


# MEMORANDUM

July 21, 2010

To: All Local Chairmen – CSXT & FEC

Subject: FRA regulations for utility employees

CY: Membership c/o LC

From: John Hancock, General Chairman 

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The purpose of this Memo is protect the employment of our Membership who may be barred from working due to their violating federal law and/or the company's operating and safety rules with respect to performing service as a utility employee.

There is a difference between working as a utility employee and assisting another crew in the performance of their duties without being a utility employee.

This paper will differentiate between the two separate and different scenarios.

Scenario 1:

Utility Employee: An individual becomes a utility employee when he "breaks the plane" of work while performing his duties as a conductor/trainman. A conductor, a trainman or a utility employee are three different job crafts. If one conductor assists another conductor and "breaks the plane", and further does not comply with 49 CFR §218.22; there are three violations, namely:

1. Violation of the Carrier's Operating and Safety Rules
2. FRA regulations; and,
3. Violation of the Collective Bargaining Agreement

A violation of items 1 and 2 can cause the individual to lose his employment rights, face a fine and jail time. The foregoing also applies to a trainman/switchman working with a separate job assignment.

Scenario 2:

An employee who does not "break the plane" is not defined as a utility employee. If a company requires a conductor to assist another conductor, but the conductor does not "break the plane", then the only issue is a contractual violation for which a day's pay is due. One such example is one conductor protecting the shoving movement of another crew. This incident violates the Crew Consist Agreement for which a day's pay is due.

A copy of 49 CFR, §218.22 is part of this Memo. This document is a copy of the FRA rules that dictate “how” an employee performing service as “Utility” employee must perform their duty. Important items in the attached document are noted with an asterisk.

When our Members follow these federal regulations, they will protect their employment relationship by complying with Federal law and/or Carrier’s Operating and Safety Rules. Furthermore, additional work opportunities may be created as a result of compliance therewith.

**Another important issue:** An employee is either a conductor **OR** utility employee; their work worlds are not interchangeable. If an individual is regularly assigned to a job as a conductor; he is not a utility employee, as defined by federal rules. Likewise, if an employee is protecting an assignment that is a utility job, he cannot be the conductor on a job.

Once you change job role from conductor and become a utility employee, you cannot return back to the conductor work on your assignment; you are, from that point a utility employee, and must remain a utility employee for that tour of duty. **This is very important to note that conductors cannot assist other crews as a defined utility employee in their performance of their duties because they must attach to the crew.** Once that event occurs, the conductor becomes a utility employee.

If the individual moves back to their job as a conductor, he has violated federal law as well as the CBA. Now, this is not to say that a carrier cannot have you complete that job assignment, but that means another day’s pay, subject to job fill procedures. We also hold that the conductor is also due another day’s pay when he became a utility employee because he performed a different **grade** in service. Grade and class of service are two different animals.

**Different scenario:** A yard crew may contact a road crew for the purpose of removing a cut of cars from the rear of the train. This is permissible. The crews must have a job briefing, and each job acts independently of the other. This is different than a conductor working with a conductor of another job. Simply stated, there is only one conductor on a job.

If a Member is instructed to violate the crew consist agreement by assisting another crew, but not in the federal description as a utility employee, the Member should have a good job briefing in order to protect their personal safety. Please remind our Members that when an individual from another craft (locomotive engineer, yardmaster, car inspector company officer performs any of our craft work, then the **penalty violation is five day’s pay** for the first out employee on the respective extra board.

Please make this information available to the Membership as it is most important and job security under the Operating Rules, the Federal Law and under our CBA.

Enclosure: 49CFR§218.22

**§218.22 Utility employee.**

218.22(a)

(a) A utility employee shall be subject to the Hours of Service Act, and the requirements for training and testing, control of alcohol and drug use, and hours of service record keeping provided for in parts 217, 219, and 228 of this chapter.

218.22(b)

(b) A utility employee shall perform service as a member of only one train or yard crew at any given time. Service with more than one crew may be sequential, but not concurrent.

218.22(c)

(c) A utility employee may be assigned to and serve as a member of a train or yard crew without the protection otherwise required by subpart D of part 218 of this chapter only under the following conditions:

218.22(c)(1)

(1) The train or yard crew is assigned a controlling locomotive that is under the actual control of the assigned locomotive engineer of that crew;

218.22(c)(2)

(2) The locomotive engineer is in the cab of the controlling locomotive, or, while the locomotive is stationary be replaced in the cab by another member of the same crew;

218.22(c)(3)

(3) The utility employee established communication with the crew by contacting the designated crew member on arriving at the train (as defined for the purpose of this section as one or more locomotives coupled, with or without cars) and before commencing any duties with the crew.

218.22(c)(4)


(4) Before each utility employee commences duties, the designated crew member shall provide notice to each crew member of the presence and identity of the utility employee. Once all crew members have acknowledged this notice, the designated crew member shall advise the utility employee that he or she is authorized to work as part of the crew. Thereafter, communication shall be maintained in such a manner that each member of the train or yard crew understands the duties to be performed and whether those duties will cause any crew member to go on, under, or between the rolling equipment; and

218.22(c)(5)

(5) The utility employee is performing one or more of the following functions: set or release hand brakes; couple or uncouple air hoses and other electrical or mechanical connections; prepare rail cars for coupling; set wheel blocks or wheel chains; conduct air brake tests to include cutting air brake components in or out and position retaining valves; inspect, test, install, remove or replace a rear end marking device or end of train device. Under all other circumstances a utility employee working on, under, or between railroad rolling equipment must be provided with blue signal protection in accordance with §§ 218.23 through 218.30 of

this part.

218.22(d)

 (d) When the utility employee has ceased all work in connection with that train and is no longer on, under, or between the equipment, the utility employee shall notify the designated crew member. The designated crew member shall then provide notice to each crew member that the utility employee is being released from the crew. Once each crew member has acknowledged the notice, the designated crew member shall then notify the utility employee that he is released from the train or yard crew.

218.22(e)

(e) Communications required by § 218.22(c)(4) and (d) shall be conducted between the utility employee and the designated crew member. This communications shall be conducted either through direct verbal contact, by radio in compliance with part 220 of this chapter, or by oral telecommunication of equivalent integrity.

218.22(f)

(f) No more than three utility employees may be attached to one train or yard crew at any given time.

218.22(g)

(g) Any railroad employee who is not assigned to a train or yard crew, or authorized to work with a crew under the conditions set forth by paragraph (b) of this section, is a worker required to be provided blue signal protection in accordance with §§ 218.23 through 218.30 of this part.

218.22(h)

(h) Nothing in this section shall affect the alternative form of protection specified in § 221.16 of this chapter with respect to inspection of rear end marking devices.

[58 FR 43293, Aug. 16, 1993, as amended at 60 FR 11050, Mar. 1, 1995]