



U.S. Department  
of Transportation  
Federal Railroad  
Administration

*Parlett*  
**Memorandum**

Date: March 17, 1994

Reply to Attn. of: OP-94-04

Subject: Use of Privately Owned Vehicles (POV) in deadhead service.

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

To: All Regional Directors

The attached letter to United Transportation Union, General Chairman Jerry L. Batton illustrates FRA's position in the expanding use of POV's in the rail industry. This position comprehends the cumulative fatigue impact on long duty tours that include either required or permitted use of POV's. Please integrate this position in your daily inspection and investigation routines.

*Pls. distribute to RMM,  
LFD & JSL.*

*LJD  
3/21*

*Also give Joyce  
copy for posting  
in Technical Bulletin*



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

MAR 16 1994

Mr. Jerry L. Batton  
General Chairman, GO-436  
United Transportation Union  
Post Office Box 203  
218 West South Avenue  
Mendenhall, Mississippi 39114

Dear Mr. Batton:

Thank you for your February 11 letter concerning the Federal Railroad Administration's (FRA) application of the Hours of Service Act (Act). Your letter specifically requested clarification of the following scenario.

"A conductor is called from the Shreveport, Louisiana extra board to protect an assignment in Monroe, Louisiana. It takes this conductor two (2) hours to drive from Shreveport, Louisiana to Monroe, Louisiana. This conductor is called at Shreveport, Louisiana at 6:00 A.M. He arrives at Monroe, Louisiana at 8:00 A.M. and goes off duty at Monroe, Louisiana at 6:00 P.M. and drives back to Shreveport, Louisiana, arriving at Shreveport, Louisiana at 8:00 P.M. Is this conductor in violation of the Hour and Service Law?"

Several issues impact FRA's application of the Act in this situation, therefore a member of my staff contacted you for additional information. I understand Shreveport is the regular reporting point for this individual. Since FRA maintains that a train and engine employee may have only one regular reporting point, all travel to and from any other on-duty site will be subject to the deadheading provisions of the Act. In this case, the 2-hour deadhead to Monroe is on-duty for purposes of the Act. After arrival at Monroe the employee will have 10 hours of on-duty time remaining in this duty tour. The return deadhead travel is usually treated as limbo time, neither on- nor off-duty. However, FRA will treat the return deadhead as on-duty for the following reasons.

Section 2(a) of the Act states in part:

It shall be unlawful for any railroad, its officers or agents, subject to this chapter-

(1) to require or permit an employee, in case such employee shall have been continuously on duty for (twelve) hours, to continue on duty or to go on duty...

While the railroad may not have specifically required the employee to drive his/her private automobile, the railroad permitted this activity. The railroad has knowledge of the activity through a variety of events. First, the railroad called the employee to an outlying point and did not furnish transportation. Second, the railroad is aware of the conductor's on-duty status and that he/she reported for an outlying job. Third, the railroad reimbursed the employee for providing his/her own transportation. Since the conductor is the driver of the vehicle for the return trip to Shreveport, FRA considers the conductor's driving activity as other service for the railroad, i.e., chauffeuring. Section 2(b) of the Act states in part

"In determining, ..., the number of hours an employee is on duty, there shall be counted, in addition to the time such employee is actually engaged in or connected with the movement of any train, all time on duty in other service performed for the railroad during the twenty-four-hour period involved."

Therefore, the return travel time in this scenario will commingle with the previous on-duty time to produce two hours of excess service.

I further understand that the railroad and the union have an agreement that provides for employee reimbursement on a mileage basis for the use of the employee's private automobile when used in deadhead service. While this type of agreement is common in the industry and may not specifically mandate the use of private automobiles, it contains provisions for their use. While the parties are free to establish agreements, they may not implement an agreement that circumvents the statute.

FRA maintains that an employee may elect to provide his/her own transportation for purely personal reasons, in lieu of carrier provided transportation, and that activity would not be construed as commingled service. In this instance, lodging or carrier provided transportation should be available, and the employee's election based on personal reasons rather than convenience and without monetary reimbursement. This exception is valid only when the railroad has offered carrier provided transportation and/or the opportunity to secure the required off-duty period prior to deadheading. In the event that the carrier neither provides transportation nor the opportunity to acquire the statutory off-duty period prior to a return deadhead, the travel time is subject to the commingled provisions of the Act.

The Act was written with the intent "to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon." FRA is aware of the employee's biological rhythms and cumulative fatigue factors that are present in scenarios such as the one you identified. The fatigue and associated safety factor of the employee is the same, whether he/she is required or permitted to provide his/her own

transportation on the return trip to Shreveport. In this instance, FRA will invoke the commingled provision of the Act to insure that its intent is observed.

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

Sincerely,



Bruce M. Fine  
Acting Associate Administrator  
for Safety