



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

Memorandum

Date: JUL 19 1995

Reply to Attn. of:

OP-95-10

Subject: **Information: Utility Employee Protection**

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

To: Regional Administrators
Division Chiefs (OP, MP&E)

The attached letter to UTU Local Chairman J. W. O'Donnell provides further guidance in the application of utility employee protection by giving specific scenarios and appropriate responses.

Please refer to Bulletin OP-95-01 for additional guidance.

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J. W. O'Donnell
Chiefs
7/19/95*

JUN 22 1995

Mr. James W. O'Donnell
 Local Chairman
 United Transportation Union
 Post Office Box 3160
 Elizabeth, New Jersey 07207-3160

Dear Mr. O'Donnell:

Thank you for your April 23 letter requesting the Federal Railroad Administration's (FRA) guidance on application of the utility employee provision. I apologize for the delay in responding to your inquiry.

The governing regulation in this area is Title 49, Code of Federal Regulations, Section 218.22. In this section FRA outlines the minimum requirements for protection of utility employees. Your specific questions involve two scenarios:

Scenario 1: "...a crew normally assigned to yard assignment YPPR04, is on duty at 7:00 AM, at 11:00 AM they are told to put their engines in the clear and the Conductor and/or the Brakeman assigned to this assignment are then ordered to double over through freight assignment CCPI, then to foul the equipment and make the air hose coupling between the coupling and remove any hand brakes that were applied to the standing cars at the coupling, and then make a brake test. After this is done then they are ordered to resume their regular duties on their assignment YPPR04 until the completion of their tour of duty which is normally about 5:00 PM."

FRA Response: I offer the precise language of the preamble to the utility rule to define our policy on this issue:

...FRA limits the assignment of the utility employee to only one crew at a time. This is necessary to prevent confusion as to the location and duties of that employee, and to ensure that the employee is, in reality, a member of the crew to which he or she is assigned for the duration of the assignment. For example, if an employee is assigned as a train crewmember to one train for an entire tour of duty, that employee may NOT, while awaiting departure from the

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yard, be temporarily assigned to a second train crew. On the other hand, a member of an inbound train crew at a crew change point, whose assignment to the train is essentially complete, could then be assigned as a utility employee to the outbound crew. Furthermore, an employee could not simultaneously perform duties on two different trains (emphasis mine).

In your scenario, employees of yard assignment YPPR04 may not be temporarily assigned as utility employees to another crew. Again, the rationale is based upon the need to avoid potential confusion as to employee duties/location brought about by breaking up a designated crew, assigning one or two to work with a different crew, then reassembling them as an original crew.

Scenario 2: "...suppose the crew of TV 207 are coupled to the head end of their outbound train on let's say track #1 and the crew of YPPN 30 are ordered to double over track #2 to track #1, make the air hose coupling between the double and then cut away and place the rear telemetry marker on the rear end of TV 207, all the while TV 207 engines are coupled to the head end of his train on track #1. Can this move be done legally without Blue Flag Protection, exactly what is required by all parties to make this move safely and legally...."

FRA Response: This scenario is typical of a widely accepted rail operating practice when necessary to add/remove cars to/from a road train at a terminal where yard engines are employed. Typically, the yard engine foreman is required to notify the road engineer of his intent, and there is an understanding of moves to be made by both involved engineers and crews. The yard engine foreman normally directs all activities when engaged in handling the common equipment. When done in compliance with applicable railroad operating and safety rules, this move is within the exclusionary provision of the Federal blue signal rules for train and yard crews.

The difference between this scenario and the first is that in scenario 2 the entire crew, with their assigned locomotive and locomotive engineer, is temporarily assigned to assist a road train. As such, with both engineers involved, the delineation of crew duties is known to both engineers, and if railroad rules are followed, there should be no confusion over crew location. No equipment should be moved unless and until both engineers understand the move and all crew members are in the clear. In scenario 1, the crew is broken apart and responsibility for each person's location becomes less clear.

With regard to United Transportation Union (UTU) and Consolidated Rail Corporation - Rule 40 of the Schedule of Agreements, it was never FRA's intent to circumvent either the collective bargaining

process or existing internal railroad policy regarding the mechanics of assigning duties, and nothing in the regulation presumes to do that. The utility employee rule merely sets minimum requirements for the protection of persons working as utility employees.

Finally, we would be pleased to accept your kind invitation for an FRA representative to attend a UTU meeting at some future time. I have referred your request to Mr. Mark McKeon, FRA Regional Administrator, Northeast Region. He will be in contact with you to make suitable arrangements for FRA participation.

Thank you for your interest and efforts on behalf of railroad safety. Please feel free to contact me if I can be of further service.

Sincerely,

Original Sign By

Edward R. English
Director, Office of Safety
Enforcement

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