



Memorandum

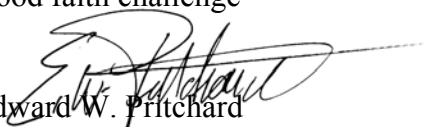
U.S. Department
of Transportation

**Federal Railroad
Administration**

Date: January 10, 2005

Reply to Attn of: G-05-05

Subject: Roadway Worker Protection Technical Bulletin
Good faith challenge

From: 
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To: Regional Administrators
Deputy Regional Administrators
Track Supervisory Specialists
Signal and Train Control Supervisory Specialists
Operating Practices Supervisory Specialists

Question: If one or more roadway workers in a work group challenge the on-track safety procedures, is it necessary for all of the workers in the group to clear the track? Section 214.311(b) states:

Each employer shall guarantee each employee the absolute right to challenge in good faith whether the on-track safety procedures to be applied at the job location¹ comply with the rules of the operating railroad, and to remain clear of the track until the challenge is resolved.

This guarantee gives every roadway worker the absolute right to challenge on-track safety rules. The good faith challenge process and the means for resolution of such challenges are required parts of every employer's on-track safety program. On-track safety depends upon the faithful and intelligent discharge of duty by all persons who provide protection or are protected under it. Any roadway worker who is in doubt concerning the on-track safety provisions being applied at the job location should act to resolve that uncertainty immediately.

Although a fundamental principle of on-track safety is that any roadway worker who is not entirely certain that it is safe to be on the track should not be there, the rule does not require that all roadway workers clear the track whenever a challenge is made. They have the right to do so, but the Roadway Worker in Charge (RWIC) is not specifically obligated to shut down the work while the challenge is

¹ As discussed in the preamble to the rule, section analysis 10, *Responsibility of Employers*, 61 Fed. Reg. 65967 (1996), the term "at the job location" is not meant to restrict who can raise an issue or where an issue can be raised. Rather, the challenge must address the on-track safety procedures being applied at a particular job location.

resolved. However, if the challenge is found valid, and if the RWIC has improperly placed persons in a hazardous situation after having been notified of the error, the RWIC or the employer may be in violation of section 214.311 (responsibility of employers).

This bulletin is based on consultation with FRA's Office of Chief Counsel. Anyone desiring a formal legal interpretation on any issues discussed in this bulletin should contact that office.

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