

**BEFORE THE
UNITED STATES HOUSE
SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS**

**HEARING
EXAMINING FREIGHT RAIL SAFETY**

JUNE 14, 2022

**TESTIMONY OF ROY L MORRISON III, DIRECTOR OF SAFETY
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION
INTERNATIONAL BROTHERHOOD OF TEAMSTERS**



Thank you, Chairman Payne, Ranking Member Crawford and members of the Subcommittee. I am Roy L Morrison III – Director of Safety for the Brotherhood of Maintenance of Way Employees Division of the International Brotherhood of Teamsters (BMWED-IBT). My union represents more than 30,000 railroad workers who perform inspection, construction, maintenance, repair, and dismantling of tracks, roadbeds, bridges, structures, and facilities on railroads throughout the United States, including the major Class I freight railroads as well as many of the largest commuter lines in the country. BMWED’s membership is comprised of highly skilled workers who are proud to perform their trade that is vital to the American rail network and its reliability to the US supply chain.

As Director of Safety, I am responsible for leading the union’s Safety Department, monitoring and addressing health and safety issues for BMWED across the country, and serving as the union’s primary staffer engaging with Congress and agencies on legislative and regulatory issues affecting the health and safety of our members. Prior to my current role, I was an Internal Organizer on BMWED’s Communication Action Team (CAT) where I interacted with our members from virtually every railroad across America to stay current on the issues they experienced on the job. I started my career as a Maintenance of Way (MOW) employee for 19 years at the Union Pacific Railroad doing construction, maintenance and repair to the tracks, structures, and bridges throughout the 14 states in the UP northern system.

Thank you for giving the BMWED the opportunity to share with you the safety concerns we see through the eyes of our Members in the rail industry and the detrimental impact these issues may have on the American people. Specifically, BMWED is concerned that: (1) current railroad staffing levels are dangerously low; (2) automated track inspection technology is an unacceptable substitute for human track inspections; (3) railroads are providing insufficient protection for

roadway workers from oncoming trains when they are working on or near active rail lines; (4) railroad managers must be disqualified following safety sensitive violations; and (5) the “excepted track” loophole that allows railroads to run over substandard tracks must be closed.

(1) RAILROADS ARE DANGEROUSLY UNDERSTAFFED

In 2015, many of the Class I railroads began implementing the Precision Scheduled Railroading (PSR) business model that has turned the industry upside down. The focus of PSR is to reduce a railroad’s operating ratio, which is the proportion of operating expenses to operating income. While PSR’s across-the-board and ruthless cost-cutting has produced historically low operating ratios and historical record profits for the railroads, it also has produced historically low staffing levels in the industry.

Between 2016 and 2020, before COVID, railroad employment on the four largest Class I railroads was reduced by over 30,000. In 2016 Class I employment was at 153,000, by 2020 it was at 120,000. The reductions in forces have continued and by December of 2021, Class I employment was at 114,499. Even as traffic has returned, the staffing levels have not. By the end of 2021, carloadings were only 2.6% below carloadings at the end of 2019; revenue had returned to the levels at the end of 2019. By December of 2021, a workforce 81% of the size of the 2019 workforce was responsible for moving 97.4% of 2019 carloadings.

Along with these staffing cuts, railroads have curtailed inspection, maintenance and repair work on their infrastructure and equipment, and required a reduced workforce to handle the responsibilities once handled by a significantly larger workforce. The railroads have made it difficult to impossible for their employees to properly perform their tasks that are essential to adequate rail service. There’s simply not enough time to perform the tasks and our members are spread thin covering impossibly expanded work territories.

MOW employees are working over 100 hours a week to perform track maintenance on multiple territories for months on end. Roadway workers, in charge of the safety of the men and women working on track, are working weeks without a day off while railroads refuse to fill positions left open due to retirements, and have continued to furlough MOW workers.

Prior to the massive workforce cuts caused as a direct result of PSR the BMWED embarked on an Occupational Safety and Health research project. A Summary Report was authored by a team of highly credentialed medical and academic researchers with expertise in workplace safety and health, performing studies both nationally and internationally. The full research project includes three separate areas of study: (1) epidemiology, (2) ergonomic and physical hazards, and (3) social and economic impacts.

This study found significant elevated levels of disease and injury compared to workers in other industries, accompanied by substantial negative economic and social impacts.¹ The increased mental and physical toll from severe understaffing placed on MOW workers only exacerbate these issues. And many of these issues could be mitigated by the railroads hiring additional MOW forces and providing more stable work schedules.

Cuts to personnel mean the loss of industrial and institutional knowledge, both of which are critical to the performance of railroading work and ultimately, the performance of the American railroad system. Railroading is a highly skilled trade and it takes years to master. Railroad employers working crews so short staffed makes on the job training all but impossible. One of the profound impacts we have seen regarding training of new MOW forces is when seasoned employees retire, they take a knowledge trust with them without any opportunity to train the new work force.

¹ The full summary report is available at https://www.bmwe.org/cms/file/08232018_145843_HSurveyResults.pdf.

In recent years we have seen an unprecedented number of MOW employees retire early or quit mid-career. Until recently it was almost unheard of for Maintenance of Way Employees to quit after acquiring a number of years of seniority because the jobs were always considered good jobs with good pay and good benefits. But the jobs have been degraded by the railroads with respect to working conditions and by pressure to work faster with less coworkers and resources often over larger service territories, cut corners and ignore or defer repairs. In a statement submitted to the Surface Transportation Board (STB) for its multi-day hearing on Urgent Issues in Freight Rail Service (Ex Parte No. 770), BMWED submitted copies of letters and statements from MOW employees describing how the jobs have been degraded and working conditions have deteriorated since the implementation of PSR. I am including copies of these letters as Exhibit A accompanying my testimony so that the Committee can hear directly from our members about how they can't continue to perform the work in good conscience under current conditions where they are pressured to cut corners/defer maintenance/skip steps/not work to the standards they were trained to and met through their careers until more recent years with the adoption of PSR

Chairman Payne, BMWED thanks you and Chairman DeFazio for requesting that the U.S. Government Accountability Office (GAO) examine the impacts that the implementation of PSR by Class I railroads is having on workers and safety.² We also thank you for holding hearings in March³ and May⁴ of this year where rail labor and the Chairman of the STB have been able to

² <https://transportation.house.gov/news/press-releases/chairs-defazio-and-payne-jr-request-gao-study-on-the-impacts-of-precision-scheduled-railroading-on-workers-safety-and-shippers>.

³ <https://transportation.house.gov/news/press-releases/chairs-defazio-payne-jr-statements-from-hearing-to-discuss-the-surface-transportation-board-reauthorizations-role-in-improving-rail-service-in-the-us>.

⁴ <https://transportation.house.gov/news/press-releases/chairs-defazio-payne-jr-statements-from-hearing-on-the-surface-transportation-boards-role-in-resolving-freight-rail-conflicts>.

testify about PSR. Staffing levels must be restored and the policies designed to ruthlessly cut corners that are driving good people from the industry must be ended. We ask that the Committee continue to stay on top of this issue and take further action to mitigate the damage caused by this cost-cutting value extraction business model called “PSR”.

(2) AUTOMATED TRACK INSPECTION IS NOT A SUBSTITUTE FOR MANUAL-VISUAL INSPECTION DONE BY TRAINED TRACK INSPECTORS:

Starting in 2018 all of the Class I railroads embarked on various test programs they refer to as Automated Track Inspection systems (ATI). In testimony before this Committee last year, the President and CEO of the Association of American Railroads (AAR) complained that the Federal Railroad Administration (FRA) is not automatically approving waivers of track inspection safety rules that set the required frequency of human track inspections. That’s wrong. The FRA is absolutely right to scrutinize these waiver requests. And Congress should make it clear that FRA has your support.

Although ATI sounds new and “cutting edge” the fact is that all the tests approved by FRA exclusively rely on Autonomous Track Geometry Measurement Systems (ATGMS). That just means the railroads are using track geometry systems which have been in use on the railroads since the 1970’s. These track geometry systems were never designed to complete FRA mandated track inspections. What those track geometry systems can do is identify track geometry defects - which make up about 26% of the total defects that FRA requires to be inspected. A full list of the defects is available at 49 CFR §213 sub part B-E.

Railroads are trying to replace human visual track inspectors who have the ability to identify 100% of these defects (as well as a number of non-regulatory defects) with a technology that only has the ability to identify approximately 26% of them. Taking human track inspectors off the tracks leaves almost 75% of track defects unmonitored and puts us all at risk. Additionally,

human track inspectors are required to make “immediate remediation” of the defects they find on-which help keep the trains moving with less disruption. The machines cannot do that.

Rail labor supports the expanded use of these track geometry systems to assist experienced human track inspection professionals, but the waivers submitted to FRA indicate that the railroads want to cut human track inspections by up to 80% below current levels while sorting out whether the new technology actually works for defects it does check, and even though there are defects the machines cannot detect. Claims that the FRA or rail labor is preventing greater deployment of these machines is simply false.

Railroads can add all the new technology they want without FRA safety waivers. They could run the systems every day if they chose to. On Amtrak’s class 6-8 tracks, track geometry systems are already used at the same frequencies the railroads want without FRA safety waivers. But Amtrak is adhering to the existing required schedule for human track inspections. Taking human track inspectors off the track and replacing them with track geometry systems that are not even designed to evaluate all the defects assessed by inspectors puts lives at risk.

It is vital to the safety of rail employees and the public that manual in-person inspection frequencies remain at their current mandated levels by the federal government. And Congress must not let the railroads get away with trying to bully FRA into rubber stamping safety waivers to get around the established safety minimum human visual inspections frequencies.

(3) ROADWAY WORKER PROTECTIONS

BMWED would like to commend the National Transportation Safety Board (NTSB) for including recommendations to improve protections for roadway worker safety on the agency’s 2021-2022 “Most Wanted List” of recommendations to save lives.⁵

⁵ <https://www.nts.gov/Advocacy/mwl/Pages/mwl-21-22/mwl-rph-02.aspx>.

An additional measure to protect BMWED's roadway worker members would be to simply enforce existing FRA regulations for safety equipment to provide warnings of oncoming trains. Because FRA has had years to enforce this minimum standard for roadway worker safety and failed to do so, Congress should elevate this requirement from regulation to statute.

Railroad watchmen/lookouts for roadway workers protect their co-workers from oncoming trains when they are working on or near active rail lines. Current regulations (49 CFR §214.329) require provision of warning equipment to watchmen/lookouts such as whistles, air horns, white disks, red flags, lanterns, or fuses. The equipment required by this regulation is clearly defined and is essential to roadway worker protection for employees working on or near active rail lines, but railroads frequently fail to provide it. In fact, BMWED investigated practices currently in place on all the Class 1 Railroad properties and discovered that only Amtrak is currently in compliance with the equipment regulations for FRA train approach warnings provided by watchmen/ lookouts.

Still, FRA has not enforced the requirement. Instead, the freight railroads encourage use of "verbal" warnings (i.e., yelling), rather than use of the equipment mandated by the regulation. This is despite the continuing occurrence of roadway worker fatalities where unequipped watchman/lookouts were a primary or contributing factor (La Mirada, CA 5/7/08, Sunshine, AZ 1/23/2009, Minneapolis, MN 5/25/15, Edgemont, SD 1/17/17, and Estill, SC 11/30/18). Just getting the proper warning equipment is a simple solution that will save lives.

Again, given FRA's failure to enforce this minimum standard for roadway worker safety, BMWED asks Congress to elevate this requirement from regulation to statute.

(4) RAILROAD MANAGERS MUST BE DISQUALIFIED FOLLOWING SAFETY SENSITIVE VIOLATIONS

For years, BMWED has been raising the issue that FRA must take action to disqualify railroad managers who have been found by a federal court or administrative body to have willfully and intentionally retaliated against a railroad employee whistleblower for reporting safety issues. BMWED's efforts to get FRA to enforce existing regulations have been ignored.

In 2012, the Occupational Safety and Health Administration (OSHA) issued a Memorandum of Agreement (MOA) to address non-enforcement of FRA's regulations contained in 49 CFR Part II, § 209.303 and § 225.33.⁶ In 2016, BMWED submitted a FOIA request to FRA with a list of ten whistleblower protection (49 USC §20109) cases in which OSHA, Administrative Law Judges, DOL's Administrative Review Board, and/or federal courts held that railroads, whose managers willfully and intentionally retaliated against their workers, were punished by imposition of punitive damages.⁷ The list from FRA identified each offending railroad manager and summarized the details of the offensive acts and intentionality of those acts. Even though the §20109 findings in all ten cases fully satisfied the FRA's presumption of guilt sustaining manager disqualification under 49 CFR §209.329(a), FRA never initiated and completed any proceedings to establish potential violation of the provisions of §209.303 and/or Internal Control Plan (ICP) requirements in any of these ten cases (or any others).⁸ The FRA continued its policy of not enforcing these regulations after the information from the FOIA request was revealed.

⁶ *Memorandum of Agreement Between the Federal Railroad Administration U.S. Department of Transportation and the Occupational Safety and Health Administration U.S. Department Of Labor* on July 16, 2012.

⁷ The FRSA's §20109 punitive damage standard is virtually identical to FRA's standard for disqualification of railroad managers for violation of safety-sensitive regulations. Reference to §20109 punitive damage findings provide a compass course of clarity for FRA enforcement of §209.303.

⁸ As in earlier years, the FRA's *Annual Enforcement Reports* for FY 2019 and 2020 reveal no rail managers were disqualified or subjected to a hearing. FRA's public databases do not appear to provide information concerning violations of ICPs for retaliatory management behavior.

BMWED has raised these issues with FRA multiple times - including in 2018 and 2021. Failing to properly penalize these managers encourages retaliatory conduct. It leads to a culture of impunity that makes the railroads less safe. All that is required to address this is for FRA to simply enforce existing regulations to disqualify these railroad managers who have been found to have willfully and intentionally retaliated against a railroad employee whistleblower for reporting safety issues.

(5) THE “EXCEPTED TRACK” LOOPHOLE THAT ALLOWS RAILROADS TO RUN OVER SUBSTANDARD TRACKS MUST BE CLOSED

Excepted track regulation permits railroads to designate track as effectively exempt from compliance with minimum safety requirements for roadbed, track geometry and track structure. This was meant to be a short-term solution to help railroads that were suffering 40 years ago. There is no excuse for its continued existence.

The “excepted track” regulatory loophole was added to FRA regulations in 1982 to provide regulatory relief following a series of railroad industry bankruptcies in the 1970s. When adopted, FRA believed that the designated tracks would be located in yards or otherwise on comparatively level terrain in areas where the likelihood was remote that a derailment would endanger a train crew or the general public. Further, it was anticipated that the Excepted Track rules would be applied for limited periods of operation over track maintained at less than the established minimum safety standards, scheduled for abandonment or later improvement. But railroads have applied the Excepted Track regulation far more extensively.

In 1997, some minor changes were added to 49 CFR § 213.4. Some of the additions were an attempt to close loopholes in the regulations, but the entire concept of excepted track is an unacceptable safety loophole. Even after the 1997 changes, current rules are used by rail carriers to designate track as excepted in order to avoid track maintenance and encourage tolerance of

dangerous track conditions, even on trackage producing revenue adequate to support track maintenance.

As a recent example of the severity of the issue, in a September 2020 Railroad Accident Brief issued by the NTSB following a 2017 derailment in Arlington, Texas that resulted in a railroad worker fatality, the NTSB wrote “[b]ecause of the excepted track designation, conditions were present at the POD [point of derailment] that otherwise would not be permitted if the track was designated as Class 1 or higher” and “[c]ontributing to the accident was the designation of the accident track as excepted track under the current FRA Track Safety Standards, which allowed inadequate track conditions to exist on track used regularly.”⁹

There is no excuse for why a short-term solution from 40 years ago that was designed to help railroads that were dealing with a series of bankruptcies should continue to exist. The “excepted track” loophole should be sunset. Carriers should only be allowed to designate sections of track as “Excepted” for a limited period of time (no more than 5 years). After expiration of such time, track should be brought into compliance with FRA Class I track standards.

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Again, on behalf of the more than 30,000 members of BMWED, thank you for the opportunity to raise these concerns about health and safety issues in the railroad industry today.

⁹ <https://www.nts.gov/investigations/AccidentReports/Reports/RAB2002.pdf>.