they have refused to do so and expect the union to give one of the most profitable railroads in the country concessions in exchange for treating their workers humanely when every other railroad that has abandoned camp cars actually has saved money by doing so. We have reached the conclusion that an Act of Congress may be the only means of compelling NS to abandon this inhuman practice once and for all.

We further believe that MW fatigue also is — to some degree — a function of staffing levels. Railroads are not hiring and retaining a sufficient number of employees to adequately maintain the nation’s rail infrastructure. There has been a precipitous drop in BMWED staffing levels over the past 25 years. For example, BMWED’s average monthly active (*i.e.*, working at the craft) membership in 1981 was 90,610 members. Average monthly active membership fell to 50,795 by 1991 and stands at 30,579 today. This represents a manpower decrease of approximately 66% in just 25 years. While some of this decrease can be attributed to improved technology and greater worker productivity, the fact remains that existing track force levels are insufficient for the task at hand.

There is, of course, a safety aspect to chronic understaffing. It takes appropriate staffing levels and quality training to keep the nation’s rail infrastructure properly inspected and maintained, especially in light of the record ton-miles of freight being transported on the railroads. The BMWED has lost a significant number of members over the past several decades due to retirements, injuries, and other natural attrition. As a result, BMWED members are working longer hours, shorthanded, and their complaints about insufficient manpower continue to fall on deaf ears.

This lack of manpower causes the nation’s rail infrastructure to be maintained in a reactive, rather than a proactive fashion. Track caused derailments account for approximately one-third of all rail accidents, and this trend will continue to increase until manpower in the maintenance of way department is brought into line with the track miles employees are expected

to inspect and repair. Railroad safety is largely dependent on proper track maintenance, and today's high volume, heavy tonnage trains require increased, rather than decreased, track maintenance. Thus, rail safety requires sufficient manpower in maintenance of way track forces to properly and proactively address current track deficiencies and reduce derailments on our nation's rail infrastructure.

Rail labor believes that the evidence clearly supports our position that fatigue is seriously degrading the level of safety in the rail industry among all crafts. There is no question that fatigue is a ticking time bomb in the railroad industry and real solutions to this problem need to be formulated and implemented, most likely by legislation. I implore you to pass common sense legislation enabling the FRA to affirmatively and aggressively regulate fatigue in our industry.

Once again, I thank the Subcommittee for hearing us today, and I'm happy to try to answer any questions you may have.

Railroad "A" (2001-2006)

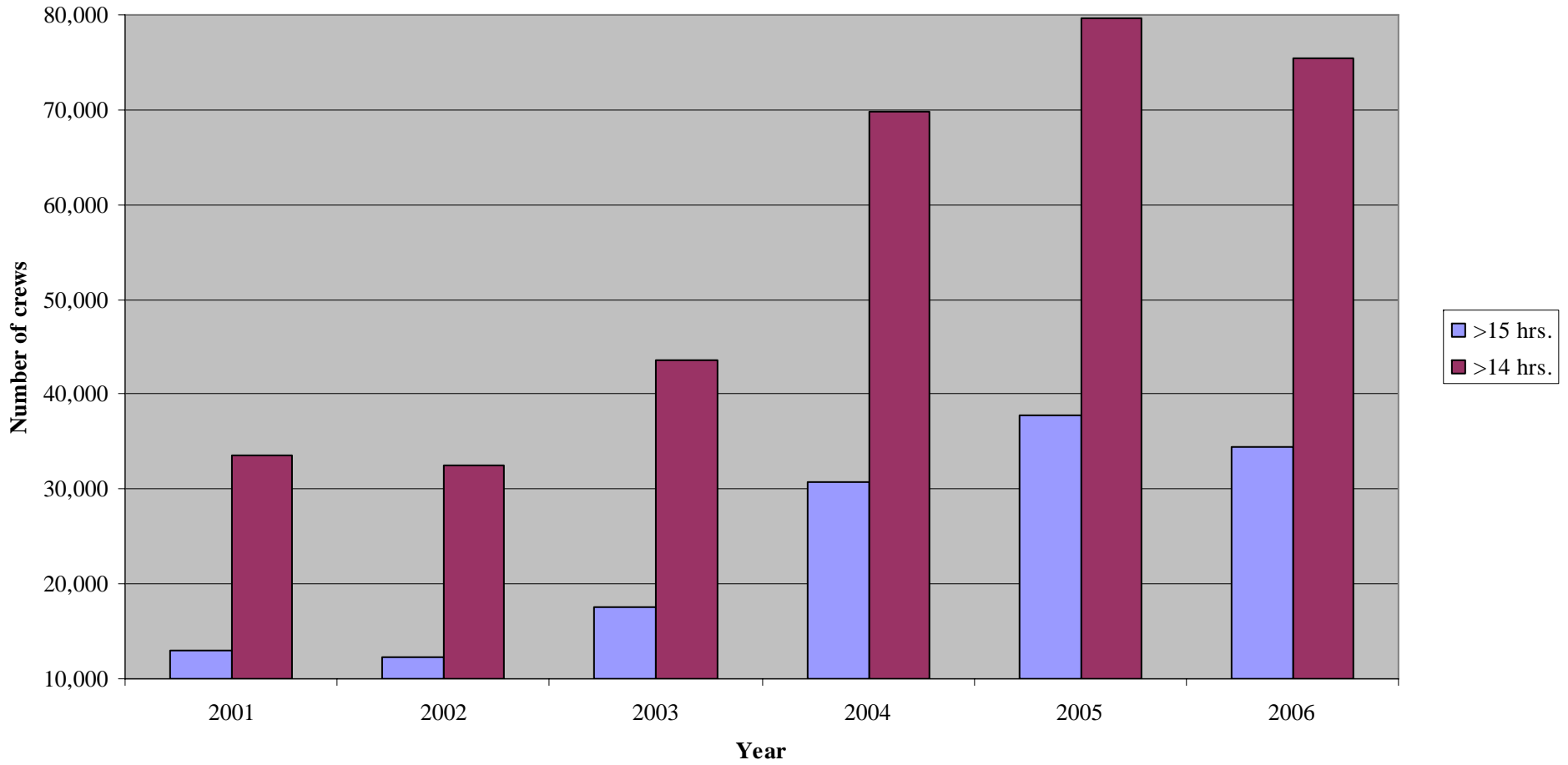


Exhibit BLET-1

Railroad "A" (2006)

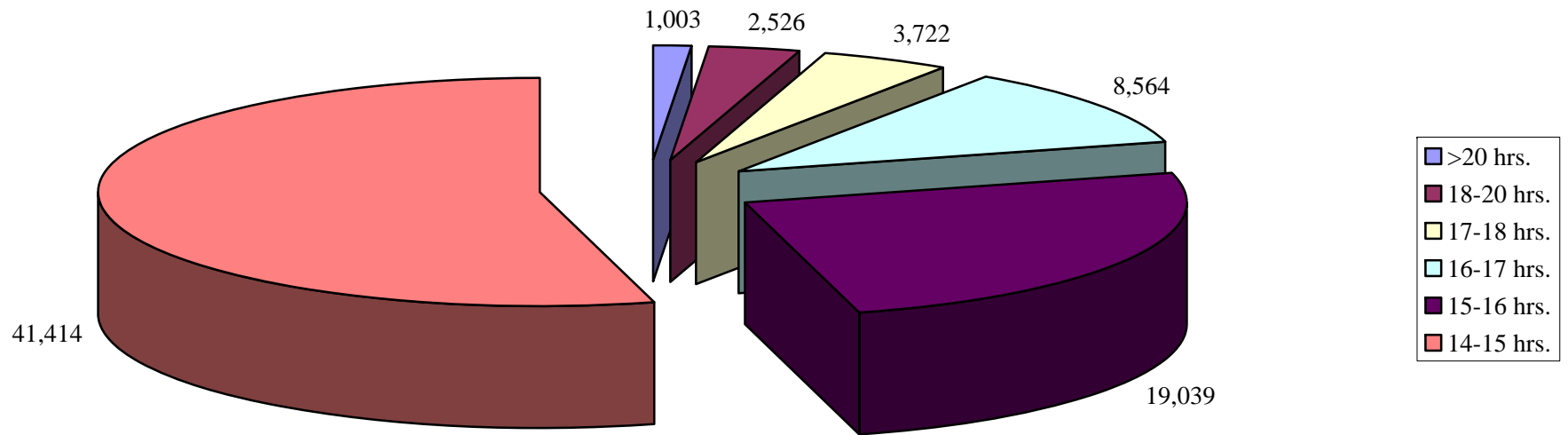


Exhibit BLET-2

Railroad "B", Terminal "X"

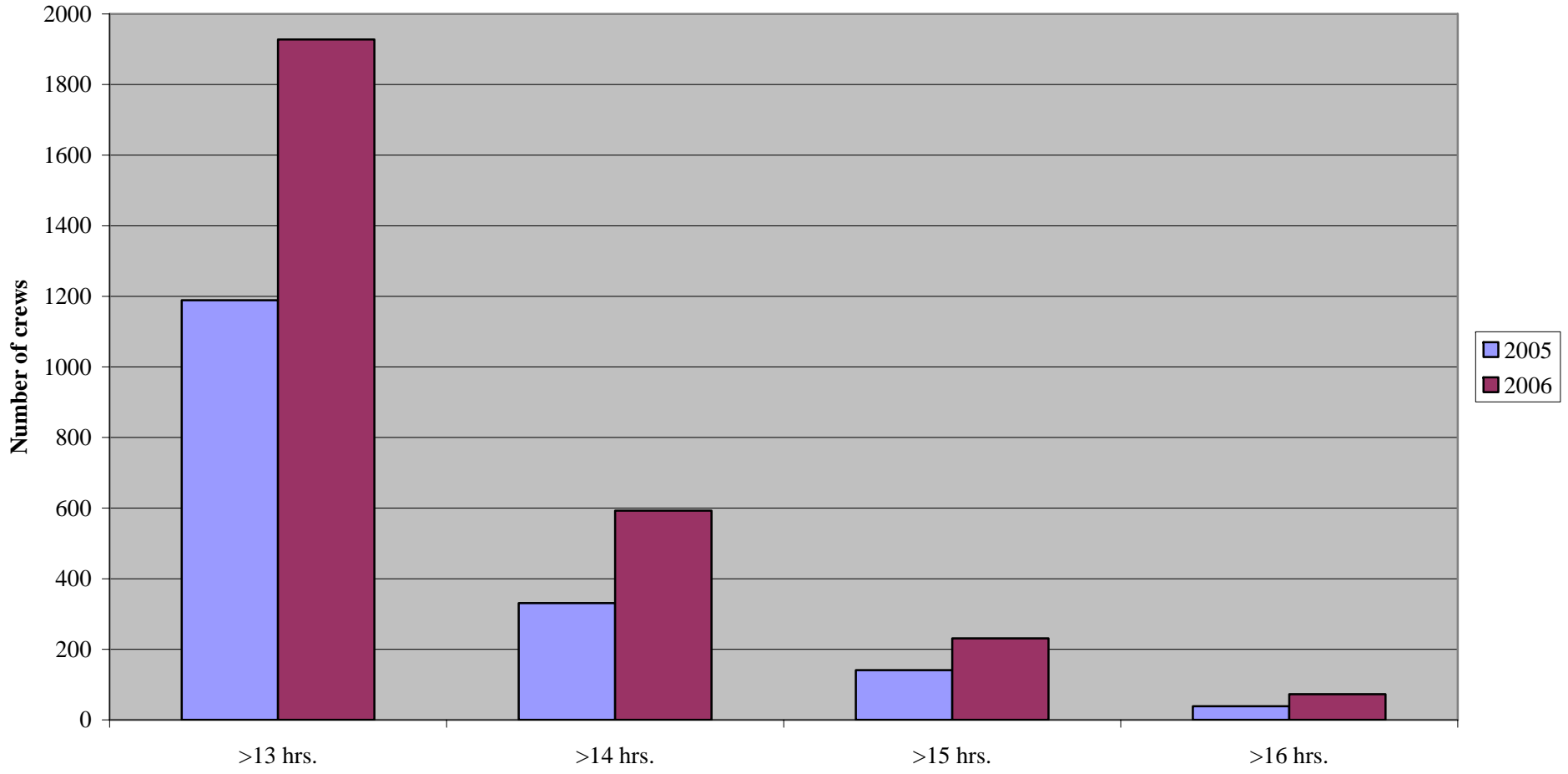


Exhibit BLET-3