

Pennsylvania Federation Northeastern System Federation



Jed Dodd
General Chairman
Pennsylvania Federation
421 North Seventh Street
Suite 299
Philadelphia, PA 19123

Dale E. Bogart, Jr.
General Chairman
Northeastern System Federation
3321 Vestal Pkwy East #B
Vestal, NY 13850

September 2, 2015

email and US Mail

National Railroad Passenger Corporation
Rodrigo Bitar, Chief Engineer
30th Street Station
Philadelphia, PA

Dear Mr. Bitar:

Re: 14 Hour Overtime Edict
Unilateral Abrogation of the Agreement

This is in connection with Amtrak's letter of instruction dated August 21, 2015 from Deputy Chief Engineer-Maintenance Andrew Keefe. A copy has been attached for your ready reference. In this letter, the Carrier purports that a safety concern has surfaced and provides a vague reference to data that it has allegedly collected. The Carrier states that as a result of its data, it will restrict the amount of hours an employee may work to 14 hours a day. While the BMWED supports a safe work environment, the BMWED objects to the Carrier's letter of instruction because the Carrier's instructions in this case are arbitrary and will result in improper assignments in violation of the Agreement.

First, we point out that assignment of Maintenance of Way employees to Maintenance of Way duties is governed by the Collective Agreement. In the past the Carrier has made improper assignments using a unilaterally imposed Carrier rule virtually identical to the one contained in the Carrier's August 21, 2015 letter. The Organization has challenged the Carrier's arbitrary actions and the Third Division of the NRAB has repeatedly upheld the Organization's position. See Third Division Awards 32371, 35495, 35642 and 37658 which all addressed this same issue and were sustained in the Organization's favor. In this regard, we direct attention to Third division Award 35495 which in pertinent part held:

"...Accepting the Carrier's argument in this case would, in effect, cause the Board to amend Rule 55 to insert a provision that employees cannot work 19 hours in a 24 hour period and that five hours of rest between assignments is not enough. That is not the Board's function. Only the parties can do that. If five hours between assignments is not enough rest, is six, seven, eight or nine? Where and how do we draw the line? See Third Division Award 32371 between the parties where a potential of between 19 and 23 hours of work in a 24 hour period (as opposed to 19 hours in this case) was insufficient to avoid the seniority requirements of Rule 55:

'The Board does not find persuasive Carrier's reasons for excluding payments when the combination of overtime hours worked by Polinaire and the scheduled hours of Claimants would have exceeded 16 hours pay in a 24 hour period. It is acknowledged that Polinaire was improperly utilized on overtime work that Austin and Higuera were entitled to perform. They filed a claim seeking payment for the hours Polinaire worked. They are entitled to be paid for these hours as a remedy even if, as Carrier said such payment would be the equivalent of being on duty in some instances of between 19 and 23 hours in a 24 hour period. The Agreement was violated when Polinaire was used instead of Claimants. As reparations for the violation they are entitled to be paid the equivalent of the total number of hours that Polinaire worked in violation of the Agreement.

Without more from the Carrier concerning its assessment of the Claimant's individual circumstances, we choose not to get on what in effect is a slippery slope which would cause the Board to establish by fiat a limit on hours where the parties have not done so by agreement."

Second, and notwithstanding the fact that the Collective Agreement dictates how assignments are to be made, we further note that the Carrier's Letter of Instruction does not contain any cohesive and relevant data in connection with a genuine goal of safety. The reference to data in the Carrier's letter is vague and the conclusions unclear. The fact that this provision is not specifically aimed at safety concerns is readily apparent

because the Carrier's so-called data makes reference to unspecified incidents where employees worked "excessive hours consecutively for days" yet the Carrier is attempting to restrict any instance where an employee would work more than 14 hours in a day without regard to any other factor. Even if the Carrier's collected data was cohesive and specific, the Carrier's attempt to limit any work day to 14 hours in all instances is simply not supportable by the data it allegedly collected where employees worked "excessive hours consecutively for days".

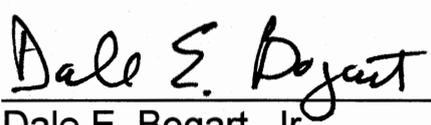
In closing, we reiterate that the Carrier's letter of instruction does not provide a reasonable basis to restrict employees to 14 hours a day. While the letter appears to be advisory and not mandatory, BMWED still must object to this type of Carrier instruction. This is because in the past, the Carrier has attempted to use this type of directive as a defense for violations under the Maintenance of Way Agreement (See Third Division Awards 32371, 35495, 35642 and 32371). Consequently, we expect and insist that assignments be made in accordance with the collective agreement without regard to this arbitrarily instituted restriction.

If the Carrier fails to follow the Agreement in making assignments we will take any means necessary to enforce the agreement.

Yours truly,



Jed Dodd
General Chairman BMWED



Dale E. Bogart, Jr.
General Chairman BMWED

cc All Federation Officers
All Amtrak Committees
Charles Sheltman
Dave Ingersoll
Sharon Jindall
Andrew Keefe
Matt Porto

NATIONAL RAILROAD PASSENGER CORPORATION
30th and Market Streets, Philadelphia, PA 19104
Tel: 215-349-3460 Fax: 215-349-3608



Date: August 21, 2015

From: Andrew Keefe
Deputy Chief Engineer-Maintenance

A handwritten signature in black ink, appearing to read "A. Keefe".

To: Distribution

Department: Engineering

Subject: Working in Excess of 14 hours
Letter of Instruction 2015-3

cc: Rodrigo Bitar
Scot Naparstek
Steven Ladislav

As a department, Safety is always our first priority. Therefore, part of our responsibility as a department is to ensure that employees receive an opportunity for proper rest. Amtrak Engineering, with support from our System Safety department, has been compiling and reviewing fatigue analytics from various incidents where employees have been working excessive hours consecutively for several days. The results indicate the potential for increased risk for an injury or being involved in a major operating rule violation or vehicle accident due to not having the proper rest. We can no longer continue this practice as a department.

Effective immediately to reduce the potential for placing our employees in situations where Fatigue could potentially limit one's ability to function safely both mentally and physically, working hours should be restricted to 14 hours per day. This includes working overtime.

Please share this new instruction with your Supervisors, Managers, Foreman and all employees.

Distribution:

R. Bernaski
M. Faulkner
G. Fitter
G. Jordan
D. Karczeski
D. Klouda
C. Mamoon
M. Moore