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September 1, 2010

VIA HAND DELIVERY

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
Harrisburg, PA 17120

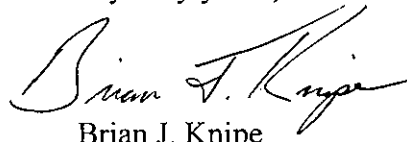
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Re: *Petition of Norfolk Southern Railway Company for Rescission or Amendment of the Pennsylvania Public Utility Commission's Order Entered on June 12, 1975 Regarding the Prevention of Run Outs in the 400 and 500 Classification Yards of Conway Yard in Beaver County, Pennsylvania, Docket No. C-00019560*

Dear Secretary Chiavetta:

On behalf of Norfolk Southern Railway Company ("Norfolk Southern"), I have enclosed for filing the original and three (3) copies of an *Amended Petition for Rescission*. Copies of these documents have been served in accordance with the attached Certificate of Service.

Very truly yours,



Brian J. Knipe

For BUCHANAN INGERSOLL & ROONEY, P.C.

BJK/paf

Enclosures

cc: The Honorable David A. Salapa (via e-mail and hand delivery, w/encls.)
Joseph P. Sirbak, Esq.
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Norfolk Southern Railway :
Corporation for rescission or amendment :
of the Pennsylvania Public Utility :
Commission's Order entered on June 12, : Docket No. C-00019560
1975 regarding the prevention of run outs :
in the 400 and 500 Classification Yards :
of Conway Yard in Beaver County, :
Pennsylvania :

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AMENDED PETITION FOR RESCISSION

Norfolk Southern Railway Company (“Norfolk Southern”), pursuant to 66 Pa.C.S. § 703(g), and 52 Pa. Code § 5.572(a) and (d), requests that the Pennsylvania Public Utility Commission (“Commission”) rescind its Order entered on June 12, 1975 at Docket No. 19560 (“1975 Order”), attached as Exhibit A. As explained below, the Commission entered the 1975 Order in the interest of promoting safety in Conway Yard, a railroad yard located in Beaver County, Pennsylvania. However, as a result of changed circumstances, namely dramatic advances in technology, today the 1975 Order actually creates a significant safety hazard in Conway Yard, necessitating its rescission.

I. INTRODUCTION

The 1975 Order requires Norfolk Southern to assign a minimum of two brakemen to the classification yard in Conway Yard,¹ around the clock, with the specific assignment of preventing run outs (rail cars traveling beyond the designated clearance point). Norfolk Southern has complied with the 1975 Order by having two brakemen, known as “skatemen,” place and remove portable “skates,” pieces of wedged steel lying on top of each rail in the classification

¹ As described in greater detail below, there were two classification yards in Conway Yard in 1975. The operation has since been consolidated into a single classification yard.

yard. In the interests of reduced accident potential, general safety and improved efficiency, the 1975 Order made sense in 1975. Today, however, significant engineering and safety improvements undertaken by Norfolk Southern at Conway Yard since 1999 have virtually eliminated run outs at Conway Yard. Norfolk Southern is rapidly completing the installation of fixed, computer-operated hydraulic skates at Conway Yard, which render the portable skates completely unnecessary to prevent run outs. Yet the continued application, removal and re-application of portable skates would require the presence of Norfolk Southern personnel on and between the tracks of the classification yard, and around the railroad cars. Under these circumstances, the presence of additional personnel in the railroad classification yard creates an unnecessary safety hazard.

In addition, the application, removal and re-application of the portable skates, in practice, has been performed almost entirely by Conway Yard personnel other than the skatemens. The remaining work of the skatemens is extremely limited. Idle employees in a railroad classification yard are, by definition, a safety hazard. As a result, the requirements of the 1975 Order now contravene the Commission's original intent. Instead of promoting safety, the 1975 Order now creates a safety hazard.

Accordingly, rescission of the 1975 Order is lawful and appropriate and critical to promoting safety at Conway Yard. Specifically, Norfolk Southern seeks immediate rescission of the 1975 Order, which will allow Norfolk Southern, for as long as portable skates are used, to continue the current *de facto* practice of having employees other than skatemens handle the portable skates and to reassign the skatemens to other positions, consistent with their seniority under the applicable collective bargaining agreement. Alternatively, Norfolk Southern seeks rescission of the 1975 Order effective upon the installation of hydraulic skates on all

classification tracks at Conway Yard; at which time portable skates will no longer be in use and there will be no work for the skatemens to perform.

II. BACKGROUND

Norfolk Southern and Conway Yard

1. Norfolk Southern is a Virginia corporation authorized to transact business in the Commonwealth of Pennsylvania and is a freight railroad engaged in the business of transporting freight, subject to the jurisdiction of the Commission.

2. Norfolk Southern operates the Conway Yard in Beaver County, Pennsylvania, located approximately 22 miles west of Pittsburgh. Conway Yard is a major classification yard on the Norfolk Southern system, and stretches approximately four miles along the east bank of the Ohio River.

3. Conway Yard was constructed by the Pennsylvania Railroad, once the dominant rail carrier in Pennsylvania and widely regarded as the "Standard Railroad of the World."

4. In 1968, the Pennsylvania Railroad combined with the New York Central system to form the ill-fated Penn Central Transportation Company ("Penn Central"). The Penn Central entered bankruptcy in 1970, which at the time was the largest bankruptcy in U.S. history.

5. Efforts to reorganize the Penn Central failed. To preserve vital rail transportation service in the Northeastern United States, Congress intervened. In 1976, a company created and owned by the U.S. government, Consolidated Rail Corporation ("Conrail"), took control of the railroad operating assets of the Penn Central, including Conway Yard.

6. Eventually, Conrail was privatized through the Conrail Privatization Act of 1986.

7. In 1998, CSX Corporation and Norfolk Southern's parent company, Norfolk Southern Corporation, acquired joint control of Conrail. In June 1999, following authorization by

the Surface Transportation Board (“STB”) the Conrail railroad assets and employees were split between Norfolk Southern and CSX Transportation, Inc. (“CSXT”). Fifty-eight percent of the assets went to Norfolk Southern and forty two percent went to CSXT. Conway Yard and the vast majority of rail lines through the Commonwealth of Pennsylvania were conveyed to a Conrail subsidiary, Pennsylvania Lines LLC. Norfolk Southern leased and operated the assets of Pennsylvania Lines LLC, including Conway Yard.

8. In 2004, Pennsylvania Lines LLC merged into Norfolk Southern. Norfolk Southern has operated Conway Yard since 1999, and has owned it since 2004.

9. Norfolk Southern is widely regarded as the safest railroad in the industry, having won 21 consecutive E. H. Harriman Gold Medal Awards for Employee Safety.

Hump Yard Operations

10. Conway is a type of classification yard known as a “hump yard,” where outbound rail cars are pushed to the top of the “hump,” released, and allowed to roll into the “bowl,” where they are routed to particular classification tracks depending on their destination. “Drafts” of cars are assembled on the classification tracks, and those drafts are later coupled with other drafts of cars in the departure yards to make up trains.

11. From the 1950s until the early 2000s, Conway was a “double hump” yard. It had one hump that was used to classify eastbound cars, and another to classify westbound cars. It also had a separate westbound classification yard (known as the “500 yard” or the “5 yard”), a westbound departure yard (the “900 yard” or the “9 yard”), an eastbound classification yard (the “400 yard” or the “4 yard”), and an eastbound departure yard (the “600 yard” or the “6 yard”).

12. In 2003, Norfolk Southern consolidated its entire operation at Conway into a single classification yard, around what was once the westbound hump. The eastbound hump is

no longer in operation. Classification of all cars (both eastbound and westbound) now takes place in the 5 yard, and drafts of cars from the 5 yard are moved to the 9 yard to make up trains.

13. The classification process begins with a locomotive pushing a string of connected rail cars from the receiving yard up an ascending grade to the apex of the “hump.” At the hump, a conductor separates a “cut” of one to four cars from the end of the string by pulling a pin. Gravity then propels the cut of cars into the bowl, and it drifts down the descending side of the hump. One or more computer-operated switches on the tracks divert the cut to the appropriate classification track.

14. The first cut stops at a designated clearance point before the end of the classification track. Subsequent cuts follow and couple with the last car in the prior cut to form a draft that later will be moved to a departure yard to form a train.

Prevention of “Run Outs”

15. In a hump yard such as Conway Yard, cuts of train cars are pulled by gravity down the descending slope of the hump and diverted by a series of switches onto the appropriate classification track.

16. As the first cut drifts down the hump, the classification yard must control its speed. Otherwise, the cut would travel beyond the designated clearance point at the end of the classification track, or “run out,” in which case it could derail, or collide with or side swipe another rail car or an engine. Controlling the speed of subsequent cuts is important as well to ensure proper coupling with the cars already present on the classification track. Cuts entering the classification track too slowly will not couple when they reach the last car on the track, while those entering too quickly will strike the last car with enough force to damage freight inside the

car, cause a derailment, or propel the lead car on the track to run out beyond the clearance point where it could “foul” other tracks in the yard and interfere with the classification operation.

17. To ensure that a cut travels at a speed fast enough to ensure a proper coupling with the last car on the track but slow enough to prevent freight damage or a run out, the classification yard has a system of “retarders” to slow the cars. A retarder is a pressurized braking device designed to squeeze the wheels of a rail car for the purpose of either slowing or stopping the rail car.

18. The first cut assigned to a classification track is routed through a series of switches and proceeds to the end of the designated track. Although most rail cars slow to a stop before reaching the end of the classification track, additional safeguards are used to ensure that the cars do not run out beyond the end of classification track.

19. Until recently, Norfolk Southern used “inert retarders,” installed approximately five car lengths short of the clearance point, on every classification track at Conway Yard. An inert retarder, which is permanently installed on the tracks, squeezes the rail car’s wheels and causes it to stop.

20. Slowed by the hydraulic retarders near the top of the hump, each successive cut assigned to a classification track connects with the previous cars. As more cuts couple with one another to form a draft, the inert retarders positioned at the ends of the classification tracks continue to hold the first car’s wheels.

21. In the unlikely event that the addition of successive cars causes the first car to proceed through the last retarder, the inert retarder at the end of the track will then squeeze the wheels of the subsequent car, bringing the draft to a stop and preventing the lead car from fouling other tracks in the yard.

22. Inert retarders are set at a constant level of pressure and are not interconnected to Norfolk Southern's electronic hump processing control system. When a complete draft of cars is formed in the classification track, an engine will connect to the lead car and pull the draft of cars through the inert retarder, with the motive power of the engine exceeding the stopping force of the inert retarder.

23. Conway Yard is the only classification yard on the Norfolk Southern system that uses an additional measure, due to the 1975 Order. A couple of feet beyond the exit end of the inert retarder are portable "skates," pieces of wedged steel lying on top of each rail, placed or removed by hand.

24. The theory behind the portable skates, employed long before the installation of the current computer-controlled system at Conway yard, is that if a rail car's front wheels reach them, the flat-bottomed steel skates will slide along the rails, creating friction that theoretically helps to prevent the lead car from passing beyond the clearance point.

25. Once a draft of cars is assembled, a Norfolk Southern employee must remove the portable skates from the tracks before an engine can connect to the draft and move it to a departure yard where it will be combined with other drafts of cars to form a train. After the engine pulls the draft away, a Norfolk Southern employee must replace the portable skates on the rails to prepare for the arrival of new cars on the classification track.

**The Commission's 1975 Order Requires
Full-Time Skatemen to Prevent Run outs**

26. On May 23, 1972, a complaint was filed with the Commission, alleging hazardous conditions in Conway Yard. At the time, Conway Yard was owned and operated by the Trustees of the Penn Central, which had entered bankruptcy in 1970.

27. The Complainants were the Cooperative Legislative Committee of the Railroad Brotherhoods in the State of Pennsylvania and William G. Daniels, a Penn Central employee and a local lodge officer of the United Transportation Union.

28. The complaint alleged the use of improperly gauged inert retarders, as well as inert retarders and portable skates that were otherwise in ineffective operating condition. It also alleged the failure to require the application of sufficient hand brakes on cars occupying the classification tracks. According to the complaint, multiple car cuts bypassed the inert retarders and rail cars knocked the portable skates off the tracks.

29. At the time the Commission addressed the complaint, operations and technology at Conway Yard were very different from the way they are now. For instance:

- a. The retarder system was not computerized. Rather, the hydraulic retarders were manually operated by employees, who used controls to adjust the amount of pressure applied to each rail car's wheels. These operators exercised their intuitive judgment to decide the proper amount of pressure, in light of the weather and the number and type of rail cars in a cut. Thus, human error often resulted in the rail cars leaving the last set of hydraulic retarders at an excessive rate of speed.
- b. The Penn Central, strapped for cash and under the control of the trustees in bankruptcy, did not install and properly maintain an effective retarder system. It did not properly maintain the hydraulic retarders. Several tracks did not even have inert retarders, and on those tracks that did, the inert retarders were not properly gauged. Not surprisingly, cars running out beyond the clearance point were an all too common occurrence.

- c. The retarder system operated by Penn Central relied on utility brakemen assigned to apply hand brakes to the first car “humped” onto a classification track as an extra measure of control. Because of Penn Central’s financial difficulties, however, it had eliminated the utility trainman position by 1972, thus removing a central element in the process.

30. As a result of Penn Central’s shortcomings in these areas, the Conway Yard experienced frequent run outs.

31. On June 3, 1975, the Commission issued the 1975 Order, which required Penn Central to assign a minimum of two brakemen or other train service employees to each classification yard around the clock, with the specific assignment of preventing run outs. *See Exhibit A.*

32. Although the 1975 Order originally purported to require Penn Central to install inert retarders on every track, this was not the Commission's intent. The Commission issued another order the next month, amending the 1975 Order to eliminate any requirement to install additional retarders.

33. In fact, the 1975 Order expressly provided that it was subject to the filing of a petition for modification or rescission if Penn Central implemented “an effective inert retarder system or other mechanical devices to prevent run outs of cars in the yard.”

34. Since the Commission entered the 1975 Order, the railroad companies operating Conway Yard have complied with the 1975 Order by constantly assigning at least two utility brakemen known as skatemen to the duty of adjusting skates in each yard. Because the classification yards operate around the clock, the 1975 Order requires Norfolk Southern to employ six skatemen per day (two per shift) in Conway Yard to cover all shifts.

Pre-Norfolk Southern Improvements and the 1998 Order

35. Conrail, which operated Conway Yard from 1976 until mid-1999, installed inert retarders on each of the classification tracks, so that by the end of 1996, every track had one. Conrail also maintained and rehabilitated the inert retarders, diligently monitored the use of portable skates, and maintained comprehensive records of run outs.

36. On May 6, 1998, the Commission entered an order at Docket No. P-00971305 (the "1998 Order") in connection with a Petition for Emergency Relief filed by the United Transportation Union. The Commission concluded that the 1975 Order's directive that Conrail assign two skatemens for the "specific" task of preventing run outs did not dictate that the skatemens have the "exclusive" duty of preventing run outs. Rather, Conrail could use the skatemens for other related duties, provided the additional assignments did not in any way detract from their primary function of placing skates and preventing run outs, in which case Conrail could be deemed in violation of the 1975 Order, with "substantial consequences" to follow. 1998 Order at 5, 7.

37. In the 1998 Order, the Commission noted that since 1975, Conrail had installed inert retarders on all tracks in each of the classification yards, further reducing the likelihood of run outs. 1998 Order at 7. However, the Commission was not presented with a request to rescind or amend the 1975 Order. Indeed, the Commission explained that it did not act to reverse the 1975 Order, and directed that preventing run outs must remain the skatemens' "priority task." A copy of the May 6, 1998 Order is attached as Exhibit B.

38. However, while the skatemens typically check the portable skates that have already been applied to the tracks when they report for work at the beginning of their shifts, virtually all of the application, removal and re-application of skates on a day-to-day basis are performed by

the conductor or utility switchman assigned to the pull-out crew already present on the tracks. Aside from re-checking that the pull-out crews have applied the skates, which in practice occurs very infrequently, there is little for the skatemens to do to prevent run outs. All too commonly skatemens have been observed washing cars, cooking, reading, watching television, and even sleeping.

Norfolk Southern's Engineering and Safety Improvements to Conway Yard

39. Norfolk Southern, which began operation of Conway Yard on June 1, 1999, has continued to maintain the retarder system diligently, and has implemented other devices to prevent run outs.

40. In 2000, Norfolk Southern installed the Hump Process Control System (the "HPC"), a system of computers that operates the classification yard and its system of retarders. This retarder system begins with sets of hydraulic retarders spaced at intervals near the top of the hump. Each set of hydraulic retarders consists of several pairs of shoes installed on each running rail. The shoes squeeze a rail car's wheels on both rails. The resulting friction causes the car to slow.

41. The HPC automatically determines the degree of pressure necessary to slow the car to the desired speed, based upon its weight, speed, number of axles, distance to coupling, *temperature, wind speed, and weather conditions, and calculates and directs the hydraulic retarders to apply the appropriate amount of pressure to the wheels of the passing car to slow the car to the desired speed.* The HPC controls the speed of cuts of cars arriving in the classification track so that they consistently couple at approximately four miles per hour.

42. The HPC, installed at a cost of over \$11 million, is a state of the art, PC-based system with the latest features in hump process control, which include:

- a. Automatic Equipment Identification on all cars being humped in Conway Yard;
- b. Entrance and exit wheel detectors at each hydraulic retarder that generate speeds that are compared to the radar speed, allowing the system to evaluate whether any portion of the speed detection system is failing;
- c. Speed detection at all switches, at the tangent point, and five hundred feet into each classification track;
- d. Diagnostic software that can show graphically how any given cut of cars was handled as it progressed to each classification track;
- e. A “distance to couple system” for calculating the available distance on each classification track;
- f. Automatic tuning of system parameters to improve coupling speed;
- g. An automatic alarm for cars traveling at excessive speed, which allows for a quicker reaction to any equipment failure;
- h. Interconnection with the new hydraulic skates now being installed on the classification tracks.

43. Norfolk Southern has also installed new pressure valves on all hydraulic retarders. These pressure valves allow the HPC to “pulse” pressure on a rail car’s wheels, resulting in more accurate speed control and more even wear on retarder shoes.

44. This new system allows more Norfolk Southern personnel to monitor the rail cars’ actual speed from their work stations, resulting in more consistent classification operations.

45. The HPC also maintains detailed logs of operation and failures. Its records demonstrate that today run outs are almost nonexistent.

46. The introduction of state-of-the-art, hydraulic skates, discussed below, will reduce the risk of run outs even further.

47. Thus, the technological advances implemented by Norfolk Southern eliminate human error that existed when employees controlled the retarders, guided only by intuition. As a result of the measures implemented by Norfolk Southern, skates have been rendered superfluous.

48. A key benefit of the HPC system is that its speed monitoring and control capabilities eliminate the need to have so many employees walking through the classification tracks, where they can be injured. Now the increased human presence on the tracks resulting from the use of skatemens actually increases the risk of injury.

Ongoing Installation of Hydraulic Skates

49. In the spring of 2010, Norfolk Southern began the process of replacing the inert retarders with new hydraulic skates on the classification tracks at Conway Yard. Currently, hydraulic skates are operational on eighteen (18) of Conway Yard's fifty-three (53) classification tracks. By the end of the second quarter of 2011, all fifty-three (53) classification tracks will be equipped with hydraulic skates.

50. Unlike the inert retarders that apply a fixed force, the hydraulic skates are electronically controlled, interconnected to the HPC, and apply greater stopping force to heavier cars. When in the "open" position, rail cars may be pulled through the hydraulic skates, as can be done with inert retarders. However, when the hydraulic skates are in the "closed" position, they provide dramatically more stopping power than the old inert retarders. An engine could not pull a draft of cars through a closed hydraulic skate, at least without risk of serious damage to the engine.

51. LED lights indicate visually when the hydraulic skates are open or closed. The HPC communicates with each hydraulic skate and, if a hydraulic skate is not in the closed position, the HPC will not allow cars to be routed to that classification track. In addition, even if a hydraulic skate loses electrical power, it will continue to apply stopping force.

52. Norfolk Southern has successfully operated hydraulic skates of the same general design at other rail yards. Hydraulic skates have been in use at Enola Yard near Harrisburg, Pennsylvania since August 2004 and are currently being installed at Allentown Yard.

53. Given the substantially greater stopping power of permanently-installed hydraulic skates, portable skates are unnecessary and not used on classification tracks equipped with hydraulic skates. The use of portable skates has already been discontinued on the eighteen classification tracks now equipped with hydraulic skates and will be discontinued on all classification tracks as the installation of hydraulic skates is completed by the end of the second quarter of 2011.

III. DISCUSSION

A. Reconsideration Is Appropriate Where There Has Been a Change in Circumstances

54. As mentioned previously, the 1975 Order expressly contemplates its own rescission or amendment: “such order to be subject to the possible filing of a petition for modification or rescission in the event that the carrier implements an effective inert retarder system or other mechanical devices to prevent run outs of cars in the yard.” 1975 Order at 11.

55. Under Section 5.572(a) and (d) of the Commission's regulations, a party may, at any time, petition the Commission to rescind or amend a prior order. And, the Commission may, at any time, rescind a prior order after providing notice and opportunity to be heard to interested parties. 66 Pa.C.S. § 703(g).

56. The Commission has explained that when considering a request for rescission or amendment of a prior order under Section 703(g), the Commission expects to see something new, such as considerations which the Commission has not previously addressed:

A petition for reconsideration, under the provisions of 66 Pa.C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. . . . What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.

Philip Duick v. Pennsylvania Gas and Water Company, 56 Pa. P.U.C. 553 (1982).

57. The Commission has further stated that “a petition for reconsideration is properly before us where the petitioner pleads newly discovered evidence, alleges errors of law, or a change in circumstances.” *Application of Superior Water Company*, Docket No. A-212955F0012 (Order entered Feb. 18, 2004), slip. op. at 5 (citing *Pennsylvania Public Utility Commission v. Fawn Lake Forest Water Co.*, Docket No. R-912117 (Order entered Jan. 4, 1993)).

58. As explained below, engineering and safety changes undertaken by Norfolk Southern at Conway Yard since 2000, particularly the installation of the HPC and the ongoing installation of hydraulic skates on every track in the classification yard, have resulted in a substantial change in circumstances that necessitates rescission of the 1975 Order.

B. Petitioner Requests That the Commission Rescind its 1975 Order Because Changes in Circumstances Have Resulted in the Placement and Removal of Skates Actually Increasing the Risk of Accident and Injury at Conway Yard

59. Rescission of the 1975 Order is lawful and appropriate because circumstances at Conway Yard have greatly changed. Given the circumstances and the state of technology at Conway Yard in 1975, it made sense at that time to require dedicated positions assigned to the

prevention of run outs. Cars coming off the hump were slowed based on human intuition. Some of the classification tracks did not even have inert retarders and the inert retarders that were in place were poorly maintained.

60. Conrail installed inert retarders on every track and Norfolk Southern has continued to maintain the system of inert retarders. With the implementation of the HPC, the speed of cars on the classification tracks is now controlled by computer, eliminating the possibility of human error. Finally, the HPC-controlled, hydraulic skates now being installed will provide the best possible protection against run outs, rendering superfluous the use of portable skates. Notwithstanding these changed circumstances, the 1975 Order continues to require that Norfolk Southern assign two skatemen per shift to the prevention of run outs. Requiring the presence of additional personnel to walk on and between the tracks of the classification yard, and around the railroad cars, creates an unnecessary risk of injury.

61. Further, in practice, skatemen perform almost none of the application, removal and re-application of the skates. Rather, this function is performed by pull-out crews. The skatemen's role in run out prevention is limited almost exclusively to re-checking skates. As a result, the skatemen required by the 1975 Order are largely idle. In a railroad classification yard, idle employees are, by definition, a serious safety hazard.

62. Requiring the presence of additional Norfolk Southern personnel on and between the tracks of the classification yard, and around the railroad cars, increases the risk of accident and injury. To eliminate this safety hazard, these employees need to be reassigned to other positions where they will be properly utilized, without the possibility that reassignment will be deemed to violate the 1975 Order.

63. The Commission's intent in entering the 1975 Order was to promote "reduced accident potential, general safety and improved efficiency." 1975 Order at 11. As a result of changed circumstances, however, the 1975 Order is now frustrating the Commission's intent, and actually creating a serious safety hazard in Conway Yard.

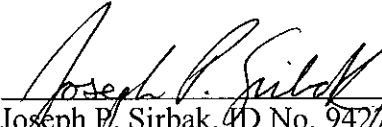
64. These changes in circumstances necessitate immediate rescission of the 1975 Order so that skatemens may be assigned to other positions, consistent with their seniority under their applicable collective bargaining agreement, with the handling of any remaining skates between now and the second quarter of 2011 to be performed by pull out crews consistent with current practice or, in the alternative, that the 1975 Order be rescinded effective upon the installation of hydraulic skates on all classification tracks at Conway Yard, at which time portable skates will no longer be in use and there will be no work for the skatemens to perform.

IV. CONCLUSION

For the reasons set forth above, Norfolk Southern Railway Company respectfully requests that the Commission grant this Petition and immediately rescind its Order entered on June 12, 1975 at Docket No. 19560 or, in the alternative, rescind its Order entered on June 12, 1975 effective upon Norfolk Southern installing hydraulic skates on all classification tracks at Conway Yard and discontinuing the use of portable skates.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY, P.C.

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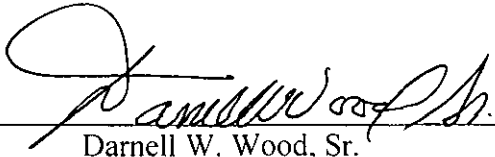
Dated: September 1, 2010

Attorneys for Norfolk Southern Railway Company

VERIFICATION

I, Darnell W. Wood, Sr., hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Dated: August 26, 2010



Darnell W. Wood, Sr.
Conway Yard Terminal Superintendent
Norfolk Southern Railway Company

EXHIBIT A

1975 ORDER

PENNSYLVANIA
PUBLIC UTILITY COMMISSION

Public Meeting held June 3, 1975
Harrisburg, PA.

COMMISSIONERS PRESENT:

Acting Chairman Kelly - Approval
Commissioner Bloom - Approval
Commissioner Carter - Approval

Complaint Docket No. 19560 - Cooperative Legislative Committee,
Railroad Brotherhoods in the State of Pennsylvania and
William G. Dannels v. George P. Baker, Richard C. Bond,
Jervis Langdon, Jr., and Willard Wirtz, Trustees of the
Property of the Penn Central Transportation Company, Debtor

O R D E R

BY THE COMMISSION:

This matter is before us upon complaint filed May 23, 1972 by the Cooperative Legislative Committee of the Railroad Brotherhoods in State of Pennsylvania, and William G. Dannels, an employee of respondent and a local lodge officer of the United Transportation Union. Complainants allege that ineffective inert retarders and skates, devices which are essential to the efficient and safe operation of respondent's 400 and 500 Classification yards in Conway Yard, and respondent's failure to require the application of sufficient hand brakes on cars occupying tracks in these yards, results in extremely hazardous conditions, due to cars extending beyond designated clearance points on various tracks in Conway Yard, located in Beaver County.

The railroad company's answer, filed June 16, 1972, averred that respondent would take the action necessary to place the inert retarders and skates in the two yards in effective operating condition so that these devices will prevent those cars entering the classification yards at the proper rate of speed, from "running out" or extending beyond designated clearance points on the respective tracks. The

company then anticipated that 60 days' time would be required to complete the restoration of the retarders and skates, or until August 14, 1972, and requested the Commission to defer formal hearing until after that date, and further suggested that in the event that complainants indicated to the Commission that the proposed corrective maintenance did in fact eliminate the basis for the complaint, that consideration be extended to dismissal of the complaint.

Subsequently, by letter dated August 14, 1972, counsel for Penn Central advised that repairs and adjustments to the retarders and skates had been completed on August 3, 1972, and requested dismissal of the complaint proceeding. However, counsel for complainants advised that runouts of cars had continued to be a common occurrence in Conway Yard and suggested the prompt scheduling of a hearing in the matter.

Initial hearing was held in Beaver on October 4, 1972, during which complainants presented four witnesses and the railroad company submitted testimony from two witnesses.

Complainant Dannels, who has worked as a trainman and conductor for Penn Central and its predecessor, Pennsylvania Railroad Company since 1941, described the yard operation in the 400 (eastbound) and 500 (westbound) classification yards, each of which consists of 54 tracks of various lengths ranging from 50 to 100 car capacity, onto which cars are directed after being shoved to a hump by a pushing engine, from which point the cars move by gravity. The speed of an individual car or groups of two or more cars is controlled by automatic and/or manually controlled retarders located on the descending grade beyond the hump or apex of the yard, with complete stoppage of cars intended to be provided by

inert retarders which are permanently installed on most of the tracks at a location about five car lengths in advance of the clearance point marked on each track, assisted by portable skates which are wedge-shaped braking devices placed atop one of the two rails of each track, at a point approximately 1-1/2 to 2 feet beyond the exit end of the inert retarders.

Mr. Dannels stated that the runouts frequently resulted from inert retarders not being properly gauged to provide adequate slowing of cars, and that the skates failed to retard the cars. He referred to earlier procedures in Conway Yard, whereby so-called utility brakeman were assigned by the carrier to apply hand brakes to the initial cars humped onto the various tracks. These utility brakeman positions were gradually eliminated, however, with the last such position having been removed in January 1972, so that at the time of hearing, hand brakes were not being set on the cars. Mr. Dannels indicated that there were then no inert retarders on tracks Nos. 500 to 510 in the 500 yard and none on tracks Nos. 447 to 454 inclusive in the 400 yard, and that he was then unable to state with certainty as to the general availability of skates on the various tracks.

J. H. Reiser, employed as a trainman and conductor since 1942 and also a local United Transportation Union lodge officer, also testified that the skates are not always effective in stopping cars. Mr. Reiser furnished the results of a survey of runouts of which he had personal knowledge obtained during his duty assignments in Conway Yard. He stated that on 12 occasions from August 23 through September 30, 1972, single cars or drafts of two, three, and five cars had run through inert retarders and skates on various tracks in the 400 yard, and had then extended beyond clearance points. One such occurrence resulted in a derailment. Mr. Reiser pointed out that many of the newer freight cars are of

longer construction and carry heavier loads than formerly was the case, while the inert retarders are of an older design, intended to accommodate the older type of cars. It has been his experience while working in Conway yard that cars either singly or in cuts of two or more cars, which are moving at four miles per hour as they clear the final or group of retarders, which are under the control of retarder operators, have a tendency to be moving at a greater speed as they reach the inert retarders.

Penn Central engineman J. E. Tush, who was then assigned to Conway yard, testified that he has personally observed the skates being knocked from the rail upon contact by car wheels, and that while an empty car striking a skate will continue for another five or six feet, a loaded car will move much further following such contact, with the 80 or 90 foot cars presenting a real problem in this regard. Mr. Tush expressed personal knowledge of four runouts which occurred on September 18 and 24, 1972. Two of these incidents resulted in collisions with cars on adjacent tracks.

Engineman A. B. McQuigg, employed by Penn Central and the former Pennsylvania Railroad since 1941, and at the time of hearing, assigned to Conway, estimated that an average of three runouts occur in the 500 yard daily and he cited tracks 532, 533, 544, 547, 548 and 549 as being particularly prone to the runouts. Mr. McQuigg stated that tracks 547 and 549 were not then equipped with inert retarders or skates and pointed out that the inert retarder on track 544 is located only two car lengths distant from the fouling or clearance point.

Mr. G. E. Ellis, Penn Central's division engineer, having jurisdiction of the maintenance of way in Conway yard

since 1968, testified that inspections of the 83 sets of inert retarders in the yard, following the filing of this complaint in 1972, revealed that 19 retarders were then within the proper gauge, while the remainder required cleaning, further inspection, and gauging. This maintenance was done during the period from June 12 through August 2, 1972. Mr. Ellis described the inert retarders as sets of four shoes installed in pairs on the inside of each running rail and on the inside of sections of rail installed within the track gauge, with spring action bringing pressure on the inside and outside of wheels of cars moving through the retarder sections.

He also stated that the portable skatas, which measure two feet in length, should be placed on rails properly, as close as possible to the leading end of the retarders.

The inert retarders are constructed on 39 foot rail sections and can perform as intended primarily only with 40 foot freight cars. Mr. Ellis expressed opinion that the retarders should be subject to inspection and adjustment annually.

The witness also believes that a properly adjusted retarder should retard to a stop, a loaded 70-ton capacity car entering such retarder at speeds up to eight miles per hour. He also testified that the classification tracks in Conway had been designed and constructed so as to provide a 2 1/2 percent ascending grade through the final 500 feet of each track so as to involve a further retardation of car speeds. However, differing surface irregularities over a period of years, in his opinion may well result in slight changes in the track structures.

Mr. G. F. Bressler, a Penn Central assistant superintendent who had formerly been assigned to Conway for a period of four years as a trainmaster and subsequently as a terminal superintendent, described the operation of both automatic computerized retarders and the operator-control retarders in the yard and expressed the opinion that the two principal causes for runouts or run throughs of humped cars are, excessive speeds of cars as they enter the inert retarders, and the absence of a skate on a track location just beyond the exit end of the retarders. Humped cars should not attain a speed in excess of four miles per hour as they approach the inert retarders, according to Mr. Bressler. This four mile per hour speed is likewise the proper one for normal car couplings in a yard.

While the retardation of the speeds of cars humped into the 500 yard is governed by computer settings, the retarder operator on duty in the No. 5 Hump office has the prerogative to pre-set the machine to fast, normal or slow indications, which may be dependent upon various factors such as weather, type of car, and the number of cars contained in a cut.

Retarder operators have standing instructions to over ride the computer, should the operator notice that cars are traveling at an excessive speed through the primary set of retarders. Instructions also provide for operators to exercise manual controls over cuts of two or more cars through the final or group set of retarders, since experience has proven that the computer accommodates single cars more effectively than it does multiple cuts of cars.

Mr. Bressler stated that he was then willing to reinstitute on a 90-day trial basis, a revised operating

procedure whereby only single cars would be released over the hump in the two yards in an effort to improve the performance of the controlled retarders and to determine whether that practice would in fact reduce the number of runouts in the classification yards. He related that prior experience with single car humping had not slowed the overall handling of cars since production in the yard is aimed at humping cars at the rate of four cars per minute. The witness emphasized the importance of employees working in the yard replacing the skates upon the rails after a draft of cars has been moved from a classification track and the track becomes empty.

The witness further stated that the only record which the carrier maintains relative to the runouts in Conway yard pertain to those which result in a derailment or a side swipe, involving damage to equipment or track, or casualties to employees.

Railroad counsel proposed that the 90 day trial of single car cuts begin at 7:00 a.m. on the following Monday, October 9, 1972 and continue until January 9, 1973. Complainant's counsel stated that the parties would then advise the Commission as to the results of the test, with the Commission then determining whether further hearing would be necessary.

The stipulation covering the method of humping cars for a 90 day trial period was forwarded to the Commission by the hearing examiner as follows:

"For a 90 day period (October 9, 1972--January 9, 1973) all cars released from the 'Hump' in the 400 yard and 500 yard and moving without power toward the 'inert retarders' and 'skates' at the end of said 'classification yards' will be single car (as opposed to several cars at a time) released at the rate of four per minute, during which time a record will be kept to see if 'runouts' at the end of the 'classification yards' decrease. Thereafter, the Commission shall make such order as it deems appropriate following notice in writing from the interested parties, of the results of said 90 day trial period."

By letter dated October 12, 1972, or just three days following the inception of the single car humping, counsel for complainants notified the Commission that the experiment had been terminated by the railroad company as being impractical. Counsel further advised that while he understood that Penn Central then proposed to continue testing various other procedures, this was not being done within the terms of any agreement between the parties. Counsel for respondent verified the termination of the single car humping procedure, by letter dated November 6, 1972 and then requested a further hearing be scheduled following compilation of various information obtained from the results of various revised procedures in the yard.

Further hearing was held in Beaver on January 30, 1973, at which Penn Central again presented testimony from Mr. Ellis and Mr. Bressler and also submitted fourteen exhibits containing data relative to retarders and runouts, along with a diagram of Conway Yard.

Mr. Ellis testified that following the October 1972 hearing, Mr. D. A. Swanson, then general manager of the railroads company's Central Region, had issued instructions that the gauge of the inert retarders henceforth be measured once each two weeks and Exhibits 2, 3, 4 and 5 represent gauge readings of the tracks in the 400 and 500 classification yards. The retarders had been inspected during June, July and August 1972, and the readings shown were taken in November 1972 and in January 1973.

Mr. Bressler testified that the single car humping proposal had been implemented in Conway immediately following the conclusion of the hearing on October 4, 1972, and expressed opinion that the policy had alleviated the runouts to some

extent. However, experience proved that the frequency and severity of equipment damage had increased due to the bypassing of draw bars (missed couplings) and increased loss and damage to lading upon impact. As a result, within a few days the instructions were again modified by management to provide that the first four cars placed on a track by humping would be single car cuts, and that succeeding cars would be humped in multiples of not more than four car cuts.

Upon adoption of this method, yardmasters were instructed to maintain a written record of run-throughs in the 400 and 500 yards, and this data was assembled and appears on Exhibits 6, 7, 8, and 11. Summaries of this data, shown on Exhibits 12 and 14 indicate a total of 65 runouts in the 400 and 500 yards during the period beginning October 4, 1972 extending through January 23, 1973. Fifty-five runouts occurred in the semi-automatic 400 yard, with skates reported to have been placed in 36 instances, while in nine of ten incidents in the 500 yards skates were reported in place.

Complainant Dannels testified to eight additional runouts which occurred between November 7, 1972 and January 5, 1973. These did not appear in respondent's exhibits, and were reported to Mr. Dannels by various employees who had knowledge of same.

In Mr. Bressler's opinion, the runouts resulted in most part from human failures by both yardmasters and retarder operators. He feels that the record keeping and review of the runout statistics has proven beneficial and cited an immediate revision where track 442, which had been formerly designed to receive Baltimore-destined freight such as 100 ton hopper cars, was re-designated to receive lighter-weight

cars in order to alleviate the runout situation which had been quite prevalent on this track. Mr. Bressler stated that weekly meetings were proposed to be held between himself, the terminal superintendent of Conway Yard, and the division engineer, in order to monitor the hump operation in its entirety, with possible alternative operating procedures to be considered and possibly adopted.

The witness estimated that two of each five hump movements consist of one-car cuts. He testified that at the time of hearing, a single utility trainman was then employed in all of Conway Yard, which extends nearly four miles.

Counsel for complainants and for respondent initially agreed that the record be kept open for two months pending further tests and surveys by the railroad company, in attempts to find solutions for the runouts. Eventually, however, counsel decided to submit the matter on the record, without the filing of briefs or presentation of oral arguments.

The transcript of testimony was received February 22, 1973. Following a review and study of the evidence and exhibits, visual observations of the physical plant and the humping procedures at Conway Yard were made by staff engineer W. G. Sutton, Penn Central officials and United Transportation Union representatives on various dates, namely, April 6 and September 28, 1973 and on October 29, 1974. Chief Engineer Peteritas, then a staff engineer, also attended the September 1973 inspection. The problems inherent were discussed on each occasion by those in attendance. Mr. C. J. Sludden, State Legislature Director of the United Transportation Union and Penn Central management officials have had continuing discussions and meetings on this subject, which culminated

in their reaching an accord which was reduced to writing by respective counsel and furnished to the Commission in a letter dated February 18, 1975 addressed to former Chairman Bloom by respondent's counsel, W. D. Stewart. This letter was placed in the record folder of this proceeding.

Counsel for United Transportation Union and Penn Central Transportation Company jointly request that the Commission issue an appropriate order based upon the agreement reached, such order to be subject to the possible filing of a petition for modification or rescission in the event that the carrier implements an effective inert retarder system or other mechanical devices to prevent runouts of cars in the yard.

We have reviewed this letter and are of the opinion that the solution to the problem of runouts as contained therein has merit and is deserving of implementation which we do here accept, in the interest of the reduced accident potential, general safety and improved efficiency.

We shall herein direct respondent to initiate the measures necessary to insure the continuous around-the-clock assignment of two brakemen in the 400 and 500 Classification Yards, respectively, said brakemen employees to have the specifically assigned duty of preventing runouts. The letter of agreement on the matter advises that one brakeman had been assigned to these duties as of February 18, 1975, that additional men were not then available to the respondent to provide full compliance, and that additional manpower would be promptly employed and trained, so as to have enabled the railroad company to maintain the required manpower on or before March 14, 1975 and continuously thereafter accordingly;
THEREFORE,

IT IS ORDERED:

1. That the complaint docketed to C. 19560 be terminated without prejudice, by issuance of the order hereinafter set forth:
2. That, if not previously done, Trustees of Penn Central Transportation Company, forthwith, institute the measures necessary to insure adherence to the following requirements of Pennsylvania Public Utility Commission, which represent matters agreed to in stipulation filed with this Commission by counsel on behalf of Cooperative Legislative Committee, of the Railroad Brotherhoods in the State of Pennsylvania and Penn Central Transportation Company.
 - A. A minimum of two (2) brakemen or other train service employees, will be assigned in both the Eastbound (400) and Westbound (500) Classification Yards on each shift or tour of duty (4 employees each trick) these employees to have the specific assignment of preventing runouts of cars beyond designated clearance points of the Classification tracks.
 - B. Inspection, maintenance and repairs requisite to the effective functioning of existing installations of inert retarders and the installation of retarders where none are now installed shall be continued on a regular, periodic basis.
3. That Trustees of Penn Central Transportation Company, beginning on September 15, 1975, and continuing at three-month intervals thereafter, until terminated by order of this Commission, shall forward to the Director of the Bureau of Transportation a special record showing the runouts

which have occurred during the proceeding three calendar months in the respective Classification Yards, such information to indicate the date, track, work shift, and all other pertinent information to the incident.

BY THE COMMISSION,

Will Ketner

Will Ketner
Secretary

(SEAL)

ORDER ADOPTED: June 3, 1975.

ORDER ENTERED: JUN 12 1975

EXHIBIT B

1998 ORDER

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held April 9, 1998

Commissioners Present:

John M. Quain, Chairman
Robert K. Bloom, Vice Chairman
John Hanger
David W. Rolka, Statement attached
Nora Mead Brownell

United Transportation Union,
Pennsylvania State Legislative Board,
by Donald W. Dunlevy,
Trustee Ad Litem

P-00971305

v.

Consolidated Rail Corporation

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration and disposition are the Exceptions filed on January 13, 1998, by Consolidated Rail Corporation (Conrail), to the Recommended Decision of Administrative Law Judge (ALJ) Michael N. Nemeec, which was issued on January 7, 1998. No Replies to Exceptions have been received.

History of the Proceedings

United Transportation Union (Union) stated in its Petition for Emergency Relief dated December 12, 1997, that Conrail was violating portions of an Order of the Commission which was entered on June 3, 1975 (June 3 Order). The June 3 Order directed, inter alia, that Conrail assign two brakemen to the "specific" task of preventing "run outs" of rail cars beyond their designated clearance points in the Conway Yard.¹ The effect of the alleged violation was to create an immediate risk of harm to employees and others in the Conway Yard operated by Conrail in Beaver County, Pennsylvania. The Petition was supported by an affidavit of Donald W. Dunlevy, Trustee Ad Litem.

In response to the Petition, Commissioner David W. Rolka signed an Emergency Order on December 12, 1997, which granted the Petition and directed compliance by Conrail with the Commission's June 3 Order. On December 16, 1997, Conrail filed an Answer and New Matter to the Petition, and requested that the Emergency Order be rescinded or, in the alternative, that an expedited hearing be scheduled and held.

¹ Rail cars are assigned to make up a train in a classification yard, first by being shoved over a "hump." "Inert retarders" are placed after the hump which are similar in purpose to a car's brake shoes. By squeezing the wheels of a rail car, the inert retarders slow and stop most cars. Cars moving beyond the retarders can then be stopped by "skates," which are pieces of wedged steel fitted on top of the rails which dig in between the rails and the wheels. The skates slide with the car, creating friction which ultimately stops most cars. (Tr., pp. 66-67). Utility brakemen assigned to the duty of adjusting "skates" are also referred to as "skatemen." Occasionally, rail cars continue moving beyond the retarders and the skates, resulting in a "run out." Some run out cars can then be stopped ultimately by switching them to a clear track. If all of these methods fail, a collision can occur.

At the Public Meeting held on December 18, 1997, the Commission ratified the Emergency Order, and its action was memorialized in an Order entered on December 19, 1997. Specifically, the Order directed that a hearing be held and a Recommended Decision resolving the factual issues raised in the pleadings be issued for review by the Commission.

The initial hearing specified in the Commission's Order was held on December 23, 1997, in Pittsburgh. Both the Union and Conrail were represented by counsel. At the beginning of the hearing, counsel for the Union presented the Union's reply to Conrail's new matter. The resulting record consists of the pleadings, a transcript of 112 pages, and two Conrail exhibits. No Briefs were filed.

The Recommended Decision of ALJ Nemecek was issued in this proceeding on January 7, 1998. Conrail filed Exceptions to the Recommended Decision as noted above.

Discussion

In his Recommended Decision, ALJ Nemecek made fifteen (15) Findings of Fact (Recommended Decision, pp. 2-7) and drew six (6) Conclusions of Law. We shall adopt and incorporate herein by reference the ALJ's Findings of Fact and Conclusions of Law to the extent that they are not expressly or by necessary implication overruled or modified by this Opinion and Order.

The ALJ's Recommended Decision was prepared in response to the Petition for Emergency Relief filed by Union on December 12, 1997. The ALJ recommended that

the Complaint in the form of a Petition for Emergency Relief be sustained, and that Conrail be fined five thousand dollars (\$5,000.00) for violating the June 3 Order by assigning additional duties to the brakemen on five recent occasions.

Initially, we are reminded that we are not required to consider expressly or at great length each and every contention raised by a party to our proceedings. University of Pennsylvania v. Pennsylvania Public Utility Commission, 86 Pa. 410, 485 A.2d 1217, 1222 (1984). Any Exception or argument which is not specifically addressed herein shall be deemed to have been duly considered and denied without further discussion.

We note at the outset that Section 5.533(b) of our Regulations, 52 Pa. Code §5.533(b), provides that:

- (b) An Exception shall be stated in specific numbered paragraphs, identify the Finding of Fact or Conclusion of Law to which exception is taken and cite relevant pages of the decision. Supporting reasons for the exception shall follow a specific exception. (Emphasis Added).

The crux of Conrail's Exceptions is that Conrail has not violated the Commission's June 3 Order. Conrail argues, inter alia, that the ALJ's Findings of Fact failed to reflect that Conrail took adequate precaution to assure safety of the tracks, that the risk of run outs on any particular track does not exist, that the June 3 Order does not dictate that utility brakemen have the "exclusive" duty of preventing run outs and that Conrail did not intentionally or knowingly violate the terms of the June 3 Order.

We note that the June 3 Order directed Conrail to assign two (2) brakemen to the "specific" task of preventing "run outs" of rail cars beyond their designated clearance points in the Conway Yard. Conrail contends that the sole issue in this proceeding is whether it violated the terms of the June 3 Order by assigning other duties to these brakemen in addition to those expressly delineated in the June 3 Order. Conrail casts this issue as whether the word specific as used in the June 3 Order has the same meaning or effect as the word exclusive.

Conrail contends that Union has proffered no testimony or evidence which supports its argument that "specific," in the context of the June 3 Order holds the same meaning as "exclusive." Accordingly, Conrail argues that the use of the word "specific" permits Conrail to utilize these brakemen for other duties. Conrail further asserts that, since under this interpretation of the word "specific," it has always been in compliance with the provisions of the June 3 Order, there is no basis on which the Commission could justifiably act to impose a fine or otherwise punish Conrail.

The crucial issue of this proceeding turns on whether the brakemen are to be assigned the task of preventing run outs "specifically" or on an "exclusive" basis. Our interpretation of specific does not mean exclusive. Accordingly, we agree with Conrail that, within the 1975 Order, the use of the term "specific" permits the use of brakemen for other related duties. Thus, we hereby reverse the ALJ's Recommended Decision and grant Conrail's Exceptions to the extent they are consistent with this Opinion and Order.

However, we do not hereby act to reverse the June 3 Order. Prevention of run out cars remains a paramount consideration, and the priority task for the two brakemen.

The record demonstrates that the brakemen spend approximately five hours of their eight-hour shift in the yard office. The brakemen testified that they are available if needed under this scenario. However, we note that the office is located at the extreme edge of the classification yard, at a considerable distance from the area where the skates are placed on most of the rails. (Exh. 1). Thus, if the brakemen were assigned additional duties during their down time, it would appear that their availability, due to their location, would be no different whether in the yard office or in a yard performing additional duties.

Further testimony was provided establishing that utility brakemen:

[R]arely engage in applying, removing and/or reapplying the skates. Instead, pull-out crews and/or other train personnel perform these duties ninety-five percent (95%) of the time. (Tr. pp. 27, 28, 72, 87-89). The utility brakemen assigned to the classification yards merely re-check that skates are properly applied to the tracks. (Tr., p. 29). [T]his provides considerable time for these brakemen to perform duties other than the specific duties of preventing run outs.

(Exc., p. 4).

As Conrail points out, the June 3 Order does not prescribe the manner in which brakemen are to prevent run outs. It is Conrail's responsibility to establish these procedures. (Exc. p. 6). Furthermore, the record demonstrates that even in the event of a failure of a retarder and a skate, there is little a brakeman can do to mitigate the impact of a run out once it occurs. (Tr. pp. 102-104).

The record indicates that since 1975, Conrail has installed inert retarders on all tracks in each of the classification yards. The record shows that these retarders successfully stop most rail cars during the classification procedure, serving to further reduce the likelihood of run outs. (Tr. pp. 24-25). Thus, the effect of our decision herein is to clearly state that Conrail may assign additional duties which are consistent with their primary assignment to these brakemen. The additional assignments cannot, however, in any way detract from their primary function of preventing run outs. Should that occur, we may deem Conrail to be in violation of the June 3 Order, and substantial consequences could follow.

Conclusion

We have carefully reviewed the record as developed in this proceeding including the ALJ's Recommended Decision and the Exceptions filed thereto. Premised on our review, we conclude that the Exceptions of Conrail are meritorious and, therefore, will be granted to the extent they are consistent with this Opinion and Order. We shall, accordingly, reverse the ALJ's Recommended Decision; **THEREFORE,**

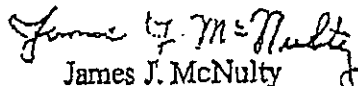
IT IS ORDERED:

1. That the Exceptions filed by Consolidated Rail Corporation on January 13, 1998, to the Recommended Decision of Administrative Law Judge Michael A. Nemecek are granted to the extent they are consistent with this Opinion and Order.

2. That the Recommended Decision of Administrative Law Judge Michael A. Nemeo which was issued on January 7, 1998, is reversed.

3. That Consolidated Rail Corporation may institute changes to its practices and procedures at the Conway Yard consistent with this Opinion and Order.

BY THE COMMISSION,


James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: April 9, 1998

ORDER ENTERED: MAY 0 5 1998

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RECEIVED
2010 SEP -1 PM 3:49
PA PUC
SECRETARY'S BUREAU

Petition of Norfolk Southern Railway Company :
for rescission or amendment of the Pennsylvania :
Public Utility Commission's Order entered on June :
12, 1975 regarding the prevention of run outs in : Docket No. C-00019560
the 400 and 500 Classification Yards of Conway :
Yard in Beaver County, Pennsylvania :
:

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

VIA E-MAIL AND FIRST-CLASS U.S. MAIL

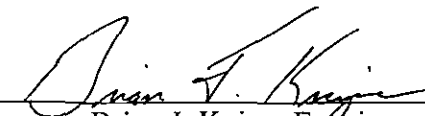
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Date: September 1, 2010



Brian J. Knipe, Esquire