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RE: Crew Consist, Article 28 and FRA 218.22

The purpose of this Memo is to protect the employment of our Membership who may be barred from working due to their violating federal law and/or the company's operating and safety rules with respect to performing service as a utility employee.

There is a difference between working as a utility employee and assisting another crew in the performance of their duties without being a utility employee.

This memo will differentiate between the two separate and different scenarios.

Scenario 1:

Utility Employee: An individual becomes a utility employee when he "breaks the plane" of work while performing his duties as a conductor/trainman. A conductor, a trainman or a utility employee are three different job crafts. If one conductor assists another conductor and "breaks the plane", and further does not comply with 49 CFR §218.22; there are three violations, namely:

1. Violation of the Carrier's Operating and Safety Rules
2. FRA regulations; and,
3. Violation of the Collective Bargaining Agreement

A violation of items 1 and 2 can cause the individual to lose his employment rights, and face a fine. The foregoing also applies to a trainman/switchman working with a separate job assignment.

Scenario 2:

An employee who does not "break the plane" is not defined as a utility employee. If a company requires a conductor to assist another conductor, but the conductor does not "break the plane", then the only issue is a contractual violation for which a day's pay is due. One such example is one conductor protecting the shoving movement of another crew. This incident violates the Crew Consist Agreement for which a day's pay is due.

A copy of 49 CFR, §218.22 is part of this Memo. This document is a copy of the FRA rules that dictate "how" an employee performing service as "Utility" employee must perform their duty.

When our Members follow these federal regulations, they will protect their employment relationship by complying with Federal law and/or Carrier's Operating and Safety Rules.

Another important issue: An employee is either a conductor **OR** utility employee; their work worlds are not interchangeable. If an individual is regularly assigned to a job as a conductor; he is not a utility employee, as defined by federal rules. Likewise, if an employee is protecting an assignment that is a utility job, he cannot be the conductor on a job.

Once you change job role from conductor and become a utility employee, you cannot return back to the conductor work on your assignment; you are, from that point a utility employee, and must remain a utility employee for that tour of duty. **This is very important to note that conductors cannot assist other crews as a defined utility employee in their performance of their duties because they must attach to the crew.** Once that event occurs, the conductor becomes a utility employee.

If the individual moves back to their job as a conductor, he has violated federal law as well as the CBA. Now, this is not to say that a carrier cannot have you complete that job assignment, but that means another day's pay, subject to job fill procedures. We also hold that the conductor is also due another day's pay when he became a utility employee because he performed a different **grade** in service. Grade and class of service are two different animals.

Different scenario: A yard crew may contact a road crew for the purpose of removing a cut of cars from the rear of the train. This is permissible. The crews must have a job briefing, and each job acts independently of the other. This is different than a conductor working with a conductor of another job. Simply stated, there is only one conductor on a job.

If a Member is instructed to violate the crew consist agreement by assisting another crew, but not in the federal description as a utility employee, the Member should have a good job briefing in order to protect their personal safety. Please remind our Members that when an individual from another craft (locomotive engineer, yardmaster, car inspector, or company officer) performs any of our craft work, then the **penalty violation is five day's pay**. Five day penalties are filed by this office. Please make this information available to the Membership as it is most important and job security under the Operating Rules, the Federal Law and under our CBA.

Fraternally,

Brian Killough

Brian Killough
General Chairman
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