



Transportation Trades Department, AFL-CIO

**WRITTEN STATEMENT OF
GREG REGAN, PRESIDENT
TRANSPORTATION TRADES DEPARTMENT, AFL-CIO**

**BEFORE THE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS**

“Getting Back on Track: Exploring Rail Supply Chain Resilience and Challenges”

May 11, 2023

Introduction

On behalf of the Transportation Trades Department, AFL-CIO (TTD), and our 37 affiliated unions, I thank Chairman Nehls and Ranking Member Payne for inviting me to testify before the Committee today on the current state of our rail supply chain. By way of background, among the many unions who affiliate with TTD, we proudly represent the totality of rail labor, whose members work on the front lines across the entire passenger and freight rail industry. That includes the rail workers directly engaged in freight transportation at railroads and ports who see first-hand the effects of a broken freight rail industry mired by self-inflicted service, safety, and staffing issues.

Freight rail is of vital importance to the U.S. economy, accounting for around 40 percent of long-distance ton-miles and hauling one-third of U.S. exports.¹ When freight shipping demand soared during the pandemic, the freight rail network’s service, staffing, and safety issues severely hamstrung the supply chain. The Class I railroads missed a massive economic opportunity to grow the system and become more competitive with other freight industries. By working collaboratively with government – and yes, the unions that represent their workers – to reform their current operating model, Class I railroads can improve service and safety; move more freight in a greener, more efficient way; and improve U.S. economic competitiveness. The status quo, however, is unsustainable.

Class I Freight Railroads Have Spent Years Undermining the Supply Chain

The Class I railroads have strayed from the traditional operating model of a service industry that responds to the demands and needs of its customers. Instead, the Class I railroads began pursuing an operating model known as Precision Scheduled Railroading (PSR) in 2015. Fundamentally, PSR seeks to generate the highest possible profits through the lowest possible operating ratios. To achieve these profits, railroads have stripped rail networks of their physical and human capital.

¹ <https://www.aar.org/wp-content/uploads/2021/03/AAR-Integrated-Rail-Network-Fact-Sheet.pdf>

Since 2015, the Class I railroads have reduced their total workforce by 30 percent and slashed their private investments in physical infrastructure, like rail yards, and sold off or sidelined essential equipment such as rail cars and locomotives. Collectively, the four largest freight railroads in the United States – BNSF, Union Pacific (UP), Norfolk Southern (NS), and CSX – have slashed \$32 billion in private capital expenditures since 2015, not accounting for inflation.

Due to these cuts, the railroads do not have the necessary equipment to provide adequate rail service. For example, since 2015, UP has reduced its rail locomotive fleet by 11% and the number of freight cars by 21%; it only managed to keep 62% of its remaining locomotives and 80% of its freight cars in service in 2021.²

In January 2023, BNSF had 1,000 locomotives that were sidelined waiting for full inspections and BNSF stated that they "do not have the necessary manpower and shop capacity available on the property to address the unusually high out of service count and backlog of scheduled maintenance events."³ After they closed maintenance shops and decreased or furloughed the maintenance workforce. There are now much fewer locomotives to serve shippers and the remaining locomotives wear down more quickly. That has led to equipment availability problems for BNSF and its shippers.

The rail industry's decline in their private capital investment is in stark contrast to the record \$66 billion federal investment the Infrastructure Investment and Jobs Act (IIJA) provides for passenger and freight rail. In addition, the bill invests \$2.2 billion in the Port Infrastructure Development Program, offering a lifeline to the nearly half of U.S. ports that state that better rail access could increase throughput capacity by more than 25 percent.⁴

As policymakers and the private sector consider strategies to expedite the flow of goods at major ports, it is essential that federal funds are maximized to become an economic force multiplier throughout the supply chain.

These federal investments are essentially designed to increase economic opportunities for the railroads; however, the railroads must also do their part to seize these opportunities for their own good and the good of the country by making an equal investment in their own infrastructure, safety operations, and service levels.

Freight Rail Service is a Supply Chain Challenge

Freight rail service issues severely hamstrung the supply chain during the pandemic. Throughout the pandemic, the railroads imposed service embargoes, limiting the freight a railroad accepts from a customer.⁵ These service embargoes led to massive backlogs of freight waiting to move by rail, including ships and containers at the Ports of Los Angeles and Long Beach, among others.

² [UP: Annual Reports](#)

³ [February 2023 Rail Unions Lawsuit against BNSF](#). Accessed at <https://www.businesswire.com/news/home/20230307005934/en/IBEW-IAM-SMART-MD-Unions-File-Outsourcing-Suit-Against-BNSF-Railway> (see items 49 and 54 on pages 11 and 12 respectively)

⁴ <https://aapa.files.cms-plus.com/PDFs/State%20of%20Freight%20III.pdf>

⁵ <https://www.bnsf.com/news-media/customer-notifications/notification.page?notId=limited-embargo-of-certain-shipments-destined-for-california> and [Union Pacific asks customers to meter traffic or face embargoes - Trains](#)

The Surface Transportation Board (STB), the independent federal agency that serves as the economic regulator of the freight rail industry, has taken unprecedented steps in recent years to monitor and direct the Class I railroads to improve their service. Last year, the STB held a series of watershed hearings on the rail industry's service issues. On May 1, 2022, the STB ordered the four biggest Class I railroads – BNSF Railway, Union Pacific, CSX, and Norfolk Southern – to submit service recovery plans. One year later, rail service has not meaningfully improved. In fact, on the anniversary of its May 1st order, the Board unanimously issued a decision finding that at least three of the four railroads (BNSF, Norfolk Southern, Union Pacific) were not complying with the service plans and targets that the railroads *themselves* submitted to the STB detailing how they were going to improve service.

The STB's May 1 decision was bipartisan, with all three Democratic members and two Republican members unanimously agreeing that freight railroads are not providing adequate service. With a few exceptions, the STB's actions over the last year have been supported by all five members, demonstrating that the state of rail service is not a partisan debate. Democrats and Republicans both believe the Class I railroads are performing quite poorly.

Likewise, members of Congress from both parties and both Chambers have repeatedly raised how the railroads' poor service is negatively impacting their constituents and a wide array of businesses in practically every sector of the American economy, including agriculture, energy, mining, and chemicals.⁶

Labor unions, federal regulators, and Members of Congress are not alone in calling attention to poor rail service. The shippers who rely on freight rail service are also sounding the alarm. In fact, rail customers have sought “emergency service orders” from the STB to address immediate and acute service problems. The threshold to obtain an emergency service order is quite high:

“Emergency service orders are designed to preserve rail service where there has been a substantial rail service issue or failure that requires immediate relief. Under 49 U.S.C. 11123(a), the Board may issue an emergency service order where there exists ‘an emergency situation of such magnitude as to have substantial adverse effects on shippers, or on rail service in a region of the United States, or that a rail carrier . . . cannot transport the traffic offered to it in a manner that properly serves the public’”.⁷

In December 2022, the STB held an emergency hearing involving Union Pacific and one of its customers, Foster Farms, because Union Pacific was not providing adequate rail service to deliver the corn feed Foster Farms needs to feed its chickens and prevent millions of them from dying.⁸ It took two emergency service orders from the STB to improve the situation. Foster Farms was not the only rail customer who suffered from poor rail service.

⁶ See [Finstad Leads Letter Urging Action on Union Pacific Rail Service Delay - Press Releases - United States Congressman Brad Finstad \(house.gov\)](https://www.finstad.house.gov/news/press-releases/sens-cramer-baldwin-colleagues-press-surface-transportation-board-on-rail-disruptions-urge-reliable-service-for-american-industries-shippers); <https://www.cramer.senate.gov/news/press-releases/sens-cramer-baldwin-colleagues-press-surface-transportation-board-on-rail-disruptions-urge-reliable-service-for-american-industries-shippers>; [Rep. Ralph Norman & Rep. Jim Costa Lead Bipartisan Effort Concerning Deficient Rail Service's Role in Fertilizer, Grain and Feed Shortage Affecting American Farmers | U.S. Representative Ralph Norman \(house.gov\)](https://www.norman.house.gov/news/press-releases/rep-norman-rep-costa-lead-bipartisan-effort-concerning-deficient-rail-service-s-role-in-fertilizer-grain-and-feed-shortage-affecting-american-farmers)

⁷<https://www.federalregister.gov/documents/2022/05/02/2022-09005/regulations-for-expedited-relief-for-service-emergencies> (page 25609, quoting 49 U.S.C. 11123(a))

⁸<https://www.wsj.com/articles/poultry-farm-says-millions-of-chickens-could-starve-from-rail-delays-11673054052>

In 2022, UP had more than 1,000 service embargoes, a ten-fold increase from the 27 service embargoes it had in 2017.⁹ 98 percent of the service embargoes in 2022 were attributed to congestion on UP's rail network, which is something entirely within the railroad's control.¹⁰

Similar to Foster Farms, Navajo Transitional Energy Company (NTEC), which is part of the Navajo Nation, on April 14th of this year filed for an emergency service order from the STB alleging that BNSF was not providing adequate service to NTEC's coal mine in Wyoming and BNSF's lack of service is putting NTEC's business at risk.¹¹ The STB heard oral arguments in the case on May 10th and should issue a decision soon.¹²

The bottom line is that railroads are failing their customers by not providing the level of service their customers need and that is required by the federal "common carrier" law. And the railroad CEOs admit that.¹³

Freight Rail Safety is a Supply Chain Challenge

This hearing is not the first venue where freight rail's intertwined service and safety problems are being examined. On February 1 of this year, I testified before the full Committee about supply chain challenges – a mere two days before the Norfolk Southern derailment in East Palestine, Ohio that traumatized a community and drew national attention to safety deficiencies in the freight rail network. The February 3rd East Palestine derailment tragically demonstrated a truth that rail labor unions have been vocal about for years: the freight rail industry has a fundamental disregard for the safety of workers and the general public.

Unfortunately, the East Palestine derailment is not an anomaly. The wide-reaching breadth of safety failures in the freight rail industry contributes to more than 1,000 freight rail derailments a year – nearly three a day. And contrary to the railroads' rhetoric, the industry's safety record is worsening, not improving. In fact, according to data from the Federal Railroad Administration, the accident and incident rate has gotten worse over the last decade at the four biggest Class I railroads: BNSF Railway, Union Pacific, CSX, and Norfolk Southern.¹⁴ In rail yards, the accident and incident rate almost tripled for Norfolk Southern.¹⁵

Safety failures are pushing the system to the breaking point and this breakdown is negatively affecting shippers. For example, the railroads have cut back on capital investments in their infrastructure. That means they haven't lengthened rail sidings to accommodate the length of trains that they are running. The Association of American Railroads' (AAR) own fact sheet on train length notes that the railroads are running trains up to 14,000 feet, a 40 percent increase from

⁹ See the November 22nd, 2022 Notice issued by the Surface Transportation Board entitled: "Oversight Hearing Pertaining to Union Pacific Railroad Company Embargoes", Docket No. EP 772. Accessed at <https://www.stb.gov/proceedings-actions/search-stb-records/>.

¹⁰ Ibid 9

¹¹ <https://www.railwayage.com/regulatory/stbs-latest-service-case-ntec-v-bnsf/>

¹² Surface Transportation Board May 5th Decision, Docket No. NOR 42178: Navajo Transitional Energy Company, LLC-Ex Parte Petition for Emergency Service Order. Accessible at <https://www.stb.gov/proceedings-actions/decisions/>

¹³ "I was a customer for a couple decades. Our customers don't really love us." New CSX CEO Joe Hinrichs, September 26th 2022. See <https://www.trains.com/trn/news-reviews/news-wire/new-csx-ceo-pledges-to-improve-service-and-company-culture/>

¹⁴ Data accessible here: <https://safetydata.fra.dot.gov/officeofsafety/publicsite/query/TenYearAccidentIncidentOverview.aspx>

¹⁵ Ibid 14

2010.¹⁶ As a result, when trains break down, they get stuck on the main line. That causes congestion and backups throughout the entire system. So even if a shipper doesn't have products on the train that broke down, they are affected.

Despite dismal rail service and safety, rail corporations are financially rewarding their shareholders. The Class I railroads have achieved record profits – more than \$146 billion in the last decade. Since 2015, the Class I railroads have collectively spent more than \$165 billion to buy back their own stock, which is at least \$46 billion more than they invested in safety. The priority of the rail companies is clear: returning as much money to their shareholders as possible, not running a safe rail system. That's why TTD [launched a public safety campaign](#) demanding that rail corporations halt all stock buybacks until they properly invest in safety.

Freight Rail Staffing is a Supply Chain Challenge

Between 2015 and 2021, the Class I railroads collectively laid off 45,000 workers, which is the equivalent of 30% of their total workforce. Those layoffs affected every rail craft, from train engineers and conductors, to maintenance of way of employees and signalmen, to the shop-craft employees that inspect, repair, and maintain rail cars.

Labor unions, shippers, and the Class I railroads all agree that the first step to better freight rail service is to hire more workers. It is not physically possible to move the same or greater volume of goods with 30% fewer workers. Unfortunately, contrary to their rhetoric, the railroads have not made much progress in increasing their workforce numbers.

As of March 2023, which is the latest data available from the STB, the total Class I employment level was 120,668 employees.¹⁷ That still remains below pre-pandemic levels and it's also still significantly lower than the pre-PSR high watermark of 174,122 employees in April 2015.¹⁸ Most rail crafts are also below their pre-pandemic levels, with maintenance of equipment and stores employees more than 18% below pre-pandemic levels and train and engine transportation employment levels currently 1.5% below pre-pandemic levels. The one exception is executives and staff assistants, which are 5% above their pre-pandemic levels.¹⁹

On an individual Class I railroad basis, only Canadian Pacific and CSX have gotten back to their pre-pandemic employment levels in March 2020.

Insufficient workforce training also has ramifications for rail safety and service. Over the last several years, NS has reduced the amount of training for new train conductors from 16 weeks to 6 weeks before putting these workers into service because they desperately need more conductors.²⁰ That means these conductors don't have the proper training to do their jobs, which includes identifying and potentially fixing mechanical problems when a train breaks down. The lack of training puts these conductors at risk of death or severe injury, increasing the likelihood of safety incidents. Shippers served by NS are harmed because the increase in safety incidents can lead to further delays in shipments.

¹⁶ <https://www.aar.org/wp-content/uploads/2023/03/AAR-Train-Length-Fact-Sheet.pdf>

¹⁷ Data accessible at <https://www.stb.gov/reports-data/economic-data/employment-data/>

¹⁸ Ibid 17

¹⁹ Ibid 17

²⁰ <https://www.trains.com/trn/news-reviews/news-wire/fra-letter-warns-norfolk-southern-about-conductor-training-safety-deficiencies/>

Solutions

It is going to take action from Congress and federal regulators such as the STB and the Federal Railroad Administration (FRA) to resolve the core staffing, service, and safety issues that threaten not only our country's freight rail supply chain, but our economy as a whole.

Rail labor and shippers are united around many of the solutions here, which has not always been the case.

Strengthen the Common Carrier Obligation

The "common carrier obligation" is a requirement that rail carriers serve a shipper "on reasonable request". It was put into federal law to ensure that the railroads didn't discriminate and refuse service to shippers they didn't want to serve. Right now, the term "reasonable request" is not defined in federal statute and so it is hard to enforce. The Surface Transportation Board has been doing an admirable job trying to get the railroads to improve rail service, but they need more tools to do their job and ensure that the railroads are living up to their common carrier obligation.

Congress should strengthen and better define the existing federal common carrier obligation the railroads have to serve their customers.²¹ Senator Tammy Baldwin introduced legislation last Congress that all rail labor unions and shipper groups from a wide array of industries, including the American Chemistry Council (ACC) endorsed.²² Senator Baldwin's legislation would strengthen and better define the common carrier obligation of the railroads by spelling out what "reasonable request" means and allow the STB to take into consideration items like workforce levels and the availability of equipment when determining whether the railroads are living up to their common carrier obligation.

Similarly, then House T&I Railroad Subcommittee Chairman Donald Payne and House T&I Chairman Peter DeFazio introduced legislation last Congress to reauthorize the STB that would also strengthen and better define the common carrier obligation along with several other important provisions.²³ We urge this Congress to pass similar legislation.

Hire More Workers

The poor working conditions on Class I railroads today are some of the biggest challenges in hiring and keeping workers. TTD's rail unions have reported on the phenomenon of rail employees with upwards of ten or fifteen years of experience resigning from well-paying jobs and giving up stable retirements. Workers face a lack of paid sick leave²⁴, draconian attendance policies²⁵, increased safety issues²⁶, and an inability to get time off for medical appointments that risks workers' health.²⁷

²¹ Codified in Section 11101(a) of title 49, United States Code

²² <https://www.baldwin.senate.gov/news/press-releases/baldwin-introduces-legislation-to-improve-freight-rail-service-for-american-businesses>

²³ <https://www.congress.gov/bill/117th-congress/house-bill/8649/text?s=4&r=1>

²⁴ [For Rail Workers, Anger Persists Over Sick Leave - The New York Times \(nytimes.com\)](https://www.nytimes.com/2019/07/18/us/politics/rail-workers-anger-sick-leave.html)

²⁵ [Railroads' workplace attendance policies at the heart of labor dispute : NPR](https://www.npr.org/2019/07/18/746894191/railroad-workplace-attendance-policies-at-the-heart-of-labor-dispute)

²⁶ <https://www.kansascity.com/news/business/article268941917.html>

²⁷ [In rail strike showdown, death of worker helped stoke anger - The Washington Post](https://www.washingtonpost.com/news/energy-environment/wp/2019/07/18/in-rail-strike-showdown-death-of-worker-helped-stoke-anger/)

The ongoing exodus of highly-skilled and experienced rail workers who have decades of knowledge and the resulting consequences greatly outweighs the limited amount of new hiring the railroads have done.

The Federal Railroad Administration (FRA) did an analysis in December 2022 of the Class I's training data for the last eight months of 2022, and found for the four largest Class I railroads (BNSF, UP, CSX, NS), they only had more new employees graduate training than existing employees leave the railroads in November and December of 2022.²⁸ In the other six months, the number of employees graduating from training programs did not keep up with the number of employees separated from the railroads. Additionally, a large percentage of those employees separating from the railroads in the last eight months of 2022 did so on their accord. On BNSF, at least 50% of the employees that separated from the railroad in those eight months did so voluntarily. On UP and CSX, at least 25% of the workers that separated left voluntarily. On NS, it was at least 20%.

We have proof that railroads can hire workers if they create a good working environment. Amtrak, which is trying to hire many of the same type of workers that the Class I's are claiming they are trying to hire, has hired over 2,300 employees since the beginning of the fiscal year with a net attrition of 1,400 employees. Those additions include significant numbers of track, signal, and mechanical employees.

Class I railroads must address quality of life issues in order to hire and retain the sufficient number of employees necessary to sustain, and hopefully one day grow, the system.

Provide Paid Sick Leave

Perhaps realizing the box they had put themselves in amid the nation's outcry over the treatment of rail workers and the anger and low morale among their workforce, the Class I railroads at the beginning of this year started to negotiate on paid sick leave. Many of TTD's rail unions have reached agreements with the Class I railroads providing four days of sick leave and the ability to convert up to three personal days (if workers have that many) to paid sick days.

TTD and its rail unions will continue to fight to address the horrific conditions for rail workers, including fighting for paid sick leave for all rail workers. Rail workers deserve paid sick leave—that is the morally right and just thing to do. TTD and our unions are forever grateful to the 221 House members and 52 Senators last Congress who stood with the rail workers in their fight for paid sick leave. We are especially grateful to Ranking Member Payne for his legislation providing 7 days of paid sick leave to all Class I rail workers and to Senator Sanders and Congresswoman DeLauro for their upcoming introduction of the Healthy Families Act, which would give all workers, including rail workers, paid sick leave. We urge Congress to pass this legislation.

Conclusion

Rail can be the greenest and most effective way to move cargo on land, but only if we have well-kept infrastructure and well-trained workers in place to meet the existing demands of our shipping communities and expand the market share of goods safely shipped by rail.

²⁸ The Surface Transportation Board started requiring these 4 Class I railroads to report this data in April 2022

We have a unique opportunity to get freight rail back on track by passing meaningful rail safety and service improvement legislation and harnessing the IJJA's historic funding in concert with greater investment from the railroads; we must achieve a combination of good government, good management, and good investment from the railroads to successfully grow the system.

It is time for Congress and the railroads to act.