



U.S. Department
of Transportation

**Federal Railroad
Administration**

Memorandum

Date: February 3, 2004

Reply to Attn of: OP-04-17

Subject: Commingled Service: Attending Railroad Investigations or Hearings

Original Signed By:

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

To: Regional Administrators

Attached is a July 14, 1997, Office of Safety response to questions posed by the Brotherhood of Locomotive Engineers (BLE) relative to FRA's application of the Federal hours of service law concerning railroad investigations or hearings. Unique to BLE's questions was the circumstance that the investigation was canceled by verbal notification. The notification of cancellation was given to the charged employee after his arrival at the investigation site but prior to the scheduled start of the investigation.

This Technical Bulletin is being distributed to our rail industry customers through the Association of American Railroads, the United Transportation Union, the BLE (including the American Train Dispatchers Department) and the American Short Line and Regional Railroad Association.

Attachment

Attachment to OP-04-17

Mr. Leroy D. Jones
Vice President and National
Legislative Representative
Brotherhood of Locomotive Engineers
400 North Capitol Street, N. W., Suite 850
Washington, D.C. 20001

July 14, 1997

Dear Mr. Jones:

Thank you for your letter on behalf of Mr. Arthur W. Scott of Kendall Park, New Jersey. Mr. Scott requested clarification of the Federal Railroad Administration's (FRA) application of the Federal hours of service laws (Law) concerning attending a railroad investigation.

My staff contacted Mr. Scott and reviewed his questions and the circumstances that prompted his letter. Based on our understanding of the events, excess service did not occur. FRA views the verbal release from the investigation after arriving at Selkirk, New York similar to a release from a duty call when notification comes after the employee's arrival and before the report for duty time. In response to Mr. Scott's questions, the following is FRA's application of the Law:

- ***Is attending an investigation considered covered service?***

Covered service is identified by the Law as "time the employee is engaged in or connected with the movement of a train." However, attending an investigation may be counted in the total time on duty under the commingling provisions of the Law.

Normally, when an employee is compelled by the railroad to attend an investigation, the time spent by the employee in the proceedings is the time that can commingle with covered service, provided covered service is present either before or after the investigation. In addition, time spent in travel to the investigation site, if different than the employee's regular reporting point, is considered as deadheading to duty and will also commingle under the same provisions as the investigation. Should the travel time and the investigation occur after a statutory off-duty period and the employee acquires another statutory off-duty period prior to reporting for covered service, the travel time and investigation time cannot commingle, therefore is not on-duty as provided for in the Law.

If an employee is compelled to attend the investigation as a railroad witness, the same FRA application as above will apply. However, if the employee is to attend the investigation as a witness for the charged, then the commingling provisions will not apply. It stands to reason in the interest of safety in this scenario, that the representative's witness should exercise the same restraints on performing covered service as the railroad is required to respect.

- ***Is it necessary for an engineer to be rested prior to attending such a proceeding?***

If the engineer is currently active and compelled by the railroad to attend an investigation, then he or she should acquire a statutory off-duty period prior to the start of the investigation. In addition, a statutory off-duty period should be acquired after the completion of the investigation to prevent commingling with the following covered service. A statutory off-duty period beforehand after the investigation and travel precludes these activities from commingling with any covered service.

- ***If the investigation had been cancelled prior to my arrival, was any covered service actually performed, other than the drive to Selkirk?***

It is FRA's understanding that you were released after 8 hours of covered service as the engineer of Conrail Train WPME-70 at 0300 on April 16, 1997. Following this service, you elected to drive directly to Selkirk, arriving at 0700, well in advance of the investigation. You arrived at Conrail's Albany Division Headquarters and were notified that the investigation had been cancelled, all occurring prior to the start time for the investigation (0900).

Given these times, FRA concludes that this scenario is addressed in its application of the Law concerning Call and Release. Since no service was performed after your arrival and you were released prior to the start of the investigation, FRA considers the travel as Limbo, neither time on nor off duty. The return travel to your home is also considered as Limbo, that is, deadheading to the point of final release. After your arrival at your point of final release, a statutory off-duty period of 8 hours is required prior to the start of a new 12 hour covered service availability period.

Since commingling activities of the investigation did not occur, your total time on duty remains at 8 hours, the time you spent in covered service as the engineer of Train WPME-70. Excess service did not occur as outlined in your letter and phone conversation with my staff.

- ***Keeping in mind that the investigation had been cancelled and never took place, would the time spent between arrival at Selkirk and 0900 be considered Limbo time?***

The time spent between your arrival at Selkirk and the verbal notification of the investigation's cancellation is time spent at your behest, since you chose to drive directly to Selkirk for personal reasons. FRA considers this time as Limbo, since you are neither on duty nor at your point of final release where off-duty time could begin.

- ***Would the drive home be considered as "Deadhead Return to Final Terminal" and therefore not applicable?***

FRA considers the travel time driving home as Limbo, because covered or commingling service did not occur within an 8 hour period after your arrival. The statutory off duty period required to restore your service availability to 12 hours cannot begin until you establish a release time after your arrival at your home or point of final release.

- ***Due to the circumstances involved, as I have explained above, did a violation occur?***

Under FRA's application, a violation of excess service did not occur in the circumstances outlined in your scenario. FRA requires excess service under the law to be reported to us. The incident concerning Train WPME-70 and your cancelled investigation was not reported by Conrail as excess service.

I appreciate your interest in this matter and hope this information is helpful.

Original signed by James T. Schultz, Associate Administrator for Safety.