

Oral Testimony of John Tolman, BLET Vice President & National Legislative Representatives, before the U.S. House of Representatives Committee on Transportation and Infrastructure Hearing on the Impact of Railroad Injury, Accident, and Discipline Policies on the Safety of America's Railroads.

Good morning, Chairman Oberstar, Ranking Member Mica, and Members of the Committee. I want to thank you for holding today's hearing and inviting us to address you.

The subject of today's hearing is something that has been a bone of contention for Rail Conference members, and all railroad workers, for generations. We believe these policies originated because of ties between the industry and the military that go back quite a way.

This history underlies why the managerial culture in the railroad industry is known as "command and control." It should come as no surprise that railroads react swiftly and harshly when something goes wrong. This is true across the board: whether an incident produces an injury to a railroad worker, results in an accident, or merely involves an act or omission that causes nothing more than a violation of an operating rule.

It is vitally important for this Committee to understand that the industry's culture, dating back more than a century and a half, is the root of this problem. This culture manifests itself in aggressive and draconian tactics across the board.

The carriers are fond of blaming the Federal Employers' Liability Act as the culprit, suggesting that it is far more adversarial than other programs designed to address workplace injuries and occupational illnesses. However, the railroads are wrong — for two reasons.

First, injured railroad workers seek the assistance of an attorney in only a minority of cases. In fact, a number of studies have been done, dating back years, which show that the percentage of cases in which an attorney is involved in a FELA matter is significantly smaller than the percentage of workers' compensation cases in which an attorney is retained, in many states. Moreover, the overwhelming majority of FELA claims – 94-97 percent -- are settled short of a jury verdict.

Second, if the industry's argument was valid, then we would expect to see noticeably more lenient responses by railroads in cases of accidents, where no personal injuries are sustained, and in disciplinary matters. That, simply, is not the case.

For example, when the FRA first published its Final Rule governing locomotive engineer certification in 1991, the industry's "command and control" culture went into overdrive, and scores of locomotive engineers found their certification revoked for incidents that would not have triggered any disciplinary action whatsoever in the past.

The level of aggressiveness, on the part of the carriers, forced FRA to reopen the rule for major revision barely a year and a half after it went into effect. On April 9, 1993, FRA published

an Interim Final Rule that significantly scaled back some of the revocable offenses and clarified the others.

Although the industry has been hemmed in somewhat by FRA in terms of locomotive engineer certification, “command and control” remains the philosophy when related to railroad workers’ discipline. The June 27th Senate Appropriations Committee report on S. 1710 points out that Railway Labor Act arbitration cases, many if not most involving discipline, take an average of 30 months to resolve and funding for such cases routinely runs out several months before the end of the fiscal year because of caseloads.

It doesn’t matter whether an event involves an injury, an accident, or merely is a disciplinary matter. The industry’s response is swift and harsh; that’s what “command and control” is all about.

In conclusion, the 19th Century ended over 107 years ago. It is time to bring the treatment of railroad workers into the 21st Century. The culture of the industry must change now. Together, we must share ideas and cooperate to implement programs where labor is treated as an equal partner throughout the industry, and workers are considered a valued resource, not a disposable commodity.

Thank you, once again, for the opportunity to testify today, and I’ll be happy to try to answer any questions you may have of me.