



U.S. Department
of Transportation
Federal Railroad
Administration

*C.E. Kutch
Kathy
Specialists
Chief Inspectors
OP Inspectors.*

Memorandum

Date: A: 1991

Reply to Attn. of:

Subject: Multiple Reporting Points and the
Hours of Service Act

FEDERAL OP '91-080

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

'91 SEP-3 12:35

To: Regional Directors of Railroad Safety
Regional Operating Practices Supervisory Specialists

Attached is an interpretation recently issued to Long Island Rail Road regarding multiple reporting points for employees in train and engine service.

Please arrange to disseminate this information to all operating practices inspectors.

Thank you.

†



US Department
of Transportation
**Federal Railroad
Administration**

400 Seventh St. S.W.
Washington D.C. 20590

AUG 27 1991

Mr. James J. Dermody
General Superintendent Transportation
Long Island Rail Road
Jamaica Station
Jamaica, New York 11435

Dear Mr. Dermody:

This is in reference to your various inquiries regarding application of the Hours of Service Act to employees of the Long Island Rail Road (LIRR). I apologize for the lengthy delay in providing you a written response.

The basic question you pose concerns applicability of the Act relative to multiple reporting points for train and engine crews. The Federal Railroad Administration's (FRA) position is that, regardless of any agreement between a railroad and its employees, each employee can have only one regular reporting point. As such, time spent traveling to a point of duty assignment other than an employee's regular reporting point constitutes deadheading to duty and, accordingly, counts as time on-duty under the Act. This applies even where the non-regular reporting point is within an agreed-upon geographic area.

Under the Act, time on-duty includes time spent in deadhead transportation by an employee to a duty assignment; time off-duty does not include time spent in deadhead transportation from a duty assignment to a point of final release. (45 U.S.C. Section 61(b)(3)(c).) Under FRA's interpretation of the statute:

"...transit time from the employee's residence to his regular reporting point is not considered deadhead time.

If an employee utilizes personal automobile transportation to a point of duty assignment other than the regular reporting point in lieu of deadhead transportation provided by the carrier, such travel time is considered as deadheading time. However, if the actual travel time from his home to the point of duty assignment exceeds a reasonable travel time from the regular point to the point of duty assignment, then only the latter period is counted. Of course, actual travel time must be reasonable and must not include diversions for personal reasons." Title 19 C.F.R. Part 228, Appendix A (emphasis added).

Our rationale is that an employee's travel to or from a duty assignment may consume a significant portion of off-duty time. To consider such travel as time off-duty comports with the statute's safety purpose only with regard to travel to or from a regular reporting point. An employee with a regular reporting point is free to select a residence near to or far from the reporting point, thereby controlling the amount of off-duty time consumed by travel. Accordingly, since the statute does not authorize FRA to dictate where an employee must live in relation to his regular reporting point, time spent traveling to and from that point is a matter of employee choice and properly considered time off-duty. However, where the employee must travel to multiple reporting points, he loses the ability to control travel time by selecting a residence in proximity to a regular reporting point.

If travel to multiple reporting points were treated as commuting time, there would be no limit to the amount of off-duty time that might be consumed in travel to and from duty. Such a wide-open system is potentially unsafe and contrary to Congressional intent. Accordingly, because this travel to and from points other than the regular reporting point is at the railroad's behest, it is considered deadheading time. This interpretation has been upheld in a directly analogous case concerning travel to a non-regular reporting point by an extra-board employee. United States v. Penn Central Transportation Co., 616 F.2d 951 (6th Cir. 1980).

A regular reporting point should not be confused with a designated home terminal. Under the Act, the designation of terminals is relevant only for the purpose of determining whether any portion of a release at a particular location can be considered time off-duty. Unless one of the statutory exceptions applies, no amount of release time at a non-designated terminal can be considered time off-duty. Railroads and employees are free to designate as many home and away-from-home terminals as they desire.

The concept of reporting points, however, goes to the issue of how to account for time spent traveling to and from the home terminal(s). If travel time to and from any and every home terminal were considered commuting time, there would be no limit on how much of the employee's off-duty period might be consumed by travel. An employee could be required to commute 100 miles one day, 50 miles the next, 125 miles the next, and so on. The round-trip travel time could consume most of the off-duty period, effectively depriving an employee of a meaningful opportunity for rest. Congress did not intend such circumvention of the minimum off-duty periods prescribed in the Act. Accordingly, in issuing its published interpretation of the Act in 1977, FRA made clear that commuting (i.e., travel time considered time off-duty) is limited to travel

time "from the employee's residence to his regular reporting point." Title 49 C.F.R. Part 228, Appendix A. This interpretation was upheld in United States v. Penn Central Transportation Co., 616 F.2d 951 (6th Cir. 1980).

Congress evidenced no intent to permit the statutory off-duty periods to, in effect, be modified in private negotiations. Accordingly, FRA cannot accept an assertion that would render meaningless the very notion of time off-duty. We have said, however, that one may position a number of multiple reporting points within a very limited area (i.e., one mile or less). Travel times to any such reporting points would be only marginally different from travel to any other such point. Under those circumstances, it could be argued, rigid enforcement of the regular reporting point concept would not produce a safety benefit. If faced with application of the concept to such a situation, FRA could exercise its enforcement discretion so as to preclude wasteful enforcement actions with no likely safety benefit.

However, such a de minimis situation is not the one that the "regular reporting point" concept was designed to combat, and not the one before us here. The distances between multiple reporting points on the LIRR, and the time needed to travel between them, lead FRA to conclude that such a trip could take two or more hours out of a total rest period of eight or ten hours. The potential for unacceptable erosion of the off-duty period is very real.

To comply with the Act, railroads must choose between (1) assigning each employee to one regular reporting point and treating travel to and from assignments at other points as deadheading; or (2) assigning no regular reporting point to the employee, and treating travel to and from all duty assignments as deadheading. With respect to service under a particular agreement, the regular reporting point for a class of employees can be changed only by changing the agreement. Of course, depending on the labor agreements on the particular railroad, an employee may be free to bid on other service that has a different regular reporting point.

In response to several typical scenarios offered under LIRR's present operations, please note the following illustrations:

1. Train and engine crews may bid a regular assignment with different reporting locations on one or more days per week. These are known as regular relief positions. The question posed is whether the travel time to each daily reporting point is deadheading or personal commuting. LIRR currently considers this as personal commuting.

Response: The time is deadheading except on those days when the assignment reports at the employee's regular reporting point.

2. Extra-board train and engine employees may bid for assignment on a daily basis until a cutoff time. After the cutoff time they are assigned. The question posed is whether the travel time to a terminal bid on a daily basis is deadheading or personal commuting. LIRR currently considers this as personal commuting.

Response: The time is deadheading unless the assignment reports at the employee's regular reporting point.

3. Extra-board train and engine employees may bid for assignment on a daily basis until a cutoff time. After the cutoff time they are assigned. The collective bargaining agreement with the United Transportation Union states "...Crews will have designated yards or terminals for going on and off-duty, and assignments will start and finish in the same yards or terminals except for double-end freight service....The location at which the trainman actually commences service will be considered his home terminal for the day...." The collective bargaining agreement with the Brotherhood of Locomotive Engineers states "...Every assignment will have a designated yard or terminal for going on-duty and off-duty. All assignments, except those in double-end freight service, will start and finish in the same yards or terminals...The location at which engine service employees are assigned to report will be considered their home terminal...." The question posed is whether the travel time to a terminal assigned on a daily basis is deadheading or personal commuting. LIRR currently considers this as personal commuting.

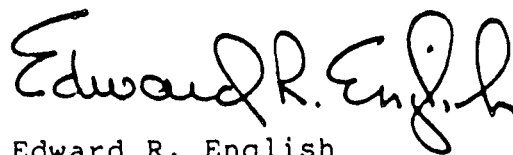
Response: The time is deadheading unless the assignment reports at the employee's regular reporting point.

4. Train crews include one or more employees known as collectors. Unlike similar employees on some other commuter rail carriers, LIRR collectors are trainmen. Many are promoted conductors. In addition to collecting fares, they align switches, pass signals and generally assist the conductor in the movement of a train. The question posed is whether or not these employees are covered by the Hours of Service Act. LIRR considers them as covered.

Response: These employees are covered by the Hours of Service Act by virtue of duties performed relative to train movement.

I hope this answers your questions regarding the multiple reporting point issue. Please feel free to contact me if you need further assistance.

Sincerely,

A handwritten signature in black ink that reads "Edward R. English". The signature is written in a cursive style with a large, looped "E" and "h".

Edward R. English
Director, Office of Safety
Enforcement