



Brotherhood of Locomotive Engineers and Trainmen

A Division of the Rail Conference—International Brotherhood of Teamsters

General Committee of Adjustment • Union Pacific Railroad - Northern Region
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B. D. MacArthur
Chairman

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Vice Chairman

December 21, 2010

Mr. T. M. Stone
General Director – Labor Relations
Union Pacific Railroad
1400 Douglas Street, STOP 0710
Omaha, NE 68179-0710

Dear Mr. Stone:

This is in reference to your letter of December 2, 2010 (copy enclosed), regarding employees subject to the Rail Safety Improvement Act (RSIA) required to attend disciplinary investigation(s) before they have satisfied the rest requirements mandated by the law.

We have recently noted that the additional language you described in your December 2, 2010 letter is being included in the investigation notices. That language being:

“The Rail Safety Improvement Act requires employees obtain their mandatory rest before attending an Investigation. If you work an Hours-of-Service covered position and you have not obtained the mandatory rest prior to commencement of the hearing, you cannot, consistent with the requirements of the RISA, be allowed to attend or participate in the hearing and will be considered as having elected to not attend the investigation.”

The amendments to 49 USC 21103 made by Section 108 of the Rail Safety Improvement Act of 2008 (RSIA) imposed no such duty or responsibility on the employee to ensure they are rested for service under the provisions of the Hours of Service Act (HOS).

The investigation is clearly other mandatory service as contemplated by the RSIA and the hearing is being conducted “at the behest of the railroad”. 49 CFR 228.5 defines, “At the behest of the railroad” is:

“...time spent by an employee in a railroad required activity that compels an employee to perform service for the railroad as a condition of employment.”

Surely, you would not suggest that attendance at the investigation is not a condition of employment?

Furthermore, those employees identified in the investigation notice, whether as the principal under charge or as a witness summoned on behalf of the Carrier, are clearly directed to "report" or "appear" at a time and location stipulated by the Carrier.

While we agree that an employee must be fully rested under the HOS provisions to attend an investigation, it is the Carrier, not the employee, that bears the responsibility to either 1) schedule the hearing in such a manner that it does not conflict with the attending employee's compliance with HOS provisions or 2) arrange the attending employee's work scheduled to insure that the Carrier does not violate the requirements of the RSIA and the employee is fully rested under the HOS to attend the hearing as scheduled.

In consideration of the above, should an employee be unable to appear at the time appointed for an investigation due to their not being rested under the HOS Law, such absence would be through no fault of the employee. Under those circumstances, the employee could not or should not be censured for any resulting failure to appear and such an absence could not, or should not, in any way be considered a voluntary election on the employee's part.

The Carrier's reliance on the RSIA is bogus, because neither the requirements of the hours of service laws nor the Federal Railroad Administration's interpretations thereof that pertain to disciplinary investigation were changed in any way, shape or form by the RISA. Your position is nothing more than an outrageous attempt to conjure something out from the law that doesn't exist in an effort to deny BLET members due process rights. Those rights are established under the controlling BLET Collective Bargaining Agreement (CBA), as well as the RLA.

It is BLET's position that this crucial arbitrary change represents a clear unilateral change for the working conditions of the Locomotive Engineer on this territory of the Union Pacific as to the application of the CBA, as well as the Railway Labor Act (RLA). Carrier, therefore, cannot reach a reasonable conclusion that the employee forfeited his/her rights.

Nevertheless, it would appear to this office that your position with regard to the RSIA and attendance at disciplinary investigations, i.e.: barring employees to attend the investigation who have not obtained the required federal rest is contrary to the intended meaning of the RSIA Hours of Service. By copy of this letter to the BLET National Office, I shall request their participation in handling of this issue to conclusion between Labor-Management and the FRA.

Sincerely,



B. D. MacArthur,
General Chairman, BLET

BDM:sjm

Cc: D. Pierce, President, BLET
L. Pruitt, First Vice President, BLET
Local Chairmen, BLET/UPNR

T. M. Stone
Gen. Director - Labor Relations



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December 2, 2010

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Mr. B. MacArthur
Mr. M. Young
Mr. J. Smith
Mr. M. Reedy
Mr. B. Hannah
Mr. D. Martz
Mr. R. Draskovich
Mr. J. Dayton

BLET GCA HP/ER
DEC 7 2010

Gentlemen:

Issues have surfaced regarding employees subject to the Rail Safety Improvement Act (RSIA) attempting to attend disciplinary investigations before they have satisfied the rest requirements mandated by the RSIA, or failing to appear for such investigations when the RSIA's rest requirements have not been met.

The RSIA considers participation in an investigative hearing to require mandated rest and, as such, bars employees who have not obtained proper rest from attending such hearings, regardless of whether their role is the charged employee or as a witness. Specifically, an employee must have received the entire amount of uninterrupted rest specified by RSIA before an employee can attend an investigative hearing, even if he or she offers to voluntarily forego or waive a portion of his or her rest.

In order to ensure employees remain aware of their obligations, UP will be adding language in its notices of investigations regarding these requirements, as follows:

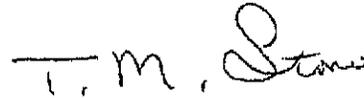
"The Rail Safety Improvement Act requires employees obtain their mandatory rest before attending an investigation. If you work an Hours-of-Service covered position and you have not obtained the mandatory rest prior to commencement of the hearing, you cannot, consistent with the requirements of the RSIA, be allowed to attend or participate in the hearing and will be considered as having elected to not attend the investigation."

The intent of this language is to remind employees of their obligation to be properly rested under the provisions of RSIA before appearing for an investigative hearing. Accordingly,

it remains the employee's obligation to ensure his or her compliance with those requirements and to be properly rested at the scheduled time of the hearing.

If you have any questions regarding this matter please feel free to contact me for further discussion.

Sincerely,

A handwritten signature in cursive script that reads "T.M. Stone". The signature is written in dark ink and is positioned above the typed name.

T.M. Stone
Gen. Director - Labor Relations