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Brotherhood of Locomotive Engineers and Trainmen

IBT Rail Conference

Mr. John Fleps
Vice President Labor Relations
The BNSF Railway Company
Post Office Box 961030
Fort Worth, Texas 76161-0030

May 11, 2006
Re: Handling Whistle Violations

Dear Mr. Fleps:

This is in reference to your letter dated May 3, 2006 describing how BNSF plans to handle a “complete” failure to sound the whistle at a grade crossing. While the undersigned certainly take the whistling responsibilities associated with regulations and operating rules very seriously, we cannot agree with your decision to treat all instances where “no” whistle is sounded to be a “rule violation calling for dismissal”. Nor do we agree that cases of this nature do not qualify for “Alternative Handling.” As we have discussed in the past, “rigid edicts” such as this one generally result in “rigid application” in the field giving no consideration to the factors that accompany such an event. As part of the exercise of due process, each and every case that may generate out of the application of the whistle regulations must be considered on its own facts and merits. That includes application of the Alternative Handling portion of the Safety Summit Agreement. The hand grenade approach described in your letter, to apply before a fair consideration of the facts on a case by case basis, smacks of predetermination prior to even collecting the facts.

There are many factors in the railroad’s operation that will contribute to “no” whistle cases, and those factors must be considered before any broad brush such as the one described in your letter is applied across the property. For example, there are concerns over application to private crossings versus public crossings. There are concerns over the actual whistle boards; some are missing, many are improperly placed. Add in that the variable weather conditions that we often operate in will make it all but inevitable that a whistle board will be missed at some point, even if it is in place. Add in that with the threat of dismissal hanging over them, many engineers will have no choice but to stop their trains for things such as simple restroom events as your policy holds them responsible even if they have qualified crew members in the cab with them. As we have advised in the past, Locomotive Engineers are not machines, they are human beings. We all know that factors such as fatigue play a big part in what BNSF has coined as “situational awareness”. To ignore all of these facts and advise in advance of your intentions to dismiss any engineer found to have missed a crossing is hardly appropriate. Nor is it in line with our collective efforts through Safety Summit to bring the Carrier’s discipline process out of the age old “military” style application. As has been said at many of our meetings, “When the only tool you use is a hammer, everyone looks like a nail.”

It has also become apparent through this weeks Safety Coordinator meetings here in Ft. Worth that no matter how well intended BNSF was in rolling out the changes to the whistle regulation, it has yet to develop a consistent application of the new whistle rules and regulations across the property. We have attached the Operations Testing Instruction Update that was provided to the Safety Coordinators and shared with the undersigned only today. Very few of the employees have been provided with this document, and from the comments shared by the Coordinators today, we are not certain that all employees have been given a full understanding of how the rule will actually be tested. Quite the opposite, many employees have been given information that directly conflicts with the Testing Update. While we appreciate that the Safety Coordinators have been given the opportunity to present scenario based questions and answers to be used to clarify the application of the whistle regulations and rules, that information must be properly disseminated before it can even be assumed that all employees, management and scheduled, actually have the same understanding of the involved rules. We are sure that you share our desire to insure that all employees are on the same page on this important rule change, applying draconian discipline instead will hardly accomplish that.

For all of these reasons we would again ask that you reconsider the position put forth in your May 3, 2006 letter. We reiterate; we take the responsibilities that are associated with the whistle regulations and rules very seriously as do the employees that we represent. That does not mean that all cases will warrant dismissal, or that they will warrant any "punitive" discipline at all when Alternative Handling should apply.

Please feel free to contact one or all of the Chairmen in the event you would like to discuss any of the issues we have presented. We would also ask that if we do not meet to discuss this issue before then, then this issue should be added to the agenda for the upcoming Safety Summit II meeting.

Sincerely,



BLET General Chairman



BLET General Chairman



BLET General Chairman



BLET General Chairman

cc: All Local Chairmen
Don Hahs, National President, BLET
BLET Safety Coordinators
All UTU General Chairmen, BNSF
Dave Dealy



John J. Fleps
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May 3, 2006

To All BNSF BLET and UTU General Chairmen

Re: Handling Whistle Violations

Gentlemen:

As you know, regulatory changes in 2005 resulted in specific requirements for sounding the locomotive whistle in advance of a public road crossing, specifying whistle timing, length and sequence. The purpose for this letter is to advise how we will handle a **complete** failure to sound the whistle at a grade crossing.

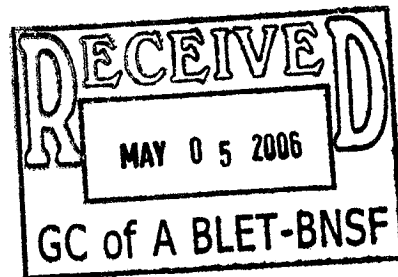
Failure to blow the whistle properly may pose a public safety hazard and will be a violation of both the new federal regulation and existing state laws. And, the FRA and law enforcement may hold the train crew personally responsible for proper sounding of the whistle.

More to the point, any complete failure to sound the whistle (i.e., no whistle in advance of the crossing), proven in a formal discipline investigation, will be treated as a rule violation calling for dismissal. This violation will be handled under Item 8, Appendix C of PEPA, "Knowingly placing the safety of themselves and others in immediate danger." Accordingly, a complete failure to sound the whistle in advance of a road crossing is considered a rule violation not eligible for Alternative Handling under Part I, Section III. E (conduct) of the Safety Summit Agreement.

This is a serious safety rule with serious consequences. Dave Dealy and I wanted you to be the first to hear how we would be handling this violation under PEPA so you can communicate with the BNSF people you represent the importance of compliance with this rule.

Sincerely,

cc: Dave Dealy
Regional Vice Presidents



Operations Testing Instructions Update - Test 609
*******IMPORTANT INFORMATION-MUST READ*******

Please review the attached document, which is the new Management Instructions No. 71. Pay particular attention to Page 8 (Test 609- Whistle Signal/Grade Crossing has changed. It NOW has six different buckets to this test, which three are considered Level S.

The Grade Crossing Approach Test verifies that train crews observe all whistle requirements approaching all road crossings equipped with whistle posts.

When conducting operations testing, be sure that you test for all six buckets, if applicable and document by entering the data in the operations testing database.

The six buckets are:

609-1- Verify that the lead locomotive traveling in excess of 45 M.P.H. starts whistle signal (7) at the whistle post. The test is a failure: if the whistle signal does not commence at the whistle post. *This is considered a Level S.*

609-2- Verify that the lead locomotive traveling at 45 M.P.H. or less sounds whistle signal (7) at least 15 seconds before the lead locomotive enters the crossing. The test is a failure: If the whistle signal is not sounded at least 15 seconds before entering the crossing (i.e., if the whistle signal is sounded less than 15 seconds).

609-3- Verify that the lead locomotive stopped between the whistle post and the crossing sounds whistle signal (7) at least 15 seconds before the lead locomotive enters the crossing. NOTE: This may require the whistle to be sounded before actual movement of the lead locomotive. The test is a failure: If the whistle signal is not sounded at least 15 seconds before entering the crossing (i.e., if the whistle signal is sounded less than 15 seconds).

609-4 Verify that whistle signal (7) is distinctly sounded as two long, one short and one long. The test is a failure: If the whistle signal pattern of two long, one short and one long is not sounded.

609-5- Verify that whistle signal (7) is prolonged or repeated from the time the whistle is required to be initiated until the lead locomotive passes through the crossing. The test is a failure: If the whistle signal is not sounded until the lead locomotive passes through the crossing. *This is considered a Level S.*

609-6- If the crew fails to sound any form of a whistle signal at a road crossing equipped with whistle post this is a failure. *This is considered a Level S.*

The conductor would also be failed when he is present in the cab of the locomotive.

(7)- is the whistle signal Two longs, one short and one long. This must be repeated, if necessary to comply with the above requirements.

Operations Test No. 609, Whistle Signal/Grade Crossing test (GCOR Rule 5.8.2, Sounding Whistle) has been amended in it's entirety. The new test contains a sequence of six separate procedures for testing whistle compliance at grade crossings.