



U.S. Department
of Transportation
**Federal Railroad
Administration**

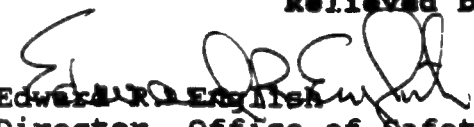
→ DENNIS

Memorandum

Date: **OCT 28 1992**

Reply to Attn of **OP 92-04**

Subject: **Information: Hours of Service Decision:**
Relieved but not Released

From: 
Edward R. English
Director, Office of Safety Enforcement

To: **Regional Directors**

FRA has lost the case in the U.S. Court of Appeals for the Ninth circuit regarding "relieved but not released." We will follow the court's opinion in that case beginning on November 1, in the States comprising the Ninth Circuit. This means that time spent awaiting deadhead transportation at the end of the duty tour will be counted as on-duty time, where the 12-hour limit is exceeded within the Ninth Circuit.

Beginning January 1, 1993, FRA will follow this decision in the rest of the United States.

By agreement with the plaintiffs in the 9th Circuit cases and the national labor organizations, complaints arising out of conduct occurring prior to these dates (November 1 in the 9th Circuit except Oregon, January 1 elsewhere) will be treated as moot. The Operating Practices Division will coordinate close-outs on those complaints. Oregon complaints arising out of the district court decision will be pursued to conclusion.

The Office of Chief Counsel is communicating directly with affected railroads in the Ninth Circuit. Please make a maximum effort to ensure that operating officers and chief dispatchers in your regions are aware of this change in the application of the Hours of Service Act.

The attached letter from the Chief Counsel provides more background and detail, including the States affected. Additional guidance will be forthcoming in the near future from the Operating Practices Division and the Office of Chief Counsel (working through Operating Practices).

Attachment



U.S. Department
of Transportation

Federal Railroad
Administration

400 Seventh St. S.W.
Washington D.C. 20590

OCT 28 1992

Robert W. Blanchette
Vice President-Law and General Counsel
Association of American Railroads
American Railroads Building
50 F St., N.W.
Washington, D.C. 20001

Dear Mr. Blanchette:

On September 22, 1992, the United States Court of Appeals for the Ninth Circuit issued a decision in the related cases of United Transp. Union v. Skinner (No. 90-16741) ("UTU") and Bhd. of Locomotive Engineers v. Skinner (Nos. 91-35911, 91-36061) ("BLE"). A copy of the decision is enclosed. Those cases concern FRA's interpretation of the Hours of Service Act as it pertains to the status of train crew members waiting for deadhead transportation to their point of final release.

The Court of Appeals upheld the decision of the district court in Portland in BLE, which found that all time spent waiting for transportation is to be considered on-duty time. In the UTU case, which was an appeal from the district court in San Francisco, the Court of Appeals affirmed the district court's order of dismissal as to the claims for injunctive relief and mandamus, but reversed the district court's dismissal of the entire case and remanded the case to that court for further proceedings consistent with the appellate court's opinion on the interpretive issue.

FRA has traditionally considered an employee on duty during the time spent awaiting arrival of the deadhead vehicle only if the employee actually has duties to perform. If the railroad had relieved the employee of all responsibility, we have considered the time spent merely waiting for the deadhead vehicle to arrive as "limbo time" (i.e., neither on nor off duty) for hours of service purposes.

Although we do not agree with the court's rationale, we have decided to accept its decision and treat it as binding. Given the ambiguity of the Act's pertinent provisions, the issue has always been a close one. While we do not agree that the conclusion reached by the court is compelled by previous case law, we believe the court's reading of the statute, like the interpretation FRA has held until now, to be reasonable.

Moreover, our traditional interpretation was based on the assumption that some railroads might choose to continue crews in train operation if having the crews tie up the train and await deadhead transportation would itself constitute a violation. We did not wish to encourage the less safe alternative of having the crews continue train operation after expiration of their legally permissible hours. However, we have not seen evidence of such behavior in Oregon, where the interpretation of the district court has been in effect for more than a year. Moreover, with increased Hours of Service Act penalties and individual liability now a reality, we are more convinced that railroads will work to avoid violations and, if faced with an inevitable violation, choose the safer alternative. Although awaiting deadhead transportation will now constitute time on duty and FRA will enforce the Act accordingly, FRA will treat more harshly the violations that are more likely to have a serious impact on safety, *i.e.*, those violations involving actual train operation after the period permitted by the Act. In addition to the legal incentives to encourage compliance, it appears that railroads have an economic incentive to minimize time spent awaiting deadhead transportation, which is wholly unproductive time.

As our original interpretation made clear, we have long been concerned about the instances in which employees are held on trains for several hours awaiting/deadhead/transportation even in the absence of any valid emergency that might explain such an occurrence. To the extent the waiting periods are extremely lengthy, there is a chance that they could contribute to the cumulative exhaustion of the employee, despite the fact that the legally required rest period is provided upon arrival at the point of final release. Thus, to the extent that application of the Ninth Circuit's decision reduces the frequency of such instances, it may actually contribute to safety.

Accordingly, in the interest of uniform application of the Hours of Service Act, we will treat the Ninth Circuit's opinion as binding in the entire nation. We will do so in two stages. We will consider the court's reading of the Act binding within the Ninth Circuit beginning at 12:01 a.m. on November 1, 1992. The Ninth Circuit, of course, includes Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington. We have chosen November 1 because that date will likely precede or be very close to the issuance of the mandate by the Court of Appeals and railroads within that circuit have had every reason to expect that its mandate would be honored.

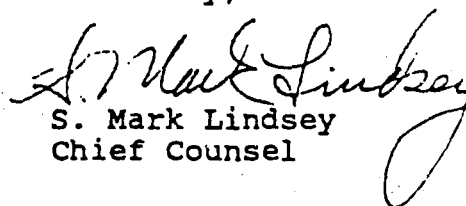
This means that, starting on November 1, all time spent awaiting the arrival of a deadhead vehicle for transportation to the point of final release shall, if it occurs within the territory of the Ninth Circuit, be treated as time on duty, and

such time should be recorded as such and reports of excess service filed, as necessary, under 49 CFR Part 228. Should violations occur and come to FRA's knowledge, FRA will, of course, continue to exercise its prosecutorial discretion in deciding which cases warrant civil penalties. Although we plan to mail copies of this letter to affected railroads that operate within the Ninth Circuit, we would appreciate your cooperation in making known our intention to enforce the court's decision to your member railroads.

For the remainder of the nation, we believe that a period of adjustment is necessary in order to permit railroads to train their employees who will be responsible for implementation of the decision. Railroads with operations outside the Ninth Circuit have not had reason, until now, to believe those operations would be affected by the court's decision. We believe a period of 60 days should permit the necessary training to occur. Accordingly, we will begin to apply the Ninth Circuit's decision to operations outside that circuit at 12:01 a.m. on January 1, 1993.

We believe that the longstanding controversy surrounding this single issue of how to treat time spent awaiting deadhead transportation is illustrative of problems inherent in the Hours of Service Act itself. We remain hopeful that railroad management and railroad labor organizations will join FRA and the National Transportation Safety Board in recommending changes in the Act that would permit FRA to issue hours of service regulations reflective of current scientific information concerning sleep cycles and the effects of fatigue on safety-sensitive performance.

Sincerely,


S. Mark Lindsey
Chief Counsel

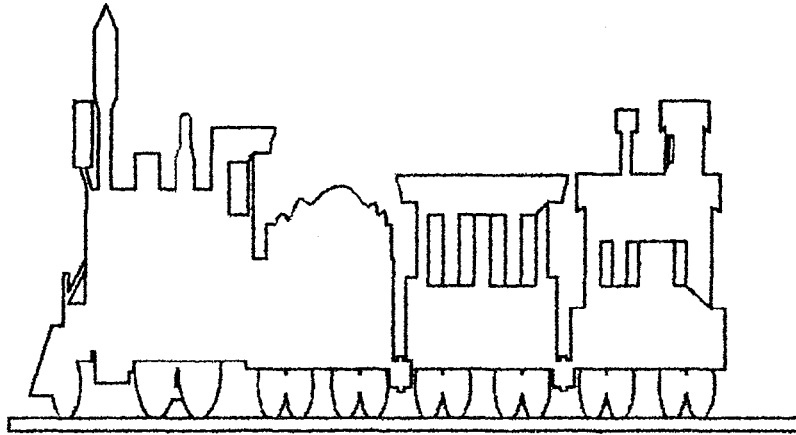
cc: Lawrence M. Mann, Esq.

Thomas C. Dorsey, Esq.
American Short Line Railroad Assn.

All railroads with operations in the Ninth Circuit

HOURS OF SERVICE ACT

and



RECORDKEEPING REGULATION (49 CFR PART 228) (Revised February 1993)

BACKGROUND - HOURS OF SERVICE ACT

(As amended thru 1988)

- **The Hours of Service Act was enacted on March 4, 1907 to "promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon."**
- **When enacted in 1907 the Act did not specify the classes of employees subject to its terms, but stated all employees engaged in or connected with the movement of any train were limited to 16 hours on-duty time.**
- **Amended October 15, 1966: All powers, duties, and functions of the Interstate Commerce Commission relating to hours of service were transferred to DOT.**
- **Amended December 26, 1969: Train and engine service employees hours reduced from 16 to 14, with a provision for a further reduction from 14 to 12 hours after two years.**

BACKGROUND - HOURS OF SERVICE ACT

(Continued)

- **Amended July 8, 1976:** Included signal service employees and hostlers within the scope of the Act.
- **Amended November 2, 1978:** Added definition of designated terminal; applied chapter to officers, agents, and employees of common carriers.
- **Amended June 22, 1988:** Increased civil penalties; substituted "railroad" for common carrier throughout, and included maintenance-of-way employees in clean, safe, and sanitary sleeping quarters provision.

As revised by the RSIA of 1988, the Hours of Service Act applies to any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad).

- **As revised by the 1992 Rail Safety Enforcement and Review Act, maximum penalties increased to \$10,000 and \$20,000 (for gross negligence). Penalty provisions amended to clarify they apply to all non-railroad entities as well as railroads.**

HOURS OF SERVICE ACT

(Who's Covered?)

*Hours of Service is the
function, not the job title*
*Switchmen, Tendermen,
Switch Tender, Same Yardmaster*

- **SECTION 2:**

A member of a train or engine crew or other employee
engaged in or connected with the movement of any train.

- (1) Engineers, firemen, conductors, trainmen, switchmen
- (2) Switch tenders, levermen, yardmasters (?)—
- (3) Hostlers (inside and outside)—

- **SECTION 3:**

An employee who transmits, receives, or delivers orders
affecting train movements.

- (1) Train order operators, train dispatchers
- (2) Control operators, levermen, bridge tenders (?)

or yardmaster!

- **SECTION 3A:**

An employee engaged in installing, repairing or
maintaining signal systems.

- (1) Signal maintainers

TRAIN AND ENGINE SERVICE

- Train or engine service refers to the actual assembling or operation of trains.
- (1) No employee engaged in train or engine service may be required or permitted to work in excess of 12 consecutive hours. Then must be given at least 10 consecutive hours off duty before being permitted to return to work.
- (2) No employee engaged in train or engine service may be required or permitted to continue on duty or go on duty unless he has had at least 8 consecutive hours off duty within the preceding 24 hours.
- When an employee's work tour is broken or interrupted by a valid period of interim release (4 hours or more at a designated terminal), he may return to duty for the balance of the total 12-hour work tour during a 24-hour period.
- After completing the 12 hours of broken duty, or at the end of the 24-hour period, whichever occurs first, he may not continue on duty until he has had at least 8 consecutive hours off duty.
- On-duty time commences when an employee reports at the time and place specified by the railroad and terminates when the employee is finally released of all responsibilities.

DEADHEAD TRANSPORTATION

(General)

- "Deadhead transportation" refers to train and engine service employees, only. *Not the Operator, etc.*
- Time spent deadheading TO a duty assignment is considered time on-duty.
- Time spent deadheading FROM the final duty assignment of the work tour to his point of final release is not computed as either time on-duty or time off-duty, but "limbo" time.
depends on what you do when you get to point of final release.
● Note: The "point of final release" is that point where the employee receives the required 8- or 10-hour off-duty period.
- The nature of deadhead transportation is determined by the action of the employee after arrival at the designated terminal.
- A railroad's election to interrupt an employee's rest period at one designated terminal in order to deadhead him to another designated terminal for the purpose of obtaining his statutory off-duty period, is not prohibited by the Act.

DEADHEAD TRANSPORTATION

(Continued)

- A crew is relieved of duties on line of road, transported to their designated terminal, and then to the lodging facility. When does their off-duty period begin?
- A crew is relieved of duties on line of road, and instead of going to the yard office, they are transported directly from the train to the lodging facility at their designated terminal. When does their off-duty period begin?
- A crew is relieved of duties on line of road, transported to the yard office (designated term.) and spends an hour enroute to the lodging facility. When does their off-duty period begin? *When they arrive at the lodging facility because it is over 1/2 hour.*
- REPORTING POINTS – Regardless of any agreement between a railroad and its employees, each employee can have only ONE REGULAR REPORTING POINT. Time spent traveling to a point of duty assignment other than an employee's regular reporting point constitutes deadheading to duty (on-duty), versus commuting time.
- Deadheading Following Toxicological Testing – Time spent deadheading from a collection facility back to the point of final release is not distinguishable from other situations involving deadhead transportation at the end of the duty tour. The period is therefore "limbo" time.

Example: Crew on duty 10 hrs, relieved from train at facility. Accompanied to collection facility. 12 hrs. Taken 1 hour to get then back. No violation.

Post Accident

DESIGNATED TERMINALS

(Suitable Food and Lodging)

- In order for a period of interim release to be valid, it must be for a period of 4 or more hours at a designated terminal.
- A designated terminal is defined as a terminal
 - (1) which is designated in or under a collective bargaining agreement as the "home" or "away-from-home" terminal for a particular crew assignment; and
 - (2) which has suitable facilities for food and lodging.
- "Suitable facilities for food" assures the availability of nutritionally adequate and palatable food which could be consumed with appropriate utensils in a reasonably clean environment.
- Suitable facilities for food should be available when needed for nutritional purposes (i.e., normally at the beginning and end of a rest period). They need not be available continuously throughout the rest period.

*Wisconsin
Control does not have
Union, a collective
no bargaining
agreement*

Care by Case Basis

DESIGNATED TERMINALS

(Suitable Food and Lodging Cont.)

- The suitability of canned, prepackaged, and frozen fast-foods such as canned soup, cold or microwave sandwiches, and frozen pizza depends on the overall circumstances involved. Disputes about the desirability of various types of meals can best be handled thru collective bargaining.
- The legislative history suggests that transportation must be furnished to eating facilities if the restaurant is "beyond a reasonable walking distance." But that is not to say that the railroad must pay for the transportation – only that it be made available.
- The Act requires only that suitable facilities for food and lodging be available. It does not indicate who must pay for the accommodations.

CALL AND RELEASE

- **"Call and release"** refers to cases in which an employee is ordered to report for duty at a specified time and place, and then is later released from that call to duty, while being ordered to be available for a later call to duty.
- If a "call and release" occurs before he leaves his place of rest, he has not been on-duty under the Act.
- If he leaves his place of rest before such notification, the time between his departure and his notification, is treated as "limbo" time.
- **EXAMPLE:** An employee is ordered to report for duty at 7:30 a.m. He arrives at his reporting point at 7:15 a.m. and is notified that his 7:30 a.m. has been cancelled. He would begin a new off-duty period at 7:15 a.m. Thus, he could either be given a 4-hour interim release or be considered as on duty from the original reporting time of 7:30 a.m.
- **Note:** In the above example, if the employee's rest period ended at 7:30 a.m., and his travel time from his place of rest to his reporting point is counted as "limbo" time, a violation occurred because he did not have his statutory off-duty period.
- **EXAMPLE:** An employee is ordered to report for duty at 7:30 a.m. At 7:45 a.m., he is notified his call has been set-back to 9:30 a.m. He has been on duty for 15 minutes, and if he goes on duty at 9:30 a.m., his time on duty shall be computed as starting at 7:30 a.m.
- **Note:** In the above example, if the employee's call is set-back to 11:30 a.m., he may work 11 hours 45 minutes because he had an interim release of 4 or more hours.

7:30 AM
Arrives 7:15 AM
& so notified.

FRA
had to
strengthen
this due
to
BARTON

RELIEVED, BUT NOT RELEASED

*They are not on duty
they are waiting
what matters
is that they
are relieved
from responsibility*

- **FRA's PRIOR INTERPRETATION:**

When train and engine service employees were instructed to go off-duty on line of road, and to wait at a specified point for transportation to their point of final release, the time spent waiting was "limbo" time, provided they were not required to perform some other duty.

- **BACKGROUND:**

The UTU filed suit against FRA over our interpretation of "relieved but not released" as outlined in Greg McBride's August 4, 1989, letter. On July 13, 1990, the suit went to trial in a San Francisco district court and a written order was issued August 1, 1990, finding in FRA's favor.

The BLE filed suit against FRA and on May 30, 1991, the U.S. District Court for the District of Oregon issued a decision, finding all time spent waiting for transportation to be considered on-duty time whether or not the employees have any duties to perform.

- FRA appealed the Oregon decision to the Ninth Circuit Court of Appeals and treated the District Court's judgment as binding in Oregon. Time spent awaiting transportation in Oregon should be recorded as on-duty time and reports of excess service should be filed with FRA.
- On September 22, 1992, the U.S. Court of Appeals for the Ninth Circuit upheld the decision of the District Court in Oregon.
- FRA decided to accept the decision and treat it as binding. FRA began enforcing the decision on January 1, 1993.

WRECK OR RELIEF TRAINS

- Prior to the 1976 amendments, crews of wreck and relief trains were exempted entirely from the hours of service limitations. Under present law that is no longer the case.
- The crew of a wreck or relief train may be permitted to be on duty for not to exceed 4 additional hours in any period of 24 consecutive hours whenever:
 - (1) An actual emergency exists; and
 - (2) The work of the crew is related to that emergency.
- An emergency ceases to exist when the track is cleared and the line is open for traffic.
- Since the track is not clear until the wreck train is itself out of the way, the crew may operate the wreck train to its terminal, provided this can be accomplished within the total of 16 hours on duty.
- The availability of relief personnel does not negate the existence of an emergency for wreck or relief trains.

Form FRA 6180-3
always
has to be
filed. & even
if a railroad with 15 or less employees
received a
lawyer

TRAIN AND ENGINE SERVICE

(Emergency Provision)

- **Section 5(d) of the Act states that the provisions of the Act do not apply in any case of casualty or unavoidable accident or the Act of God; nor where the delay was the result of a cause not known to the railroad or its officer in charge of the employee at the time the employee left a terminal.**
- **Delays and operational difficulties are common and must be regarded as entirely foreseeable.**
- **Common operational difficulties which do not provide relief include:**
(Broken draw bars, locomotive malfunctions, equipment and brake system failures, hot boxes, unexpected switching, doubling hills and meeting trains).
- **The need to clear a main track or cut a crossing does NOT justify disregard of the Act.**
- **The railroad must still employ due diligence to avoid or limit excess service.**

CANADIAN SERVICE

- Does the Hours of Service Act apply to service in Canada or Mexico?
- The U.S. has no jurisdiction to control conduct on foreign soil. Thus when a train crosses the border and enters Canada or Mexico, its crew ceases to be subject to limitations on service imposed by U.S. law.
- However, when a train enters the U.S. from Canada or Mexico, the crew is immediately subject to the Act and all time spent on duty in that country is counted in computing the appropriate periods of service and release.
- For example, if, on entering the U.S., an employee had been on duty for 14 hours, the railroad would immediately become liable for a civil penalty for permitting the employee to remain on duty within the U.S. in excess of the 12-hour duty limitation.

COMMINGLED SERVICE

(General Provisions)

- All duty time for a railroad even though not otherwise subject to the Act must be included when computing total on-duty time of an individual who performs covered service during the 24-hour period.
- The 24-hour period begins upon the commencement of a work tour immediately after his having received a statutory off-duty period.
- Duty time subject to commingling occurs when it is **REQUIRED BY THE RAILROAD AS A CONDITION OF EMPLOYMENT.**
- The law does not distinguish treatment of situations in which non-covered service follows, rather than precedes, covered service.
- When an employee performs service covered by more than one restrictive provision, **the most restrictive provision determines the total lawful on-duty time.**
- However, an employee covered by Section 2 (T&E) does not become subject to Section 3 (operators) merely because he handles train orders in the course of his duties as a trainman.

COMMINGLED SERVICE

(Attendance at Rules Classes)

- Attendance at REQUIRED rules classes is duty time subject to the provisions of commingling.
- When attendance at a rules class fulfills a CONDITION OF EMPLOYMENT, such attendance is "required."
- This is true even where employees have the option to attend one of several sessions, and it is immaterial that specific scheduling of such service is left, in part, to the employee.
- (For example, consider a system that permits an employee to attend any of six sessions within a given period or to attend one final session held for those who missed an earlier one. Whether the employee attends one of the first six or the last one, his attendance fulfills a condition of employment, and is subject to commingling).
- FRA inspectors should review a railroad's Part 217.11 program filing to determine whether attendance at an operating rules REVIEW class is required by the railroad.
- (For example, SP's filing requires its employees to attend a "rules examination," but considers the preparatory review class as optional. SP's program instead calls for study guides to be provided employees for self-study. Therefore, for SP employees, time spent in the "review class" is not subject to commingling, but time spent "taking the written examination" is subject to commingling).

Brought on
by
South
Pa

COMMINGLED SERVICE

(Yes or No?)

- **RAILROAD INVESTIGATION HEARINGS** – When an employee is "required by the railroad" to attend a hearing as a principal under charge, or as a witness on behalf of the railroad, such time is subject to commingling.
- **RAILROAD SAFETY COMMITTEES** – As long as participation in railroad safety committee activities is a voluntary act and not a condition of continued employment, such time is not normally subject to commingling.
- **JURY DUTY** – Time spent in jury duty and similar endeavors is not "other service performed for the railroad" and not subject to commingling.
- **PHYSICAL EXAMS** – If an employee is required to report for a physical examination as a condition of continued employment, that time would be subject to commingling. The issue of payment for services rendered or contract requirements is not recognized or covered by the Act.
- **FAMILIARIZATION TRIPS** – If riding a train for the sole purpose of qualifying on the physical characteristics of the railroad in the same 24-hour period as performing covered service, such time would be computed in total on-duty time.

Fact that he
gets paid
to ride
train doesn't
matter
if it is
voluntary or not.

COMMINGLED SERVICE

(Yes or No?, Cont.)

*Don't let
Railroad set up
Interviews for you.*

- **ACCIDENT INVESTIGATION INTERVIEWS** – If the railroad requires a train crew to remain on railroad property to provide information regarding an accident, the time spent waiting to give, and giving is "on-duty" time.
- (If an FRA inspector interviews a train crew regarding an accident, that time is not subject to comingling, because the railroad is not requiring them to do so).
- (Inspectors should not ask the railroad to have a train crew available for an interview, but should schedule the interviews with the individual crewmembers).
- (If inspectors interview a crew at a post-accident tox collection site, that time would count as on-duty time and the railroad would be required to report to FRA any excess service).
- **DEADHEADING IN A PRIVATELY-OWNED VEHICLE** – If a railroad **REQUIRES** an employee to deadhead from a duty assignment to his home terminal in a privately-owned vehicle without the opportunity to obtain rest or to be transported, this activity could be considered service for the railroad.
- (By offering to transport the employee or allow him the opportunity to obtain rest, the railroad would be in compliance even if the employee **ELECTED** to drive his own vehicle).

COMMINGLED SERVICE

(Yes or No? Cont.)

- **ONBOARD OBSERVATIONS BY RAILROAD OFFICERS –**
The railroad officer, acting in a supervisory capacity when riding trains to perform observations of crewmembers, is not subject to comingling.

(However, if he takes over control of the train by operating the controls of the locomotive or replaces a train crewmember and assumes the normal duties of that crewmember, he would become subject to comingling).

ADMINISTRATIVE DUTIES - FRA views even a limited task, (such as entering information into a computer terminal at the completion of a duty tour), despite its de minimus nature and probable lack of impact on railroad safety, as time on duty.

(Violations coming in 5", 6", etc., & are sending them back to Complainant.)

(However, should violations occur FRA will continue to exercise its prosecutorial discretion).

*Can't said sitting
even if sitting
constitutes work
for the carrier -*

OPERATORS/DISPATCHERS

- The handling of orders governing the movement of trains is service covered by Section 3 of the Act.
- Includes operators, dispatchers, or other employee who by the use of an electrical or mechanical device, dispatches, reports, transmits, receives, or delivers orders pertaining to or affecting train movements.
- An employee may not remain on duty for more than 9 hours, whether consecutive or in the aggregate, in any 24-hour period, where 2 or more shifts are employed.
- Where only 1 shift is employed, an employee is restricted to 12 hours (consecutive or aggregate) during any 24-hour period.
- The time spent traveling between different places of duty is considered as time on duty.
- 1 hour is the minimum acceptable release period for off-duty time.

OPERATORS/DISPATCHERS

(Emergency Provisions)

- In an emergency, an employee may work an additional 4 hours in any 24-hour period for a maximum of 3 days in any period of 7 consecutive days. However, the railroad must make reasonable efforts to provide relief.
- In determining whether the emergency provisions apply, FRA considers whether rested relief employees were available and whether the absence of rested relief employees was foreseeable by the railroad.
- A dispatcher that performs duties from 7 a.m. to 7 p.m. in association with an emergency should not be allowed to return to duty at 7 a.m. the following morning when the emergency had ceased to exist. The 15-hour off-duty period is a good rule-of-thumb to follow. The dispatcher could legally return to duty at 10 a.m. and continue on duty for a maximum period of 9 hours.
- If the emergency had ceased to exist the dispatcher who went on duty at 7 p.m. should be relieved at the expiration of 9 hours during the 24-hour period involved.
- It remains the duty of the railroad to exercise a high degree of diligence to do all reasonably within its power to prevent or minimize excess service, even in emergency situations.

OPERATORS

*Came about
due to BW-
BW was doing
all.*

(Handling Mandatory Directives)

- FRA does not consider the function of REMOVING mandatory directives (i.e., train orders, clearances, track warrants/bulletins) from a computer printer or fax machine as service covered under the Act.
- However, if the employee who removes them has responsibilities which include the following, he is subject to the Act:
 - (1) ACKNOWLEDGING RECEIPT of the mandatory directives.
 - (2) ENSURING THE ACCURACY of the mandatory directives.
 - (3) VOIDING a mandatory directive upon instruction from the train dispatcher.
 - (4) MAKING PHOTOCOPIES of the mandatory directives for distribution to trains.
 - (5) MAINTAINING A LIST of mandatory directives IN EFFECT for the purpose of distribution to trains.
 - (6) RELAYING mandatory directives governing the movement of trains between the train dispatcher and trains.

BRIDGE TENDERS

- A "switch" is a movable section of railroad track used in transferring a train from one set of tracks to another. It does not include a device used to open or close electric circuits which control the movable section of a bridge.
- Bridge tenders who control automatic signals or automatic switches (above definition) or deliver train orders affecting the movement of trains are covered by Section 3 of the Act.
- Bridge tenders who receive instructions by telephone or other electrical device to
 - line specific hand operated switches (above definition) affecting the movement of trains, or
 - give hand signals to proceed after personally determining the locking mechanism is locked for the intended movementare covered by Section 2 of the Act. They are in effect the same as switch tenders.
- Bridge tenders who merely receive instructions from a dispatcher or operator to swing or lower a bridge into position for train passage and are not directly involved in communicating information to the train, are not covered.
- NOTE: There are bridges which cannot be moved until an electric circuit is open from a remote location such as a train dispatching office. After the dispatcher opens the circuit, the bridge tender can manipulate the bridge into proper position. These bridge tenders are typically maintenance-of-way employees who have no direct involvement in train movements.

HOURS OF SERVICE EMPLOYEES

(Recordkeeping)

Part 228.9(a) requires that records maintained be:

- o Signed by the employee whose time on duty is being recorded or, in the case of train and engine crews, signed by the ranking crewmember;
- o Retained for 2 years; and
- o Available for inspection and copying during regular business hours.

*pull out CFR, the
+ go down the
line.*

*CSX has
applied for behavior
for use of their
electronic system.*

Part 228.11 (a) requires the railroad to keep a record of the following information concerning the hours of duty of each employee:

- o Identification of employee.
- o Place, date, and beginning and ending times for hours of duty in each occupation.
- o Total time on duty in all occupations.
- o Number of consecutive hours off duty prior to going on duty.
- o Beginning and ending times of periods spent in transportation, other than personal commuting, to or from a duty assignment and mode of transportation (train, track car, railroad motor vehicle, personal auto, etc.).

F6180.3

*Total Time on Duty = Should be
stated for
Hours of Service
Purposes.*

NOTE: Number of consecutive hours off duty prior to going on duty should be "actual" hours, not 8+ or 24+. Regarding computerized hours of service records, we expect actual hours off duty up to 99 hours.



U.S. Department
of Transportation
Federal Railroad
Administration

FEDERAL RAILROAD ADMIN.

93 JAN 28 PM 3:31

OFFICE OF CHIEF COUNSEL

Office of the Administrator

400 Seventh St. S.W.
Washington, D.C. 20590

JAN 27 1993

Mr. James (J.P.) Jones
State Legislative Director
United Transportation Union
California State Legislative Board
921 11th Street, Suite 502
Sacramento, California 95814

Dear Mr. Jones:

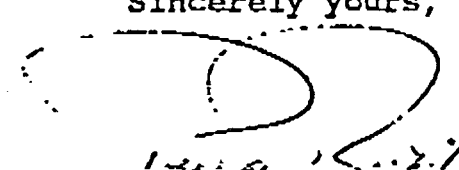
Thank you for your letter of October 16, 1992, in which you asked for an interpretation of whether time spent by Southern Pacific Transportation Company (SP) conductors entering information into a computer terminal at the completion of their tours of duty counts as time on duty for purposes of the Hours of Service Act (Act).

Under the Act, time on duty for an SP conductor shall commence when that employee reports for duty and terminate when that employee is finally released from duty, and shall include the time the conductor is actually engaged in or connected with the movement of any train, as well as the time such employee spends performing other service for the railroad. See 45 U.S.C., Sections 61(b)(3)(D) and 62(b). The Federal Railroad Administration (FRA) views even limited, incidental administrative activities as commingled with covered service even if such activity takes no more than a few minutes.

Accordingly, even a limited administrative task, despite its de minimis nature and probable lack of impact on railroad safety, is considered time on duty for purposes of the Act. However, should violations occur and come to FRA's knowledge, FRA will, of course, continue to exercise its prosecutorial discretion in deciding which cases warrant civil penalties. See 49 Code of Federal Regulations, Part 209, Appendix A.

I hope this information is helpful.

Sincerely yours,


Perry A. Rivkind
Acting Administrator

FRA:RRS11:Norris:60508:tes:1/7/93:1/26/93
Control No: 921222-12212
cc: RCC, ROA20, RRS1 & 3, OSE(2),
Rdg & Subj Files, C:92-11725.CO

Mr. W. A. Thompson
District D&E Chairman
Brotherhood of Locomotive Engineers
891 Santiago Road
Imperial, Pennsylvania 15126-9602

NOV 10 1992

Dear Mr. Thompson:

This will respond to your October 27 letter concerning hours of service questions posed in a November 26, 1991 letter. I regret the inconvenience of the delay and hope the following will assist you in handling questions from your membership.

The Hours of Service Act (Act) is silent on the "undisturbed rest" issue. The Act requires a specific period of consecutive hours off duty after twelve hours on duty in either aggregate or continuous time. The statutory off duty requirements were established to afford the employee an opportunity to secure rest. The Federal Railroad Administration (FRA) has consistently maintained that the only acceptable calls during these consecutive hours off duty should be a brief call to report for duty at a specified time after the statutory off duty period had expired. Calls of another nature, specifically "question and answer" calls initiated by the carrier and for the benefit of the carrier, could be construed as service for the carrier, and thereby become periods of on-duty, thus breaking the consecutive requirement of the off duty period.

A blanket response to the circumstances that you cite is inappropriate in this letter. However, FRA will review and/or investigate specific instances to determine compliance based on the merits of each occurrence. Should specific instances be brought to your attention, feel free to forward them to my office for our review and response.

Thank you for your continued interest in rail safety.

Sincerely,

E. R. English

Edward R. English
Director, Office of Safety
Enforcement

FRA-RRS-11:DNorris:60503:11/3/92

cc RRS-1
OSE(2)
RRS-11
Region 2
Subject File

CONCURRENCES	
RTG SYMBOL	RRS-11
INITIALS/SIG	D.O.H.
DATE	11-3-92
RTG SYMBOL	RRS-11
INITIALS/SIG	J. Schuy
DATE	11-4-92
RTG SYMBOL	RRS-10
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