



U.S. Department
of Transportation

**Federal Railroad
Administration**

Memorandum

Date: February 3, 2004

Reply to Attn of: OP-04-26

Subject: Coverage of Inside Hostlers and their Helpers
under the Hours of Service Act

Original Signed By:

From: Edward W. Pritchard

Director, Office of Safety Assurance and Compliance

To: Regional Administrators

This discussion clarified the applicability of the Hours of Service Act (the Act) as it pertains to employees who move locomotives in or around repair shops or assist such movements. The Hours of Service Act regulates duty hours of employees “actually engaged in or connected with the movement of any train, including hostlers.” [45 U.S.C. Section 61(b) (2)]. However, the law does not address every situation in which railroad rolling equipment is moved. In our analysis, we make distinctions between “train movements” and other equipment movements not directly related to transportation (e.g., for maintenance, repair, or troubleshooting inspections).

The 1976 amendments to the Act brought “inside” hostlers within the category of employees “engaged in or connected with the movement of any train.” For the purpose of this statute, 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.

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 addressed this issue in an agency statement of policy and interpretation:

“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.] 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 or moving a locomotive under its own power to repair or test cab signal or automatic train control equipment) 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 amendments 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' the movement of trains." 42 FR 27594, May 31, 1977.

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.

An employee who, in the course of performing maintenance, repair, or troubleshooting inspections, repositions a locomotive (to a limited extent, as indicated by the examples given in "II. Noncovered Service" below), 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.

(Continued on next page)

EXAMPLES

I. Covered Service

- A road crew pulls a locomotive up to the blue signal and detrains. Sometime later, a mechanical department employee drops the blue flag and moves the locomotive into the repair area and then to the fueling station for servicing prior to taking it into the shop for maintenance.
- Same situation as above. Now, the servicing is complete, and the employee moves the locomotive from the servicing location to the shop for repairs.
- Same situation as above except the employee moves the locomotive directly from outside the area to the shop and positions it for repairs, bypassing the servicing area.
- In any of the above scenarios, a trackmobile (defined by the regulations as a “locomotive”) is utilized to move the locomotive instead of the prime mover.
- A locomotive enters the repair area for a routine inspection, including a 92-day inspection.
- An employee operates a locomotive under its own power to repair or test cab signal, train stop or automatic train control equipment, regardless of distance.
- Locomotive repairs have been completed, delayed, cancelled or deferred, and an employee moves a locomotive out of the shop to a location elsewhere inside the repair area; moves it to the servicing area; or moves it outside the blue signals.

II. Noncovered Service

- Moving a locomotive on a wheel truing machine to inspect or turn the next wheel.
- Moving a locomotive so that its mechanical parts can be repaired or for purposes of “troubleshooting” inspections.

- Moving any locomotive (including passenger multiple-unit electric cars, freight locomotives or conventional passenger locomotives) in a repair shop by use of a winch.
- Separating multiple-unit electric passenger cars inside a repair shop to allow for inspection or repair.
- Once a locomotive is in the shop and spotted for maintenance or repair, an employee repositions the locomotive to another location inside the shop area (regardless of time or distance) to complete a specific task directly related to the repair, maintenance, or troubleshooting inspection underway. This would include “load-testing” immediately after repair.
- After a locomotive is spotted inside the shop for maintenance or repair, an employee utilizes a trackmobile to reposition the locomotive to another location inside the shop area (regardless of time or distance) to complete a specific task directly related to the repair, maintenance, or troubleshooting inspection underway.
 - Once a locomotive is in the shop, an employee utilizes a remote excitation switch from beside or on the locomotive to energize a traction motor to move it, under either of the two immediately above examples.
- Once a locomotive is in the shop and spotted for maintenance or repair, an employee repositions the locomotive to another location inside the shop area (regardless of time or distance) to complete a specific task directly related to the repair, maintenance, or troubleshooting inspection underway. This would include “load-testing” immediately after repair. Enroute to the other location, the same employee during the same tour of duty stops the locomotive short and waits while another locomotive clears the area ahead. (This applies even if the locomotive operator leaves the locomotive sitting unoccupied for a given period of time. As long as the trip is directly related the “maintenance” function, it is not a “train movement” function).
- An employee moves freight or passenger cars inside a car repair shop area or RIP track by means of a winch, mechanical mule, or trackmobile.

III. Commingled Covered Service

- Once a locomotive is in the shop and spotted for maintenance or repair, an employee repositions the locomotive to another location

inside the shop area (regardless of time or distance) to complete a specific task directly related to the repair, maintenance, or troubleshooting inspection underway, as previously illustrated in “II. Noncovered Service” above. This would include “load-testing” immediately after repair. None of these activities alone would be covered. Enroute to the other location inside the shop area, the same employee during the same tour of duty, stops to fuel and sand the locomotive, or perform any other general servicing duties. (In other words, the principle of commingled service applies. See 45 U.S.C. Section 62 (b). In any case in which, during the course of repairing, maintaining, or servicing a locomotive, an employee performs one or more covered job functions along with one or more job functions that do not constitute covered service, the more restrictive job function classification will apply, and, therefore, the employee will be considered to be in covered service).

#