

Rail Safety Improvement Act of 2008 Hours of Service Amendments

Presentation for BNSF (former STL-SF) GCA Meeting May 20, 2009

BLET position on HOS reform

- The major causes of fatigue are unexpected calls for work and excessive limbo time.
- Unexpected calls for work can be avoided by replacing 8 hours off duty with an 8-hour call.
- Excessive limbo time can be controlled by reversing the 1996 Supreme Court decision, and requiring that crews be removed from trains prior to the expiration of the 12th hour.

Proposals we had to fight

- Reduce maximum work hours from 12 to 10.
- Increase minimum rest time.
- Impose cap on hours on-duty.
- Impose cap on limbo time.
- "One-size-fits-all" approach that would apply to all crews, including those with an advertised reporting time.

11th hour deal with industry

- By mid-September, the AAR agreed to oppose the 276-hour cap or, in the alternative, to support eliminating limbo time and other mandatory service from the calculation.
- UTU agreed to change its position on the caps from "support" to "neutral".
- After the Chatsworth accident, Congress felt stampeded into action, and refused the agreed-to changes.

Passenger / Commuter Service

- Current law remains in effect until earlier of:
 - the effective date of specific passenger/commuter regulations promulgated by FRA; or
 - three years after enactment (i.e., 10/16/11).
- RSAC has established a Working Group to review data and draft passenger/commuter HOS regulations; WG report due by 11/13/09.

Recap of HOS changes for freight

- Effective July 16, 2009:
 - Time off duty between work tours must be 10 hours undisturbed, regardless of work tour length.
 - Cap of 276 hours of work, limbo, and other mandatory service per calendar month.
 - Cap of 40 limbo time hours per month (reduced to 30 hours effective October 16, 2009).
 - Mandatory days off under 6&48 statutory or 7&72 agreement schedule.

Mandatory days off

- If an engineer initiates an on-duty period for 6 consecutive days, (s)he must have at least 48 hours off duty before reporting again, except:
 - when the sixth day ends at the away-from-home terminal, the engineer is permitted to initiate an on-duty period on the 7th day, but must have 72 hours off upon return; or
 - when the service is covered by an agreement and/or a HOS pilot program.
- Statute waives 6&48 in favor of 7&72 if:
 - prior to 04/16/10 an existing CBA expressly provides for such a schedule;
 - on or after 04/16/10 a CBA negotiated between 10/16/08 and 04/16/10 expressly provides for such a schedule;
 - such a schedule is provided for by a pilot program authorized by a CBA (49 USC § 21103(a)(4)); or
 - such a schedule is provided for by a pilot program under 49 USC § 21108.

BLET Regulatory Philosophy

- Existing interpretations not affected by the law should not be changed.
- Existing interpretations affected by the law should be changed only to the extent required to bring the interpretation into compliance.
- Wherever possible, argue for the interpretation that maximizes work opportunities.

Part 228 Rulemaking Process

- Full RSAC recommended draft revisions to Part 228 at April 2nd meeting; consensus of all issues but one.
- Substantial changes have been made to implement the new law, and to permit electronic HOS recordkeeping.
- Publication of an Interim Final Rule and FRA interpretations are expected this month.
- All GCs will be provided with new rule text and a summary as soon as possible.

Interpretive Issues

- Definition of a "day" . . . calendar day per FRA.
- DH on 7th day . . . unresolved; BLET says DH combined w/service does not "initiate" a separate on-duty period.
- Rules class and other mandatory service . . . does not "initiate" an on-duty period.
- Extra board lay-in . . . unresolved; BLET/AAR say it does not "initiate" an on-duty period
- Lay-in at AFHT . . . unresolved; BLET/AAR say it resets 6-day clock.
- Working home from outlying point on 7th day . . . OK, but requires 72 hours off after arrival.
- Working for two railroads and effect of 48-and 72-hour off requirement . . . unresolved.
- How employee gets home after hitting 276 at AFHT . . . unresolved statutory language issue, but FRA working toward allowing DH home.
- Duty calls near cap . . . unresolved; BLET says carrier must call or pay so long as any time is left.
- Undisturbed rest . . . absolute during interim release and for a 10-hour period in the 24 hours prior to initiating an on-duty period; communication initiated by employee is permissible; text and e-mail messages, setbacks, and notification of displacements and job awards are OK if requested by employee.
- Declining extra "limbo time rest" . . . FRA says "No"; extra rest must be provided on a minute basis.

Work Arrangements at Risk

- From 10-hours off:
 - Doubling (22 1/2 hour rule)
- From 6&48 / 7&72:
 - Seven day assignments
 - Six day assignments
 - Basic-day pools
 - Extra boards
- From 276 / limbo caps:
 - Seven day assignments
 - Six day assignments
 - Basic-day pools
 - Extra boards
 - Runs over 11 hours
 - Runs with heavy limbo time

Lessening the Risk w/o waivers

- For 6&48 / 7&72:
 - 6&48 / 5&1 rotation
 - Insert relief day to break rotation
 - Add to extra board / basic day pool to increase lay-ins
- For 276 / limbo caps:
 - 6&48 / 5&1 rotation
 - Insert relief day to break rotation
 - Add to extra board / basic day pool to increase lay-ins
 - Mix short and long trips

Impact on CBAs

- CBA override only to extent required by law:
 - First out engineer currently can be run around if not rested under the law.
 - Present "7&3" agreements with "optional" rest days must be converted to mandatory 72 hours off in order to survive.
- CBA may also provide economic protection:
 - "Make whole" rule for HOS unavailability may cover impact of 6&48 and caps, but likely will require arbitration to settle the issue.

Types of Waivers

- 49 USC § 21103(a)(4), which can be used only for purposes of waiving the 6&48 / 7&72 requirements: "The [FRA] may waive [the 6&48 / 7&72 requirements] . . . if a collective bargaining agreement provides a different arrangement and such an arrangement is in the public interest and consistent with railroad safety." All other waivers must be handled via HOSA "pilot project" provisions.
- 49 USC § 21108: "A railroad carrier . . . and all labor organizations . . . may jointly petition for approval of a [2-year] waiver to enable the establishment of one or more pilot projects to demonstrate the possible benefits of implementing alternatives to the strict application of the [HOS] requirements . . . including requirements concerning maximum on-duty and minimum off-duty periods."

Problems with Waivers

- Subject to APA notice and comment and publication in the Federal Register
- Can only be of limited duration (FRA standard is 5 years; § 21108 is two years).
- Must be supported by scientific data, little of which exists and none of which we control.
- FRA is likely to be conservative, at least in the short term.

The Bottom Line

- Some negative impact on maximum earnings is unavoidable; the question is how much.
- The carriers will need more engineers; the question is how many.
- Carriers who want to "punish" us by not talking will need far more new bodies than those who deal.
- Maximizing work opportunities will require the least workforce expansion.