

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34495

BUCKINGHAM BRANCH RAILROAD CO.
--Lease--
CSX TRANSPORTATION, INC.

**MOTION OF THE
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
FOR DECLASSIFICATION OF BMWE EXHIBIT 5
OR ALTERNATIVELY FOR LEAVE TO
FILE SUPPLEMENTAL EVIDENCE**

Pursuant to the Board's Decision No. 1 in this proceeding and paragraph 7 of the confidentiality order attached thereto, the Brotherhood of Maintenance of Way Employees ("BMWE") hereby requests that its exhibit no. 5 be declassified so that it may be publicly filed or alternatively that BMWE be granted leave to submit a supplemental filing in the form of a version of the same document that was obtained by BMWE under the Freedom of Information Act.

BMWE's comments in this proceeding included several Federal Railroad Administration documents that were produced by CSX Transportation in discovery that were marked confidential or highly confidential. BMWE requested that CSXT declassify these documents or some of them because documents of that type may be obtained from the FRA through FOIA processes. CSXT declined to declassify any of the documents. BMWE therefore filed both confidential and non-confidential versions of its comments and exhibits with the classified materials removed from the public versions. BMWE then filed a FOIA request with the FRA for production of documents that would include documents that CSXT had produced but marked

confidential. The FRA has now provided BMW with copies of certain materials that CSXT produced but marked as confidential, including the materials that were produced under seal as Exhibit 5 to BMW's confidential version of its comments. *See* attachment to this motion. Since BMW has now obtained from the FRA a copy of the materials that were contained in its Exhibit 5, BMW now requests that the confidentiality classification for those materials now be lifted.

Alternatively, BMW requests that it be granted leave to file the attachment to this motion as supplemental evidence. BMW submits that it could not have filed these materials earlier because they were just produced by the FRA and that there will be no prejudice to the applicants because the same materials are already on record at the Board and applicants have already had the opportunity to respond to them. The only consequence of allowing the filing of the materials as supplemental evidence is that they would become part of the public record.

For the foregoing reasons, BMW requests that its motion be granted and that its exhibit no. 5 be declassified so that BMW be permitted to file that document as supplemental evidence.

Respectfully submitted,

/s/
Richard S. Edelman
O'Donnell, Schwartz & Anderson, P.C.
1900 L Street, N.W.
Suite 800
Washington, D.C. 20036
(202) 898-1824

Dated: October 1, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused copies of the foregoing Motion of the Brotherhood of Maintenance of Way Employees for Declassification of BMW Exhibit 5 or Alternatively for Leave to File Supplemental Evidence to be served by First Class Mail on all parties of record indicated on the attached service list and also by facsimile transmission to counsel for applicants and representatives of parties that filed comments.

Date: October 1, 2004

_____/s/
Richard S. Edelman

U.S. Department of Transportation
Federal Railroad Administration (STOP 10)
1120 Vermont Avenue, N.W., Washington, D.C. 20590

JUL 18 2002
In reply, refer to:
FRA No. CSX 2002-68(TS)

Patricia D. Barksdale, Esq.
Counsel
CSX Transportation, Inc.
Law Department - Speed Code J-150
500 Water Street
Jacksonville, FL 32202

Dear Ms. Barksdale:

As detailed in the enclosed violation report(s), FRA alleges that your company has violated the Federal statute or regulations specified below and proposes civil penalties in the amount stated:

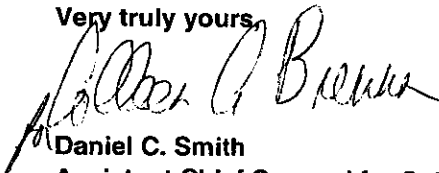
Total Proposed Penalties: \$120,000
Total No. of Alleged Violations: 24
Dates of Alleged Violations: 26-Mar-2002 to 26-Mar-2002
Statute/Regulations: TRACK SAFETY STANDARDS

Citations on the attached Summary of Alleged Violations are to the Code of Federal Regulations text or the corresponding schedule of civil penalties found as an appendix to the relevant CFR part.

Within 60 days of the date of this letter, you may (1) pay the proposed penalty; (2) submit information in writing that you believe will explain, excuse, or disprove the alleged violations; or (3) request an informal conference to discuss the alleged violations. In the event an administrative settlement cannot be achieved, individual violations will be referred to the Department of Justice for institution of suit in the appropriate United States District Court. In that event, FRA reserves the right to seek the statutory maximum penalty for each violation and for each day a violation continued.

Please contact this office at (202) 493-6029, if you need additional information.

Very truly yours,


Daniel C. Smith

Assistant Chief Counsel for Safety

Enclosures:

- (1) Summary of Alleged Violations
- (2) Copy of Violation Report(s)

cc: Data Entry, Case file, Stop-40

U.S. Department of Transportation
Federal Railroad Administration (STOP 10)
1120 Vermont Avenue, N.W., Washington, D.C. 20590

SUMMARY OF ALLEGED VIOLATIONS

FRA No. CSX 2002-68(TS)

FEDERAL RAILROAD SAFETY STATUTES
(49 U.S.C. CH. 201, 213; FORMERLY 45 U.S.C. SECTIONS 421, 431-441)
TRACK SAFETY STANDARDS
(49 CFR Part 213)

Dates of Violation: 26-Mar-2002 to 26-Mar-2002

Violation Number	Inspector's Report No.	Section Violated	Proposed Penalty Per Violation	Proposed Penalty Subtotal	Note
1 - 24	K.I. MUNRO-3	213.053 (b)	\$5,000	\$120,000	4
Total Proposed Penalty:				\$120,000	

Note(s):

4 - Penalties have been assessed for 2 or more days on which violation continued.

Memorandum

DATE : May 10, 2002

TO: David R. Myers
Regional Administrator, Region 2

FROM : Kirk Ian Munro
SCC Track Inspector

SUBJECT: Violation Report No.03 - Kirk I. Munro
Track safety Standards, 49 CFR Part 213
CSX Transportation, Inc., Alleghany Division, Piedmont Subdivision

SYNOPSIS

Between March 26 and April 4, 2002, track inspections were conducted on the Piedmont Subdivision of the Alleghany Division of CSX Transportation, between Richmond and Gordonsville, Virginia. The activity included follow-ups for previous inspections, some non-violation defects, and 24 violation counts cited for excessive track gage under load. CSX Transportation was represented by Roadmaster K.W. Gunter on all the above dates. On March 28, 2002, Mr. Les Miller, CSX Engineer of Track Testing & Quality Control, System, also accompanied the inspection process. Joseph Zebrowski, FRA Region 2 Track Specialist, participated in the inspections on March 26 & 27, 2002.

VIOLATION DESCRIPTION

The 24 violation counts were cited by this inspector on reports No. 46 (2 counts); No. 49 (15 counts); No. 51 (4 counts); No. 53 (2 counts); and No. 55 (1 count). They are all attached to this report as Exhibit A. All of the violations were issued between March 26, and April 10, 2002, along with many non-violations. Those reports are attached as Exhibit B. All of the violations have been cited under Paragraph 213.53 for track gage under load exceeding the allowable limit for the track class.

Although the citations were issued in five reports on five different dates, they were all part of a systematic series of inspections on the Piedmont Subdivision, with the intent of citing violations to address the extremely poor crosstie conditions that prevail across this subdivision. The original intent was to cite violations under paragraph 213.109 (Crossties), but CSX, having declared the Piedmont Subdivision to be under the new Paragraph 213.110 (Gage Restraint Measuring System-GRMS, described below), operated its GRMS car over the subdivision on March 25, 2002, the day our inspections were scheduled to begin. Because of this, we were forced to alter our approach and write citations under Paragraph 213.53 (Gage), instead of

Paragraph 213.110, since CSX had not yet had the opportunity to "field verify" the data produced by the GRMS car. The citation of gage violations was independent of any data the GRMS car may have produced. The violations were appropriate because the railroad's inspectors should have been able to find those conditions during their routine track inspections. Our use of the Portable Track Loading Fixture (PTLF, described below) was also appropriate because the local roadmaster and track inspectors have the same device and have been trained in how to use it to identify wide gage locations.

We had verbally notified CSX on February 14, 2002, that we would be returning the week of March 25 to inspect the entire subdivision and cite violations for any non-complying tie conditions we should find. As March 25 neared, CSX deadheaded its GRMS car directly from Florida to Richmond, Virginia in order to perform its initial GRMS survey on the Piedmont Subdivision before our inspections were to begin. This was stated by Mr. Les Miller. Note that CSX had declared the Piedmont Subdivision, along with two other subdivisions in Virginia, to be under Paragraph 213.110 as of December 12, 2001. However, the GRMS car suffered a major derailment with significant damage and several injuries on January 7, 2002, while beginning its initial survey on the Piedmont Subdivision, and the survey was not done. The March 25, 2002 survey was made by CSX's second car, the first still being under repair. Thus, although the subdivision was declared to be under Paragraph 213.110 as of December 12, 2001, the paragraph was not actually effective until the initial survey was made on March 25, 2002.

During the course of our inspections, our activity was discussed with Al MacDowell, Chief of the Track Division in FRA headquarters after CSX officials called him to protest the violations. After Mr. Zebrowski explained the situation to him and the approach we were taking was discussed, Mr. MacDowell advised that we should not use Paragraph 213.110 for the violations since CSX had not yet had time to verify the GRMS data in the field. He did agree, however, that violations could be properly written for excessive gage under load, since the existence of that condition was a separate issue from the operation of the GRMS car. He stated that he would fully support any violations we should cite for gage.

BACKGROUND

The Piedmont Subdivision of CSX Transportation has a well-documented history of crosstie conditions which do not comply with the FRA Track Safety Standards. In calendar year 2000, a total of 293 defects were cited under Paragraph 213.109; in calendar year 2001, a total of 258 were cited under Paragraph 213.109; and in calendar year 2002 through February 14, a total of 49 similar defects have been cited. A summary report of Paragraph 213.109 defects cited from January 1, 2000 through February 14, 2002 are attached to this report as Exhibit C and the supporting inspection reports are attached as Exhibit D. The next FRA inspections after February 14 were made subsequent to Paragraph 213.110 coming into effect. Those inspections, between March 26, and April 22, 2002, resulted in 26 citations for excessive track gage, of which 24 were cited as violations and two as non-violations. Photographs representative of conditions found are attached as Exhibit E. The inspection approach changed due to the fact that these latest

inspections began on the day following the initial "official" GRMS survey, which caused Paragraph 213.110 to replace 213.109 for compliance and enforcement purposes, as explained further below.

In all, over a period of 26 months, a grand total of 600 defects were cited under Paragraph 213.109, a clear indication that CSX has been neglecting crosstie conditions on the Piedmont Subdivision for many years. It has also been stated, by engineering officers of CSX, that there has been no large scale programmed tie renewal work since 1986, except for a few miles to address conditions on a few curves. Our observations of the tie conditions existing in the track bear this out. Nor has there been any programmed surfacing, rail renewal or bolt tightening. In fact, the few instances in which ties were replaced did not include surfacing afterward, which is usually a normal adjunct to tie renewals.

In accordance with the requirements of Paragraph 213.110, CSX sent a letter dated October 26, 2001 to FRA Region 2, attached as Exhibit F, to declare the Piedmont and two other subdivisions to be under Paragraph 213.110 effective December 12, 2001. Prior to this, CSX had run its GRMS car over the Piedmont Subdivision in May 10, 2001, for its own purposes. That operation serves to further prove that CSX had prior knowledge of the tie conditions extant. Our conversations with division level engineering officers have also determined that they have been aware of the worsening tie conditions for some time but that they have not been successful in convincing upper level managers to schedule any programmed tie renewals on the Piedmont Subdivision. On the CSX System TSC Schedule for 2002, attached as Exhibit G, the Piedmont Subdivision is conspicuous by its total absence.

The railroad attempted to conduct its initial official GRMS survey prior to December 12, 2001, but technical difficulties with the GRMS car caused a delay until January, 2002. While conducting the initial survey on January 7, 2002, the car derailed just 15 miles into the survey at a rail joint at which both joints bars were center broken. The car was seriously damaged and several employees on board were injured, at least one seriously. Thus, Paragraph 213.110 was still not in effect on the subdivision. During our conversations in February with CSX personnel, we were told there was no date established for the initial survey, which would have to be done by CSX's second GRMS car, but which was occupied elsewhere on the system.

During our February, 2002 inspections, we verbally informed the CSX roadmaster, assistant regional engineer and regional engineer that we would be returning on March 25, for follow-up inspections, and that regardless of whether defects cited in early February were corrected or not, we would be looking to cite violations for any non-complying tie conditions, under Paragraph 213.109, which we might find. The assistant chief engineer for that part of the CSX system had also been present on February 14 and had conversed at length with Mr. Zebrowski in regard to the overall poor tie conditions and lack of programmed maintenance work on this subdivision, so he was also aware of the FRA's concerns. In fact, his presence there that day was specifically to discuss the situation with Mr. Zebrowski, and he flew back to Jacksonville late that afternoon.

At this point in the report, it is important to interrupt the chronology and explain the GRMS car and the Portable Track Loading Fixture, their purpose and how they affect what transpired during these inspections.

The Gage Restraint Measurement System (GRMS)

The Gage Restraint Measurement System (GRMS) is an instrumented car with a hydraulically controlled axle which exerts a lateral force of 14,000 pounds on the rails, which when combined with the vertical force imparted by the car, produces a resultant lateral force of about 6,000 pounds against the gage side of the rail heads. The purpose is to measure how much the track gage widens under dynamic loading. In addition to measuring the actual gage movement, the computer program also extrapolates a gage value as if the lateral force were 24,000 pounds. The program produces a printout of these values and their exact locations and length in feet. A green stripe is automatically painted on the track to aid personnel in finding the locations when they go out to verify the data and/or make repairs.

The GRMS car produces two "levels" of data. The first amounts to gage conditions which must be immediately protected with a speed restriction and promptly repaired. The second includes locations which should be checked at the earliest convenience, but for which no immediate action is required.

If a railroad opts to use a GRMS car, the new Paragraph 213.110 becomes effective, supplanting Paragraph 213.109. There are certain requirements in Paragraph 213.110 with which the railroad must comply. When a track segment is declared to be under 213.110, the initial survey made and the data verified, all subsequent FRA inspections must be made under 213.110, since Paragraph 213.109 no longer applies to that track segment. Thus, instead of citing crosstie conditions, the FRA must cite either widening of the gage under load in excess of 5/8 inch, or gage under load exceeding the allowable for the track class. Both are covered by sub-paragraph 213.110(m).

The Portable Track Loading Fixture (PTLF)

The Portable Track Loading Fixture (PTLF) is a hand-carried device placed between and perpendicular to the rails and used to hydraulically apply 4,000 pounds of lateral force to the inside of the rail webs, near the base, as prescribed by Paragraph 213.110. It is to be utilized by the railroad to verify the GRMS data and to perform periodic gage measurements between the GRMS surveys (which can be up to 14 months apart). On the Piedmont Subdivision, the roadmaster has one of these devices and has been trained in its use, as have his track inspectors, by Mr. Miller. FRA Region 2 also has two of these devices, assigned to the inspectors whose respective territories include CSX's designated GRMS track segments and who have been trained in its use, as has FRA Region 2 Track Specialist Zebrowski.

Gage is first measured without any lateral load applied and not adding any value for apparent

lateral movement, i.e., unloaded gage is measured. Then the PTLF is positioned, 4,000 pounds applied to the rails and the resultant gage is measured. The two measurements are then compared with each other. If the movement exceeds 5/8 inch, regardless of whether the resultant gage is still within the allowable limit, a citation can be issued. Also, if the resultant gage exceeds the allowable limit a citation can be issued for that, even if the movement does not exceed 5/8 inch.

The Inspections

To continue with the chronology, on March 21, we were informed that CSX would be conducting its initial official GRMS survey on the following Monday, March 25. Therefore, we decided to begin our inspections on March 26, and to use Paragraph 213.110 for enforcement purposes. We were later advised by Mr. MacDowell that we could not do that because CSX had not yet had an opportunity to field verify the GRMS data. So, after two days of citing violations under Paragraph 213.110, we had to do two things. First, the violations were changed to Paragraph 213.53 (Gage) and the roadmaster was advised. Mr. MacDowell advised us to do this because the existence of excessive gage under load, as determined by using the PTLF, was independent of any data produced by the GRMS car, and that Paragraph 213.53 was appropriate because the railroad had not yet verified the GRMS data. Second, in order to give the railroad time to complete its verifications, it was decided to allow one additional week before completing the inspections. That accounts for the spread in dates between reports KIM-51 and KIM-52. Mr. MacDowell also advised us that once the railroad had completed its verifications, Paragraph 213.110 would be appropriate to use and that violations could and should then be cited under Paragraph 213.110(m), instead of Paragraph 213.109.

The required alterations in our approach were made and the railroad officials were promptly notified of the changes in defect codes. For simplicity, all of the violations, including the three on April 8 and 10, were cited under Paragraph 213.53.

In all, from March 26 to April 22, 2002, inclusive, a total of 14 inspection reports were issued, including five reports containing a total of 24 violation counts. Copies of all of the reports are attached as exhibits.

We did suffer a false start in the approach we took in this matter, but the application of Paragraph 213.110 is new to everyone in the FRA and the railroad, and some initial mis-application did occur. However that was promptly corrected and the proper approach was then taken. This does not mitigate the seriousness and extensiveness of the tie and gage conditions found all across the Piedmont Subdivision.

It must be noted that CSX hurriedly brought the GRMS car from Florida to Virginia to conduct the initial survey before we were able to begin our inspections. It is also notable, and of concern to us, that of the 24 counts cited for gage, 23 were at locations identified by the GRMS car as second level items, not requiring immediate corrective action. This causes us to be concerned over the veracity of the data produced by the car. These were all locations where the loaded

gage, with 4,000 pounds of lateral force applied by the PTLF, exceeded the allowable for the track class by 1/8 inch or more, but which the GRMS data did not identify as such. This would lead to excessive gage being left in the track until verified, which could be up to two weeks.

Another item of concern is that in addition to the 24 locations where loaded gage (using the PTLF) exceeded the allowable limit by 1/8 inch or more, there were many other locations at which the gage measured at or perhaps 1/16 inch below the limit, or 1/16 inch over the limit (which were not cited), or at which the difference between unloaded and loaded gage exceeded 5/8 inch. Some of these locations did comply with Paragraph 213.110 (m), while others did not. We did not cite those non-complying locations because CSX had not yet had the opportunity to verify their existence prior to our inspections which began on March 26.

The overall tie condition on the Piedmont Subdivision is such that if we inspect it every three or four months, we will be able to cite violations at locations which are presently at the allowable limits, unless tie renewals are done in the interim. The GRMS car identified 785 locations in the 75 miles of the Piedmont Subdivision, attached as Exhibit H. At least ninety percent of them were checked by the FRA, using the PTLF. Early in our inspections it became evident that the GRMS car was listing locations as "level two" defects but at which the gage under load was exceeding the FRA allowable limit, so it was decided to apply the PTLF to every location painted by the car. This slowed down our progress, which accounts for the length of time needed to complete the entire subdivision. The only exceptions to this approach were on April 15 and 22, between milepost CA85.5 and CA111.9, because CSX had inserted new ties and brought the gage into compliance at the locations identified by the GRMS between those mileposts.

Finally, it is important to know that for many years this subdivision was designated as FRA class 3, with an authorized speed of 40 mph. Eventually, recognizing that the tie conditions would not support Class 3, CSX management restricted the speed over the entire subdivision to 25 mph (FRA Class 2) and began the practice of not scheduling any programmed maintenance work for this subdivision. At one time, the company had considered the abandonment of this route due to light local traffic and the availability of its other east-west mainline across Virginia (which closely follows the James River for its entire length, and is subject to periodic flooding). The abandonment idea was scrapped when it became evident that the Piedmont Subdivision, along with the North Mountain Subdivision to the west, constituted an important and useful alternative route, especially when the principal route was out of service due to derailment or flood. However, that change in thinking did not include any plans to improve the physical condition of the Piedmont Subdivision to ensure its compliance with FRA safety regulations.

We believe that the background of the situation on the Piedmont Subdivision provides ample justification to cite the following violations:

<u>Paragraph</u>	<u>Description</u>	<u>Counts</u>
213.53 (b)	"Gage shall be within the limits prescribed..... Class 2 and 3 track, not more than 4' 9 3/4" (57 3/4")"	24

All gage measurements which were taken to arrive at these 24 counts were "under load," i.e., measured with 4,000 pounds of lateral force exerted on the gage sides of rails by the PTLF, in conformance with Paragraph 213.110. In all instances the measurements were witnessed by the roadmaster and confirmed by him.

LOCATION & METHOD of OPERATION

The Piedmont Subdivision of the Alleghany Division is a single track freight only line extending from Richmond, Virginia (milepost CA85.5) to Gordonsville, Virginia (CA160.4). The authorized speed over the entire line is 25 mph (FRA Class 2). It connects at its east end with the Peninsula Subdivision, which is CSX's route to Newport News, VA. At its west end it connects with the Washington Subdivision at Gordonsville, which in turn connects with the North Mountain Subdivision at Charlottesville. That subdivision continues to Clifton Forge, VA and a connection with the Alleghany Subdivision westward. Train operations on the Piedmont Subdivision are under Direct Traffic Control (DTC), timetable and special instructions, as controlled by a dispatcher in Jacksonville, Florida, are attached as Exhibits I & J.

Traffic amounts to approximately 9 million gross tons, consisting primarily of empty westbound hopper trains, a few local freight trains and occasional grain trains. There are no passenger trains, but placarded hazardous material is handled, principally liquified petroleum gas. The line crosses CSX's RF&P Subdivision (a major north-south route which carries high tonnages and several Amtrak trains each way daily at high speeds) at Doswell, Virginia (milepost CA111.8).

RECOMMENDATION

CSX engineering managers, up to and including at least the assistant chief engineer, are fully aware of the extremely poor tie condition on the Piedmont Subdivision, and have been for at least several years. In spite of that knowledge, and the fact that the FRA has documented hundreds of non-complying tie conditions, no reasonable effort has been made to bring those conditions into compliance. For example, in 2001 the subdivision was initially scheduled to receive 22,000 ties, but that was cancelled. About 2,100 of those ties were actually unloaded along the right of way before the program was cancelled, and are still lying there.

Although CSX has subsequently responded to our inspections by inserting one or two ties at each of the locations identified by the GRMS car, this only amounts to an average of about 22 ties per mile, or about 0.7 percent of the total number of ties. Based on our visual observations of the physical tie conditions, we have determined that in order to approach full compliance, a renewal rate of at least 1000 ties per mile on average, or 31.0 percent of the total, would be necessary. That would amount to about 75,000 crossties (or more) instead of the approximately 1,200 to 1,600 crossties actually being inserted.

Based on the above, plus the overwhelming evidence of prior knowledge, the large number of locations (785) identified by the GRMS car as potential wide gage spots, the lack of any meaningful plans or attempts to address the extremely poor tie conditions which extend over the entire 75 miles, and the fact that placarded hazardous materials are regularly handled, we are requesting that all 24 violation counts be prosecuted, at the face value figure of \$5,000 per count, for a total of \$120,000.



LIST OF ATTACHMENTS

1. Exhibit A FRA Form 6180.96 Reports KIM # 46, # 49, # 51, # 53 & # 55
2. Exhibit B FRA Form 6080.96 Reports KIM # 47, # 48, # 50, # 52, # 54, # 58 & 60.
3. Exhibit C CSX Transportation, Summery Report of Tie Defects Noted on the Piedmont Subdivision, 2000 through February 14, 2002.
4. Exhibit D FRA Form 6180.96 Reports for Year January 2001, through February 14, 2002

Year 2001:
KIM # 15, # 16, #17 # 23, #98, #100, #101, # 102, # 103, #104, # 105, # 106, # 108, #109, #110, #111 & #112, ACL # 37, #38, # 39, #40, # 42 & #43.

Year 2002:
KIM # 12, # 13, # 15, # 16, # 17, & #21.
5. Exhibit E Photographs Representative of Conditions Found
6. Exhibit F CSX Transportation, Notice of Intent to Implement Gage Restraint Measurement System.
7. Exhibit G 2002 TSC Schedule
8. Exhibit H Piedmont GRMS Report Level 1 & 2
9. Exhibit I Page 49-50 of CSX Transportation Timetable # 1, effective January 1, 2000.
10. Exhibit J Special Instructions (Virginia Dist. Bulletins, General Bulletin #501 Page 9 of 15)
11. Exhibit K Piedmont Subdivision Track Charts