



ASSOCIATION OF
AMERICAN RAILROADS

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Surface Transportation Board
395 E Street, SW
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RE: *Urgent Issues in Freight Rail Service*, EP 770; *Urgent Issues in Freight Rail Service—Railroad Reporting*, EP 770-1

Dear Chairman Oberman, Vice-Chairman Schultz, Board Member Fuchs,
Board Member Primus, and Board Member Hedlund:

I write in response to a letter entered in the EP 770 docket from Greg Regan, President, Transportation Trades Department, AFL-CIO ("TTD"), which requested the Board collect further data and details on employment matters. TTD's request is beyond the scope of these proceedings and appears to be driven by matters unrelated to the Board's jurisdiction.¹

The Class I freight railroads recognize that service has fallen short of railroad and customer expectations. To be clear, freight railroads do not consider this situation acceptable, and as the updated service recovery plans and periodic reporting requirements indicate, railroads are working hard to improve. Unfortunately, as the Board has recognized and many employers know too well, contrary to TTD's assertions there *is* a shortage of workers in this country.² According to the Bureau of Labor Statistics, the unemployment rate in June was 3.6 percent for the fourth month in a row, and there are nearly two job openings for every unemployed worker.³ However, the railroads are making progress: according to STB data, the number of Class I train and engine employees (the men and women in locomotive cabs) in June

¹ AAR recognizes that the Board's jurisdiction extends to appropriate labor protective conditions for those employees affected by certain Board transactions; obviously that is not the context for TTD's requests here.

² Compare *Urgent Issues in Freight Rail Service*, EP 770, at 2 (Apr. 7, 2022) (explaining "carriers have reported hiring difficulties—difficulties that are not restricted to the rail industry."), with Letter from Greg Regan, President, TTD, to the Board, *Urgent Issues in Freight Rail Service*, EP 770, at 4 (July 5, 2022) (claiming "there is no shortage of ready and willing workers in this country.") ("TTD Letter").

³ See Bureau of Labor Statistics, *The Employment Situation – June 2022*, found here: <https://www.bls.gov/news.release/empsit.toc.htm>.

2022 was 5,544, or 13%, higher than it was in June 2020, when it bottomed out near the beginning of the pandemic.⁴

The jurisdiction of the Board is over “transportation by rail carrier” and its remedies are exclusive regarding “rates, classifications, rules...practices, routes, services and facilities...[and] construction, acquisition, operation, abandonment, or discontinuance” of rail carrier facilities.⁵ While generally considered broad authority, the Board does not regulate rail employment or rail labor relations. As Chairman Oberman explained to Congress, “[t]he Board does not prescribe particular industry-wide labor levels, nor does it manage railroad labor agreements.”⁶ It bears noting that other federal entities, including the National Mediation Board (with respect to labor agreements), as well as FRA and OSHA (with respect to training, qualifications, and safety) and the Railroad Retirement Board (with respect to retirement and other benefits), do have roles in the labor and employment arena.

The Board’s recent service-related decisions nonetheless require the railroads to report extensive high-level data regarding workforce levels, attrition, and hiring efforts.⁷ The Board’s interest in understanding the contribution of labor shortages to the current service problems, as well as the railroads’ efforts to address those shortages, is in the context of its service oversight responsibility.⁸ But the data requested by TTD is of an entirely different sort. TTD wants the STB to scrutinize and (apparently) micromanage railroad hiring, staffing, retention, as well as other “workplace policies” and practices.⁹

For example, TTD requests that the Class I railroads begin to report “(t)he number of employees working in active service in each craft within categories 300, 400, 500, and 600; (s)pecific separation data (resignations, retirements, dismissals, etc.) to include breakouts by craft, work location, and specific reasons for separation; (t)enure at time of separation, broken out by craft and year hired; and (a) narrative description of the data and trends in the monthly

⁴ See Surface Transportation Board, *Employment Data*, found here: <https://www.stb.gov/reports-data/economic-data/employment-data/>.

⁵ 49 U.S.C. § 10501.

⁶ Written Testimony of Martin J. Oberman, Chairman, Surface Transportation Board, before the Subcommittee on Railroads, Pipelines, and Hazardous Materials, Committee on Transportation and Infrastructure, hearing on “Board Member Views on Surface Transportation Reauthorization”, at 4 (May 12, 2022) (“Written Testimony”).

⁷ See *Urgent Issues in Freight Rail Service—Railroad Reporting*, EP 770-1 (STB served May 6, 2022).

⁸ Written Testimony at 4 (“I provide this information to explain what is driving a critical aspect of the Board’s oversight responsibilities—service—and why the Board is taking additional steps....”).

⁹ TTD Letter at 3-4.

reports.”¹⁰ TTD also requests the Board collect more data on attrition and retention, claiming, among other things, that such data will help the Board understand “workplace policies.”¹¹

TTD offers no theory for how this type of granular data will help the Board understand—never mind address within the limits of its authority—“root causes” of service problems. The reasons why individuals decide to leave the railroad, or their tenure and years of service at the time they separate, may be useful information for the railroads to use in deploying their own recruitment and retention strategies (including “workplace policies,” as well as compensation and benefits), but those decisions are well outside the scope of the Board’s jurisdiction here. The Board’s oversight over the result—service performance—does not bring with it authority to review and manage all the many business decisions that go into running the railroads, particularly when those areas infringe on authority expressly granted to other federal agencies, or that are integral to the collective bargaining process.

Additionally, the data TTD seeks is so granular as to implicate privacy interests of individual employees. At this level of specificity, someone familiar with the workforce within a given craft at a given location would likely be able to identify the circumstances surrounding individual employees’ departure from their job. Those circumstances may involve sensitive matters to those employees, such as medical issues or disciplinary matters. TTD’s sparse justification for this extensive data collection provides little basis for intruding on the employment circumstances of individual employees.

Finally, TTD has not accounted for the additional burden this new reporting requirement would place on the railroads themselves. The Board’s decisions in this proceeding have imposed substantial new data reporting requirements on railroads. AAR members have had to implement systems changes to collect and collate the data sought in those proceedings, and the TTD request would likely necessitate further systems changes to capture still more new data points.

It is no coincidence (and is not news to the Board) that railroad employment terms—compensation, benefits, and workplace policies—are currently a very hot topic, as collective bargaining over these items has reached a critical juncture in the statutorily defined process under the Railway Labor Act.¹² The connection between TTD’s *request* and *that* process is obvious, but the requested data do not have any legitimate utility to the STB.

¹⁰ *Id.* at 3.

¹¹ *Id.* at 4.

¹² On July 15, 2022, President Biden signed an executive order establishing, effective July 18, 2022, an Emergency Board to investigate disputes between certain railroads and their employees. See Exec. Order No. 14077, 87 F.R. 43203, *Establishing an Emergency Board To Investigate Disputes Between Certain Railroads Represented by the National Carriers’ Conference Committee of the National Railway Labor Conference and Their Employees Represented by Certain Labor Organizations* (July 15, 2022).

Thank you for your time and consideration.

Sincerely,

A handwritten signature in blue ink, appearing to be 'JFM', with a stylized, cursive script.

J. Frederick Miller, Jr. (*admitted in MD*)
Associate General Counsel & Government
Affairs Liaison
Association of American Railroads