



**BEFORE THE U.S. DEPARTMENT OF OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION**

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**PUBLIC COMMENT ON OSHA'S PROPOSED IMPROVEMENTS TO WHISTLEBLOWER  
PROTECTIONS IN AMERICAN RAILROADING**

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**DOCKET NO. OSHA – 2024-0007**

**November 12, 2024**

These comments are on behalf of the Transportation Division of the International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART-TD), an organization representing approximately 100,000 transportation employees with active rail members working in all operating crafts, including engineers, conductors, trainmen, switchmen, hostlers, and yardmasters.

The SMART-TD Union submits this comment in response to the ongoing need for stronger, federally mandated whistleblower protections for workers in the railroad industry. We believe the current system fails to protect the men and women who make up the backbone of America's freight and passenger rail system, leaving them vulnerable to intimidation, retaliation, and abuse at the hands of their employers.

It is well-known in the railroad industry that reporting injuries, safety violations, or unsafe conditions can lead to severe consequences for workers. Railroad carriers routinely discourage injury reporting and whistleblowing on safety issues, creating an environment where employees are often too fearful to speak out. Too many railroaders have experienced firsthand the consequences of reporting safety violations or getting injured on the job: retaliation that includes demotion, harassment, forced resignations, or even termination.

SMART-TD is deeply concerned by the culture of intimidation and bullying that has become ingrained in the railroad industry. It is no longer surprising for a railroader to risk their own health and safety, or even to fabricate stories about how an injury occurred, just to avoid retaliation and maintain employment. In many cases, workers feel pressured to hide their injuries or to claim they occurred outside of work to avoid the financial and professional consequences of speaking the truth. This is not just an issue of job security—it is an issue of workers' rights, dignity, and safety. Not being able to accurately report the conditions leading to a workplace injury prevents that condition from being addressed and widely opens the door to that condition causing harm to future employees. The nature of the railroad industry is that there are very few small injuries or incidents. These lost opportunities to address known safety concerns realistically results in the loss of life limb to our workers regularly.

In the most extreme cases, railroad managers have been known to follow injured workers to the hospital, pressuring them into signing away their rights, often while they are under the effects of pain medication or in no condition to make informed decisions. This type of behavior is not only unethical—it is dangerous and leaves workers vulnerable to long-term harm. SMART-TD has created the SMART-TD Auxiliary, a national organization tasked with defending injured railroaders from these aggressive tactics. We have had to go to such lengths because of the depth of the problem.

At SMART-TD, we know all too well that the fear and intimidation railroaders experience is so pervasive that even our own members are reluctant to speak openly about their experiences with those of us who are charged with protecting them. This is a result of years of systemic pressure and a corporate culture designed to silence those who speak out. In many cases, even local officers struggle to collect accurate data on injuries, safety violations, and other issues because workers fear the consequences of sharing this information, even within their own labor organizations.

The use of regulatory required "operational testing" by railroad managers is another key component of this culture of fear. These tests, which are conducted by supervisors to assess an employee's adherence to safety regulations, are often used as a tool to punish or "re-educate" workers who have spoken out about safety issues or who have been injured on the job. Employees know that any infraction—real or

perceived—can lead to punitive action. As a result, many workers simply choose not to report safety violations or injuries, even when doing so would be in the best interest of everyone involved.

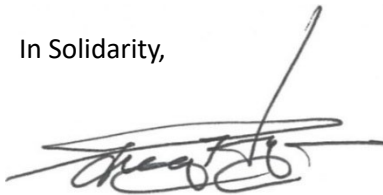
The railroad industry's use of intimidation and bullying has reached a point where it is a routine part of the job for many workers. Unfortunately, this browbeating causes an inappropriate silencing of workers which results in empowered managers who capitulate to capital pressures and willfully instruct employees to violate rules and regulations in order to protect their own personal interests. Despite OSHA and FRA possessing the authority and jurisdiction to decertify these managers, more often than not, no action is taken, nor is any punitive discipline pursued, and the manager is rewarded by the employing railroad (or another railroad) with promotion and bonuses. This signifies to the men and women that fill the ranks of America's rail carriers that they are held to a different standard than the managers responsible for their actions and well-being.

This is not acceptable. It is time for OSHA to take a strong stand in protecting the rights and humanity of all railroad workers. We need stronger protections for whistleblowers, including a clear and enforceable mechanism to prevent retaliation and a culture change within the industry that prioritizes safety over profits. Safety for workers in this industry into the future depends on it.

SMART-TD urges OSHA to strengthen whistleblower protections, hold railroads accountable for retaliating against workers, and ensure that no worker feels compelled to hide an injury or a safety violation out of fear. There is a well-founded reason that corporate intimidation used to force submission is known as being "Railroaded." This culture of fear must end. Hardworking railroaders deserve the right to speak up about safety without risking their livelihoods or well-being.

Our National Safety and Legislative Department would like to thank OSHA for including our office in the Railroad Stakeholder Meeting held October 29<sup>th</sup> to discuss this issue. We also appreciate OSHA's consideration of this important issue and look forward to working together to ensure that all railroad workers are treated with the respect and dignity they deserve.

In Solidarity,

A handwritten signature in black ink, appearing to read "Greg Hynes", with a long, sweeping horizontal line underneath.

Greg Hynes,  
SMART-TD  
National Director, Safety and Legislative Department

Enclosure: SMART TD verbal testimony as presented during the OSHA Railroad Stakeholder Meeting held on October 29, 2024.

SMART TD Verbal Testimony  
OSHA Railroad Stakeholder Meeting, October 29, 2024

Good afternoon. On behalf of SMART TD, the largest railroad union in the country, I would like to begin by saying that five minutes is an almost impossibly short period of time to address this issue. Accordingly, please know that we will rely on our comments to supplement and fully substantiate this statement.

Railroading is an inherently dangerous occupation. In fact, just being on the property or in the presence of rail equipment is, in and of itself – dangerous. But with that being said, ask any railroader what their employer’s take is on safety, and they’ll all tell you the same: it’s merely a talking point or check in the box to show that they’ve met their regulatory obligations. It is not a meaningful approach to provide a safe work environment, nor is it a priority to ascertain that an employee has the education, training, or skill set necessary to perform their job functions safely.

To this point, training in the industry is abysmal. Currently, the timeline it takes to be introduced to the job and promoted as a conductor (the starting point for the majority of members I represent) is a fraction of the amount of time it took not more than ten years ago. Today, the emphasis of training is not on exposure, repetition, or comprehension but rather a forced memorization of material focused on only passing the next test, not the building blocks necessary to work in the field or establish a safe work ethic.

So, why discuss training in this context? Well, it’s because there is an absolute abandonment of initial and continuing education. And this is where the harassment and intimidation of America’s railroad begin to truly take shape. Today’s conductors are not prepared for the road ahead. So, then, the question becomes, what do the railroads do about it? Well, they abuse the Federal Railroad Administration’s requirement to perform observational testing. They park a car in the weeds so they can watch you with binoculars. They fly a drone over your head, so you are distracted and fearful for every move you make. They pressure you to ride equipment you’re not comfortable with because walking takes too much time. And the list goes on and on and on. But, instead of offering you supplemental classes or additional training, the railroads do everything they can to discipline you into compliance.

It is this - keep disciplining them until they’re broke - mentality that applies universally across the industry.

Sure, workers may technically be able to submit unsafe condition reports or take sick leave when needed, but they do not possess the freedom to do so without the ever-present cloak of harassment and intimidation.

More often than not, if an employee submits a complaint or an unsafe condition or takes a sick day that creates a hardship for the railroad or reflects poorly on a manager, you can rest assured that the employee will be met with a flurry of observational testing. The stress and fear that results is like none

other, but it will continue until it is understood that speaking up is not tolerated or until your career has been terminated by the employing railroad.

Retaliation is so present and so understood in the industry that workers purposefully withhold information for the sake of their jobs and the welfare of their families. Workers do not disclose injuries because they will result in termination. They would rather suffer the physical consequences than face the wrath of their employer.

I myself had my life threatened by a trainmaster because I reported him for willfully and repetitively instructing crews to violate the carrier's operating rules and federal regulations. As we speak, I am actively defending a local union safety officer from his employer, who is seeking to discipline him for using Union business to perform the functions of his role simply because of the sheer volume of unsafe conditions he has reported. Unlike most, he is willing to put his job on the line, but he knows full well that the odds are heavily stacked against him and that he will eventually pay the price.

Unfortunately, for most workers, the time and processes required to enact whistleblower protections are a loss of time and money they cannot afford, and the threat of being adversely affected has a chilling effect on their willingness to report. They would rather remain in the shadows, out of their employer's view, than draw attention to themselves by trying to make a safer workplace or care for their own bodies.

I commend OSHA for its whistleblower protections and program, but for it to be successful in the railroad industry, both fundamental and drastic changes are needed to regulations enabling excessive and abusive observational testing and to railroad processes and structures that cultivate environments rife with harassment and intimidation.

Please know there are many other examples of retaliatory behavior, but this seemed like the most fundamental starting point to be shared. Thank you for the time and opportunity and for holding this very important meeting.