



U.S. Department
of Transportation

**Federal Railroad
Administration**

Memorandum

Date: February 3, 2004

Reply to Attn of: OP-04-04

Subject: Commingled Service Provisions;
Hours of Service Interpretations

Original Signed By:

From: Edward W. Pritchard
Director, Office of Safety Assurance and Compliance

To: Regional Administrators

This technical bulletin is to reaffirm the Federal Railroad Administration's interpretation of the Hours of Service Act commingled service provision as it pertains to employee attendance at required rules classes, railroad investigation hearings, safety committees, administrative duties, familiarization trips, and physical examinations. Additional issues regarding time spent providing information about railroad accidents, time spent deadheading from a duty assignment in a privately-owned vehicle, and onboard observations made by railroad officials are also addressed.

Section 2(b) of the Hours of Service Act states, in part: "In determining . . . the number of hours an employee is on duty, there shall be counted, in addition to the time such employee is actually engaged in or connected with the movement of any train, all time on duty in other service performed for the railroad during the 24-hour period involved."

ATTENDANCE AT RULES CLASSES

The Federal Railroad Administration (FRA) has not changed its position since its published interpretations of the Act in 1977, where we said "It should be remembered that attendance at required rules classes is duty time subject to the provisions of commingling" [49 CFR Part 228, Appendix A (emphasis added)].

When attendance at a rules class fulfills a condition of employment, such attendance is "required." This is true even where employees have the option to attend one of several sessions, and it is immaterial that specific scheduling of such service is left, in part, to the employee (42 FR 27596, May 31, 1977). For example, consider a system that permits an employee to attend any of six sessions within a given period or to attend one final session held for those who missed an earlier one.

Whether the employee attends one of the first six or the last one, his attendance fulfills a condition of employment, and his time spent in the class is therefore time on-duty.

One could make a reasonable argument that insofar as safety is concerned, required rules class attendance should be treated differently depending on whether it occurs before or after covered service. However, Congress did not draw such a distinction. Commingled service is defined to include “all time on-duty in other service performed for the common carrier during the 24-hour period involved” [45 U.S.C 62 (b)]. This flat statutory language precludes any such disparate treatment for enforcement purposes.

ATTENDANCE AT RAILROAD INVESTIGATION HEARINGS

When an employee is required by the railroad to attend a hearing as a principal under charge, or as a witness on behalf of the railroad, time so spent would be considered as time on duty under the commingled service provisions of the Act. When an employee and/or union representative voluntarily attends a hearing as a witness on behalf of an employee, such service is not required by the carrier, and therefore, not considered time on duty under the commingled service provisions.

Under these circumstances, if an employee attends a hearing because he or she is required to do so by the railroad in the same 24-hour period as having performed service subject to the limitations of the Act, the time spent in the hearing is included when computing the total time on duty. The Act does not distinguish between commingled service performed before covered service and that performed after covered service. If there is less than a 4-hour interval between such a hearing and service performed in the movement of a train, then the time is counted as continuous time.

The Act generally prohibits service in excess of 12 hours, absent an unforeseen event beyond the railroad’s control. Required attendance at a disciplinary hearing is clearly foreseeable. Thus, the railroad will be in violation of the Act if it requires or permits such service beyond the time limits prescribed for total time on-duty.

PARTICIPATION IN RAILROAD SAFETY COMMITTEES

As long as participation in railroad safety committee activities is a voluntary act by an employee, and not a condition of continued employment, such service is not normally considered “covered” under the commingled provisions of the Act. Time occupied in such endeavors, if truly voluntary, is usually done during an employee’s discretionary time. As such, since an employee is presumably free to come and go, this activity may be included in “rest time.”

FAMILIARIZATION TRIPS

An employee who rides a train for the sole purpose of qualifying on the physical characteristics of the railroad is subject to the constraints of the Act if such trips are required as part of the qualification process and are made in the same 24-hour period as covered service. Such time is considered commingled service and must be computed in determining total time on-duty.

PHYSICAL EXAMINATIONS

If an employee is required to report for a physical examination as a condition of continued employment, he would be subject to the commingled service provisions of the Act. The issue of payment for services rendered or contract requirements is not recognized or covered by the Act.

PROVIDING INFORMATION CONCERNING RAILROAD ACCIDENTS

If a train crew is explicitly required by railroad officials to remain on railroad property to provide information regarding an accident, the time spent waiting to give, and giving, such information is "on-duty" time for purposes of the Hours of Service Act. This time would be added to the time spent by the crewmember in train or engine service in computing total time on-duty by that employee.

DEADHEADING FROM A DUTY ASSIGNMENT IN A PRIVATELY-OWNED VEHICLE

In general, FRA's position is that if a railroad requires an employee to deadhead to a home terminal in a privately-owned vehicle without the opportunity to obtain rest and without the opportunity to be transported (i.e., required the employee to drive his own vehicle), this activity could be considered commingled service. By offering to transport an employee or allow him the opportunity to obtain rest before deadheading back to the home terminal, the railroad would be in compliance even if the employee elected to drive his own vehicle.

ONBOARD OBSERVATIONS CONDUCTED BY RAILROAD OFFICIALS

A common scenario is a railroad official that rides a train for the purpose of performing onboard observations of crewmembers and railroad operations. In general, FRA's position is that the railroad official is acting in a supervisory capacity and therefore not subject to the commingled service provisions. However, if he takes over control of the train by operating the controls of the locomotive(s), the time spent operating the train would subject him to the 12-hour duty limitations. Likewise, if the railroad official replaces a train crewmember and assumes the normal duties of that crewmember, his role would no longer be considered that of a supervisor and he would become subject to the commingled service provisions of the Act.

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