

March 22, 2023
306361

Surface Transportation Board
395 E Street SW
Washington, DC 20423

ENTERED
Office of Proceedings
March 22, 2023
Part of
Public Record

RE: Docket# EP-770 / EP-772

Dear Chair Oberman and Board Members:

I am writing regarding an issue relevant to Docket# EP-770 & EP-772. The issue being: Did BNSF Railway Company pressure rail dependent shippers on its Hi-Line route into opposing state-level railroad safety legislation to avoid metering of rail services?

As background, my rail labor colleague and I have worked on state-level rail safety legislation here in WA state for many years and have been successful in passing railroad safety law where no federal law substantially subsuming the subject matter existed. Of course, the railroad industry categorically asserts the states have “no right” to pass railroad safety laws of any kind and that the states are preempted in all matter involving railroad operations. The courts have ruled otherwise.

This year in Washington state, rail labor is seeking legislation to allow “unpaid” time off work without being subject to Draconian carrier Availability Policies when a railroad worker is sick, injured, or in need of additional time to attend to bereavement matters (beyond the 3-days of paid allotment). Additionally, we are seeking augmentation to the FMLA to stop the unethical management practice of accelerating and depleting a worker’s FMLA leave bank allotment by systematically docking time the worker was not actually absent from work. This type of unethical issue was occurring in the airline industry and is why airline flight crews fought for (and won) an amendment to the federal FMLA law over ten years ago stopping the practice. Railroad workers tried to be included in that law amendment but were purposely excluded, in part, due to the massive lobbying effort of the Class I railroads. This was grossly unfair to the railroad operating crafts and is the reason why rail labor continues to seek these protections at both the state and federal levels today.

Specific to the allegation BNSF pressured shippers to oppose rail labor's state-level legislation, I offer the following:

There is current legislation being proposed in the state of Washington that gives employees broad discretion to lay off with little to no consequence which could significantly impact service in the state. At a high level:

- ESSB 5267 would effectively make railroad attendance policies unenforceable.
- Without enforceable attendance policies, railroads have no way of ensuring crew availability, which is critical to running trains on time.
- The bill would allow railroad workers to take leave, without notice or verification, for reasons as vague as general fatigue.
- It provides broad protections for employee absences and excessive fines up to \$100,000 on railroads attempting to enforce attendance policies.
- The bill would severely limit railroad service in the PNW, with immediate negative impacts on trade, manufacturing, shipping, ports, and the state economy.

If Washington employees are allowed to do this, it would affect crew availability and could cause us to eventually meter traffic in Washington.

BNSF wanted to raise awareness with our customers as to the potential impact to trade. Support can come in many forms. It can be as simple as a phone call to key legislators voicing concern or we can assist in any formal letters to address those concerns. Please let me know if you have questions and would be glad to discuss further. Your support would be appreciated.

I'm told the above listed message was received by an employee of a smaller grain shipper, who passed the information on to a friend at BNSF, who then posted it on a social media platform. The message was supposedly sent out by The American Grain Growers Association, allegedly at the behest of BNSF. I tried to verify this myself but have been unable to do so.

Additionally, during my registration for testimony to the WA state House Labor & Workplace Standards committee on March 21, 2023, I noticed two new "con" entries to the proposed legislation were listed: 1) The Farm Bureau and 2) The Highline Grain Growers, Inc. While the Farm Bureau has opposed rail labor's safety legislation in the past, opposition is not automatic. As for The Highline Grain Growers, Inc, this is the first time I have seen them oppose any state-level rail safety legislation proposed by rail labor.

While the railroad industry is certainly entitled to lobby their position, "arm twisting" by using veiled threats of service metering/embargos should not be allowed – if that's what happened. Considering Docket# EP-770 & EP-772, the railroads have created their own crew shortage mess with Precision Scheduled Railroading and cannot maneuver out of it using single-person train crews (recall James Foote's testimony during EP-770 when questioned by Member Primus). Now, when railroad workers in WA state seek what is in essence a common decency issue, i.e., the right not to be punished when sick, the railroads insinuate (to shippers) that rail service may need to be metered on the Hi-Line route, should the law pass.

I respectfully request that the Surface Transportation Board make an official inquiry into the allegation listed herein. It's one thing to seek support for your position on an issue, but quite another to pressure shippers into agreeing with your position by way of veiled threats of service metering/embargo. Thank you.

Respectfully,

Mike Elliott