

To: All LC, VLC, SLD, S&T's, Membership
From: John Hancock, GC
Subject: Utility Employees and Use of Non-Utility Employees

Please note the attached information from Brother Westbrook concerning FRA regulations on the use of utility men and the use of conductors as utility men. This is excellent information. These laws help reserve the job of a conductor.

Please make this information available to the Membership.

Brother Westbrook is the UTU State Legislative Director for North Carolina; he works on the Norfolk Southern Railroad.

From: DoubleTrk@aol.com [mailto:DoubleTrk@aol.com]
Sent: Monday, December 13, 2010 4:56 PM
To: John Whitaker; John Hancock; Yvonne Hayes
Subject: Utility Persons

John, On the NS in several places in North Carolina they are taking a ground crew member off his job and sending them to assist another train. After he assists the other train they are putting him back on the job he started out on. This is in violation of FRA regulations. The only way he can assist another job is to become a Utility person. He can only do this if the job he was originally on is done for the day. he cannot go back to that job. I have sent this info out to all of my LR's in the state. I have also sent this to my General Chairman as well with the recommendation it is sent to the Local Chairman. This is knowledge they need to know also.

On the NS they also have violated the regulations by instructing Utility persons do perform duties that are outside the regulations found in CFR Title 49 218.22 (c) (5).

I have attached 3 files to this email that sets the duties of the Utility person. If you have any questions do not hesitate to call me.

Dickie Westbrook
UTU SLD NC

“Blue Flag Protection”

James Wilson – FRA, 202.493.6259

Motive Power & Equipment Division

Office of Safety Assurance and Compliance

June 2005

“Equipment Called to Operate”

FRA has told us that they are taking a very stringent interpretation of **“Equipment Called to Operate”**.

What does this mean?

Crew members cannot assist other train crews in coupling or uncoupling of cars,

Cannot change EOT batteries,

Work on cars of a train, for which they were not called,

Unless blue flag protection is provided.

The FRA gave several questions and answers, which help define their interpretation:

1. Can members of one crew assist another crew, such as making a coupling at a road crossing;
2. Replacing or changing EOT batteries;
3. Changing an air hose without establishing blue signal protection?

No- It would have to involve the entire crew, to include using the locomotive, to handle the equipment and to assist another crew.

Can a train crew member perform a mechanical repair? (Change a brake shoe) Without establishing blue flag protection?

Yes- If the repairs are performed on the equipment, he/she is called to operate and he/she is **not working as a utility employee.**

Utility Employee Job Functions: (CFR 218.22 (c)(5))

1. Set or release hand brakes
2. Couple or uncouple air hoses & other electrical or mechanical connections
3. Prepare rail cars for coupling
4. Set wheel blocks or wheel chains
5. Conduct air brake test to include cutting air brake components in/out
6. EOT-inspect, test, install or remove.

Can a **crew member** assist another crew with the following job functions, **without blue signal protection?**

1. Protect a shoving move? **YES**
2. Line a switch? **YES**
3. Pull a cut lever? **YES**, Pulling a cut lever **does not** require blue signal protection.
4. (NO, if a cut lever is pulled and an angle cock is required to be opened or closed, **then blue signal protection would be required, unless the individual is a properly attached Utility Man.**)
5. When the presentation was given, the answer to that question was "maybe", based on the above discussion.

The blue flag protection is designed to provide rail workers with the maximum amount of safety in a dangerous situation. I ask you to review these rules with your fellow employees, so that we can work together in making the Rail industry a safe place to work, while abiding by the federal regulations.

If you are instructed by the carrier to violate any Federal Regulation- **Do Not Refuse – Request the carrier officers or Dispatchers name, with time, date and train number, forward to your local UTU officer for handling.**

Questions and Answers to **Equipment Called to Operate.**

Question: A hostler, if he has to cut an engine off or add an engine to consist and a crew is on the leading

locomotive, can the Hostler go in-between to connect or disconnect the hoses and set up the engines?

YES, because this is equipment he is called to operate. It is the same as a yard crew adding cars to a train with the road crew in place on the head end. Advise the individual that **communication** between the two crews is the key to this type of operation.

Question: Is it permissible for one train to shove another?

(Example, for instance when this involves the conductor coupling onto the train being shoved and going in between the engine and rear car, coupling the air.)

YES, would have to involve the **entire crew**, including using the locomotive, to handle the equipment and to assist the other crew.

The key to this type of operation is communication between the two crews.

1. **Crewmember** --- Called for one Train or Equipment to operate.

2. **Utility person** --- A utility employee shall perform service as a member of only one train or yard crew at any given time. CFR 218.22 & 218 App B

3. **Worker** --- Needs Blue Signal Protection CFR 218.27

Question: Can a Utility person being instructed by management to;

"Protect a shove without being attached to a crew."

Answer: Protecting a shove move **is not** a utility employee issue.

Further, any qualified employee may protect a shove move.

The employee would not be considered a worker, either.

Of course, this activity would subject the individual to the Hours of Service Laws, Part 217 (instruction on operating rules and operational testing and inspections), Part 220 (if the move is being directed by radio), and possibly federal drug/alcohol testing, depending on how many times a quarter the individual performs this function.

Question: a yard crew is instructed to hostile power to the head end of a train. The crew will use the track adjacent to the train to move the power to the head end of the train. While moving the power to the head end is it permissible for the yard crew to arm the end of train device on the train on the adjacent track without blue flag protection?

Answer: Yes. The train is equipment the yard crew was called to operate, and as long as the engine is in the vicinity of the crew, and the adjacent track would certainly qualify as being in the vicinity, then this is acceptable. However, the yard crew is still required to ensure that the equipment will not be coupled to or moved during the time the yard crew is arming the EOT. Also, this is conditional on the road crew not yet being on duty. The yard crew would have to determine this before fouling the equipment. If the road crew is on duty, then only one crew can be in charge of the train at a time, and the two crews would have to work this out between themselves as to which one would arm the EOT --- they can't "mix-and-match."

Question: In reference to the above question: Could the yard crew arm the end of train device on the adjacent track if the car department had the adjacent track blue flagged without additional blue flag protection?

Answer: NO. A member of a train or yard crew (T&E employee) may not foul equipment while the track is under blue signal protection by the mechanical department. I suppose the T&E employee could provide his/her own blue signal protection, but that would tend to complicate rather than facilitate the accomplishment of the task. Why not simply ask someone from the mechanical department, who applied the blue signals, to arm the device?

Question: -An engineer on a through freight train is instructed to stop his/her train and perform the daily inspection on a DP unit on a train stored in the siding. Does the engineer require blue flag protection?

Answer: No -- if the daily inspection can be performed without the employee placing himself in a position of danger should the equipment inadvertently move. However, if the employee's activities would place him/herself in a position of danger should the equipment inadvertently move, then the employee would require blue signal protection.

Question: In the above scenario if the engineer is required during the daily inspection to open an engine compartment door to visually check the water, oil, etc. would this require blue flag protection?

Answer: No--this would follow the same rule of reason as explained in the answer above. Typically, opening an engine compartment door to visually check fuel and water levels, etc., would not require blue signal protection. Even pulling a dipstick and checking an oil level normally wouldn't place an employee in harm's way. Anything more involved than that, such as removing (unscrewing) a fuel cap, using a tool, reaching way into the compartment with your body, etc., would most likely indicate the need for blue signal protection.

Question: If there was a crew on the train of the engine being inspected would the engineer then be required to have blue flag protection and/or attach as a utility employee?

Answer: The issue is whether or not the employee would be injured if the equipment inadvertently moved, not the *likelihood* of it moving, nor the fact that there may or may not be other employees present. Employees must at all times be conscious of and understand, in connection with rolling equipment that is not protected by blue signals, that movement should always be expected, and be governed accordingly

Question: A conductor on one train is performing a roll by inspection of another train and discovers a handbrake and or brakes sticking on a car. Can the conductor performing the inspection release the hand brake or work on the sticking brake of the other train without blue flag protection?

Answer: In the situation described, under normal circumstances, the conductor **may not** release the handbrake or work on the sticking brake on another train without either: (1) becoming a Utility Employee (in which case, his/her work with their original crew must be essentially complete); or (2) providing blue signal protection.

However, in a bonafide emergency situation, FRA would certainly take the circumstances under consideration when exercising its prosecutorial discretion. An example would be if Train A out on the line of road, in extremely frigid temperatures, with two feet of snow on the ground, and otherwise treacherous walking conditions, experienced a problem with a sticking/smoking brake, and it was observed by a crewmember of a

passing train, Train B, then, after Train A was notified and brought to a safe stop, perhaps with crossings blocked, in that situation, it is very likely that the emergency provision contained in the federal blue signal regulation

[§ 218.25(c)]* could justifiably be invoked, and a crewmember from Train B could then assist Train A. Again, FRA would view each situation on a case-by-case basis on its own merits.

*"§ 218.25(c) When emergency repair work is to be done on, under, or between a locomotive or one or more cars coupled to a locomotive, and blue signals are not available, the engineman or operator must be notified and effective measures must be taken to protect the workers making the repairs."

Question: If a Utilityman is bleeding off a track and then he has to perform work on this track like lace an air hose, tie a hand brake, remove a ETD, close an angle cock, etc... can the U-man then attach himself to a yard job and get protection and notify all yard crews working in the yard and then do this work, even if the switch crew he has attached to is in another track or switching on the lead? Or would he have to follow the Blue Flag Rule?

Answer: A properly attached utility employee (UE) functions as an integral member of the crew to which he/she is attached. Therefore, as would be true for any crewmember, in order for the UE to qualify for the blue signal exemption for train and yard crews:

- (1) it must be rolling equipment that the crew was called to operate;
- (2) the locomotive of the crew to which the UE is attached must be "in the vicinity" of all of the crewmembers so as to afford protection against inadvertent movement of rolling equipment;
- (3) all crewmembers must be in proximity to one another, need to be in communication with each other, and must have an understanding of the work to be performed; and
- (4) if there are other crews working in the yard, such as at the opposite end of the track, then there must also be an understanding with those crews so that appropriate safeguards may be taken.

Part 218 Subpart B Blue Signal Protection of Workers

218.21 Scope.

218.22 Utility employee.

218.23 Blue signal display.

218.24 One-person crew.

218.25 Workers on a main track.

218.27 Workers on track other than main track.

218.29 Alternate methods of protection.

218.30 Remotely controlled switches.

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]

218.27 Workers on track other than main track.

When workers are on, under, or between rolling equipment on track other than main track-218.27(a)

(a) A blue signal must be displayed at or near each manually operated switch providing access to that track;

218.27(b)

(b) Each manually operated switch providing access to the track on which the equipment is located must be lined against movement to that track and locked with an effective locking device; and

218.27(c)

(c) The person in charge of the workers must have notified the operator of any remotely controlled switch that work is to be performed and have been informed by the operator that each remotely controlled switch providing access to the track on which the equipment is located has been lined against movement to that track and locked as prescribed in § 218.30.

218.27(d)



US Department
of Transportation
Federal Railroad
Administration

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

NOV 15 1995

Ms Yolanda M. Grimes, Esq
Legal Department
Burlington Northern Santa Fe Railway Company
3017 Lou Menk Drive
Fort Worth, Texas 76131

Dear Ms. Grimes:

Thank you for your letter of February 18, 1999, to Federal Railroad Administration (FRA) Regional Administrator Laurence H. Hasvold concerning FRA's interpretation of its regulations governing the use of utility employees, which are found in 49 C.F.R. Part 218. Your letter was forwarded to the Safety Law Division of FRA's Office of Chief Counsel.

The primary issue raised in your letter is whether an employee originally assigned as a member of a train or yard crew may serve as a utility employee before his or her original train or yard crew has completed its service. For reasons set forth below, FRA has consistently stated that a member of an assigned train or yard crew may serve as a utility employee with another train or yard crew only after the completion of the assignment of the crew to which that employee was originally assigned.

FRA believes its reading of Part 218 is consistent with the text and regulatory history of the utility employee rule. "Utility employee" is specifically defined in Section 218.5 as "a railroad employee assigned to and functioning as a temporary member of a train or yard crew . . ." Use of a utility employee in concurrent service is prohibited under Section 218.22(b), which provides that such an employee "shall perform service as a member of *only one train or yard crew at any given time*" (emphasis added). Under Section 218.5, a "train or yard crew" is defined as "one or more railroad employees assigned a controlling locomotive, under the charge and control of one crew member; . . . involved with the train or yard movement of railroad rolling equipment they are to work with as an operating crew, *reporting and working together as a unit that remains in close contact* if more than one employee . . ." (emphasis added).

Consistent with the rule text, FRA considers train and yard crews to be specific groups of employees that report to work as an integral whole and stay together for their tour of duty. The clear implication of the definition of "utility employee" is that members of a train or yard crew who are not utility employees are not "temporary" members and are, instead, permanent members of that crew. More important, nothing in the definition of "train or yard crew" suggests that

members of such a crew may serve as temporary members of other crews during their assignment. On the contrary, that definition requires that, to be considered a train and yard crew that does not need blue signal protection, the crew report and work together "as a unit that remains in close contact" and be "involved with the train or yard movement of railroad rolling equipment they are to work with as an operating crew." *Id.* The agency believes that train and yard crews may safely perform their tasks without blue signal protection "because the characteristics of their activity provide alternative protection for the crew members. They work as a team and maintain communication with each other." *Section-by-Section Analysis, Final Rule, Protection of Utility Employees*, 58 Fed. Reg. 43288 (1993). FRA's intent in promulgating the utility employee regulation was to ensure that utility employees may work without blue signal protection only under narrowly defined conditions that provide these employees with the same level of protection afforded train and yard crews working under the blue signal exclusion. FRA noted that, "The utility employee is not covered in the exclusion principally because he or she is not called *for a tour of duty* as a member of the cohesive working unit . . ." *Id.* (Emphasis added.) Prior to the utility employee final rule, a utility employee would always require full blue signal protection. FRA stated, "To avoid that necessity, the railroad can instead assign a brakeman to a crew *for an entire tour of duty*, even though that person's services are only required for a small portion of the duty tour." *Id.* (Emphasis added.)

Therefore, it has been clear from the time of the final rule that FRA has considered a train and yard crew to be one that is together for its entire tour of duty. In the final rule preamble, FRA explained the Section 218.22(b) prohibition against concurrent service for more than one crew by offering an example concerning a train or yard crew.

For example, if an employee is assigned as a train crew member 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 to help them prepare to depart. On the other hand, a member of an inbound train crew at a crew change point, *whose assignment to the train is essentially completed*, could then be assigned as a utility employee to the outbound crew to assist in preparation for departure of the train . . .

58 Fed. Reg. 43290-91 (1993) (emphasis added).

Consistent with the preamble and rule text of Part 218, FRA has consistently read 218.22(b) in conjunction with the definition of train or yard crew in 218.5 to mean that any railroad employee called to work as an original member of a train or yard crew may not be assigned to perform service as a utility employee until the train or yard crew which that employee was initially called to work has completed its service. That is the only time that such a train or yard crew employee may be given a new assignment as a utility employee. Any other use of a train or yard crew member as a utility employee would be considered violative of the letter and the intent of 49 C.F.R. Part 218.

Letters issued by FRA's Office of Safety demonstrate that FRA has consistently read the relevant rules as it does now. For example, in a letter (copy attached) dated March 7, 1995, Deputy Associate Administrator Phil Oiekszyk, in providing examples of what FRA would consider to be noncompliance with Part 218, stated that "a crewmember assigned to a train waiting to depart a yard . . . cannot serve as a utility employee with another train . . . because it would be construed as performing concurrent service . . ."

Hopefully, this letter will serve to eliminate any misunderstandings concerning the intent and effect of 49 C.F.R. § 218.22. If you have any further questions concerning this matter, please do not hesitate to contact me or Trial Attorney Paul F. Byrnes.

Sincerely,



Daniel C. Smith
Assistant Chief Counsel for Safety

Enclosure

Mr. Dennis Yachechak
Operating Practices Specialist,
Federal Railroad Administration

Washington, DC

Mr. Yachenchak,

As shared today, we response with interest to many questions that our members have from the field. This following a memo put in the field by Mr. Richard Rusnak, OP Region #3, FRA. Memo is enclosed below. We have also had conversation with FRA Rep's - Erick Leslie, Leno Penas, and left messages with others for clarity. Per my conversation with you today, I wanted to clarify and confirm our understanding of the Blue Flag and the Utility employee Q's and A's listed below.

BLET, General Chairman, Don Moates, and many others also have received many calls and emails concerning this issue. It is not our interest to handicap the Carrier to move trains but only to protect our members and employees interest, safety and jobs. The climate in the industry obviously is tightening on us all, as state recently by Mr. Joseph Boardman himself. We further would like not to spread incorrect information. There has been very little education on the overall matter to the field by the Carriers. The recent memo we see went to many Carrier Officers, CSX as well, so we expect that there may be improvement on the matter.

UTILITY EMPLOYEE

With reference to question #1 below we understand that those that "qualify" as a "Utility Employee" as stated are those that have completed work with his or her train first. An example: would be those that arrived at the terminal or destination and have put away their train for that day. Then the employee could be directed or assist another train as an attached utility employee. That with respect to the " Six holy things".

SIX HOLY THINGS

These "six holy things" as outlined are:

1. 1. Setting or releasing hand brakes
2. 2. Coupling or uncoupling air hoses
3. 3. Electrical or mechanical connections
4. 4. Wheel chocks and chains
5. 5. Cutting in and out of brake valves or brake components
6. 6. Rear end markers or devices - inspecting, testing, installing, removing or replacing

UNDERSTANDING

- • With the above stated, we understand it would eliminate or not allow (any employee or conductor) of train A to do any of the "six holy things" on train B? This would include the task of putting another train back together at public crossings, which in function includes many of the task defined as "the holy six" dedicated for a "qualified utility

employee"? Dispatchers daily and employees of the Carrier seem to take on this task daily, in violation.

Comment: FRA would consider, in extreme cases, the crew invoking the emergency provision out on the line of road [see § 218.25(c)] if the circumstances warranted, and would exercise its prosecutorial discretion accordingly. This would be handled on a case-by-case basis, wholly dependent on the circumstances of each particular situation.

- It would prevent any employee from any work at any time where the employee is not complete with his/her own train first. The key word being "complete"? Unless it were an emergency as referenced.

Comment: the term "any" work is too broad. That is, if the duties do **not** involve going on, under, or between rolling equipment, such as lining switches, protecting shove moves, passing hand signals, bleeding cars, etc., then these activities would be permitted. The prohibitions do come into play, however, if the individual performs any of the six holy things, or goes beyond that to engage in repairs, etc.

- We further understand that we have had misunderstanding in the field. For example the CSX "Three Step Protection" is not covered by the FRA CFR 218.22 as employees and Officers assumed. That this three step or similar Operating Rules by any Carrier are just that operating rules of that Carrier.

Comment: this statement is correct, with the understanding that the so called "3-step protection" **may not** be used as a substitute for blue signal protection when such is required. [See next bullet.]

- That Blue Flag Protection and Three Step Protection or Double Check Programs are separate and apart from each other.

- We also understand that two crews working together are also not under Blue Flag requirements because they are in fact working together and must be in communication with each until the work is completed. In essence they are all one big crew working together on the same train.

Comment: this is correct, provided that the **entire** crew, including the engineer, of the assisting train or assignment is actually engaged in handling the "joint" equipment, that is, coupling to and moving the equipment. Then, and only then, would we consider the "joint" equipment as equipment that the assisting crew was called to operate. In other words, in order for the assisting crew to avail themselves of the train and yard crew blue signal exemption, they must actually handle, that is, couple to and move, the "joint" equipment. They can't just use a body or two to assist the other crew --- it has to be the entire crew, to include the engineer **and** the engine, and the assisting crew must actually couple to and move the equipment. That's what we mean by "handle" equipment in our long-standing interpretive guidance concerning the TY&E exemption.

There are more questions that will arise we are sure. We find that it would be helpful to have the Carriers educate the employees on the matter. We, as the Organization Representatives would be interested in an open forum with the FRA and the Carriers to discuss and ask many of these questions for clarity on behalf of our members. We stand ready for any information that any office could render to us in addressing this issue for the overall good for all parties. We thank you for your time in this matter this day and in the future, as I remain...

Respectfully,

J T

J T Little 4th - Chairman
Tennessee State Legislative Board,
Brotherhood of Locomotive Engineers and Trainmen, IBT
423-426-2880

DATE: December 5, 2006

TO: D. M. Arterburn, Legislative Representative, Local #1313
United Transportation Union
Amarillo, TX

FROM: Rob Castiglione, Deputy Regional Administrator, FRA
Fort Worth, TX

Concurrence at FRA Headquarters – Washington, DC:

Operating Practices Division
Douglas Taylor, OP Staff Director
Dennis Yachechak, OP Specialist

Office of Chief Counsel
Carolina Mirabal, Trial Attorney

SUBJECT: Blue Signal Protection

The following answers to your questions concerning whether blue signal protection is required are as follows:

- 1) At locations other than crew change points: Crew member(s) of train A instructed to assist crew member(s) of train B for any purpose which would require crew member(s) of train A to go on, under, or between the rolling equipment of train B. *Note*: Including working on ETD -- replacing, arming, and/or battery change.

Answer: At any location, a crew member from train A may attach him/herself to assist the crew of train B as a utility employee provided his/her work with train A is completed. The scope of the utility employee's work is limited to the following "six holy things": setting or releasing hand brakes; coupling or uncoupling air hoses and other electrical or mechanical connections; preparing rail cars for coupling; setting wheel blocks or wheel

chains; conducting air brake tests to include cutting air brake components in or out and positioning retaining valves; and inspecting, testing, installing, removing or replacing a rear end marking device or end of train device. (*See 49 CFR Part 218.22 for additional utility employee conditions regarding communication, position of engineer, etc.*)

Concerning ETD battery changeouts, regularly assigned crewmembers may replace the ETD battery but only on equipment they are called to operate. A utility employee, however, may not replace a battery, since this is not one of the “six holy things” permitted under Part 218.22. **Exception:** BNSF, CP, and UP have a waiver to permit properly attached utility employees to replace a battery on an ETD, but only if these employees are from the T&E ranks.

- 2) At crew change points: After a crew change, inbound crew member(s) instructed to assist outbound crew member(s) for any purpose, which would require inbound crew member(s) to go on, under, or between the rolling equipment that is controlled by the outbound crew. *Note:* Including working on ETD – replacing, arming, and/or battery change.

Answer: See Answer 1.

- 3) At any location: Crew members of train A instructed to assist crew members of train B by shoving train B up a hill that of which would require crew members of train A to go on, under, or between the rolling equipment of train B.

Answer: this is a simple matter of one entire crew, including the locomotive, assisting another entire crew, which has always been FRA’s traditional position on

situations of this type. In essence, the train to be shoved becomes equipment that both crews are called to operate. Equipment that a crew is “called to operate” means rolling equipment, as defined in Part 218.5 (i.e., locomotives and railroad cars), that they are handling, or will handle, as in couple to and/or move, as an operating crew. The two crews must be in communication with each other and both crews must understand the moves to be made. It is therefore a non-blue signal and non-utility employee issue.

- 4) At any location: Crew members of train A instructed to assist crew members of train B by pulling train B up a hill that of which would require members of train A or train B to go on, under, or between the rolling equipment of the other respective train.

Answer: See Answer 3.

- 5) At a yard location: Members of yard crew A instructed to place a fill on or remove cut outs from train B (crewed) which would require member(s) of yard crew A to go on, under, or between the rolling equipment of train B.

Answer: See Answer 3.

- 6) At a yard location: Members of yard crew A are instructed to place a fill on or remove cut outs from train B (non crewed) which would require member(s) of yard crew A to go on, under, or between the rolling equipment of train B.

Answer: similar to Answer 3, except that arrangements must be made by the person giving the instructions to ensure either that the equipment will not move, or that if another crew will handle the same equipment, that each

crew is notified of the other and that they will be handling the same equipment.

- 7) At any location: Member(s) of yard crew A or road crew B instructed to cross through standing train C (crewed) for any purpose which would require the member(s) of yard crew A or road crew B to go on, under, or between the rolling equipment of train C.

Answer: Blue signal protection is not required, whether crewed or non-crewed. Railroad operating and safety rules address this issue.

- 8) At any location: Member(s) of yard crew A or road crew B instructed to cross through standing train C (non crewed) for any purpose which would require the member(s) to yard crew A or road crew B to go on, under, or between the rolling equipment of train C.

Answer: See Answer 7.

- 9) And on an ending note, when this issue was initially brought to the attention of FRA back in August of this year, it was the opinion of the BNSF rules department, as relayed to me, that certain train events could be classified as emergency events and therefore would not require Blue signal protection for crew assisting another crew.

This therefore begs the question, how exactly does FRA define “emergency” and what examples of events might FRA describe that would preclude the requirement of Blue signal protection?

The only situation I can imagine in the instant that would warrant a classification of an emergency situation, would be

when a train was left standing, fouling a public road crossing and emergency vehicles were attempting to cross the track. Would this not be correct?

Answer: out on the line of road, FRA considers a bonafide emergency to be a situation whereby a train has become disabled, such as a break-in-two (caused by a broken knuckle or drawbar), or dragging brake rigging, and requires the assistance of others (either mechanical department employees or other T&E crews) without the capability of displaying blue signals. The assisting employees would be required to follow the provisions of Part 218.25(c) while engaged in the repairs, such as replacing a knuckle, chaining up a drawbar, or securing brake rigging, etc. Another example would be a shifted load, where the car had to be set out. FRA would likely not take exception to a crewmember from another train assisting in this regard. FRA would view each of these situations on a case-by-case basis.

Concerning blocked crossings, the mere fact that a train is stopped by an emergency application of the air brakes, or for other reasons, such as a stop signal, and a crossing is blocked, does not, in and of itself, constitute an emergency. However, once again, these situations must always necessarily be viewed on a case-by-case basis. For example, in the event an emergency vehicle was attempting to cross, FRA, under these circumstances, likely would not take exception if a crewmember from another train assisted the standing train in cutting the crossing. The emergency procedures in Part 218.25(c) would, of course, still need to be followed.

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