



U.S. Department
of Transportation

**Federal Railroad
Administration**

Memorandum

Date: February 3, 2004

Reply to Attn of: OP-04-05

Subject: Inside Hostler Helpers;
Hours of Service Implications

Original Signed by:

From: Edward W. Pritchard
Director, Office of Safety Assurance and Compliance

To: Regional Administrators

The Federal Railroad Administration (FRA) has been receiving letters inquiring about the applicability of the Hours of Service Act to “inside” hostler helpers working in locomotive repair facilities. The FRA has established the following interpretive position on the matter.

The question most often posed is whether employees who perform such duties as throwing switches or giving hand signals, or otherwise assisting in the movement of locomotives inside repair and servicing areas, are performing service covered by the Act. We believe that, by the 1976 amendments, Congress intended to bring “inside” hostlers within the category of employees “engaged in or connected with the movement of any train.” For the purpose of this statute, then, Congress defined inside hostling moves as train movements, i.e., the movement of one or more locomotives, with or without coupled cars. It follows necessarily that inside hostler helpers are as much connected with the movement of trains as outside hostler helpers. In short, by defining train movements to include inside hostling, Congress expanded covered service to include both locomotive operators and their helpers.

In construing the amended statute, FRA takes a functional approach to coverage, that is, we consider the type of work performed, not the craft or job title of the person doing the work. In 1977, FRA amended its regulations relating to the hours of service of railroad employees by adding an agency statement of policy and interpretation in which FRA addressed this question:

“With the passage of the 1976 amendments, both inside and outside hostlers are considered to be connected with the movement of trains. Previously, only outside hostlers were covered. Any other employee who is actually engaged in or connected with the movement of any train is also covered, regardless of his

job title.” (Emphasis added.) (Title 49, CFR Part 228, Appendix A)

Thus, FRA’s interpretation is, and has been since 1977, that employees performing inside hostler duties (e.g., moving a locomotive under its own power to or from a repair shop for fueling, sanding, or general servicing duties; moving a locomotive under its own power to repair or test cab signal or automatic train control equipment; or using a mechanical mule or trackmobile to move locomotives, freight, or passenger cars inside a repair shop) are as much “connected with the movement of a train” as outside hostlers. Since outside hostler helpers are connected with the movements they assist, so too are inside helpers performing covered service.

In explaining its issuance of this interpretation, FRA stated:

“Employees known as ‘outside hostlers’ generally move locomotives between shops or engine terminals and other yard areas. Employees known as ‘inside hostlers’ generally move locomotives within shop or repair areas. Since outside hostlers were considered by the Interstate Commerce Commission, FRA and the industry to be covered by the Act prior to the 1976 amendment which added the words ‘including hostlers’, it is evident that Congress wished to establish as a matter of law that inside hostlers should be considered to be ‘connected with’ hostlers should be considered to be ‘connected with’ the movement of trains”. (42 FR 27594, May 31, 1977)

The Act’s coverage of hostler helpers rests on the same safety rationale. A mistake in throwing a switch or giving a hand signal can be deadly, whether the mistake is made inside or outside a shop or repair area.

Although FRA concludes that all individuals who perform the duties of hostlers and hostler helpers, whether outside or inside, are covered by the Act, we believe that in the 1976 amendments Congress did not intend to cover all railroad employees. Persons performing the job duties of machinists, electricians, laborers, and similar occupations not generally associated with responsibilities covered by the Hours of Service Act, who are not engaged in or connected with the movement of trains, are not covered. To regard as covered service job functions performed by mechanical department personnel—functions not traditionally performed by hostlers and hostler helpers at the time Congress passed the 1976 amendments—would be inconsistent with the statutory purpose.

Duties performed by mechanical department employees that would not constitute covered service can include moving a locomotive on a wheel trueing machine to inspect or turn the next wheel; moving a locomotive so that its mechanical parts can be inspected or repaired; moving any locomotive (including passenger multiple-unit electric cars, freight or conventional passenger locomotives) in a repair shop by use of a winch or other device, other than a mechanical mule or trackmobile; and the separation of multiple-unit electric passenger cars inside a repair shop to allow for

inspection or repair. Accordingly, we conclude that an employee who, in the course of performing maintenance, repair, or troubleshooting inspections, repositions a locomotive, is not “engaged in or connected with the movement of any train” and is therefore not performing service covered by the Hours of service Act. Similarly, a helper who assists such a movement would not be covered.

This opinion on Hours of Service Act coverage of inside hostler helpers and mechanical department employees who move locomotives in shop areas reverses an opinion letter issued by a former FRA Assistant Chief Counsel for Safety. Some railroads may have relied on that 1979 letter in classifying their employees; accordingly, we recognize that FRA has a responsibility to alert such railroads and their employees to the clear meaning of FRA’s published 1977 interpretation. However, we believe that the great majority of railroads are operating in a manner consistent with the views expressed in this letter—views that are consistent with FRA’s 1977 interpretation and with the agency’s application of the law in the field during the years since.

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