



# **Railroad Workers United**

***Solidarity • Unity • Democracy***

***The Rank & File in Action!***

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## **Countering the Rail Industry's Arguments**

Below are 10 points railroad workers may wish to use – at public hearings and/or in written format – when countering the rail industry's testimony on two-person crew legislation.

### **Rail Industry Claim #1 – No plan to implement the procedure “at this time”**

Various Class I rail carriers have been known to state that “We are not interested in implementing single employee train operations at this time.” This is somewhat disingenuous. Nearly 15 years ago, on November 1, 2004, the umbrella group that bargains collectively for the major Class I rail carriers – the National Carriers Conference Committee (NCCC) – submitted a “Section 6” notice under the Rail Labor Act, a proposal directed towards both unions of the rail operating crafts in which the idea of single employee operation of trains was first brought forward by the rail industry. If not for the resistance of the rank & file engineers and conductors, their unions, and groups like Railroad Workers United, the carriers would have happily implemented universal single employee train operations anywhere, anytime they pleased over a decade ago. In addition, simply because an individual carrier may state that it has no intention of running trains with a single employee “at this time” does not mean they are not interested in doing so as soon as possible. “At this time” can simply mean “this week” or “this month.” Given the NCCC attempt in 2004, we know that the industry has in fact had this on their wish list for a decade and a half! Moreover, simply because a single carrier may state that it has no interest in this form of train operation does not mean that this specific carrier has total say in the matter. Once another major Class I carrier were to succeed in launching this practice – if it is able to coax, cajole, blackmail, and otherwise browbeat a union into submission at the bargaining table – this contract will then set the “pattern” which the other major carriers will inevitably be drawn to follow, and the dominoes will surely fall throughout the industry. So it is meaningless when rail carriers state that they are not interested in single crew implementation “at this time” as reason to oppose this legislation.

### **Rail Industry Claim #2 – Subject is more appropriate for collective bargaining**

The industry is fond of stating that the question of train crew staffing is a subject more appropriate for the collective bargaining process, not legislation. We disagree. The issue is one of public and workplace safety and is obviously a matter of concern for the general public, one well within the sphere of government intervention.

The rail carriers have historically resisted the implementation of new safe technology and safer practices. The air brake and automatic couplers were mandated by the Safety Appliance Act of 1893, which is credited with saving countless lives. In more recent times, the Rail Safety Improvement Act of 2008 mandated both Positive Train Control (PTC) implementation as well as an updated hours-of-service component to mitigate fatigue. Without such legislation and regulation, it is unlikely that these and a host of other safety devices and safe practices would have been achieved through the collective bargaining process.

But what if the subject was in fact brought to the rank & file membership for ratification through the collective bargaining process? The carriers have tested the waters a few times. In August of 2014, the second largest railroad in North America – BNSF – sought to consummate an agreement with a renegade faction of a rail union to run trains with one person. In return, the carrier offered big wage increases and lifetime guarantees of employment. Ratification meetings on this tentative agreement where members voiced their opposition quickly became combative and chaotic. The final vote was 5-to-1 against, with not a single craft or terminal systemwide voting in favor of the tentative contract. And for the last decade, regional carrier Wheeling & Lake Erie (WLE) has attempted to browbeat its workforce into submitting to single employee crews. Throughout this time, these low-paid rail workers went without a single pay increase, so adamant was their opposition to single employee train crews. After striking and voting

down earlier contracts proposals near unanimously, they finally won a contract with no provisions for single crew member operations this past winter.

Moreover, it is absurd to relegate this subject to collective bargaining, considering that many non-Class I rail properties have no union at all to collectively bargain with, making this an impossibility.

### **Rail Industry Claim #3 – Such legislation would hurt those states that adopt it**

The industry may claim that state laws such as this one would “hurt” specific states such as Nevada who may dare to adopt it, as freight might then be detoured elsewhere should two-person crews be mandatory here. This is ludicrous. First, neighboring states California and Arizona already have legislation on the books banning single employee train crews. To the east, as of March, Colorado has joined with them. In fact, legislation has been introduced and is pending in most other western states including Wyoming, Washington, Utah, New Mexico, Idaho and Oregon. There are a handful of mainlines across Nevada, and practically all freight in the state outside of Reno-Sparks and Las Vegas is thru-freight, moving across Nevada to and from California. It is simply impossible for this freight to be rerouted via another railroad. Therefore, it is not possible that a two-person train crew mandate would hurt the Nevada economy or the well-being of the state.

### **Rail Industry Claim #4 – The cost is prohibitive**

The rail industry may claim that mandating two-person train crew minimums is costly and unnecessary. This is coming from an industry that has claimed this about an array of proposals to run a safer railroad, from the air brake to the automatic coupler, from the two-way-end-of-train-device (EOT) to Positive Train Control (PTC). They refused to develop nor implement any of this technology. But over the years, all this and more has been legislated and is currently the law of the land. Yes, some of these were big ticket items, especially the most recent, PTC. But in retrospect we all agree on the merits of their vital safety functions, and we see these improvements as long-term investments in rail safety. And it is worth noting that while the rail industry might have complained of PTC’s high price tag, the major railroads have all recorded record profits, maintained inflated stock prices, and have boasted record low operating ratios throughout the entire process of PTC implementation.

### **Rail Industry Claim # 5 – The procedure is standard practice in some foreign countries**

The industry may point to other countries as examples of where trains are often run with a single crew member. What they may fail to mention is that these trains are generally very short, light-weight unit trains that run on a perfectly maintained and dedicated right-of-way for short distances in readily accessible territory with no road crossings and/or highly protected crossings. U.S. railroads however span great distances, encounter thousands of lightly protected road crossings, and traverse remote territory in rural areas. In addition, U.S. freight trains are generally far longer and heavier, and the industry is accelerating the trend towards even longer and heavier trains.

### **Rail Industry Claim #6 – PTC Makes the two-person crew unnecessary**

Ironically, the same rail industry that fought against PTC - and dragged its feet on implementation for the last decade - may at this point tell you that since we now have it, we no longer require a two-person crew. Nothing could be further from the truth. While PTC may prevent many of the worst train wrecks and disasters, it is not a panacea. Even where PTC is in effect, it cannot protect against collisions when running at what is called “restricted speed.” For that common mode of operation, we must rely on the train crew alone to avoid collisions and mishaps. And of course, like any technology, PTC is subject to failure and suspension. When routine conditions degenerate, there is no substitute for two employees fully trained and qualified on the territory – a conductor and an engineer, both of whom are federally certified and trained – aboard any train. PTC cannot prevent the thousands of train-vehicle collisions that are suffered every year at many of the 250,000 railroad-road crossings in this country. When they happen, we need both employees on the scene to protect against further harm, danger and destruction. Likewise, when a train derailed due to factors that PTC cannot prevent (poor track, rock slides, broken rails, faulty equipment, vehicle strikes, etc.) two crew members are essential in the aftermath. Heroic examples exist in recent years where a two-person train crew was able to uncouple cars from others derailed and engulfed in flames, thereby preventing further catastrophe. (Casselton, ND 12/30/13 and Grettinger, IA 3/10/17 are two examples). These efforts would not have been possible had these trains been operated by a lone crew member.

### **Rail Industry Claim #7 – Trucks are routinely operated with a single driver**

The rail industry has been known to draw a comparison to trains and trucks. Most over-the-road trucks in this country are staffed by a single driver. Why not trains? We know very well why not. While they may be alone in the cab,

truck drivers are surrounded by other motorists, and have easy and quick access in most instances to the highway patrol, emergency services, food, lodging, and other necessary accommodations. Help and assistance is literally a cell phone call away or at the next exit, or even right there in the “break-down lane.” Train crews on the other hand work in isolated regions of the country. Even in a populated area, a train crew in distress is not easily located or accessed by the authorities or emergency services. There are no rest areas, trackside facilities, or other amenities. A train crew cannot simply pull over and get a cup of coffee or take a nap if exhausted. Cell phone service is spotty at best along many rail rights-of-way. Emergency services may not arrive for hours and even then, have difficulty accessing the train and its crew. Obviously, this is not a safe environment for anyone to be working alone in.

### **Rail industry Claim #8 – Passenger trains routinely run with a single employee in the cab. Why not freights?**

Writing for the industry magazine *Railway Age* in the summer of 2014, contributing editor Frank Wilner postulated that since passenger trains sometimes run with a single employee in the locomotive cab, it would follow that the freight railroads should be free to run freight trains with a single employee. But passenger train operations with a single crew member in the locomotive cab *always* have one or more certified and qualified crew member aboard the train, assisting the locomotive engineer with many critical aspects of the job. Proposals from the freight industry to run trains with less than two crew members make no provision for *any other employee to be on the train at any time*. And while it is true that passenger engineers do sometimes operate alone in the cab, they are not subject to the extreme conditions of freight engineers, conditions that include the following:

- Freight engineers begin and end their tour of duty at random times 24/7/365. No two tour-of-duty start-times and end-times are the same. There is little predictability to a freight engineer’s schedule. Studies have proven that having no fixed schedule dramatically increases crew fatigue and the likelihood of forgetfulness, mistakes, and accidents. Passenger engineers have fixed schedules, making for routine and predictable on-duty and off-duty times as well as defined layovers periods at both the home and away from home terminals.
- Freight engineers regularly work at night, whereas most passenger and commuter train engineers work during normal waking hours. Very few passenger trains operate from midnight to 5 AM.
- Freight train engineers are expected to routinely run trains through the night alone, with *no one* in the cab to assist. All long-distance Amtrak trains that are scheduled through the night have two engineers working together in the locomotive cab.
- A freight engineer usually has little idea of when s/he may be called to work and must “protect” the board 24/7. Extra-board passenger engineers have a much better sense of when and where they will be called to work. Generally, passenger train start times are published and adhered to. Therefore, an extra board passenger engineer has a reasonably good idea when s/he might be called to work.
- Freight engineers routinely work twelve hours and then some. Passenger engineers work scheduled runs, and single engineer runs are usually scheduled for less than 6 hours. Amtrak crews with two engineers in the cab are usually on duty for no longer than 8 or 10 hours.
- Freight engineers generally have no guaranteed regular off days. Passenger engineers at Amtrak all have at least one day a week scheduled off work.

Because of the unscheduled nature of freight service, the myriad on-duty and off-duty times, the long hours, the night work, the lack of regularly assigned days off, and the absence of anyone else anywhere on the train to assist, the freight industry conception of single employee crews has nothing in common with currently existing single engineer passenger service operations.

### **Rail Industry Claim #9 - Not an appropriate subject for the individual states to decide**

Because rail traffic is mostly interstate commerce, the rail industry might wish to argue that the states have no right to intervene into such questions as train crew size. Ultimately, this might be a question for the courts to decide. Meantime, political leaders at the state level have the duty to respond to the concerns of their constituents. For the last 125 years or more, countless pieces of rail safety legislation have been introduced and adopted by the myriad states. It is often this patchwork of state legislation that eventually leads to uniform legislation at the federal level. Had it not been for the pressure from the states, the federal legislation would never have finally come to fruition. Therefore, when considered historically, the effort to secure legislation in Nevada and other states on minimum train crew size is simply the latest chapter of a long tradition of securing a safer railroad, starting at the state level.

## Rail Industry Claim #10 - Statistics do not prove two-person crews are safer

The rail industry is fond of stating that the statistics do not prove that single employee train crew operations are any less safe than standard two-person crews. This is absurd. There have been very few single employee crew operations to date in North America, aside from a few localized short-line operations. No Class I carrier has experience with the practice. As a result, these comparative “statistics” simply do not exist. Conversely, the rail industry may state that there is no proof that single employee crews are inherently dangerous because we do not have the data! But we do know that in one of the rare examples of single employee train crews, a loaded train of volatile Bakken crude oil ran away down a steep grade, crashed and destroyed much of a small town, killing 47 people in Lac-Mégantic, Quebec in 2013. The rail carrier – Montreal, Maine & Atlantic (MMA) - was one of the very few railroads that have experimented with single employee train crew operations. The rail industry would be quick to tell you that the lone crew member was in the motel getting his rest when the accident occurred, and therefore, the single crew operation cannot be to blame. However, the reality is that the single crew operation was in fact *central* to the whole debacle. In order to facilitate this single crew member operation, the MMA required that the train in question be left on a steep grade as opposed to nearby level ground. Why? If left unattended there, the train would have to be separated to keep from blocking a road crossing. A standard two-person crew could have easily accomplished this task, along with the necessary recoupling and air brake test the next shift. *But neither task could have been performed by a lone crew member.* In addition, the company policy of not making use of the train’s air brakes to assist in securing the train was also related to its decision to use single employee crews. Had the train had two crew members present, it could easily have been left unattended on level ground with its airbrakes applied, ensuring that no runaway would have taken place that night.

In conclusion, the rail industry understandably wants things its way. The industry is made up of large corporations who - like any other - are in business to serve the interests of their stock holders. This is their job. As a result, they have resisted PTC while pushing for single employee crews. They have fought against an innovative means of train braking - Electronically Controlled Pneumatic Braking (ECP) - while they run ever longer and heavier trains. All the while, the industry has taken on vast shipments of volatile chemicals such as ethanol and crude oil, in addition to the host of other hazardous materials that are routinely shipped. This trajectory, if left unchecked, spells trouble for rail workers, trackside communities, the environment and the nation. Ultimately, we must decide what is in the public interest. For government to allow an industry to self-regulate is to abrogate its responsibilities to the employees and the general citizenry. We must provide adequate regulation to ensure the health and safety of workers and the public.