

JOHN C. HANCOCK, johnh@utu851.org  
General Chairman

# united transportation



JOHN D. WHITAKER, III, johnw@utu851.org  
YVONNE R. HAYES, yvonneh@utu851.org  
Vice General Chairpersons



## union

3560 Cardinal Point Drive.  
Suite 104  
Jacksonville, FL 32257  
Phone: (904) 367-1974  
Fax: (904) 733-1252

GENERAL COMMITTEE GO-851  
CSX/SCL - FECR - WSSB - HPTD - GM - GARR - SCPR - SCCR

February 24, 2009

Mr. John Drake  
General Manager – Safety Compliance  
CSX Transportation  
500 Water Street  
Jacksonville, FL 32202

SCANNED & SENT

Dear Mr. Drake:

Thank you for providing our office with a copy of the 2009 T&E Rules Training in response to our inquiry about the Carrier's educational program on the "Good Faith Challenge" provisions of 49 CFR Part 218.

In reviewing the document, we had some concerns with regard to the clarity of the presentation.

1. The first line of the applicable portion of the law (§218.97(a)), states that the employee has the responsibility to challenge any directive that, in his/her good faith determination, would violate either an FRA regulation or operating rule regarding the items covered un Part 218. However, the third slide of the "Good Faith Challenge" section of the CSX training module (p. 26 of the PDF file provided to us) entitled "The Basics" states that the "employee has the right to challenge" any such directive.

Although the individual accountability mandated by the law is mentioned on the subsequent slide, which reads that the law "holds the individual responsible for violating the rules", employees might come away from the training session believing that they would not be held accountable for a rule violation if they were acting under the instructions of a supervisor. We believe it is important to make this explicit: the "Good Faith Challenge" is a responsibility, not a right.

2. Second, there are several references to "good faith" without any explanation of the legal meaning of this term. Since we were not present for the actual "face-to-face" classes where the slides were shown, there may have been instructors who gave their trainees a solid understanding of the language. We doubt, however, that this happened consistently across the property.

As outlined in *Black's Law Dictionary*, "good faith is an intangible and abstract quality with no technical meaning or statutory definition". If an employee were to

invoke the Good Faith Challenge in error – i.e., in reference to something not covered under Part 218 – that would not necessarily mean the employee was not acting “in good faith”. Yet the training module explicitly defines such an error – “not a shove or pushing move, or leaving equipment in the clear, or operating a hand switch or hand derail” – as a challenge not “made in good faith”. (See slide on p. 32 of PDF file provided.)

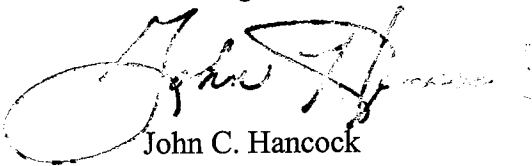
*Black's Law* notes that the term “good faith ... encompasses ... an honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage.” It further explains, “An individual's personal good faith is concept of his own mind and inner spirit and, therefore, may not conclusively be determined by his protestations alone.”

An employee who is mistaken in his/her challenge as opposed to an employee who is not acting in good faith are entirely different things. One is in need of discussion and education of the type provided through the review process; the other may find him/herself subject to disciplinary action.

Obviously, we do not expect the Carrier to provide employees with a full-blown legal education! And we realize that this regulatory language is new to all of us and that there will be a learning curve for all parties. But, we are concerned that the weaknesses in the presentation noted above may lead employees to err in the direction of failure to challenge a supervisory command when it would be appropriate, and legally mandated, that he or she do so.

Again, thank you for providing us with your training material. As part of our commitment to promoting strict rules compliance, we will be working with our local chairpersons to ensure that our members understand their obligations under the law.

Kind regards,



John C. Hancock  
General Chairman

YRH:gmt

Cy: All Local Chairpersons