Insufficient Manpower and Unsafe Working Conditions In the Railroad Industry

I am a retired switchman, trainman, conductor, and I have also spent some time as a union officer. I am not writing this on behalf of any labor organization. The opinions contained herein are my own as are any errors. The following are some of my thoughts. I hope that you find them useful.

History is important. Here is a highly condensed, labor point of view version. Early railroad workers were considered to be working in one of the most, if not the most, dangerous industry in the country. While there were no formal point systems to evaluate people for hire at that time, there were more direct approaches. For example, people who showed up and wanted to work were asked to raise their hands. If they had missing fingers, they were given preference for work. Absent digits meant that they were experienced. There was no right to a safe work place, and there was no liability to the carrier for not providing one.

It wasn't long before people working in these conditions formed benevolent societies or associations. They paid into funds and hoped to receive a benefit if they were injured. These early groups evolved into the early RR unions. They all literally grew out of the blood of their membership, and they all had a fundamental focus based in large part on safety.

As time went on, railroad companies went from being the most dangerous to being the largest employers in the country, and the unions representing their employees became some of the largest and most powerful. Many battles took place along the way. On one side the leaders of a railroad company were routinely characterized as "Robber Barons." Corporations were defined as, "Soulless entities created by man for the single purpose of making a profit." Current legal rulings not withstanding, that's still a good way to view them. The carriers never improved safety or anything else out of the goodness of their hearts. Improvements were always profit driven or the result of labor struggles, regulation, and potential liability. That was true then, and it is true now. Corporations are profit driven, pure and simple.

On the other side labor organizations typically characterized themselves as fighting for safe working conditions for their membership and for improved wages, rules, and benefits. Obviously safety conditions can impact the public as well. For the most part, I think that this is a fair assessment. However, it must be said that we from the labor organizations have spent a lot of time and energy fighting amongst ourselves. As a retired President of the old SUNA Switchmen's organization told me when I first started working as a union representative at the general committee level, "This is a business of conflict, and you will find yourself fighting with your own as much as with the carriers." That proved to be true, but for purposes of this conversation, there is only one thing to be noted. When it came to safety, we all seemed to be able to work together.

Conflicts between the carriers and the labor organizations caused the organizations to fight different battles on different fronts. The first type involved the negotiation and enforcement of contracts. General committees perform this duty and have the responsibility for protecting a member's seniority rights, including protection from wrongful termination. Contract, discipline, and medical claims are all passed up to and resolved at general committee level.

A second type of battle involved creating and protecting laws that benefit railroad workers. State and National Legislative Departments handle this by lobbying and supporting politicians friendly to railroad labor. Laws such as the Federal Employers Liability Act, the Boiler Inspection Act, and the Safety Appliance Act were put in place by these state and national legislative groups. Those laws essentially established an employee's right to a safe work place and created substantial liability for the carriers if that did not happen. Liability established a definite incentive for carriers to become a safer place in which to work.

So much for history. The current problem is that these protections no longer seem to be working for employees denied the right to take time off when they do not feel it is safe to work. Potential liability is not working to prevent this unsafe condition, and the carriers appear to be willfully ignoring it. Maybe this will change if a major accident happens involving crewmembers who are impaired by sleep deprivation. The effects of sleep depraivation are well known. People working long hours or continuous, irregular shifts without adequate relief or rest are impaired. It is also something that shortens life spans. I don't think anyone wants to wait for that kind of accident to happen. This problem should be addressed by passing strong laws and/or regulations. These should require the carriers to maintain a sufficient number of employees to meet the needs of the service including reasonable rights to layoff. I don't know if the labor organizations have the political power to do something like that anymore. The reality is that they appear to be attempting to address the problem by obtaining paid sick leave. I do not think that even begins to be an adequate solution to the problem.

Given this situation I need to talk about bargaining in general and collective bargaining in the RR industry. There are two styles of bargaining: Confrontational or directive bargaining and cooperative "getting to yes" style bargaining. Directive bargaining occurs when the parties can't or won't alter their positions through negotiations or compromise to reach an agreement. At some point a contest of strength occurs. In industrial settings, that means there is either a strike or a lockout. However, that does not apply in the RR industry. Because our industry is national in scale and because disputes can potentially affect both the economy and national security, the process is regulated and governed by the Railway Labor Act. There are major and minor disputes, cooling off periods, presidential study commissions, and findings or recommendations of those study commissions. All these are designed to keep disruption out of the industry, and they serve to eventually mandate an agreement if one cannot be reached voluntarily. There are plenty of opportunities to reach agreement along the way, but if an agreement

cannot be reached between the parties, someone else will ultimately make it happen for them, and they will then be responsible for implementing it.

This all brings us to the immediate problem. There are an insufficient number of employees to meet the needs of the service. Let's take a quick look at what this problem is and what it isn't. With respect to what the problem is, there is an unacceptable and unsafe working condition caused by a shortage of manpower in the operating departments on Class 1 railroads. Simply put, employees cannot get adequate rest or relief, and they are being required to work when they do not feel it is safe to do so. I can recognize that it would have been no easy task to manage manpower needs during the last two to three years. However, the responsibility for managing manpower rests solely with the carriers. That is what management is paid to do, and operating employees have absolutely no part in it. This whole problem has been caused by a management failure.

The manpower problem is not a problem caused by employees seeking time off to get rest. It is not caused by excessive absenteeism. Most importantly, the problem is not correctable through disciplinary policies of any type. In fact, current discipline and attendance policies, including those that are based on quantitative comparisons and points, etc., are contributing to the problem.

Is the problem a serious one? Yes, and for more reasons than just employee safety. The Union Pacific was actually "embargoing" customers due in large part to the acute manpower shortage they created. As noted above, the Railway Labor Act was put into place because of concerns over the national economy and national security. By the same token, there should be equal concern over carrier induced blockages and slow downs. One can only imagine what the consequences would have been if the current blockages and slow downs had really been caused by labor.

The carrier naturally does not want to accept any responsibility for the situation they have created, and they are actively trying to avoid it. As I was writing this, the Union Pacific addressed the Surface Transportation Board. Some media reports were critical of a power point presentation that the carrier made about manpower. The data presented was characterized as not providing the information that the carrier was asked for, being incomplete, and being potentially inaccurate in that it did not match data from outside sources that it should have. That a carrier would misrepresent or manipulate data to serve its own purposes is nothing new under the sun. I can remember my first visit to a carrier's headquarters and meeting various labor relations officers with whom I'd be working. One of them, with whom I developed a good working relationship, had a book on his shelf by Darrall Huff with the title, <u>How to Lie with Statistics</u>. When I commented on his choice of reading material, he smiled and said something along the lines of, "Get used to it. It's part of the water you're swimming in." Having said that, it's still disturbing to see this type of tactic playing out before the STB.

On December 12, 2022, I was forwarded an article, "CSX and UP adopt kinder, gentler attendance policies for rail labor – Trains." The article was written by Bill Stephens on December 8, 2022, and it describes new policies on the UP and CSX. Some items in this article give me concern. Before addressing that, some things need to be explained. The carrier has the absolute authority to implement or change any discipline policies or any attendance policies that it wants to. That can be done without any input or participation from labor. Again, they can arbitrarily change, alter, or cancel such policies at will. They do not need labor's permission or participation to do the right thing. Reciprocally, the labor organizations have a fundamental responsibility to protect a member's seniority rights and to protect their members from wrongful dismissal. Law and precedents governing the process for disciplining or dismissing employees are roughly as follows:

- Discipline and medical disputes are handled as minor disputes under the Railway Labor Act.
- Seniority rights are considered as property rights and cannot be taken way without due process.
- No employee will be disciplined without a full, fair, and impartial investigation.
- The purpose of an investigation is to fully develop all of the facts, both for and against an accused employee.

These all provide powerful protection against wrongful termination, and anything that undercuts them is dangerous. Again, organizations have the obligation to protect their members from discipline, especially wrongful termination. They should not be doing anything that makes it easier for the carrier to put their members in that status.

In disciplinary cases involving absenteeism, safety based defensive arguments are usually the first to be made. Arguments are put forth to the effect that an employee does not need permission to be sick, or that an employee laying off sick is taking the safe course of action, etc. The carriers have the burden of proof to establish justification for any discipline assessed. The carriers also have potential liability for time lost by any employee being held out of service. Additionally, the carriers also have other means besides discipline to address absenteeism. They can simply target employees who they view to be laying off sick excessively and remove them from service pending a medical evaluation. The carrier then takes the position that its actions are based on its obligation to provide a safe work place for all concerned, including any employee being withheld for service. Such employees then have the burden of proof to show that they are fit for service, and they are required to provide medical documentation to support that. The only liability that the carrier has is for any time lost due to excessive delay in the handling and evaluation of the case. These are difficult cases to defend against. The point of this is to demonstrate that the carrier has adequate tools to deal with any absenteeism problem that it may have. But again, excessive absenteeism is not the cause of the problem. The

carrier's failure to maintain a sufficient number of employees to meet the needs of the service is the problem.

To return to the article referenced above, when I read the "kinder, gentler" language in the title, it raised all kinds of red flags for me. When I first started to work as a general committee officer, the same SUNA mentor who told me that I was entering a business of conflict also told me something else, "The carrier's purpose is your demise. **NEVER** forget that." Accordingly, I believe that any union organization or officer, if asked to voluntarily participate in developing any carrier policy, and particularly those involving discipline or attendance, should ask themselves a series of questions. For example: What is the carrier's real reason for asking the organization to participate when they do not have to? Are they trying to use the organization's credibility for their own purposes? Are they trying to discredit or undermine the organization's credibility with its members? Are they trying to do both? The list can go on and on. Remember the previous quote, "the carrier's purpose is your demise."

The fourth paragraph of the article referenced above opens in part with a quote from a CSX spokesman, "The policy was developed in large part through discussions with labor representatives …" This is at least a PR score for the carriers. It implies that there was participation, meaningful involvement, and discussions that took place between the parties, and it also implies that some type of tacit agreement was reached between the parties regarding all of the policy's elements. One should wonder how all of that will be used against labor.

The fifth paragraph quotes the same CSX spokesman as stating, "The new policy will also be non-disciplinary and non-punitive, and CSX will no longer subject employees to formal investigations, hearings, or disciplinary suspensions." This is another PR score for the CSX. It implies that there is also at least a tacit agreement permitting the carrier to control data and administer points and point thresholds. Also, it should be remembered that formal investigations, hearings, or disciplinary suspensions are in place to protect an employee from wrongful discipline and permanent dismissal. Again, insufficient manpower is at the root of this problem, and once again, one has to wonder how all of this will be used against labor and if it will ultimately undercut a labor organization's ability to defend its members against wrongful termination.

The sixth paragraph of the article reads as follows: "The Union Pacific's attendance policy for train, yard, and engine employees was updated on Oct.15 so that the railroad can 'attract, hire, and retain talent', the railroad said in a Dec.2 regulatory filing." It's obvious that the carrier needs to do something, but what concerns me here is reference to these comments being made in the context of a regulatory filing. It's probably a safe bet that these regulatory filings concerned, at least in part, the current manpower shortage. I think that the use of these new attendance policies in a regulatory setting reveals the way in which they are being used against labor organizations. It's probably another a safe bet that the carrier's "kinder, gentler"

attendance policies, developed with supposedly meaningful participation and input from, and discussions with labor organizations, are being used by the carriers as exhibits to support the positions that they are taking to avoid serious regulation in regards to maintaining sufficient manpower to meet the needs of the service, including the right to reasonable lay offs. The carrier is essentially using these policies and the organization's credibility to further their own goals. I can't help but wonder if those labor people participating with the carrier even saw it coming or if they have a clue that it has happened. However well intentioned their participation, they have been duped by the carrier at the expense of their membership. Hopefully we can still end up with regulations that require the carrier to maintain a number of employees sufficient to meet the needs of the service, including reasonable time off.

The article ends with a series of bullet points indicating various time frames, credits, and scores. It's all controlled and driven by the carriers. As far as the numbers go, the whole thing seems unreasonable, inadequate and, draconian. In the end, I don't think that it makes any difference. These policies are all discretionary for the carrier. As I've said previously, they can be altered, changed, or eliminated totally at the carrier's discretion or whim. Be ready for a credibility hit when that comes. But to come back to the numbers for a second, modern management is data driven, and computers magnify it. They can manipulate that data to their own ends. If they manipulate data as they apparently have done before the Surface Transportation Board, just think what they can do with attendance and discipline policies. I think that what the carriers would like most is to be able to treat their employees as disposable units of labor. Unfortunately for them, employees are still human beings, and they are organized into labor unions.

Separately, I recently read another article about two Class 1 railroads initiating a new program to give formerly incarcerated people an opportunity to work on those railroads. I do not know what kinds of jobs were involved, and I have no problems with redemption or second chances. However, I could not help thinking that it was not that long ago that the carriers preferred applicants for positions in the operating department to have some level of college education. Also I could not help thinking that working conditions on the railroads have now deteriorated to a point where incarceration could be considered as good preparation to work in the railroad industry. Who knows? Unless things improve, previous incarceration might end up being treated something like missing fingers were treated in the past.

I want to try and end all this on a positive note. My wife Marian normally proofreads my writing. As we went through this process, I was amazed at the level of aggravation she expressed over what she termed "the call" that disrupted any plans she had made. That was almost 50 years ago. At that time there was sufficient manpower to permit reasonable layoffs. There was no problem laying off for either personal business or sickness. And I wasn't being abused. I was just "sharpshooting" the extra board. Working for the railroad puts more stress on families than you might think, even in good times. I have a hard time imagining what it must be like for current working families trying to survive in this time of

insufficient manpower and unsafe working conditions. It's late in the process, but asking your spouse and/or other family members to write a letter to your local representatives about how the current situation has affected them could still be useful. This is an issue that cuts across party lines. Railroad families in all political parties are suffering because of it. Who knows? A representative that is not normally friendly to labor might help you, at least on this issue. It will at least give these representatives something to work with. Ask those who writes a letter to be polite and respectful, but also tell them not to be afraid to be energetic in their communication. Let it rip.

Keep up the good fight, and good luck. Happy Holidays,

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