

BEFORE THE  
UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL RAILROAD ADMINISTRATION

FRA WAIVER PETITION DOCKET No. FRA-2002-13651

**Brake System Safety Standards for Freight  
and Other Non-Passenger Trains and Equipment**

(49 C.F.R. Part 232)

July 31, 2003

STATEMENT OF RICHARD A. JOHNSON, GENERAL PRESIDENT,  
BROTHERHOOD OF RAILWAY CARMEN DIVISION  
TRANSPORTATION§COMMUNICATIONS INTERNATIONAL UNION

3 Research Place  
Rockville, Maryland 20850

On behalf of the Brotherhood Railway Carmen Division of the Transportation\$ Communications International Union (ABRC@), I am writing in response to the notice published by the Federal Railroad Administration (AFRA@) in the July 1, 2003 edition of the Federal Register (68 Fed. Reg. 39181-82), inviting comment on the petition of the Canadian Pacific Railway (ACP@), on behalf of its Soo Line Railroad subsidiary, to designate repair points for power brake defects, pursuant to 49 C.F.R. ' ' 232.15(g) and 232.17.<sup>1</sup>

BRC strongly opposes CP=s special approval petition to designate five repair points along its St. Paul Service Area and five repair points along its Chicago Service Area. Granting this petition would: (1) create a serious risk of rail cars with defective air brakes moving over long distances of track without repair, without any real reason for creating said risk; (2) create a similar risk that cars with other defective conditions will similarly move over long distances without repair; and (3) risk violating longstanding practice and court precedent on the movement of defective equipment.

In its petition, CP seeks to designate as repair points sites which range from 79 to 150 miles apart. Thus, under CP=s presumed logic, a train on which an air brake defect is detected can be hauled anywhere from 40 to 75 miles<sup>2</sup> for repair, regardless of the fact that repairs could be performed at an earlier point.<sup>3</sup>

As a result, if CP=s petition is approved, the carrier would be allowed to move unsafe cars over longer distances, thereby increasing the likelihood of a serious accident or incident occurring *en route*. While FRA=s regulations have made allowances in those cases where the necessary repairs could not be performed at the site where the defect was detected, those allowances have only permitted movement to the nearest location where the repair could be safely performed. *See* current 49 C.F.R. ' 232.15(a)(6) and (7). In this way, FRA has wisely balanced the risks of moving defective equipment with the risks of rail employees performing repairs under unsafe conditions. To that end, in its new Power Brake Regulations, FRA has set forth a thoughtful and well-considered list of criteria to determine whether power brake repairs can be safely performed at a given location. *See* 49 C.F.R. ' 232.15(f). Significantly, nothing in CP=s petition suggests that repairs at all other locations between its designated points could not be made safely.

---

<sup>1</sup> In addition to this statement, BRC has also requested the opportunity for oral comment on CP=s petition. Oral comment is necessary on this petition because this is (to BRC=s knowledge) the first invocation of the new repair point designation rule by a Carrier, and the problems attendant to CP=s petition should be addressed in an open forum with all interested parties present.

<sup>2</sup> This is calculated based upon FRA=s requirement that equipment with defective air brakes may only be moved to the nearest available location (as opposed to the nearest *forward* location) where repairs can be made. 49 C.F.R. ' 232.15(a)(7).

<sup>3</sup> This is the way we believe that CP would read the new Power Brake regulations. BRC believes that 49 C.F.R. ' 232.15 is more ambiguous, and may still require carriers to perform air brake repairs at locations where such repairs can be safely performed, regardless of the locations the carrier may designate. Clarification by FRA on this point would be appreciated.

What is most peculiar about CP=s petition for waiver is that six of the ten locations which it seeks to designate would be serviced by a road truck. If CP is requesting designation of these locations because they are locations that can be reached by repair truck, its petition still begs the question of why such repairs could not be performed at other intermediate locations where repairs could be B and currently are B safely made. Alternatively, if CP is suggesting that these locations be designated because these are locations at which repair trucks are stationed, such a designation makes no logical sense. The reason why carriers use repair trucks is to enable carmen (or other maintenance personnel) to travel to remote locations where repairs can be performed on equipment, not to bring the defective equipment to the truck.<sup>4</sup> Indeed, BRC would like to remind FRA that such trucks were used by CP and other carriers as a rationale for closing repair facilities (staffed by carmen) at outlying points; allowing CP to now invert its argument to say that defective equipment must be brought to the location where the truck would permit manipulation of federal rail safety regulations at its most disingenuous, with no positive safety benefit. Under either rationale, CP=s petition strikes this organization as nothing more than a cynical attempt to move equipment with defective brakes over longer distances for no reason other than financial benefit.

In granting a petition for designation of power brake repair points pursuant to 49 C.F.R. ' ' 232.15(g) and 232.17, FRA should consider whether granting the petition is consistent with the aims and requirements of Part 232. *See* 49 C.F.R. ' 232.15(g). BRC is at a loss to understand how a petition which allows defective equipment to be moved over longer distances without repair B when such repairs can be and currently are made B is consistent with the safety aims of Part 232. Absent some safety benefit to the public at large, the financial benefit a carrier may gain from designation of repair points pursuant to ' 232.15(g) cannot serve as sufficient grounds to grant such a petition. Accordingly, BRC strongly urges FRA to reject CP=s petition.

---

<sup>4</sup> Indeed, the dubious nature of this argument is highlighted by the fact that, if an air brake defect was detected, the carrier could allow the train to be brought to the repair truck; if a safety appliance defect was detected, the repair truck *must* be brought the train.

In addition to the reasons provided above, CP may also use these designated repair points as a device to evade the requirements of the Safety Appliance Act. That Act (as interpreted by the United States Supreme Court) prohibits the movement of equipment with defective safety appliances beyond the nearest point where a repair can safely be made. 49 U.S.C. § 20303(a); *United States v. Erie R. Co.*, 237 U.S. 402, 409 (1915). With the designation of specific repair points for power brake defects, BRC is concerned that CP will effectively use these designated repair points to spread out the areas where inspections can be performed by qualified mechanical personnel; this in turn increases the chance that cars with defective safety appliances (which are often missed by train crews performing inspections) will continue to operate in service over longer distances, well past locations at which they could be repaired. If CP does act according to its legal obligations by ensuring that safety appliances are effectively inspected and repaired at the nearest location where a repair can be effected B BRC finds it difficult to contemplate why CP needs to designate repair points, since the same trucks which are used to repair safety appliances can also be used to repair power brakes.<sup>5</sup>

Finally, BRC is concerned that, if it approves this application, FRA risks running afoul of the spirit of federal rail safety law. FRA is entrusted with the responsibility of ensuring the safety of the nation's rail systems, and the nature of that trust is expressed in the Safety Appliance Acts, which prohibit the movement of defective equipment past the point where it can be safely repaired. To that same end, FRA has no less of a responsibility when it comes to power brake safety, and BRC believes that FRA risks violating its responsibilities by allowing petitions such as the one presented by CP. This petition would allow CP to let its trains operate with defective brakes over several miles without repair, when the carrier is readily capable of performing such repairs at the location the defect is discovered. CP has provided no rationale as to how its petition contributes to rail safety and, indeed, CP's petition seems to ignore the risks presented by its proposal. The only rationale which appears to support CP's petition is its own economic convenience. Federal courts have repeatedly held that such convenience is not a sufficient ground to threaten rail safety, *see Erie R. Co.*, 237 U.S. at 409, and there is no reason for FRA to diverge from that principle here.

---

<sup>5</sup> This point applies equally to FRA's stated position for permitting such designated repair points in the first instance. In its responses to reconsideration of the final power brake rule, FRA stated (without further explanation) that permitting repairs to be made at listed locations would improve FRA's enforcement activities[.]@ 67 Fed. Reg. 17565 (April 21, 2002). FRA's Motive Power & Equipment Inspectors are trained and entrusted to enforce both the Power Brake and Safety Appliance rules. Therefore, it is unclear how FRA's enforcement activities are improved by allowing a carrier to designate a specific location where power brake repairs can be performed, when MP&E inspectors are also responsible for enforcing the Safety Appliance rules which expressly prohibit the movement of defective equipment beyond the nearest point where it can be repaired. If the inspector must (as a matter of law) enforce a safety appliance rule at the point where the defect can be repaired, it is a mystery to BRC how FRA's enforcement capability is enhanced by not requiring the inspector to enforce power brake rules in the same manner.

## **Conclusion**

For the reasons set forth above, FRA should deny CP=s January 3, 2003 petition to designate repair points for purposes of repairing power brake defects.