



U.S. Department  
of Transportation

**Federal Railroad  
Administration**

1200 New Jersey Avenue, SE  
Washington, DC 20590

**OCT 8 2014**

Mr. Jeff Liepelt  
Senior Vice President, Southern Region  
Canadian National Railway Company  
935 de La Gauchetière Street West  
Montreal, Quebec H3B 2M9  
Canada

Mr. John Previsich  
President, Transportation Division  
International Association of Sheet Metal, Air, Rail and Transportation Workers  
14600 Detroit Avenue  
Cleveland, OH 44107

Mr. Dennis R. Pierce  
National President  
Brotherhood of Locomotive Engineers and Trainmen  
137 Ontario Street—Mezzanine  
Cleveland, OH 44113

**Re: Docket Number FRA-2009-0074**

Dear Messrs. Liepelt, Previsich, and Pierce:

This letter clarifies FRA's January 15, 2010, decision letter to the Canadian National Railway (CN), the International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART), and the Brotherhood of Locomotive Engineers (BLET) (collectively, Petitioners), related to the docket number referenced above, which granted a waiver providing relief from a provision of the Federal hours of service laws found at 49 U.S.C. Section 21103(a)(4).

FRA's January 15, 2010, decision letter specified that FRA's analysis of CN employees' schedules—using the Fatigue Avoidance Scheduling Tool (FAST)—supported a train employee receiving 24, rather than 48, hours off duty, after initiating on-duty periods for 6 consecutive days, if such on-duty periods are scheduled assignments that do not extend into the early morning hours (midnight to 6:00 am). FRA intended the term “scheduled

assignments" to apply to assignments that were scheduled to go on duty and off duty at the same time of day and with the same day off during a 7-day period. Additionally, the conditions of the waiver were only to apply if an employee initiated on-duty periods for 6 consecutive days on the same scheduled assignment.

Recently, FRA became aware that CN is applying the conditions of the waiver to employees and schedules outside of FRA's original intent. CN crew management at Homewood, IL, informed FRA that CN is applying the waiver to regular pool jobs with calling windows at the assigned home terminals. Further, FRA understands that there is no calling window associated with these assignments when they initiate an on-duty period at the away-from-home terminal and operate to the home terminal. Additionally, FRA was informed that CN is applying the conditions of the waiver to employees that initiate on-duty periods for 6 consecutive days on more than one assignment.

After reviewing the joint petition from the Petitioners, dated July 10, 2009, and FRA's January 15, 2010, decision letter in response to the petition, FRA believes that both the nature of the petitioners' request and FRA's decision letter led to a misunderstanding of the conditions of the waiver. As such, FRA is requesting the following corrective actions in applying the waiver until it expires on January 9, 2015:

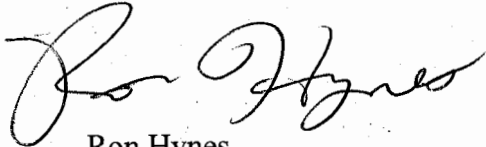
1. Only employees that initiate on-duty periods for 6 consecutive days in a single scheduled assignment may receive 24, rather than 48, hours off duty.
2. Employees initiating on-duty periods on calling window assignments are only eligible to work under the conditions of the waiver if each of the six on-duty periods is initiated within the defined calling window for that assignment. If one or more of the six on-duty periods (duty tours) begins outside of an assignment's defined calling window, the employee working that assignment will require 48 hours off duty before returning to perform covered service for the railroad.
3. All other conditions of the original waiver apply to the calling window assignments.

CN's waiver, Docket Number 2009-0074, expires on January 9, 2015. If the Petitioners request an extension of this waiver from FRA, the petition for extension must include the following information for FRA to effectively evaluate the types of assignments to which the Petitioners apparently seek to apply the waiver:

1. The start and end times, day off, and location (yard/terminal, city, and State) of scheduled assignments to be covered by the waiver.
2. Beginning and ending times of calling window, day off, and location (yard/terminal (home and away from home), city, and State) of calling window assignments to be covered by the waiver.
3. Justification that the waiver is in the public interest and that the waiver has not negatively impacted safety for the types of assignments to be covered by the waiver.

If you have any questions or concerns regarding this waiver, please contact Dr. Amanda Emo, Fatigue Program Manager, Risk Reduction Program Division. Dr. Emo can be reached at (202) 493-6413 or [Amanda.Emo@dot.gov](mailto:Amanda.Emo@dot.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Ron Hynes". The signature is fluid and cursive, with the first name "Ron" being more prominent than the last name "Hynes".

Ron Hynes  
Director, Office of Technical Oversight