

Freddie N. Simpson
Acting President



Perry K. Geller, Sr.
Acting Secretary-Treasurer

Brotherhood of Maintenance of Way Employees

Affiliated with the AFL-CIO and C.L.C.

November 7, 2003
(Via fax and mail)

The Honorable Allan Rutter, Administrator
Federal Railroad Administration
1120 Vermont Ave., NW
Washington, DC 20590

Dear Mr. Rutter:

Re: Petition for Emergency Order

On October 30, 2003, BMWWE member Mr. D. G. Stevens, a track foreman on the Burlington Northern Santa Fe (BNSF) with 28 years of service, was struck and killed by a train traversing the adjacent track at mile post 251.9 on the BNSF Marceline Subdivision, Chicago Division, in Argyle, Iowa.

The Brotherhood of Maintenance of Way Employees (BMWWE) respectfully requests the issuance of an Emergency Order to rectify life-threatening deficiencies in the application of Roadway Worker Protection (RWP) as it relates to adjacent track protection. Specifically, BMWWE seeks an Emergency Order requiring **mandatory** adjacent track protection under §214.335 for **all** roadway work groups. BMWWE filed a similar petition for an Emergency Order on December 21, 1999 after two other BMWWE members employed by BNSF were struck by trains in separate incidents on August 4, 1999 and November 9, 1999, respectively. A copy of BMWWE's December 12, 1999 petition, and FRA's May 16, 2000 response, is attached for your ready reference.

In the May 16, 2000 denial of our original petition for an Emergency Order, former FRA Administrator Jolene Molitoris stated "requiring train approach warning on adjacent tracks for all work groups is not necessary for safety" and "an educational campaign addressing the issues of adjacent track protection would better address your concerns." The recent death of BMWWE member D.G. Stevens, and other similarly serious incidents, belie these statements by FRA. Little has changed since May 2000 and the so-called educational campaign has failed miserably as well. The current status quo remains wholly unacceptable to BMWWE and we believe that a

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safety emergency exists on our nations' railroads. In order to prevent further loss of life, FRA must take direct and immediate action through the issuance of an Emergency Order.

The tragedy which occurred in Argyle, Iowa was unfortunately not an isolated incident. On June 11, 2003, near Delta Ohio, a Norfolk Southern Tie Remover/Inserter was struck by a train traveling on the adjacent #2 main track while working westward on #1 main track. And on September 21, 2003 a BNSF ballast regulator operating on #2 main track was struck by a train traveling on the adjacent #1 main track at mile post 151.2 on the San Bernardino Subdivision, Southern California Division. These are just two of several recent incidents involving adjacent track movements. Documentation of these two incidents is attached for your ready reference. These and similar incidents reinforce the necessity for immediate and decisive action by FRA to rectify this unacceptable safety risk to roadway workers.

Contributing in large measure to this ongoing problem is the fact that several Class I railroads, including BNSF, changed their long-standing safety and operating rules governing "roll by" speeds and roadway worker maintenance activity immediately following the issuance of the RWP regulations in 1997. Prior to January 15, 1997, BNSF and several other Class I carriers had in place safety and operating rules that required trains passing adjacent work zones to proceed at a speed not to exceed 25 MPH, and roadway workers were required to stop and secure their on-track machinery, dismount, and observe the passing train for defects from a position of safety. However, immediately following the issuance of the RWP Final Rule, BNSF and other major carriers unilaterally changed their long-standing safety and operating rules to increase train roll-by speeds to 40 MPH (or higher). These rule changes also dictated that equipment operators remain on their equipment and continue to operate, and their support personnel on the ground continue to work around such operating equipment, as trains pass on the adjacent track. Even though carrier management officials argued vehemently during the negotiated rulemaking that FRA regulation in this area was unnecessary due to the long-standing industry practice of 25 MPH roll-by speeds and the dismount and observe provisions of the carriers' safety rules, a number of carriers unilaterally increased roll-by speeds and eliminated the dismount and observe provisions immediately following promulgation of the RWP regulations.

It is clear to BMWWE that in the current operational environment, safety has taken a back seat to productivity and profits. It is clear to BMWWE that the provisions of Roadway Worker Protection are insufficient to prevent the continuing carnage from adjacent track movements. And it is clear to BMWWE that the Safety Assurance and Compliance Program (SAC-P) process has failed to adequately address this long standing safety problem and that immediate FRA intervention and issuance of an Emergency Order is required.

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Nationwide, roadway work groups are being dispatched to work sites without adequate manpower. The result is that on-track safety and protection against adjacent track movements is being severely compromised. Railroad management continues to sharpshoot the provisions of §214.335(c) by utilizing the permissive language as a loophole to get around the adjacent track protection requirements intended by the rule. The railroad industry has failed to properly man its roadway work groups to provide the Employee-in-Charge (EIC) with the personnel necessary to establish train approach warning, and the industry has failed in the area of roadway worker training. As a direct result, BMW EICs continue to be pressured by management to work shorthanded and without adequate protection, and then they are scapegoated by management when tragedy occurs.

These incidents, compounded by the unilateral changes in carrier safety rules, highlight the urgency to amend by Emergency Order the current language of §214.335 to provide, effective immediately, that all roadway work groups shall be provided with train approach warning in accordance with §214.327 for protection against movements on adjacent tracks not included within working limits, and each time trains are cleared through working limits by an Employee in Charge (EIC). Thus, we once again implore FRA issue an Emergency Order which incorporates the following conceptual amendments to §214.335:

214.335(c) [proposed modification]

Roadway work groups ~~engaged in large-scale maintenance or construction~~ shall be provided with train approach warning in accordance with §214.327 for movements on adjacent tracks that are not included within working limits **and each time trains are cleared through working limits on an adjacent track by the Employee in Charge.** (*Proposed new language in bold; proposed deleted language struck through*)

The preceding proposed amended language for §214.335(c) would require mandatory train approach warning and safe positioning of roadway workers for protection against movements on the adjacent track(s) regardless of the size or function of the roadway work group. We believe that by adopting the language proposed above through issuance of an Emergency Order, FRA will effectively improve safety and operational efficiency by closing a glaring loophole in the Roadway Worker Protection (RWP) regulations. Such will serve to make compliance with the spirit and intent of the adjacent track protection provisions mandatory, and will provide the requisite level of safety for employees working adjacent to live track(s).

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The abysmal record of adjacent track protection within the industry in general, and on BNSF in particular, requires immediate steps to put an end to preventable death and injury. Statistics bear out that adjacent track protection saves lives. Therefore, in order to end this preventable cycle of injury and death, BMW once again respectfully requests, in the strongest possible terms, that FRA immediately issue an Emergency Order for mandatory protection from adjacent track movement as outline above.

Sincerely,

Acting President

cc: Mr. Perry Geller
All U.S. Vice Presidents
All U.S. General Chairman
Mr. Rick Inclima
Rail Chiefs
Mr. G. Gavalla