

UTU's predecessor filed a Complaint before the Pennsylvania Public Utility Commission on or about May 23, 1972. In that 1972 Amended Petition, the Complainants alleged that ineffective inert retarders and skates, devices which are essential to the efficient and safe operation of the railroad's 400 and 500 classification yards in the Conway Rail Classification Yard, and the Railroad's failure to require the application of sufficient hand brakes on cars occupying tracks in these yards, resulted in extremely hazardous conditions due to cars extending beyond designated clearance points on various tracks in the Conway Rail Classification Yard located in Beaver County, Pennsylvania. Subsequent to a hearing in which witnesses were examined and cross examined and exhibits were entered into the record, and no fewer than three visual observations of the physical plant and the procedures at the Conway Rail Classification Yard over a period in excess of two years, the Pennsylvania Public Utility Commission issued an Order that was based, in substantial measure, on an accord reached between the Railroad corporate entity operating the Conway Rail Classification Yard and the then Petitioner in that matter which required, in pertinent part, that the Railroad, inter alia. institute measures necessary to insure adherence to a requirement that

- (a) A minimum of two (2) brakemen or other trained service employees, be assigned in both the Eastbound (400) and Westbound (500) Classification Yards on each shift or tour of duty (four employees each trick) these employees to have the specific assignment of preventing run outs 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.

That Order of the Public Utility Commission required further that the Railroad,

commencing on September 15, 1975 and continuing at three month intervals thereafter, until terminated by Order of the Pennsylvania Public Utility Commission, was to forward to the Director of the Bureau of Transportation of the Public Utility Commission a special record showing the run outs which occurred during the preceding three calendar months in the respective classification yards of the Conway Rail Classification Yard with such information including an indication of the date, track, work shift and all other information pertinent to the incident.

On July 18, 1975, at Complaint Docket Number 19560 the Pennsylvania Public Utility Commission issued an amendment to its initial Order of June 12, 1975 in the matter which amended paragraph 2(b) of the prior Order to articulate that inspection, maintenance and repairs requisite to the effective functioning of existing installations of inert retarders shall be continued on a regular periodic basis. The July 18, 1975 Amended Order provided no other modification of the June 12, 1975 Pennsylvania Public Utility Commission Order.

On October 1, 1996 Conrail, in its capacity as successor to the Trustees of the Penn Central Transportation Company Amended Petitioned the Pennsylvania Public Utility Commission seeking relief from the requirements of the decisions and orders of the Commission, described herein, dated June 12, 1975 and July 18, 1975, respectively. That October 1, 1996 Amended Petition was docketed to Pennsylvania Public Utility Commission Docket Number A-00113375. Subsequently, on or about September 8, 1997 Conrail sought leave of the Pennsylvania Public Utility Commission to withdraw its 1996 application seeking, inter alia, relief from the requirements of the Commission Orders entered on June 12, 1975 and the amendments thereto entered on or about July

18, 1975. On or about September 30, 1997 the Pennsylvania Public Utility Commission marked the application docketed to A-00113375 as closed based on Conrail's Amended Petition of September 8, 1997 seeking leave to withdraw its application docketed to Pennsylvania Public Utility Commission Docket Number A-00113375.

Shortly thereafter, on about December 12, 1997 your Commentator herein, the PSLB UTU, was compelled to file a Amended Petition for Emergency Relief against the operator of the Conway Rail Classification Yard before the Pennsylvania Public Utility Commission noting that on the various dates it had failed and/or refused to assign a minimum of two brakemen or other trained service employees in the Westbound (500) Classification Yard in direct violation of the 1975 Orders of the Commission. That matter was docketed to P-00971305. On or about December 12, 1997 the Pennsylvania Public Utility Commission issued an Emergency Order granting the Amended Petition for Emergency Relief filed by the PSLB UTU. That Emergency Order required, inter alia, that the operator of the Conway Yard comply with the previous Order of the Commission dated June 3, 1975 at Docket Number C-19560 and further that Conrail (the predecessor in interest to Norfolk Southern Railway Corporation, the Petitioner in the instant matter) shall "have a minimum of two (2) brakemen or other trained service employees assigned to both the Eastbound and Westbound Classification Yards on each shift or tour of duty, or a minimum of four (4) employees per shift at the Conway Yard facility. That Emergency Order went on to require that the employees assigned on each shift or tour of duty were to have the specific assignment of preventing run outs of cars beyond the designated clearance points of the Classification Tracks in the Conway Rail Classification Yard.

On or about December 19, 1997, the Pennsylvania Public Utility Commission issued an Interim Order referring the matter to the Office of Administrative Law Judge for resolution of factual issues raised in the Emergency Amended Petition and Conrail's Answer and New Matter thereto. That Interim Order ratified the Emergency Order issued over the signature of David W. Rolka, Commissioner, which was dated December 12, 1997.

An initial hearing before Pennsylvania Public Utility Commission Administrative Law Judge Michael A. Nemeč was held on December 23, 1997. On or about January 2, 1998 Administrative Law Judge Nemeč issued a Recommended Decision and Order sustaining the PSLB UTU's Amended Petition for Emergency Relief, requiring the operator of the Conway yard to comply with the requirements of the Order of the Pennsylvania Public Utility Commission of June 3, 1975 docketed to Number C-0019560; further requiring the Railroad to immediately cease and desist from further violations of the provisions of the Order of the Commission of June 3, 1975; and directing the Railroad to pay a civil penalty of \$5,000.00 within twenty days of the date of service of Administrative Law Judge Nemeč's January 2, 1998 Recommended Decision.

On or about January 13, 1998 Conrail filed Exceptions to the Recommended Decision of Administrative Law Judge Nemeč.

Ultimately, on May 6, 1998, the Commission entered an Order which it adopted on April 9, 1998 in which it specifically refused to reverse its prior above described June 3, 1975 Order stating in pertinent part, "prevention of run out of cars remains a paramount consideration, and the priority task for the two brakemen . . ." In reviewing Administrative Law Judge Nemeč's Recommended Decision and the Exceptions filed on

behalf of Conrail thereto, the Commission concluded that certain of Conrail's exceptions were meritorious however, the Commission stated with clarity, "[T]hus, the effect of our decision herein is to clearly state that Conrail may assign additional duties which are consistent with the primary assignment of 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 [1975] Order and substantial consequences could follow . . ."

Since the May 1998 entry of the Order modifying, but not rescinding or reversing, the June 3, 1975 Order, the Commission's requirement of assigning two brakemen to the duty of preventing run outs of rail cars beyond their designated clearance points in the Conway Rail Classification Yard has remained in force and subject to the appropriate oversight of the Commission. It is noted that the above described quarterly reporting requirement remains in effect and has never been modified by the Commission.

The Instant Amended Petition seeks a complete Commission rescission and repudiation of its long-standing Order as modestly modified by action of the Commission in the spring of 1998. Alternatively, it seeks an amendment in the nature of an exception that would swallow the hazard limiting, safety enhancing, rule.

At paragraphs 49 – 53 the Petitioner's instant Amended Petition asserts that it will have "installed" hydraulic skates on all fifty-three (53) classification tracks by the end of the second quarter of 2011. Indeed, as of the date of this submission, the Petitioner has installed and is utilizing, in likely contravention of one or more existing Orders of the Commission, multiple hydraulic skates on multiple classification tracks in the Conway Railroad yard.

The Conway Rail Classification Yard, located geographically Northwest of Pittsburgh, Pennsylvania, is a huge and complex automatic classification yard, which extends for more than three miles on the East bank of the Ohio River. At its widest point, the Yard spans nearly 100 pair of tracks. At Conway, freight destined to and from both the Eastern seaboard and the Mid-West and beyond, as well as intermediate points, is pushed onto a hump where railroad cars are scanned, weighed and dropped by gravity onto various tracks. The cars are then assembled by railroad yard crews that couple onto varying numbers or drafts of cars on any number of classification tracks followed by the shoving of what is then a nearly complete train onto one of the departure tracks. At these locations, additional cars are typically added and locomotive power and air pressure is attached to the train following the coupling of air hoses. Those operations in the massive yard known as Conway, take place in congested close quarters subject to the unique weather conditions of Western Pennsylvania including, but not limited to, snow and ice conditions, the presence of various forms of debris associated with the operations in a massive railroad yard through which all manner of substances ranging from hazardous chemicals, to grain, to coal, to automobiles and all manner of freight imaginable, are moved.

The basic activities and operations taking place at the Conway Yards that gave rise to the 1975 Commission Order and its progeny which are the subject of the instant Amended Petition, remain essentially unchanged.

***THE INSTANT AMENDED PETITION, IF GRANTED, WOULD
IMPOSE HAZARDOUS CONDITIONS AND
COMPROMISE SAFETY***

The Instant Amended Petition admits, in its opening paragraph, that the Com-

mission entered its 1975 Order in the interest of promoting safety in Conway Yard. It then asserts that the rescission and repudiation of the essential and minimally invasive requirement of the Commission's Order of 1975, that the Railroad assign a minimum of two brakemen, commonly known as "skatemen" to the Classification Yard in Conway with a specific assignment of preventing run outs, i.e. the assignment of assuring that rail cars do not travel beyond a designated clearance point, is no longer relevant due to putative advances in technology some of which have been or are proposed to be installed on classification tracks at the Conway Yard. Indeed, Norfolk Southern's Amended Petition asserts with specificity that "skates are no longer needed to prevent run outs . . . specifically, Norfolk Southern seeks rescission of the 1975 Order, or amendment of the 1975 Order to eliminate ***the now obsolete requirement*** that Norfolk Southern use skates to prevent run outs . . ." (Emphasis supplied.) This assertion is made by Norfolk Southern in its Amended Petition despite the fact that it fails to demonstrate, or even allege, that the replacement of the system created by its predecessor's agreement to assure the prevention of run outs, is failsafe or foolproof. It is respectfully submitted that the actual experience of the Petitioner's utilization of its proposed basis for rescission of the existing Commission order does not equal obsolescence and reveals, with clarity, the fundamental flaw in the Railroad's requested relief. The best evidence of this critical fact is that during the limited period of September 7, 2010 through November 19, 2010 no fewer than thirty (30) events of one or more cars "running out" or derailling occurred on classification tracks at the Conway Yard on which

your Petitioner installed and was contemporaneously operating the replacement “hydraulic skates” instead of the operating procedures and equipment contemplated by the existing order of the Commission as amended.

In the introductory language of its Amended Petition, at page 2 Norfolk Southern asserts that, “engineering and safety improvements undertaken . . .”, by the railroad at Conway Yard have virtually eliminated run outs. This is an assertion that not only fails to be demonstrated in the body of Norfolk Southern’s Amended Petition but which candidly flies in the face of all logic. Since it must be assumed that Norfolk Southern is following the minimum requirements of the 1975 Orders, as modified by the Commission in 1998, to the degree run outs at Conway are currently minimized, it is precisely because of the presence of skatemen assuring that skates are properly placed and set that is responsible for the substantial prevention of run outs in the Conway Yard. It is the very presence and consistent adherence to the intent and the spirit of the 1975 Orders that has assured run outs in the Conway Yard are minimized. Indeed, a review of your Petitioner’s “Skate Report” records would reveal the folly of your Petitioner’s recision demand. The record clearly belies the assertion that the new “computer operated” system of “hydraulic skates” virtually eliminates runouts. If the limited information presently available to your instant Commentator is accurate, and we believe it to be, there are an average of more than ten (10) runouts per week on classification tracks in the Conway Yard on which the new computer operated, “hydraulic skates” have been operated since September of 2010, in likely contravention of an existing Commission Order.

In its Amended Petition, Norfolk Southern describes, at length, its installation of a so-called Hump Process Control System (“HPC”), a computerized system that “operates

the Classification Yard and its system of retarders.” (See paragraph 40, et seq. of Norfolk Southern’s Amended Petition.) This assertion is patently false. While the HPC System certainly has some involvement with certain of the retarders that are located on some of the trackage, Norfolk Southern admits, at paragraph 21 of its Amended Petition, for example, that retarders installed at the ends of the classification tracks in Conway Yard are *inert* retarders. (Emphasis supplied.) Inert Retarders, based on Norfolk Southern’s Amended Petition, are an integral part of its retarder system in Conway used to slow or stop a draft of railroad cars exiting a hump in the classification yard. Inert retarders are mechanical devices, not electronic devices, and they do not interface with the HPC that is in place at Conway. Paragraph 22 of the Petitioner’s Amended Petition makes that fact abundantly clear.

The problem that is addressed by the 1975 Orders is the fundamental safety hazard that exists with the potential of run outs of drafts of railroad cars that may derail, suffer severe and dangerous impact, or far worse if the railroad cars involved contain hazardous or toxic substances. At paragraph 45 of the Amended Petition, Norfolk Southern asserts, among other things, that, “its records demonstrate that today run outs are *almost* non-existent.” (Emphasis supplied.) Neither this Commentator nor the Commission can possibly know what “almost” means in this context. We do know however that, based upon the Amended Petition at paragraph 45, run outs do occur even with the so called HPC System in place. And we know, based upon this Commentator’s business records, that runouts appear to occur on an average of in excess of ten (10) per week on classification tracks where your Petition has been utilizing HPC controlled hydraulic skates. That the number of run outs has been minimized, as recorded by the

HPC, is testament to the efficacy and the necessity of the requirements in the Commission's 1975 Order. The proper setting and placement and resetting of skates overseen by appropriately trained yard personnel is the factor that has minimized run outs in the Conway Yard and the elimination of these requirements will assure a further increase in run outs at the Conway Yard and a resultant increase in safety hazards at a time when a fair reading of the Petitioner's Amended Petition yields the ineluctable conclusion that the appropriate utilization of skates by Classification Yard personnel, overseen by the required skatemens crew, has successfully operated to abate and avoid those precise kinds of hazards.

Since the 1998 modification of the Commission's 1975 Orders, the operator of the Conway Yard has been permitted to assign additional duties to the required yard personnel during down time from skate-based operations. As modified, the current Order which Norfolk Southern now seeks to eliminate, simply requires that Norfolk Southern presently has the right to assign additional duties to those individuals which are consistent with their primary assignment, as long as such additional assignments do not in any way detract from their primary function of preventing run outs. Despite this fact, the Petitioner asserts in part in its Amended Petition's paragraph 61 that, "the skatemens required by the 1975 Order are largely idle . . ." In the face of the broad latitude conferred upon the operator of the Conway Yard by the 1998 modification of the 1975 Orders, the absurdity of this assertion is beyond comprehension. The fact is that the current job of a skatemens is to assure that skates are properly in place and properly set. That duty rests upon the skatemens regardless of whether a skatemens or another crew member places that skate on the track or sets it. The responsibility remains with the

skateman and the proposed elimination of the requirement to utilize skates as sought by the Amended Petition, even in the face of the admittedly dramatically limited utilization of computer controlled retarders in the HPC system, is certain to increase the hazards that the 1975 Order was adopted to control. Unless and until Norfolk Southern is capable of demonstrating, with absolute certainty, that it has put into place an operationally failsafe system, one that assures no run outs, the necessity for the utilization of skates and skatemen is as fundamental today as it was at the time the initial Order of the Commission was adopted. Moreover, the various descriptions of the duties of the skatemen in Norfolk Southern's Amended Petition simply ignore a reality that is well-known to Norfolk Southern in its capacity as the operator of the Conway Yard.

The skatemen perform a host of duties and bear an enormous number of responsibilities in addition to the assurance that skates are properly placed, set and reset. The skatemen, of course, check the skates for position and reset them. Additionally, they identify skates in need of repair. Beyond these duties, the skatemen are also responsible for putting hand brakes on rail cars, for handling coupling on rehandle tracks, for verifying the inventory on the trackage with train lists and reporting on hazardous materials listings. Indeed, the skatemen have a substantial number of other duties as well. The fact of the matter is that the title "skateman" is a job title, it is not a descriptor of the work duties associated with that title. The 1998 modification of the 1975 Orders makes that fact abundantly clear. A managerial decision on the part of Norfolk Southern to fail to utilize people occupying that job title, if such a failure actually exists, is not a reason to compromise the safety of the Yard or of the surrounding community by the eradication of a necessary and appropriate safety assuring, hazard avoiding, operating

procedure. The repetitive assertions in Norfolk Southern's Amended Petition, that the individuals holding the job title of skateman are idle and because they are idle they present a safety hazard in and of themselves, is belied by the facts on the ground and by a fair reading of Norfolk Southern's Amended Petition itself.

In paragraph 42 of Norfolk Southern's Amended Petition, it describes its view of the HPC. It asserts that the HPC is a "state of the art" computer based system with the "latest features in hump process control . . ." While the HPC may be endowed with the latest features available in hump process control, clearly, based on the fact that frequent run outs still occur, as well as the multiple admissions in the Amended Petition that the HPC is not universally implemented on all tracks in the Conway Rail Classification Yards, it is clear that this latest technology does not eliminate the need for the utilization of skates to stop run outs and the skatemen who are experienced and vigilant in the execution of their duties.

The HPC System, as described throughout the Amended Petition in general, and in paragraph 40 - 45 in particular, does not assert that it is a system that is either fool-proof or failsafe. In fact, at subparagraph (g) of paragraph 42 of Norfolk Southern's Amended Petition, the assertion is made that the HPC system is, *inter alia*, endowed with an automatic alarm for cars travelling at excessive speed. If the system of hydraulic operated, computer controlled retarders eliminates the need for the requirement of skatemen and the utilization of skates to prevent run outs, why would such an alarm be necessary, much less integrated, into the HPC system? Of significant question in this regard is the reality that if this automated system is not failsafe, what possibly could be the efficacy of an alarm sounding if there are no skatemen and no skates to do some-

thing about the excessive speed problem triggering the alarm? The reality of the danger associated with this fact placed under appropriate scrutiny is that we have no way of knowing today what the content of the car or draft of cars giving rise to the triggering of that alarm may be. If it is a railroad car containing a hazardous substance, or a substance under pressure, the absence of properly placed and set skates will give little comfort to the workers in the Yard and the residents of the adjacent communities after the predictable results of the uncontrolled run out takes place.

CONCLUSION

The elimination of the use of skates and the concurrent elimination of the assurance that skates are properly set and reset by an experienced skateman crew is based on an assumption that retarders both inert and hydraulic, both mechanical and electrical, never fail. Were that an accurate description of the current state of affairs, run outs would never occur. Yet, we are painfully aware that runouts continue to occur on classification tracks at the Conway Yard on which your Petitioner is presently operating the very system it represents is an adequate and safe substitute for the 1975 Commission order of which it presently demands rescission and elimination or substantial dilution. The reality is that the operation required by the 1975 Commission Orders as modified by the 1998 Commission Order puts in place a measure of security against a known and otherwise unabated hazard. The present fact that there are limited run outs is due to the efficacy of the Commission's current limited oversight requirements.

Before even seriously considering an elimination or a modification of the existing framework of Commission Orders aimed at protecting against and limiting run outs in the Conway Rail Classification Yard, a substantial period of reporting based oversight

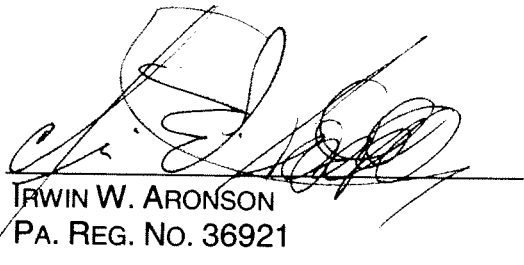
must be implemented. To that end, the Petitioner should be required to report to the Pennsylvania Public Utility Commission, on a monthly basis, the date, time, track number, content, conditions and number of railroad cars that pass through each set of retarders on each track in the Conway Rail Classification Yard. Only after a substantial period of such reporting, that covers various seasonal changes, weather conditions, lighting conditions and the multiplicity of other variables that are present in the Conway Rail Classification Yard, could a meaningful review of the efficacy of the putative technological changes described in Norfolk Southern's instant Amended Petition be evaluated. The bald assertions of technological advance that may, at best, be partially present and available for less than universal use, must not be substituted for the proven safety-enhancing, hazard-reducing, efficacy of the current Commission Orders of 1975 and 1998.

For these reasons, it is respectfully submitted that Norfolk Southern has failed, in its Amended Petition, to demonstrate changes in circumstances that support the rescission of the 1975 Orders or the 1998 modification of those Orders that would result in the elimination of the Commission's requirement that Norfolk Southern use skates to prevent run outs and assign skatemens to assure the proper placement and operation of safety enhancing, hazard reducing skates. Moreover, it is respectfully asserted, that Norfolk Southern's Amended Petition fails to even adequately allege in a credible, reliable or dependable fashion such changes in circumstances at the Conway Rail Classification Yards that would give rise to any appropriate amendment or alternative modification of the existing framework of requirements in place pursuant to the Commission's

current Orders aimed at assuring, to the greatest degree possible, the prevention of run outs in the Conway Rail Classification Yards.

Respectfully submitted,

WILLIG, WILLIAMS & DAVIDSON
212 Locust Street, Suite 504
P.O. Box 11997
Harrisburg, PA 17108
(717) 221-1000
(717) 221-9311 (fax)
iaronson@wwdlaw.com

By 
IRWIN W. ARONSON
PA. REG. NO. 36921

COUNSEL FOR PENNSYLVANIA STATE
LEGISLATIVE BOARD, UNITED
TRANSPORTATION UNION

Dated: January 7, 2011