

Approved 2-26-87 Date

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES

The meeting was called to order by Sen. Bill Morris at
Chairperson

9:00 a.m./~~p.m.~~ on February 24, 1987 in room 254-E of the Capitol.

All members were present except: Sen. Vidricksen

Committee staff present:

Hank Avila, Legislative Research Department
Ben Barrett, Legislative Research Department
Bruce Kinzie, Revisor
Louise Cunningham, Committee Secretary

Conferees appearing before the committee:

Sen. P. Burke
Sen. R. Ehrlich
Rich Dame, Hoisington, Brotherhood of Locomotive Engineers
Leroy D. Jones, Brotherhood of Locomotive Engineers
Ron Calbert, United Transportation Union
Steve Paige, Department of Health and Environment
Pat Hubbell, Kansas Railroad Association

HEARING ON S.B. 189 - Designating I-670 as the Jay Dillingham Memorial Highway.

Sen. Burke said there were few ways that a community could recognize contributions made by individuals. This was one way and this individual had made a very strong contribution to the Kansas City community. Missouri has already recognized him by naming I-670 in their state for him and Sen. Burke was asking that Kansas do the same thing for him on the Kansas side. He apologized to the Committee for the numerous changes that would be necessary in the bill.

HEARING ON S.B. 185 - Relating to railroad companies; toilet facilities

Sen. Ehrlich said there was a problem with toilet facilities and drinking water on working trains and cabooses. Now we are also seeing female engineers and they do not have decent facilities.

Rich Dame, Hoisington, is an engineer and asked the Committee for full consideration on this bill. They have female trainees and the toilet facilities are not suitable to sit on. They are unclean and do not work or flush. He said management is responsible for keeping them clean. There is also a problem with drinking water. The containers are kept in refrigerators which are not cleaned, are rusty, and just an unsightly mess. There are usually three people working in the engine room and it gets crowded. There is not a good place to store water.

Leroy Jones, Brotherhood of Locomotive Engineers, spoke of the unsanitary conditions and the sewage gases coming from the toilet or holding tank. They are the only workers in Kansas that are required to work in this type of condition. The conditions got better during a period in the 60's when the Labor Department was responsible for checking the facilities. When the Department of Human Resources was reorganized, this responsibility was taken from that Department. A copy of his statement is attached. (Att. 1). He also submitted pictures showing unsanitary facilities on some engines. (Att. 2).

Ron Calbert, United Transportation Union, also spoke of the unsanitary conditions and said there is no federal or state law in existence

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES,
room 254-E, Statehouse, at 9:00 a.m./~~p.m.~~ on February 24, 1987

which requires railroads to have or maintain clean toilet facilities. His organization is often forced to go to state or federal agencies to resolve sanitation problems when such conditions are not corrected in a reasonable time. A copy of his statement is attached. (Att. 3).

Steve Paige, Department of Health and Environment, said an inspection program would be costly and it should be the responsibility of the particular railroad involved to maintain safe and sanitary water supplies and toilets for their employees. In answer to questions he said his department had not received any complaints and they had been unaware of any problem. The Department of Human Resources is responsible for conditions in the workplace. He also said it would cost approximately \$580,000 for such inspections. He based this on 12,000 inspections per year. It would be much cheaper if they were inspected only on complaint. A copy of his statement is attached. (Att. 4).

Pat Hubbell, Kansas Railroad Association, said such disputes are normally handled during collective bargaining. He pointed out specific parts of the contract pertaining to toilet facilities. A copy of his statement is attached. (Att. 5).

Mr. Hubbell was asked about the pictures. He said that possibly there could have been a problem at some point but the engines are now equipped with toilets such as on airlines and they are in the process of coming out with even newer ones. He has looked through print-outs for complaints and none have been found.

A motion was made by Sen. Francisco and was seconded by Sen. Thiessen to approve the Minutes of February 17, 18 and 19, 1987. Motion carried.

Meeting was adjourned at 10:00 a.m.

Brotherhood of Locomotive Engineers

Kansas State Legislative Board

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STATEMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS

PRESENTED TO THE SENATE COMMITTEE
ON TRANSPORTATION AND UTILITIES

THE HONORABLE BILL MORRIS, CHAIRMAN

STATEHOUSE
TOPEKA, KANSAS
FEBRUARY 24, 1987

Mr. Chairman and Members of the committee, I am Leroy Jones, Chairman of the Kansas Legislative Board for the Brotherhood of Locomotive Engineers. I am here today to testify in favor of Senate Bill 185.

In 1863 my union was formed to try to negotiate with the railroad companies on ways to prevent the loss of life and limb due to unsafe and unsanitary working conditions while operating a locomotive. Through all of the years we have been unable to do anything about unsanitary toilets. That is why we are appearing before this legislative body to ask that regulations be placed on all railroad companies operating in the State of Kansas,

ATT. 1
T&U 2/24/87

requiring safe and clean working conditions to protect the health and welfare of engineers while operating a locomotive.

We have asked this Kansas Legislature of 1987, through Senate Bill 185, to come to our assistance and provide a railroad locomotive with a clean place to work. We may work up to twelve hours with sewage gases coming from the toilet or holding tank. We are the only workers in the State of Kansas that are required to work in this type of condition. If we eat during our tour of duty, which can be up to twelve hours, we have to eat our lunches setting right there in the smell.

The job of a locomotive engineer has many natural hazards about which nothing can be done for our safety. These are such things as carrying explosive and flammable materials in our trains, instances of trucks carrying dangerous cargos pulling into our path at crossings, or derailments due to equipment failure. But, something can be done about unsanitary and unhealthy conditions of the toilet facilities on locomotives.

Today with the change of the make up of our work force, both men and women work on trains. Both must use the same toilet facilities. Yet, there is no federal, state, or city laws that apply to keep locomotive toilets clean.

Collective bargaining agreements have not given us relief from unsanitary facilities. The Southern Pacific will pay some employees on specified parts of its railroad when they are not provided with sanitary toilets. Even these contracts are ignored. We find our union officials having to take these cases before

Public Law Boards in attempts to get paid under the contracts. This may take several years, which does not address the problem. If we refuse to take an engine with bad toilets, we are fired.

At the present time OSHA and the Federal Railroad Administration say they do not have laws or regulations that cover clean drinking water or toilet facilities on locomotives, however, all road locomotives are equipped with each of these items. You will find this admission from the FRA in attachment #I.

For many years we have tried to get the railroads to clean up the locomotives that we must work and ride on for many hours. The problem with the toilets stopping up and seldom being cleaned started in the mid 40's and got worse, except for a period in the 60's, until the the condition they are in now. Today they have holding tanks for the flush type. These tanks are okay if no sewage gas escapes. The area around the base of the toilet on many engines are never washed or cleaned out. These areas need cleaning often to stay sanitary. Most railroads have issued instructions for these to be cleaned every thirty days. Rarely are the instructions carried out. Some railroad officials mean well and are aware that the unsanitary conditions exist but the immediate superior officer over the laborer who must do the job will see that the cleaning occurs only when forced to do so.

AS stated before, both OSHA and the FRA say they do not have authority to make the railroad companies clean and maintain drinking water and toilet facilities in a sanitary condition, but the FRA tries to persuade them to do so. OSHA has regulations but say they can not apply their standards to railroad working conditions

which the FRA regulates. This is where we are after about forty years of asking the railroads and the various governmental agencies to make engines sanitary. This is why we are here before you today. In a letter from the U.S. Department of Transportation to Mr. Don Robertson, former Texas Legislative Chairman, clearly states "These are matters within the purview of State governments". Please see attachment #II.

Let us now take a look at what the odors are that is being emitted from these unsanitary toilets. In a letter dated April 16, 1981 to Don Robertson, the Texas Department of Health makes a statement about the sewage gases and odors. Please see attachment #III

Laws fining the railroads a large amount for each day they operate an engine in an unsanitary condition is the only way to get all railroad officials to see that laws are carried out. The railroads want to interpret the laws and use them to their advantage. They don't want to be regulated. Conditions such as these show you that railroads force laws and regulations upon themselves and will pay a great amount of money in order not to comply with laws in effect.

Every railroad that operates in this state has engines that do not have clean toilets. Recently it was reported to me by a Santa Fe engineer that the toilet smelled so bad that he and the crew could hardly stand to be in the locomotive cab. The Santa Fe has one of the finest engine service facilities in the nation in their Kansas City yards, yet this engine did not have its toilet clean. I work as an engineer when the Legislature is not in session. I have had so many toilets that were in terrible condition, I can't count them. In warm weather they're even worse.

There is no excuse for this to happen. The railroads don't care because no one requires them to keep locomotive toilets clean.

Let us now look at Senate Bill 185. This bill gives us a solution to our problem. It authorizes the Secretary of Health and Environment to adopt rules and regulations that are necessary to carry out the provisions of this act which are listed under subsection (a) numbered (1) thru (4). In Section 2, it gives the Secretary of Health and Environment the power to inspect or cause to be inspected. Presently there are 15 inspectors in the department that inspect the sanitary condition of facilities throughout the state. Because of the wording in Section 2, subsection(a) which reads "or caused to be inspected" could be interpreted as needed or upon complaint. This would not in my opinion, take any additional employees for the department. To clarify this matter I would like to suggest an amendment to line 38 of the bill following "inspected" by inserting the following: "upon complaint". Then line 38 will read "directed and empowered to inspect or cause to be inspected upon complaint the". This language was suggested by Steve Paige from the Department of Health and Environment. Mr. Paige stated that with this language the department could do 10 to 20 inspections a year with very little fiscal impact to the department. I believe that with a few inspections a year, at the half dozen engine service facilities throughout the state, the railroads would soon come into compliance if this bill was passed into law.

Involvement by our state into the railroad industry, as

is authorized by Senate Bill 185, is not new to Kansas. I would like you to turn to attachment#IV, which is from the former Kansas Department of Labor. It shows clearly that the state did inspect railroad tiolet facilities. Please note 51 locomotives and 14 cabooses were inspected.

A number of states have laws that are similar to Senate Bill 185. Our neighboring state of Missouri is quite active in this area, especially with Kansas City being the number 2 rail center in the U.S. and St. Louis being number 3. California, Texas, and Washington are some states that have enacted such legislation.

In closing, they say a picture is worth a thousand words. I would like to pass these pictures out to you and ask if it is reasonable in this day and age, 1987, for citizens of Kansas to have to work in these conditions?

I would like to thank you for allowing me the opportunity to testify before you today.



U.S. Department
of Transportation

**Federal Railroad
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

1806 Federal Building
911 Walnut Street
Kansas City, MO 64106

February 19, 1987

Mr. Leroy Jones
Kansas State Legislative Board Chairman
Brotherhood of Locomotive Engineers
12601 W. 105th
Overland Park, Kansas 66215

87-5-2-16

Dear Mr. Jones:

Reference is made to your letter of February 16, 1987, concerning unsanitary toilets and drinking water facilities on locomotives operating in the State of Kansas.

FRA does not have regulations to address these issues; however, we are sometimes successful in improving conditions through routine locomotive inspections where unsanitary conditions are pointed out to Mechanical Department supervisors.

The State of Missouri has a statute addressing toilets and drinking water conditions. I understand the state is successful in administratively handling complaints resulting in improved conditions.

I suggest you contact Lavon Danner for further information.

Sincerely,

A handwritten signature in cursive script, appearing to read "H. T. Paton".

H. T. Paton
Regional Director



OFFICE OF
THE ADMINISTRATOR

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION
WASHINGTON, D.C. 20590

Mr. Don L. Robertson
Chairman and State
Legislative Representative
Texas State Legislative Board
Brotherhood of Locomotive Engineers
1011 Congress Avenue, Suite 519
Austin, Texas 78701

Dear Mr. Robertson:

President Carter has asked me to respond to your letter of November 6, 1980, concerning drinking water and toilet facilities on locomotives. As we have indicated in our previous correspondence, the Federal Railroad Administration (FRA) regulations do not address hygienic conditions of drinking water and toilet facilities. These are matters within the purview of State governments, and specific requirements for certain interstate conveyances have been issued by The Food and Drug Administration (21 CFR Part 1250).

The FRA will continue to focus its effort on issues involving a clear threat to the safety of railroad employees and a history of accidents, injuries, and illnesses. However, our safety inspectors are directed to note the condition of drinking water and toilet facilities during their regular inspections and to call unsanitary conditions to the attention of appropriate carrier personnel for remedial action.

Sincerely,

A handwritten signature in cursive script that reads "John M. Sullivan".

JOHN M. SULLIVAN
Administrator



Texas Department of Health

Robert Bernstein, M.D., F.A.C.P.
Commissioner

1100 West 49th Street
Austin, Texas 78756
(512) 458-7111

A. M. Donnell, Jr., M.D., M.P.H., F.A.C.P.
Deputy Commissioner

April 16, 1981

Mr. Don L. Robertson, Sr., Chairman
Texas State Legislative Board
Brotherhood of Locomotive Engineers
1011 Congress Avenue, Suite 519
Austin, Texas 78701

SUBJECT: Request for Information
Restroom Facilities on Locomotives
and Cabooses

Dear Mr. Robertson:

Reference is made to your letter of April 14, 1981, concerning sanitary facilities on board locomotives and cabooses of trains engaging in both interstate and intra-state commerce. It is noted that you have requested a response concerning the effects of exposure to sewage gas and/or odors for periods of 6 to 12 hours a day, and for numerous days in succession.

It is difficult to quantify such exposure because of the variations in individual tolerances. However, the following general comments are offered:

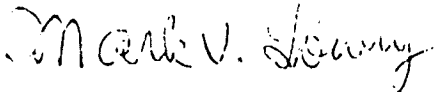
1. Sewage gases include both methane and hydrogen sulfide, both of which could be extremely hazardous to the health of exposed personnel if these gases collected or concentrated in certain confined areas. There have been numerous deaths of sewer system workers associated with these gases building up to lethal levels in manholes or trenches. Of particular concern is hydrogen sulfide, since it can easily attain lethal concentrations in an enclosed area and exposure to sub-lethal concentrations quickly dulls an individual's sense of smell.

Mr. Don L. Robertson, Sr., Chairman
Page Two
April 16, 1981

2. Improper collection and storage of fecal material can result in conditions conducive to the breeding of flies and other insect vectors. Close proximity to such material provides an increased chance for the spread of disease.
3. Aesthetic considerations of exposure to sewage and its associated odors are much more difficult to quantify, but we would agree that such exposure would be decidedly unpleasant.

We regret that we are unable to offer further assistance at this time. If we may provide additional information or clarification of the above, please let us know.

Sincerely,



Mark V. Lowry, P.E., Chief
Plan Review and Wastewater Branch
Division of Wastewater Technology
and Surveillance

MVL/re

STATE OF KANSAS
DEPARTMENT OF LABOR

ATTACHMENT #IV



Date: May 9, 1966

DEPARTMENT MEMORANDUM

To: **Industrial Safety Inspectors Lindensmith & Muir**

From: **Leonard Williams, Commissioner of Labor**

Subject: **Safety and health inspections of railroad terminal facilities at
Hoisington, Kansas**

I appreciate your report and to learn that of the 51 locomotives, 14 cabooses; also the toilet and clean-up facilities used by the crews and the mechanical maintenance department, which were inspected that only two or three of them had any type of health and safety items that did not conform to good safe practices and to learn that considerable new equipment is being placed into service and that the older type of cabooses are being replaced with new ones with spring type draw bars and cushioned underframes, and generally speaking that the equipment as far as employee safety and health is concerned was considered to be in fair to good condition.

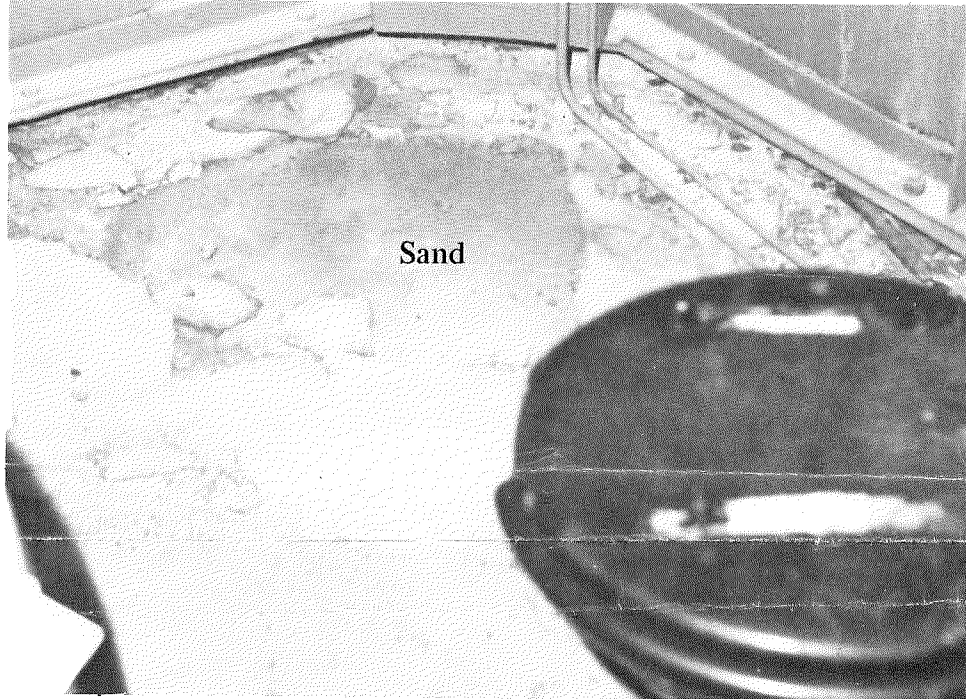
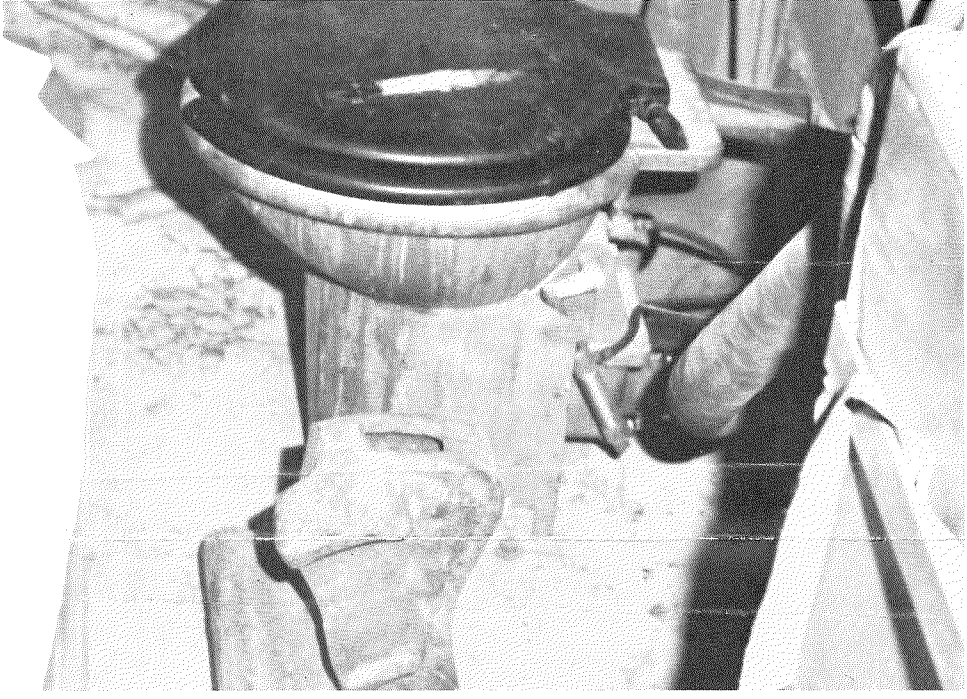
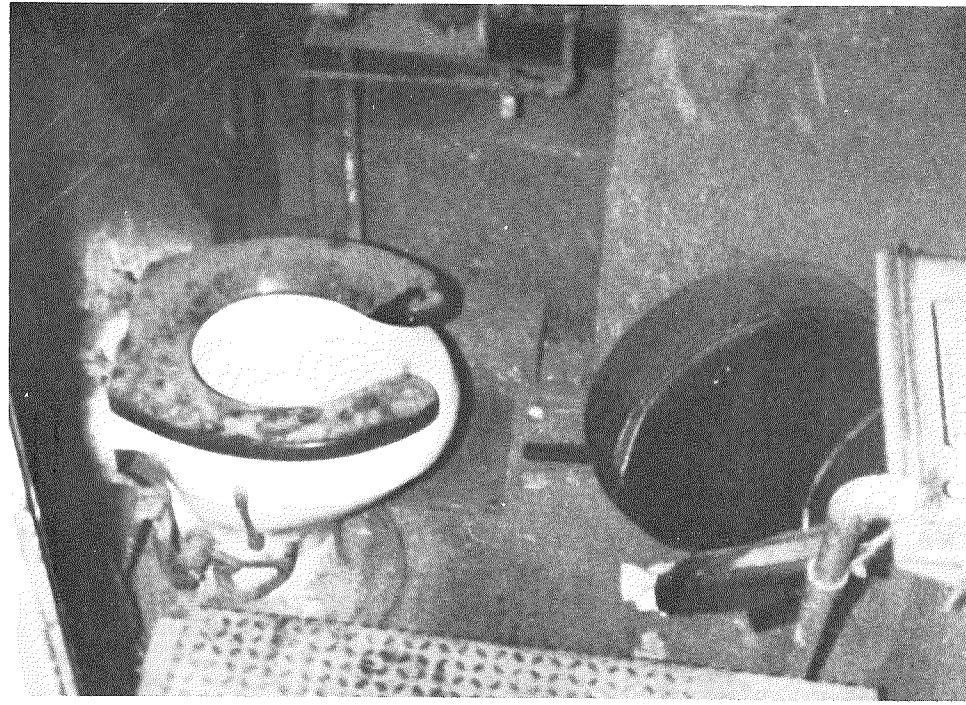
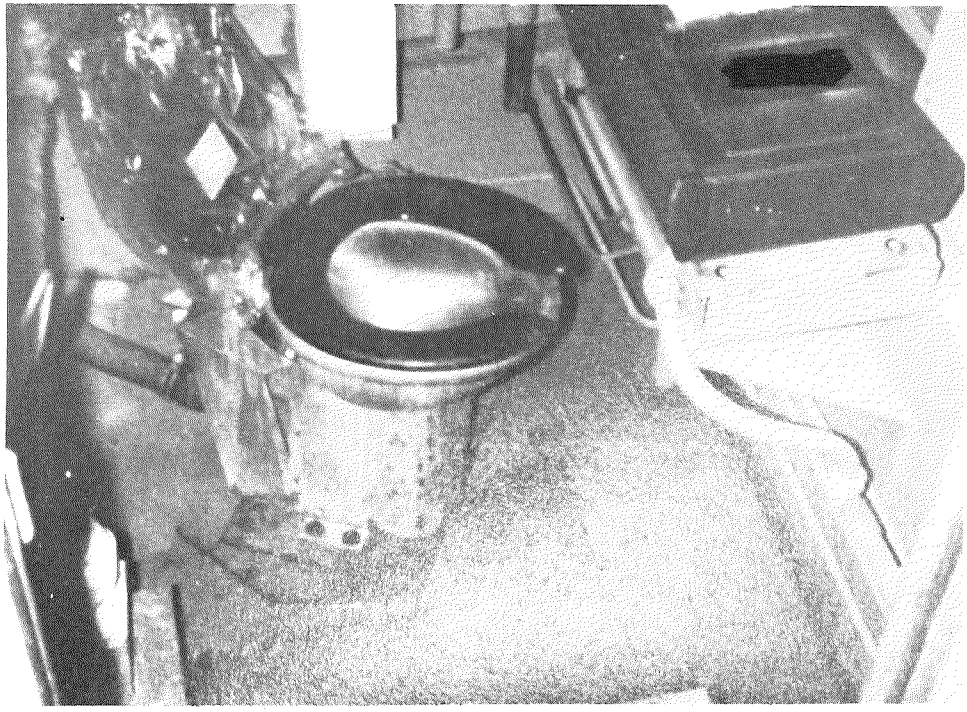
I was especially pleased that the safety inspection of the locomotives revealed that the tools, repair draw bar knuckles and jumper cables were being stowed in a proper and suitable manner and were not being placed on the floor and walkway where employees are required to walk during train movement.

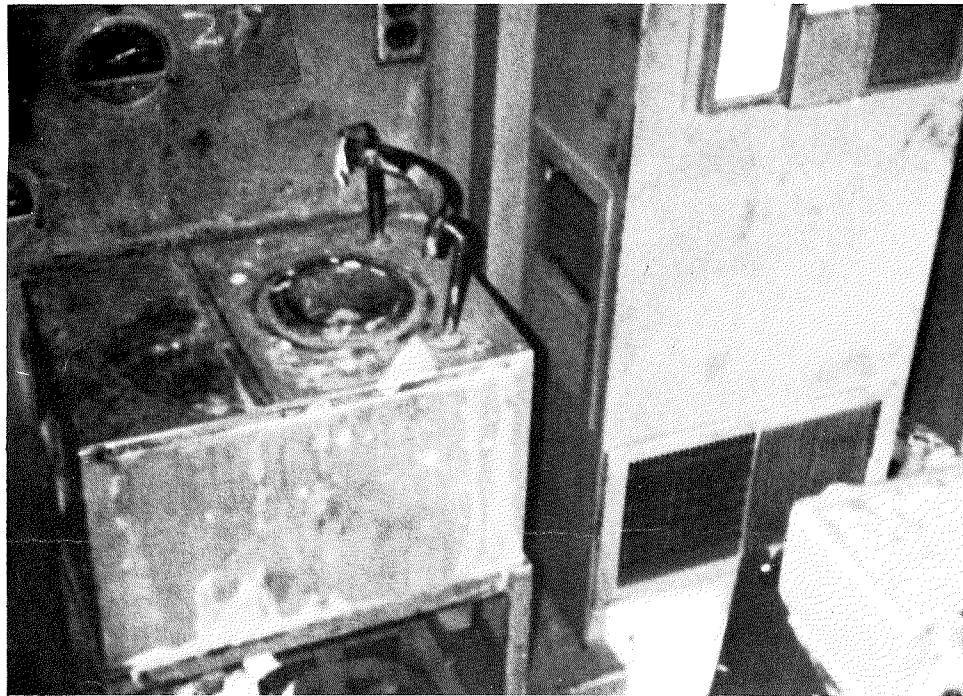
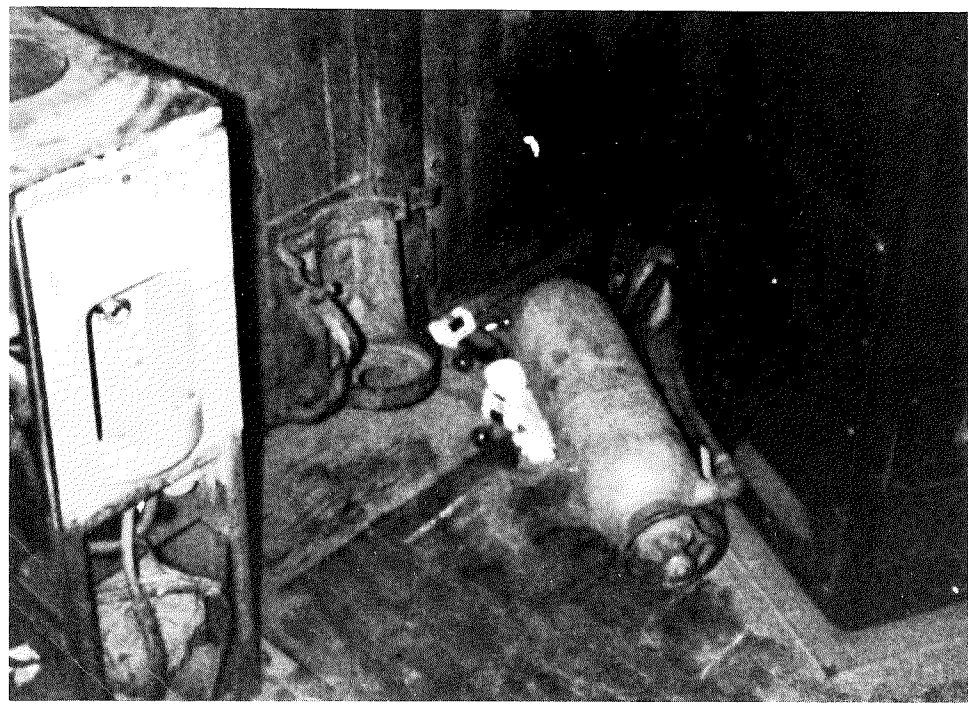
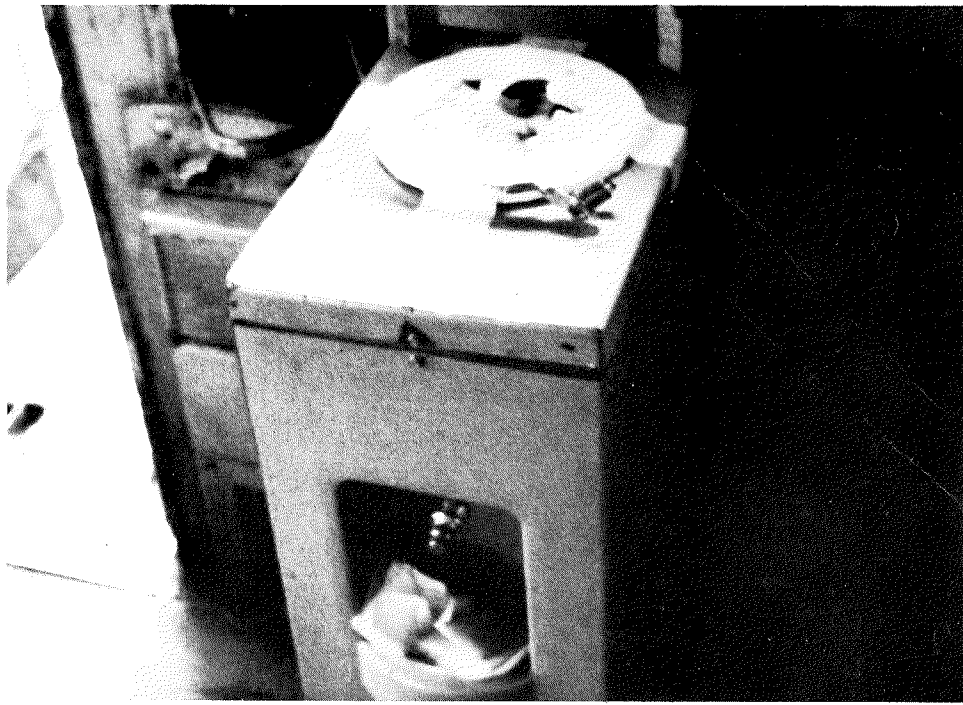
We are forwarding copies of this summary of your report to Mr. J. B. Barbee; Mr. Herol L. Farmer and Mr. J. A. McGlothlin.

LW/fp

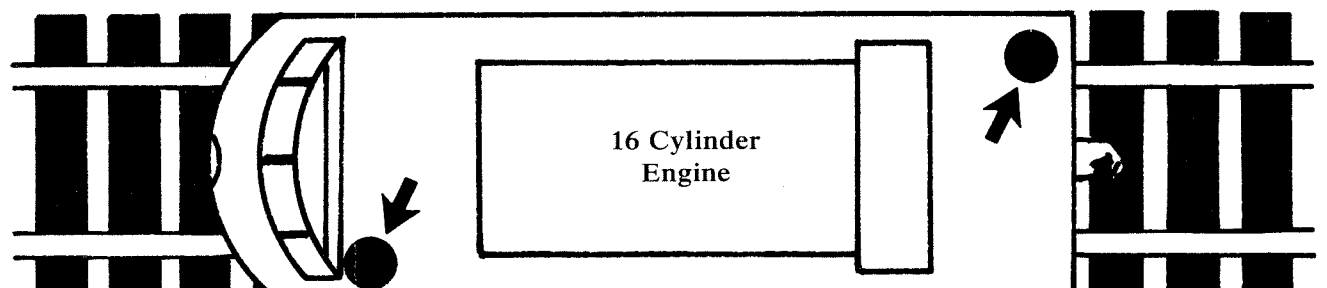
cc: Messrs. Barbee, Farmer & McGlothlin

THE WAY IT IS . . . SANITARY FACILITIES ON THE ENGINE



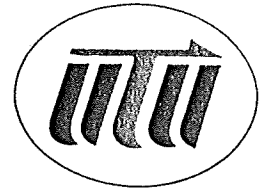


Location of
Sanitary Facilities
on the Engine



R. E. (RON) CALBERT
DIRECTOR/CHAIRMAN

united
transportation
union



OAK STREET PLACE SUITE A
130 EAST FIFTH STREET
P.O. BOX 726
NEWTON, KANSAS 67114-0726
TELEPHONE (316) 283-8041

KANSAS STATE LEGISLATIVE BOARD

Statement Re: Senate Bill No. 185
An act relating to railroad companies; concerning toilet facilities.

Presented to: Senate Transportation and Utilities Committee
February 24, 1987

Mr. Chairman, and members of the Committee, thank you for the opportunity to appear before you today on Senate Bill No. 185. I am Ron Calbert, Director, Kansas State Legislative Board, **United Transportation Union**. Mr. Chairman, I am authorized to speak for our some seven thousand (7,000) active and retired railroad and bus members and their families who reside in Kansas. I have worked as an engine foreman, yard master, and brakeman, with thirty-three (33) years service with the Santa Fe Railroad at Newton, Kansas. I appear today in support of Senate Bill No. 185.

The concept of state and federal legislatures imposing state and federal laws upon railroads is not unique. The railroad men and women work under several federal laws which have been imposed on the railroads: The Hours of Service Act, the Safety Appliance Act, the Power Brake Law of 1958, the Locomotive Inspection Act, and the Accident Reports Act.

We must remember that railroads are not a "mom and pop" operation. In years past, railroads were managed by railroad people who had worked and gained experience in the railroad industry. Now they are operated by college-educated people who have never previously worked for the railroad, and whose interests are mergers and the number of line trackage they can abandon.

The responsibilities of my office, among other things, includes maintaining a workplace and conditions predicated upon safety and sanitation on all railroads

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in Kansas. When a **United Transportation Union** Local Chairman or Legislative Representative cannot resolve a safety or sanitation problem in his respective area, I am contacted for assistance. I can assure you, Mr. Chairman and Committee members, that my organization gives railroad carriers a reasonable time to correct any safety or sanitation problem before I am forced to go to state or federal agencies.

There is no federal or state law or regulation in existence which requires railroads to have or maintain clean toilet facilities. You know it goes without saying that an employee incapacitated by illness loses just as much time for himself, his family and the carrier, as one who is injured. Therefore, sanitation and health become an integral part of any safety program on the railroads. We had sincerely hoped that we would not need to come before the Kansas Legislature for this protection to involve another state agency in assisting my organization to acquire clean toilet facilities and sanitary drinking water on engines and cabooses. However, it appears to be the only feasible way to have this important sanitation matter resolved.

It is important to have sanitary drinking water and toilet facilities on engines and cabooses. Because of union work rule concessions with several railroads in Kansas, we are running special trains longer miles. Train crews spend more hours on the trains and travel longer distances. For instance, Santa Fe crews are currently running from Wellington, Kansas to Amarillo, Texas, from Newton, Kansas to La Junta, Colorado, and from Newton, Kansas to Purcell, Oklahoma. As a representative of men and women employed in train service, I believe that it is as important for them to have clean toilet facilities and sanitary drinking water as it is for railroad employees working in office buildings. I sincerely request your support for Senate Bill No. 185.

Thank you, Mr. Chairman, for furnishing me the opportunity to appear before your Committee and express the concerns of the Kansans I represent. I will attempt to answer any questions at this time.

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

TESTIMONY ON SB 185

PRESENTED TO: Senate Committee on Transportation and Utilities

This is the official position taken by the Kansas Department of Health and Environment on SB 185.

BACKGROUND INFORMATION:

This proposed legislation would require the secretary of health and environment, or his agent, to inspect each railroad engine and caboose in Kansas which transports or is occupied by railroad crewmen, and to adopt rules and regulations necessary to carry out the provisions of this act. Such inspections would be performed to ensure the existence of a sanitary water supply on each engine and caboose and that existing toilet facilities are retained and maintained in a sanitary manner and in working order. Frequency of such inspection is not indicated, but is assumed to be at least once annually. Existing statutes are not impacted.

STRENGTHS: Such inspections would provide some assurance that water supplies and restrooms intended for the use of railroad crewmen are safe and sanitary.

WEAKNESSES: Such an inspection program would necessitate work being scheduled on a 24 hour per day basis since trains would be entering the state on a 24 hour basis. Trains to be inspected would have to be searched out by inspectors. This program does not benefit the health of the public at large.

DEPARTMENT'S POSITION

It is the position of the KDHE that the objective of maintaining safe and sanitary water supplies and toilets for railroad crewmen working aboard trains, could be accomplished as a part of the routine and daily maintenance program which is an existing responsibility of the particular railroad involved. Such a plan would have the advantage of monitoring water supplies and toilet facilities on a daily basis and could be done at a fraction of the cost of a KDHE inspection program.

Presented by: Stephen N. Paige

Att. 4
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KANSAS RAILROAD ASSOCIATION

920 S.E. QUINCY
P.O. BOX 1738
TOPEKA, KANSAS 66628

913-357-3392

PATRICK R. HUBBELL
SPECIAL REPRESENTATIVE-PUBLIC AFFAIRS

MICHAEL C. GERMANN, J. D.
LEGISLATIVE REPRESENTATIVE

Statement of the Kansas Railroad Association

Presented to the Senate Committee
on Transportation and Utilities
The Honorable Bill Morris, Chairman

Statehouse
Topeka, Kansas
February 24, 1987

* * * * *

Mr. Chairman and Members of the Committee:

My name is Pat Hubbell. I am the Special Representative - Public Affairs for the Kansas Railroad Association. I would like to thank you for giving me the opportunity to express the opposition of the Kansas Railroad Association to Senate Bill No. 185.

S.B. 185 is not legislation of general application. Rather, the principal focus of S.B. 185 is private toilets - - - toilets used only by train crews.

Before discussing the collective bargaining process in the railroad industry I want to stress one point: There is no business reason, monetary or otherwise, to provide railroad workers with anything less than the safest and most sanitary

*Att. 5
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working environment humanly possible. The Federal Employers' Liability Act (45 U.S.C. §51) demands nothing less.

I. COLLECTIVE BARGAINING

Through the collective bargaining process American railroad unions have achieved for their members wage agreements, work rules and working conditions which are the envy of workers world-wide. The issue before the Committee today, like many other issues promoted before state legislatures and state regulatory bodies by railroad unions, is one which already has been dealt with through the collective bargaining process.

The Railway Labor Act (45 U.S.C. §151 et seq.) regulates collective bargaining in the railroad industry. Employment contracts between rail carriers and rail labor organizations ("organizations") never expire. However, issues to be negotiated can be raised at any time by the filing of so-called "Section 6 Notices" (Section 6 of the Railway Labor Act, 45 U.S.C. §156). Exhibit #1, printed on pink colored paper and included in the material distributed with my statement, provides a brief synopsis of the Railway Labor Act.

National Agreements are the basic documents which establish rates of pay and working conditions for members of the various organizations. In addition, the National Agreements are supplemented by Memorandums of Agreement, Letter Agreements and Memorandums of Understanding, which are negotiated not only at the national level but on the divisions of each rail carrier as well.

All of the various documents referred to above collectively constitute the contracts which exist between the carriers and the organizations. If any member would like to review a rail labor contract, I have three sample contracts with me today.

With that brief overview of the collective bargaining process in the railroad industry, I would ask the Committee to direct its attention to the second exhibit distributed with my statement. Exhibit #2, printed on yellow colored paper, is a copy of pages 32 through 34 of the National Agreement in effect between the Brotherhood of Locomotive Engineers ("BLE") and all Class I Carriers operating in Kansas. This exhibit contains that portion of the National Agreement with the BLE which specifically deals with the subjects of toilets and drinking water.

Exhibit #3, printed on blue colored paper, is a copy of pages 7 through 11 of the attachment to a Memorandum of Understanding which resolved the "Section 6 Notices" filed November 17, 1977, by the BLE on the Eastern and Western Lines of the Atchison, Topeka and Santa Fe Railway Company ("Santa Fe"). This exhibit is provided to the Committee as an example of the agreements which relate to the locomotive environment and which are in effect between Class I Carriers operating in Kansas and the organizations providing labor to work in the locomotives.

Exhibit #4, printed on green colored paper, is a copy of a Locomotive Inspection Report used by engineers on the Santa Fe to report locomotive defects.

II. UNIFORMITY OF REGULATION

Congress, in the exercise of its constitutional authority to regulate commerce among the several states, has created a comprehensive statutory scheme to regulate interstate railroads. The following Acts are part of the federal scheme:

The Interstate Commerce Act, 49 U.S.C.
§1 et seq.

The Transportation of Explosives and
Other Dangerous Articles Act
of 1909, 18 U.S.C. §831 et seq.

The Safety Appliance Acts, 45 U.S.C.
§1 et seq.

The Railroad Safety Act of 1970, 45
U.S.C. §421 et seq.

The Hazardous Materials Transportation
Act of 1974, 49 U.S.C. §1801
et seq.

The Locomotive Boiler Inspection
Act, 45 U.S.C. §23

The Locomotive Boiler Inspection Act is particularly relevant to S.B. 185. A Federal District Court in Texas on January 27, 1987, relying on a United States Supreme Court decision, held that the Locomotive Boiler Inspection Act "wholly preempts the subject matter of locomotive equipment." Missouri Pacific R.R. Co. v. R.R. Commission of Texas, No. A-86-CA-406 (W.D. Tex. 1987). Citing the Supreme Court decision a second time, the Court further held: "[T]he proscription against state regulation of locomotive equipment extends to the design, the construction and the material of every part of the locomotive" Id.

In its closing comments, the Court added:

[T]his case represents the fourth time in as many years that courts have been forced to address federal preemption of rules or regulations promulgated by various Texas agencies including the Texas Railroad Commission; rules and regulations that are clearly preempted. (Citations omitted.)

Why the Railroad Commission continues to expend its resources in such idle undertakings remains a mystery to this Court. When one considers the existing fiscal problems facing the State of Texas, it would appear that the resources of the Commission and the Attorney General's Office would best be spent in more meaningful and positive pursuits. Id.

Congress enacted the laws listed above to establish uniform standards in all areas of railroad operations for the benefit of the public and for the benefit of railroad workers. These Acts were intended to eliminate a hodgepodge of conflicting local railroad regulations which created an impossible burden on interstate commerce. The logic of uniformity is overwhelming.

III. CONCLUSION

There are approximately 25,000 locomotives operating in the United States. Because of leasing arrangements, run-through agreements and weather-caused detours, any of the locomotives in the national fleet could operate in Kansas and become subject to the provisions of S.B. 185. For this reason it would seem that the value of any alleged benefits of the legislation would be far exceeded by the costs associated with its administration.

Thank you for the opportunity to present the railroad industry's position on Senate Bill No. 185. We urge you to report this bill adversely. I will try to respond to any questions which you may have.

#

shall not be subject to the moratorium provisions of this Agreement, but, rather, shall be held in abeyance pending efforts to resolve these issues through the procedure established above. If, after 60 days from the date the neutral Chairman makes his recommendations, the parties have not reached agreement on all unresolved issues, the notices may be progressed under the procedures of the Railway Labor Act, as amended.

(e) Agreement reached by the parties on these issues will provide for a contract duration consistent with the provisions of Article XVIII of the Agreement, regardless of whether such agreement occurs during the time that the proposals of the parties are held in abeyance or subsequent to the time that they may be progressed in accordance with the procedures of the Railway Labor Act as provided for above.

ARTICLE XVI - INFORMAL DISPUTES COMMITTEE

Disputes arising over the application or interpretation of this agreement will, in the absence of a contrary provision, be referred to an Informal Disputes Committee consisting of an equal number of representatives of both parties.

If the Committee is unable to resolve a dispute, it may consider submitting the dispute to arbitration on a national basis for the purpose of ensuring a uniform application of the provisions of this Agreement.

ARTICLE XVII - LOCOMOTIVE DESIGN, CONSTRUCTION AND MAINTENANCE

Section 1 - Maintenance Of Locomotives

The parties recognize the importance of maintaining safe, sanitary, and healthful cab conditions on locomotives.

This Agreement affirms the carriers' responsibility to provide and maintain the aforementioned conditions particularly, although not limited to, such locomotive cab conditions as: heating, watercoolers, toilet facilities, insulation, ventilation-fumes, level of cab noise, visibility, lighting and footing.

The parties recognize that one way to achieve and maintain safe, sanitary, and healthful cab conditions on locomotives is by establishing procedures on each railroad for monitoring cab conditions and expediting the reporting and correction of maintenance deficiencies.

A. Local Implementation

Each individual carrier will designate an appropriate official(s) who will contact the BLE General Chairman (Chairmen) and arrange a meeting within 30 days from the date of this Agreement for the following purpose:

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(a) Review the policies on the individual railroad concerning the existing procedures for reporting and correcting locomotive deficiencies, assess the effectiveness of such procedures, and, where appropriate, establish methods for obtaining more satisfactory results.

(b) Institute a program whereby the Local BLE representative and the carrier's supervisors at each facility will participate in direct discussions regarding any maintenance problems at the locations under their jurisdiction for the purpose of carrying out the intent of this understanding, including evaluating the reports and suggestions of either party and implementing agreed-upon solutions thereto.

B. National Committee

A national committee will be established within 30 days from the date of this Agreement, consisting of two members of the National Carriers' Conference Committee and two representatives of the BLE. The Committee may review and make recommendations with respect to any maintenance problem on an individual property that is referred to it by either party after efforts to resolve such matter on the individual property have been exhausted.

The Committee may also consider any matter where the parties on an individual property have jointly concluded that the subject matter is one that may be addressed more appropriately on a national level.

Section 2 - Dispatchment Of Locomotives

A locomotive will not be dispatched in road service from engine maintenance facilities where maintenance personnel are readily available, and an engineer will not be required to operate the locomotive pending corrective action, if the engineer registers a timely complaint with supervision with respect to the controlling unit of the consist that is determined on investigation to be valid concerning -

(a) the existence of a federal defect, as defined by the Federal Railroad Administration, with respect to the following matters:

- Exhaust gases (ventilation)
- Cab lights
- Locomotive cab noise
- Cabs, floors and passageways (footing) (cab seats)
(vision) (heat)

and

(b) other conditions as follows:

- Lack of clean, sanitary toilet
- Lack of adequate cooled, potable water
- Lack of adequate toilet paper or hand towels

Should the complaint be found valid, and if there is another unit in that consist or otherwise readily available which will eliminate the protest, the units will be rearranged provided such rearrangement will not result in unreasonable delay to the train. If the engineer performs the work to accomplish the rearrangement, no additional payment(s) will be allowed. If, however, the official makes a good faith determination that the locomotive is suitable for dispatch, the engineer will proceed with the assignment.

An engineer will invoke the foregoing right in good faith and where a reasonable person would conclude that the carrier is in substantial non-compliance, i.e. more than technical non-compliance.

In determining the reasonableness of an engineer's complaint, among the factors to be considered are the timeliness of the complaint, the accessibility of the means to take corrective action, the seriousness of the deficiency, the engineer's ability or inability to correct the deficiency with means at his disposal and whether or not an unreasonable train delay would be incurred.

Section 3 - Locomotive Design And Construction

In recognition of the desirability of consultation with the General Chairman (Chairmen) prior to the ordering of new locomotives, or while formulating plans to modify or retrofit existing locomotives, the parties agree that, before any design and construction changes in locomotives are made which change safety or comfort features of the locomotive, the designated officer of each individual railroad will contact the General Chairman (Chairmen) providing him with the opportunity to furnish the carrier with his recommendations for full and thoughtful consideration by the carrier.

This Section 3 does not disturb existing local agreements that set forth required specifications for particular locomotive appurtenances or components.

ARTICLE XVIII - GENERAL PROVISIONS

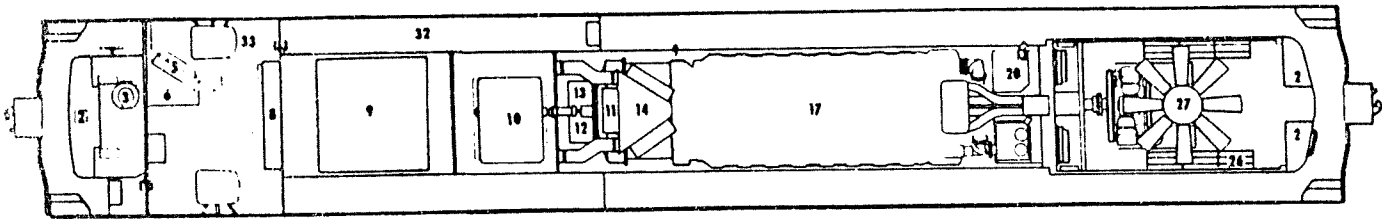
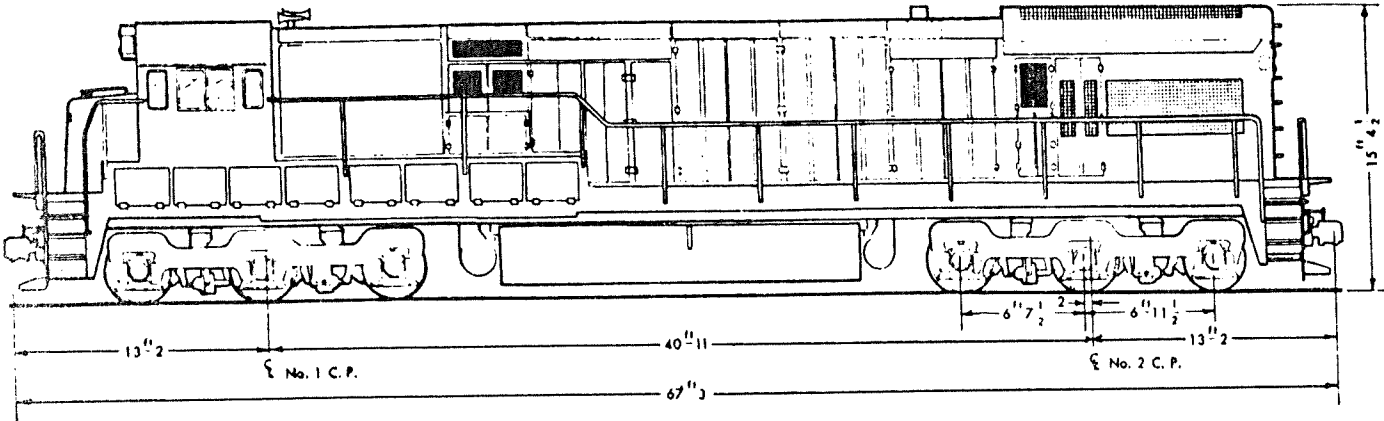
Section 1 - Court Approval

This Agreement is subject to approval of the courts with respect to participating carriers in the hands of receivers or trustees.

Section 2 - Effect of this Agreement

(a) The purpose of this Agreement is to fix the general level of compensation during the period of the Agreement and is in settlement of the dispute growing out of the notices served upon the carriers listed in Exhibit A by the organization signatory hereto dated on or about October 20, 1979, January 3, 1984 and January 17, 1984, and the notices served on or about January 23, 1984 by the carriers.

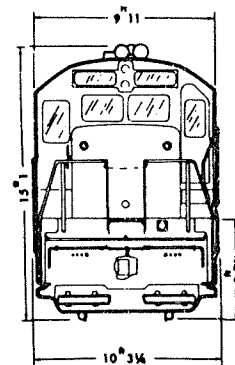
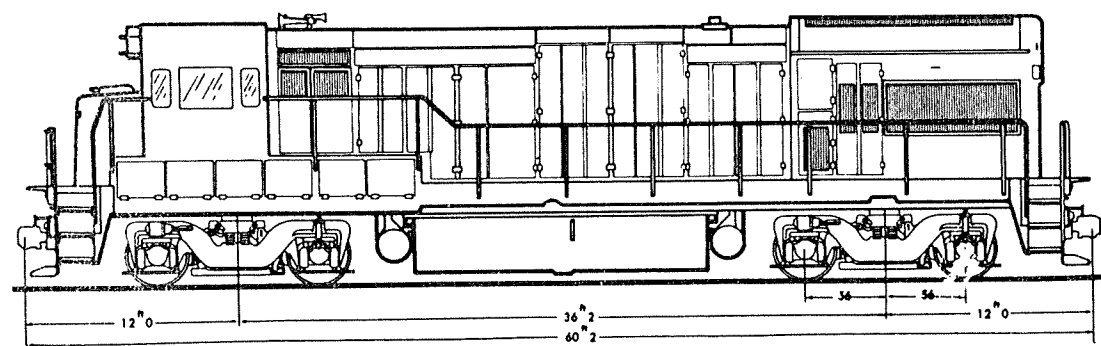
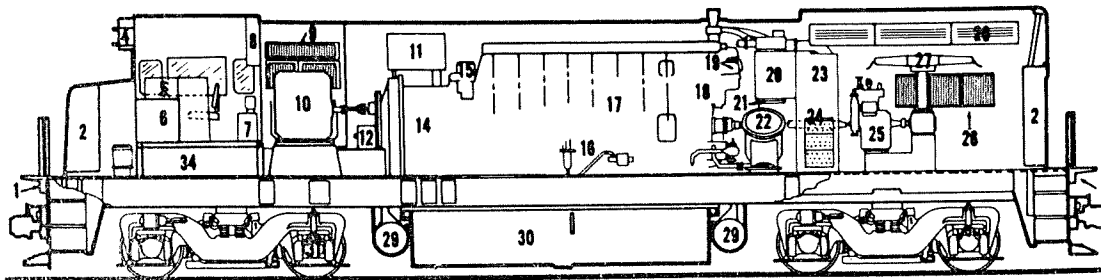
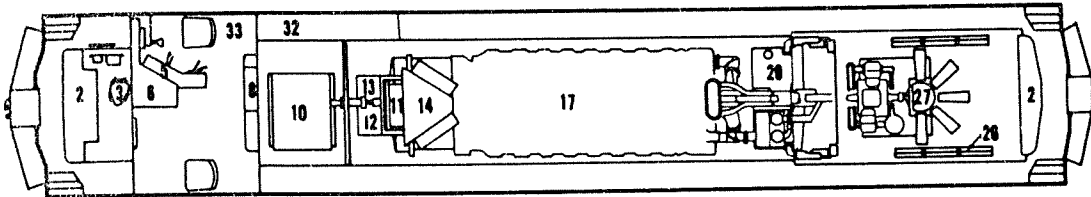
DIESEL-ELECTRIC LOCOMOTIVES: General Electric U23C



Location of Parts

- | | | |
|--|-------------------------|--|
| 2. Sand box | 10. Equipment blower | 20. Cooling water storage tank |
| 3. Toilet (when furnished) | 11. Rectifier | 26. Dynamic brake grids (when furnished) |
| 5. Operating controls | 12. Auxiliary generator | 27. Radiator fan |
| 6. Cab heater | 13. Exciter | 32. Battery (right side) |
| 8. Engine control panel | 14. Traction generator | 33. Air brake equipment (right side) |
| 9. Ballast or steam generator (when furnished) | 17. Diesel engine | |

DIESEL ELECTRIC LOCOMOTIVES: General Electric U30B



APP 5
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BACKGROUND INFORMATION

NATIONAL RAILWAY LABOR CONFERENCE

1225 CONNECTICUT AVENUE, N.W., WASHINGTON, D. C. 20036 / (202) 659-9320

The Railway Labor Act:

PRESS CONTACT: Dan Lang - (202) 293-4196

A STEP-BY-STEP PROCESS

In the railroad industry, labor negotiations follow a process that is always complex and often helpful.

Railroads bargain nationally with fourteen separate and independent unions. In any round of negotiations, each may have different goals and positions. And any one of the unions -- despite the fact that some are quite small -- has the power to close down the industry by throwing up picket lines.

But, since railroads are a service industry, there is a strong public interest in assuring that railroad bargaining does not produce precipitous action.

This interest is reflected in the provisions of the Railway Labor Act, first enacted in 1926 and amended several times since then.

One of the things the Railway Labor Act does is provide a criterion for distinguishing between "major" and "minor" disputes and guidelines for disposing of each.

Minor disputes relate to the meaning or proper application of a provision of an agreement in a particular situation. They are what might be called grievance disputes in other industries.

If such a dispute is not settled by the parties, it goes to the National Railroad Adjustment Board or to special boards of adjustment known as "Public Law Boards." Strikes over such issues are not legally permitted.

In major disputes -- those arising in the negotiation of a new agreement -- the Act provides a series of steps which have the dual purpose of bringing about an agreement and providing for cooling-off periods before legal strike may be implemented.

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One of the unique features about railroad labor relations is the fact that contracts -- in the sense of an agreement running for a fixed period of time and then expiring -- do not exist. An agreement remains in force indefinitely -- until it is changed by the action of the parties involved.

The announcement of an intention to change an existing agreement can be made by either party in the form of a "Section 6" notice -- so named because the procedure for giving notice is spelled out in Section 6 of the Railway Labor Act.

Either management or union can serve a Section 6 notice -- and one can be served at any time. If no notices were served, an agreement could theoretically stay in force forever. By the same token, Section 6 notices could theoretically be served the day after an agreement was signed.

In practice, however, an agreement usually contains a moratorium on the raising of issues covered in the agreement for a fixed period of time. Also, unions normally serve notices as soon as the moratorium expires -- so that the effect is that of a typical contract.

The usual pattern is for a union to serve a Section 6 notice, and for management to respond with a counter-notice. The counter-notice, in addition to providing the way for management to propose changes in existing agreements, also establishes a legal basis for promulgation of the proposals if all negotiations fail and the union threatens to strike. In such a case, management has the right to resort to its own form of self-help -- one manifestation of which could be to unilaterally implement its proposals.

After Section 6 notices are served, the two sides must agree within 10 days to confer. The conference must be held within 30 days of the notice.

On issues affecting most of the railroads in the nation, the bargaining is done between the National Railway Labor Conference and the National Carriers Conference Committee, for the railroads, and the national representatives of the union or unions involved. NRLC is headquartered in Washington, D. C. In each set of negotiations, the Committee receives power of attorney to negotiate for the railroads participating.

There is no limit on how long the initial conferences can continue. Usually, they go on as long as both sides think there is a good chance of reaching agreement.

If one side or the other finally concludes that no progress is being made and breaks off negotiations, the mediation process is the next step.

Either side may invoke mediation, or the National Mediation Board may proffer its services.

There is no time limit on mediation. If the Board eventually gives up in its efforts to resolve the dispute, it will proffer binding arbitration. But arbitration may not take place unless both sides agree to it.

If arbitration is refused by either, the status quo must be maintained for 30 days.

During that period, the Mediation Board may -- it is not required to do so -- make a finding that the dispute threatens (in the words of the Act) "substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service."

If the Board makes this finding, it notifies the President of the United States, who then has the option of appointing an Emergency Board to investigate the dispute.

If the President decides not to name a board, the disputing parties are on their own. They may continue to negotiate until an agreement is reached. If further negotiations are fruitless, either or both is legally free to resort to "self-help" -- which, for the union, is a strike and, for management, unilateral implementation of its proposals or some other action.

If the President does name a board, that body has 30 days to investigate the dispute and report its findings. If the parties accept the findings the dispute is over. But the Board's recommendations are not binding. Either side may reject them.

If the recommendations are rejected, neither party may act, except to reach an agreement, for 30 more days.

This is as far as the Railway Labor Act goes. If all these steps have been carried out and agreement has still not been reached, the parties are legally free to act.

Exhaustion of the steps provided by the Railway Labor Act does not assure a strike, however. For one thing, the courts have established a two-week notice requirement. Then, too, the parties may decide -- for any of a number of reasons -- to hold off.

In some cases, Congress or the President has acted on an ad hoc basis to put off a strike and compel negotiations.

NEGOTIATIONS OUTSIDE THE ACT

In a sense, the Railway Labor Act only sets forth criteria for a legal strike. Its provisions need not be followed to make a resulting agreement legal.

In at least one recent case, negotiations were begun and carried to a successful conclusion with all unions but one -- in some cases, without any of the procedures of the Act coming into play.

In the case of the one union that did not join in the agreement, however, all the provisions of the Act were followed -- although agreement was finally reached without a strike.

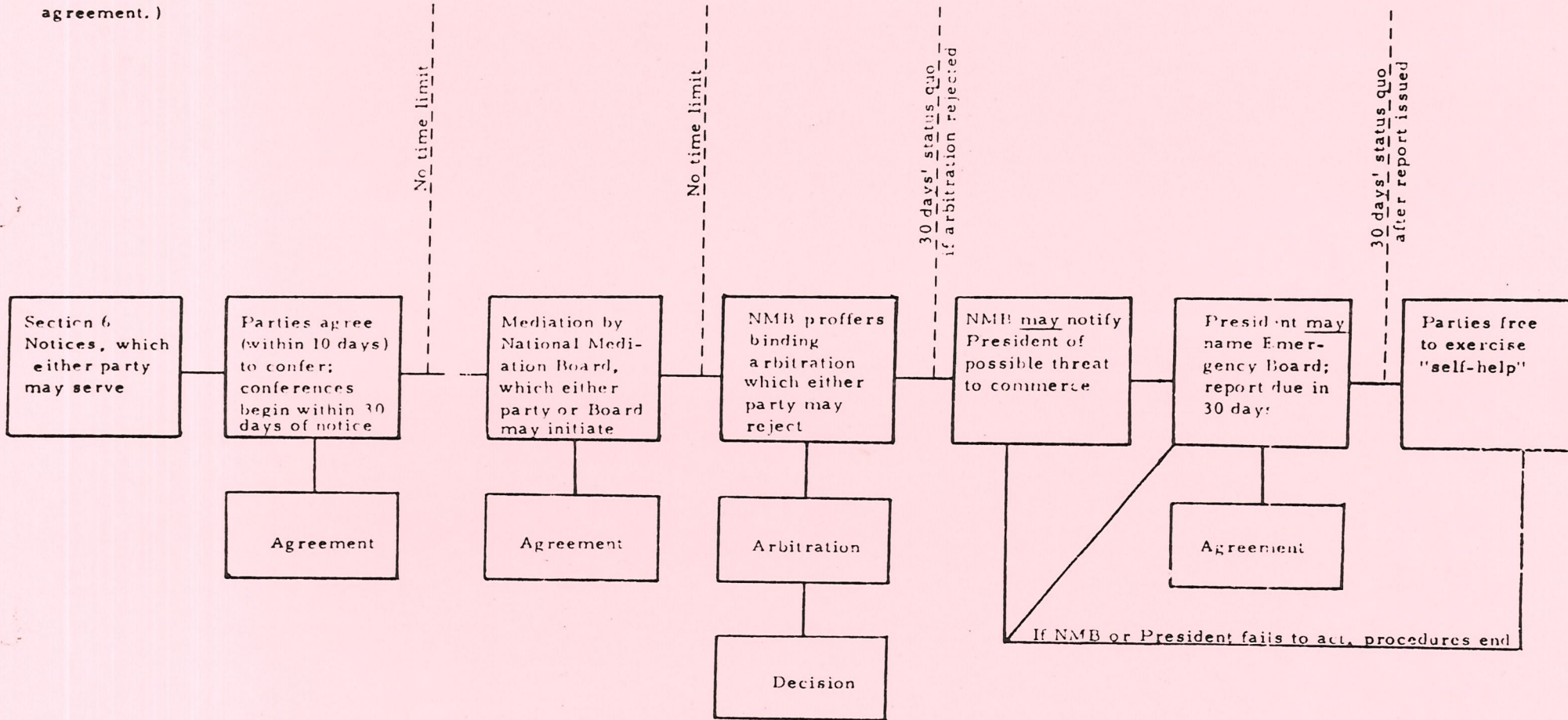
Over the years, the Railway Labor Act has not prevented all strikes. It couldn't, since it provides no binding arbitration and does not, ultimately, deny the right to strike.

But it does provide time and multiple opportunities for disputing parties to present their proposals -- to each other and to impartial bodies.

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Procedures Under Railway Labor Act

(All time limits may be extended by mutual agreement.)



LOCOMOTIVE ITEMS

Item H - 1

ISSUE:

Cab windows and windshield will be cleaned and engine cabs will be supplied at all on-duty points for each engineer. Engineers required to perform any of these services will be allowed one hour's pay for each service rendered, in addition to all other earnings for the trip or tour of duty.

SETTLEMENT:

If an engineer registers a complaint with supervision about a certain condition on the lead unit, supervision will investigate the validity of the complaint. Should the complaint be found valid, and if there is another unit in that consist which will eliminate the protest, the units will be rearranged provided:

- A. This occurs at the time of going on duty;
- B. The consist is still in the so-called Mechanical area;
- C. Rearranging will not result in delay to train;
- D. If the engineer performs the work to accomplish the rearranging, no additional payment(s) will be allowed; and
- E. The rearranging will not take place except in the so-called Mechanical area, and the Carrier will not be required to move a consist from any location to the area solely for the purpose of rearranging to correct a complaint.

Item H - 2 -- Withdrawn

Item H - 3

ISSUE:

Only shatterproof glass will be used in all windows and windshields on locomotives.

SETTLEMENT:

All side safety glass windows are replaced with Lexan if the window is broken or when found to be defective. Presently all units are equipped with shatter proof glass.

Item H - 4 -- Withdrawn

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Item H - 5

ISSUE:

All controlling units will be equipped with an operable air conditioner with variable speed fan. Engineers will be allowed 25 miles for operating a unit not so equipped, in addition to all other earnings for the trip or tour of duty.

SETTLEMENT:

Will be handled as per Item 1 comments.

Item H - 6

ISSUE:

Radios on all locomotives will be equipped with two AT&SF frequencies. One frequency will be designated for yard and one for road. When the lead unit has a defective radio, an operational hand set will be supplied to the engineer.

NOTE: A radio on which the volume cannot be controlled manually will be considered defective.

SETTLEMENT:

Investigation reveals would be necessary to add extra crystal to every radio. Also, radios on some locomotives were previously equipped with the second crystal; however, because of congestion, a safety hazard was created making it necessary to remove second crystal. It would not be practical to revert to former method. If radio on lead unit found inoperable would handle as per Item 1 comments.

Item H - 7

ISSUE:

The Carrier will tag any unit that has been reported as having flat spots. The tag will be dated, signed and displayed in an obvious position, and it will not be necessary for any other engineer to wire in the unit(s) to the Road Foreman of Engines and the Mechanical Supervisor as having flat spots.

SETTLEMENT:

The wire by each engineer is a protection in view of which practice will not be modified.

Item H - 8

ISSUE:

A unit having a bad order speed recorder will not be placed on the point; i.e., made the controlling cab, unless it is the only controlling cab unit available.

SETTLEMENT:

Handle as per Item 1 comments.

Item H - 9

ISSUE:

The Carrier will provide information to all concerned; i.e., Power Bureau, dispatchers, yardmasters, mechanical personnel, and engineers operating a unit or a consist of units, concerning a unit or units with a traction motor cut out or bad order dynamic brakes. In addition, a tag will be dated, signed, and placed in the operating cab of the consist relating this information.

SETTLEMENT:

Must tag individual unit so record will remain with defective unit.

Item H - 10

ISSUE:

Engineers will not be required or instructed to accept a unit as a controlling unit on which the toilet facility is not sanitary and in proper working order. Electric toilets on units so equipped are to be removed, said units to be equipped with Microphor type toilet.

SETTLEMENT:

Present electric toilets are being programmed for replacement with Microphor toilets. This will occur as unit is undergoing Classified repairs and it is estimated program will require approximately two years to complete. This is dependent upon availability of Microphor equipment as related to you during conference.

Item H - 11 -- Withdrawn

Item H - 12 -- Withdrawn

Item H - 13

ISSUE:

All units will be equipped with a Locomotive Performance Notation Pad.

SETTLEMENT:

This procedure was in effect years ago but found ineffective. Presently, Rules 313.1 and 313.2 of Form 2501-A cover the requirements.

Item H - 14 -- Withdrawn

Item H - 15 -- Withdrawn

Item R - 16 -- Withdrawn

Item H - 17

ISSUE:

Cab doors on all units are to be repaired to the extent they are completely weatherproof, including openings for door lock keys (7500 class in particular), then will be maintained in this condition. Condition on 7500 class units which allows dirt and dust to be drawn into cab interiors, particularly bad during warm weather when it is necessary to open cab windows, be corrected so as to eliminate the extremely dusty condition inside the cab.

SETTLEMENT:

Units are now being handled on an earlier schedule, about September of each year, to winterize.

Item H - 18

ISSUE:

All units will be equipped with adequate heating, including side wall electric heaters.

SETTLEMENT:

Venting was modified to permit fresh air flow which will provide adequate circulation for heating.

Item H - 19

ISSUE:

Electric refrigerators on 4600 class units are to be relocated so as not to interfere with passage from left cab door into cab interior, also to provide proper clearance for person occupying left front seat.

SETTLEMENT:

Study reveals the cooling unit can only be located as at present. The only change permissible would be to move toward the center of cab and this would be limited to 3 - 4 inches due to nose door. This is not practical when considering cost versus gain. As information if the seat was moved to the rear as far as possible additional room would be available.

Item H - 20

ISSUE:

All alerters and safety foot pedals will be removed from locomotives.

SETTLEMENT:

Consideration is being given for new locomotives not to, in some cases, have this equipment installed.

* * * * *

Item J - 3

Local Agreements concerning locomotive engineers will not become effective until after approval by Carrier's Vice President - Personnel and Labor Relations and the General Chairman B of LE. Such local Agreements will automatically be subject to cancellation by ten (10) days' written notice from either party.

* * * * *

Request other than Section 6:

The following shall be added as a new rule:

When an engineer is authorized to use his own automobile for dead-heading, he shall be allowed the same rate per mile generally allowed other employes (presently 17 cents) for use of his private automobile for the highway mileage traveled, station to station.

* * * * *

LOCOMOTIVE INSPECTION REPORT

* Locomotive Unit Number and Initials

INSTRUCTIONS: Each Locomotive Unit shall be inspected in accordance with Rule 229.21 of the Laws, Rules, and Instructions for Inspection and Testing of Locomotives Other Than Steam.

* Each Unit number of Locomotive consist shall be Noted. By the use of carbon copies prepare as many work Reports as there are Units in the Locomotive consist. As many as six reports can be made at one time with proper pencil pressure and last copy remaining legible.

Lead.	2775	R.C.E.
2nd	2308	1st
3rd	2816	2nd
4th	3400	3rd
5th		4th
6th		

INSPECTED AT	TIME	DATE
456	1735	12-21-86

ENGINEER'S REPORT

REPAIRS NEEDED	REPAIRED BY
1	
2	
3	
4	
5	
6	

Main Reservoir Pressure 130 Lbs. Brake Pipe Pressure 90 Lbs.

Condition of Brakes and Brake Rigging OK

Engineer GEBLOSS

INSPECTOR'S REPORT

REPAIRS NEEDED	REPAIRED BY
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	11/23 2/11
17	
18	
19	
20	

Employee Making Inspection *Harold Harker* Occupation *MC*

The above work has been performed, except as noted, and the report is approved.

Signature *[Signature]* Occupation _____ Available for Service Time _____ Date 12-21-86