

To: U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

From: David F. Cook
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BLET member

Re: Testimony before this Committee on October 25, 2007 regarding “The Impact of Railroad Injury, Accident, and Discipline Policies on the Safety of American Railroads”

I would like to thank the members for this opportunity to state facts regarding the situation I faced before and after my injury while at work on CSX Railroad in January 2006.

The Seaboard Coast Line Railroad Company employed me in May 1970 when I was 18 years old as a Locomotive Fireman and I was promoted to Engineer position in January 1972. I remained there over 36 years through many mergers until September 2006 on the same property known as CSX. Over those years, I held several positions in union representation for the United Transportation Union thru 1992 and in 1993 I joined the BLE where I assisted members of both organizations with grievances and safety related issues until Sept. 2006.

During 2005 I handled along with the local union Officers a complaint about an unsafe work condition relating to daily, extended overtime, which resulted in employee fatigue. Our Railroad Division sent down an assessment team and made job changes in November 2005, which addressed the long working hours. I was the Senior Engineer in our near 100-man Central Florida terminal at Sanford-Orlando area and occupied one of the newly created 10-hour 5-day jobs. In latter December 2005, I was told by a CSX manager with 5 years experience whom I had helped train, that “if I couldn’t work 12 hours EVERY DAY, that CSX would pull me out of service to find out why I couldn’t work long days”. I asked, “was this a threat”, but received no response. I gave this Officer copies of the two working agreements in effect since 1975, of which he wasn’t aware of, which showed this forced overtime was not a work requirement.

On Jan. 12, 2006, after working over 10 hours I told the Officer I was tired and felt unsafe since the Locomotive Engineer is the sole operator of the locomotives. He told me to leave and when I returned the next morning at the assigned work time I was ordered to his office and informed that I had FAILED three operational rule tests the workday before, allegedly occurring at the same time he ordered me to leave. I objected and was not aware of any personal test failures since 1993, which started a bad chain of events. I then filed a CSX Code of Ethics violation on 1/28/06 against this supervisor for falsifying my personal employment records, which was dismissed by CSX without any investigation of the facts.

On January 20, 2006 after working 10 hours 30 minutes while an assigned relief crew present and available to take over, the same CSX Officer deliberately held me on extended overtime. I sustained a back and neck injury during a coupling at Taft yard just 7 miles south of Orlando and tried to continue to work with the pain, but after 15 minutes later my back pain was too severe, and I had to report my only career injury after over 12,000 working days. I was taken to the local hospital, but after waiting for 9 hours in a wheelchair and receiving no medical help, I opted to go home after being on duty for more than 21 hours to take some Aleve and lie down. I was on my off days the next two days; then I was ordered by a CSX Officer to take 1/23/06 off and attend a Safety seminar at Taft. I did and told the Officer that I needed a medical check of my condition, which definitely showed an upper back injury and was prescribed three meds for pain and inflammation. This made my injury reportable to the Federal Railroad Administration (FRA). The doctor asked if I wanted to have some time off to give my injury some rest but I opted to try working. The doctor cautioned me against climbing on/off of locomotives, which is part of my work requirements.

Starting at 1110 hours on 1/24/06 my crew and I were attacked by test teams ordered to Taft by the same CSX Officer who took me to have a medical checkup/Safety seminar as a result my personal injury. CSX has claimed that they sent those test teams to determine if the employees were acting in a safe manner. These teams were ordered to administer increased operational rules tests far in excess of the normal 3-5 per employee per month. The FRA regulations require the Railroad Officers to administer normal tests for educational purposes not meant to be disciplinary to improve our rules compliance. However, this was not the purpose of the tests on me. In those three days I was administered 13 tests, yet only 11 were noted. Of these 11, there were two alleged Failures and none of my crewmembers were failed, although they would have failed some of the tests as well. On January 31, 2006, the same Officer who handled my injury, charged me with another minor test Failure by not fully stopping at the bottom locomotive step before dismounting. I had two compliances at the same test time, yet neither of the compliances was recorded at all. CSX was interested in building up a record of rule failures on me.

As a result of five incidents in our area from 12/26/05 thru my 1/20/06 injury involving some 5-8 employees CSX increased FRA operational tests were ordered by CSX Officers from 1/2 through 2/26/07 for a total of 56 days and 457 train and engine employee tests. There were 19 failures by 13 employees. I had seven and 12 others had singular failures. From 1/12/07 thru 2/16/07 (35 days) there 334 total tests with 328 compliances and I alone had ALL six failures. CSX administered these additional operational tests as a cover up of their goal to terminate me. I was the most senior Engineer and very active in handling union grievances/complaints affecting our work location. Terminating me would send a message to other CSX employees not to become injured or not to report injuries in the future.

I was ordered to four separate investigations based on alleged "operational tests" failures

which started with my injury and went thru 1/31/06. No other Failed employees were called to any investigations. In these investigations, the Railroad CSX Officers are the prosecutor, judge, and jury. In addition in the latter three investigations, my crewmembers were not charged but were called as Carrier character witnesses even though in several cases they would have to be guilty of rule violations during the same test times as me (assuming that there were actually violations). Witnesses called by my union representative were refused to be made available by CSX "as having no testimony pertinent to the investigation". I was administered 85 days of unpaid disciplinary suspensions starting 3/1/06. This was more discipline than our combined employee terminal had in over a year and none of these had sustained an injury at work. I was the only employee at this terminal to incur a work related injury from 1/06 until latter 8/06.

In an 18 page letter dated February 18, 2006, I wrote CSX President Michael Ward about these harassing situations and copied several CSX execs, the FRA, DOT, DOL, OSHA, EEOC, the US Dept. of Justice, and 3 local US Congresspersons. CSX replied in latter March '06 and stated that they would investigate each of my points including harassment, employment record falsification, etc. and advise me of their findings. I am still waiting on the first reply. My four discipline cases were appealed by the BLET and we are awaiting hearings on each. My regional union Officer and one of the Congresspersons staff advised me that these actions by CSX towards an injured and/or medically afflicted employee were unethical and unlawful. They suggested that I needed legal advice from a Labor attorney.

In early 7/06 I filed an extensive Federal lawsuit against CSX and CSX Transportation based on discrimination, harassment, and intimidation of me because I was injured while working for these companies. In early August '06 both the UTU and BLET Presidents wrote a joint letter to CSX President Ward about several incidents on their property whereby acts had occurred to injured employees where CSX used written terms of the "CSX Action Plan". This plan carefully directs CSX Officers at each terminal (10 or more on most Divisions) to name 5 BAD ACTORS in each location. Bigger terminals may have multiple lists based on their numbers of employees. In most cases, the employees included on these lists most likely are not notified of their presence on such lists; however Officers are to check on the whereabouts each day of such employees. They are to be targeted, stalked, and followed very closely to find ways to terminate such actors. In early '06 most employees on the Jacksonville Division, where I worked, were specifically warned in face-to-face rule meetings by CSX Officers that, "if you get hurt, we will fire you".

During my suspensions I was being checked regularly by a chiropractor, orthopedic doctors, attending physical therapy sessions, having two MRI's and a nerve test in an attempt to find my pain source. It was discovered that I had 4 bulging discs (2 in upper back/two in lower neck) causing my constant pain. After 9/7/06 I could not work any longer based on my inability to climb, sit extended times on the loco, or stand the whole body vibrations present while using locomotives to perform yard switching. I consulted my doctors and found that only time would tell if my conditions would improve so I filed

for full Railroad Retirement Disability which was granted 3/1/07. The doctors now say they are not optimistic that I will ever improve.

In September '06 I was served with a fifth investigation notice based on several more alleged rules violations using my crew members as witnesses. This was a FINAL step to send me to termination from my employment after I was injured. I was not able to return to neither work nor attend the investigation and after several attempts by CSX to force the hearing, it was decided that it was postponed until I was ever able to return to work. This disappointing treatment by my employer was certainly a mental strain as not only was I faced with my disability and pain, but CSX was now trying paint a picture of me from an excellent, long term employee (who trained many new hires with CSX) to an employee not worthy of any employment. I started in 9/06 with psychiatric counseling and treatments, which continue to date to be able to cope with such treatment.

CSX has been extremely interested in winning the annual Harriman National Safety award and seem to always be beat out by the Norfolk Southern for years. It is common knowledge by CSX employees that Tony Ingram was hired, as CSX EVP & Chief Operating Officer, from the NS a few years ago to show how their record always stayed out front. I believe that the CSX Action Plan and their clear actions against me after Mr. Ingram was hired by CSX, based on written Officer instructions and verbal threats, show that CSX will terminate any employee who reports an injury, using false failure FRA test records or any other harassing and/or discriminating tactics they can manipulate. I and the many other US Railroad workers hope that this hearing and future legislation based on the clear facts you are presented show that we are handled by bullies in our workplace as Officers in a transparent effort to intimidate employees from reporting injuries or face termination. The US workers deserve to be treated with dignity and respect in their workplace and this has not been happening. US Railroad companies are guilty as charged based on the clear facts. While the US Railroads should continue to educate employees to improve safety, intimidating employees through threats and false FRA test failures is an unacceptable means of creating misleading and faulty safety records.

Thank you,

David F. Cook
Long-term US Railroad Engineer