



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

Memorandum

cc ALL OF
ALL MPE

Date: FEB 1 1995

Reply to Attn. of: OP-95-01

Chiefs
LFD

Subject: **Information: Utility Employee Protection**

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

2/6/95
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To: Regional Administrators

The attached letter to William J. Thompson of the UTU further explains FRA's position on several issues related to the Utility Employee regulation (§ 218.22) and is intended to provide specific interpretive guidance to the field concerning these issues. However, as always, inspectors should continue to consider the specific circumstances of each situation in applying this guidance.

Enclosure

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cc: OP Division Staff
MP&E Division Staff

95 FEB -6 PM 1:45
FEDERAL RAILROAD ADMIN.
CHICAGO, ILLINOIS

JAN 20 1995

Mr. William J. Thompson
Chairman and State Legislative Director
United Transportation Union
5918 Sharon Woods Boulevard
Columbus, Ohio 43229

Dear Mr. Thompson:

Thank you for your letter requesting interpretation of the Federal Railroad Administration's (FRA) regulation on utility employees.

Your first question dealt specifically with regularly assigned operating crewmembers assigning themselves to another crew. I offer the precise language of the preamble to thoroughly explain our policy in this area:

"In subsection (b), 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 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."

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 rule merely sets minimum requirements for the protection of persons working as utility employees.

Your second question asked what restrictions exist in the regulation relating to who may be assigned to perform the duties of a utility employee. The regulations simply state that a utility employee is a "railroad employee assigned to and functioning as a temporary member of a train or yard crew whose primary function is to assist the train or yard crew...." There

are no restrictions as to class or craft of employee who may be assigned as a utility employee. The wording of the regulation is class and craft neutral. The rule applies to all employees on a functional basis, not on class and craft basis. This was specifically addressed in the preamble to the rule as follows: "...FRA has traditionally viewed the blue signal requirements as addressing functional rather than craft distinctions, with the exception of train and yard crews...."

Question three inquired into whether an officer or manager of the railroad may assign himself as a utility employee and perform duties without blue signal protection. As stated in the response to your second question, the regulation does not restrict who may be assigned as a utility employee. Assignment of an officer or manager as a utility employee is not prohibited by the regulation. However, once assigned as a utility employee, that individual immediately becomes subject to carrier operating rules, Federal hours of service provisions, and Federal drug and alcohol testing.

Your fourth question dealt with whether a railroad can assign a person to be a utility employee if, at the time of the assignment, they are not working in a class or craft subject to the operating rules, hours of service provisions, and FRA drug and alcohol regulations. As stated previously, once an individual is assigned to a crew as a utility employee, that individual is subject to the above provisions immediately upon such assignment, regardless of his or her prior status. There is an expectation that employees subject to assignment as utility employees will be properly trained on applicable operating rules, and will be in compliance with Federal pre-employment and random drug testing prior to being assigned.

I would hasten to add that the inclusion of employees in random drug testing pools is not automatic, based solely on the singular or occasional performance of covered service. Rather, FRA looks to how frequently covered service is actually performed. In this regard, lacking a precise definition of the term "occasional" in our drug and alcohol regulation, on the other hand, an employee particular circumstances in each situation on a case by case basis. For instance, an employee called to perform covered service one or two times within a 3-month period would likely not be included in a random pool called to perform covered service 10 or 12 times in the same period should be included in a random pool.

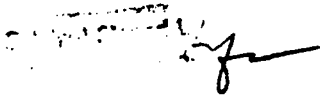
Your fifth and final question asked whether the utility employee regulation overrides collective bargaining agreements in place between employees and management. The Federal regulations do not supplant any existing collective bargaining agreements regarding who may be assigned to tasks based on membership in a particular craft. The regulations only provide minimum protection when an

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employee is so assigned. Of course any agreement that is contrary to the requirements of the rule must yield to it (e.g., an agreement that permits work by utility employees to occur without the protection required by the rule).

I appreciate your interest in this matter and hope the information provided is helpful. If you have any further suggestions or comments that would promote a better understanding of this matter, I will be more than happy to consider them.

Sincerely,



Bruce M. Fine
Acting Associate Administrator
for Safety