

**Written Testimony of**

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**Transportation & Infrastructure Committee**

**Subcommittee on Railroads, Pipelines & Hazardous Materials**

**On this date**

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Good afternoon Chairman Nehls, Ranking Member Wilson, Members of the Subcommittee, and thank you for invitation to testify today on the immense and imminent need for legislation that improves the safety of our nation's rail network.

I'd like to briefly pay my respects to our committee's former Chairman Donald Payne. He was indeed one of the kindest souls on Capitol Hill and he cared deeply for all working people – especially railroaders. He is – and forever will be - missed dearly.

My name is David Arouca and I'm the National Legislative Director for the Transportation Communications Union, or TCU.

TCU is a merged affiliate of the Machinists Union. TCU itself represents about 30,000 workers across many different rail crafts, including: clerical, intermodal workers, supervisors, crew callers, crew haulers, bridge tenders, onboard service workers, dispatchers, and – as it specifically pertains to this hearing, the Carmen.

### **The Carmen**

TCU's Brotherhood of Railway Carmen Division represents approximately 10,000 carmen all across the country. The Carman craft consists of the skilled journeyman tasked with the inspection, maintenance and repair of passenger and freight railcars.

A Carman's primary duty is to inspect freight rail cars for compliance with 49 CFR parts:

- § 215 – Railroad Freight Car Safety Standards (primarily mechanical defects)
- § 231 – Railroad Safety Appliance Standards (mostly defects that could injure a crewmember)
- § 232 – Brake System Safety Standards (all braking system components)

In all, the various components on a railcar amount to *at least* 90 points of inspection per side of a rail car – 180 in total minimum. Some of the most important components to inspect are: the brake shoes and brake air hoses, couplers, wheel flanges, signs of bearing failures, and safety appliances.

Sadly, in today's era of railroading, many Carmen have to make the difficult decision of what to inspect. Under impossible time pressures, Carmen are simply unable to perform full inspections. Some just try to inspect mechanical components or other major derailment-causing defects. Others only inspect the Safety Appliances - critical components to ensure that train crews can safely perform their duties.<sup>1</sup> Carmen are making the conscious and difficult decision to protect either their fellow railroaders or the general public.

It should go without saying: nobody should have to make that choice.

A Carman is very much a skilled position – not a job you just pick up off the street. In fact, you remain an apprentice and do not become a full journeyman until 732 working days, or 5,856 working hours.

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<sup>1</sup> See Attachments #1 & #2 - Schedules of Parts 231 and 215 standards detailing FRA defects.

As my colleagues at SMART-TD have testified, “a conductor may have an Associates in car inspection, but the carmen are the Phds.” Carmen are known to have a “sixth sense” for detecting rail car defects. That’s what they spent years training to do. That’s what they were hired to do.

Commonsense would tell you that the Carmen should therefore be empowered as much as possible to find defective components and fix them before they cause an accident or injury.

What I’m about to tell you may seem shocking, but it’s the truth: the railroads do not want to know how defective their trains are.

Indeed, the prevailing mindset of the Class 1s in the current era can be summed up in the common refrain that our members hear every single day from management: “we’re in the business of moving freight, not fixing rail cars.” This mentality was detailed in a recent ProPublica piece that centered on the pressures applied to various crafts, primarily the Carmen.<sup>2</sup>

To quote the article directly:

“They use performance-pay systems that effectively penalize supervisors for taking the time to fix hazards and that pressure them to quash dissent, threatening and firing the very workers they hired to keep their operations safe. As a result, trains with known problems are rolling from yard to yard like ticking time bombs, getting passed down the line for the next crew to defuse — or defer...”

“...a senior general foreman in Norfolk Southern’s Savannah, Georgia, yard, had a reputation for keeping a close eye on bad orders. In 2019, car inspectors Kelvin Taylor and Shane Fowler filed a federal complaint alleging that Ware had repeatedly removed their repair order tags, allowing dangerous cars to leave the yard. They said Ware told them he had a quota — no more than 10 a week — regardless of the actual number of defects the inspectors found. (Ware disputed that figure, arguing that his goal was actually 20 bad orders at the time.)

Numbers like “bad order counts” can be used on scorecards to rank a manager. For example, Ware’s supervisor said in a deposition that metrics related to bad orders made up 15% of her final score.”

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<sup>2</sup> Sanders, Topher, et al. “How the Railroad Industry Intimidates Employees into Putting Speed before Safety.” *ProPublica*, 15 Nov. 2023, [www.propublica.org/article/railroad-safety-union-pacific-csx-bnsf-trains-freight#:~:text=Bradley%20Haynes%20and%20his%20colleagues.and%20send%20them%20for%20repairs](https://www.propublica.org/article/railroad-safety-union-pacific-csx-bnsf-trains-freight#:~:text=Bradley%20Haynes%20and%20his%20colleagues.and%20send%20them%20for%20repairs).

This mentality to lower dwell times at all costs, safety be damned, is sadly prevalent and pervasive throughout the industry.

### **BRC President Grissom's Warning in 2022**

In June of 2022, TCU's Carmen Division General President Don Grissom testified to this very committee about how industry changes have "created a ticking time bomb on our nation's rails."<sup>3</sup>

He warned about the dramatic decline in the number of Carmen, and the intense pressures being placed upon the limited forces that remain.

He warned about the railroads utilizing other types of crews for inspections, abusing the loophole in the regulations (49 CFR 215.13) that allows non-Carmen to inspect trains if Carmen are not present. How do you ensure the Carmen aren't present? You furlough or relocate all of them.

He warned about the railroads' concerted efforts to reduce inspection times from what used to be 3 minutes per car down to one minute or less – or 30 seconds a side.

He warned about the pressures NOT to perform car repairs – especially when shops or Repair-In-Place (RIP) tracks were overloaded due to the railroads' own self-inflicted staffing-shortages and/or short-sighted safety policies.

He warned about managers ripping off Bad Order tags just to keep freight moving – a major violation, but one that is seldom held to account. →

He warned about the increasing and dangerous level of fatigue, especially as short-staffing forces 16-24 hour shifts, sometimes 4-6 days in a row.

He warned about Carmen having to sleep in their cars in the parking lots because they're too tired to drive and have to be back at work in 4 hours.

I ask Members of the Committee, if it's too dangerous for you to drive, isn't it too dangerous to work on the railroad? Apparently not to the railroads.



Figure 1 Example of a Bad Order tag that signifies a defect that must be fixed prior to being put back into service

<sup>3</sup> Grissom, Don. "Written Statement before Subcommittee on Railroads, Pipelines & HazMat." 14 June, 2022, <https://www.congress.gov/117/meeting/house/114882/witnesses/HHRG-117-PW14-Wstate-GrissomD-20220614.pdf>

## **FRA Responses**

The Federal Railroad Administration (FRA) has been doing as much as possible through focused inspections, Risk Reduction Plans (RRPs), and safety culture assessments.<sup>4</sup>

However, the railroads can't even get those right. In fact, often times they throw up road blocks whenever and wherever possible.

The FRA recently conducted a series of three focused inspections at Union Pacific's North Platte yard. These are inspections – or safety blitzes - where several FRA inspectors from across the region descend upon a yard in order to get a fuller picture of the operations and attempt to better-enforce compliance.

Union Pacific (UP) management knew the FRA was coming the second and third times and yet they did nothing to alter their operations. In fact, **their defect ratio rose over those three focused inspections.** In talking with FRA inspectors after the fact, they recounted that the attitude of UP management was dismissive, and could be summarized as: “thanks, write me the violations and get out of my way so I can move these trains.”

As for the Risk Reduction Plans, the railroads were supposed to consult with labor when crafting the plans, including System Safety Plans and Fatigue Risk Management Programs:

“...Consistent with the statutory consultation requirements, the regulatory requirements under Parts 270 and 271 require freight railroads and passenger rail operations to use “good faith” and “best efforts” to reach agreement with all directly affected employees, including any non-profit employee labor organization (“labor organization”) representing a class or craft of directly affected employees, on the contents of the relevant plan...”<sup>5</sup>

Without exception, those “consultations” from the freights can be summed up merely as one-way Zoom calls without time allotted for questions or the ability to provide an ounce of feedback. This was uniformly reported by every Carman representative across the Class 1 railroads.

Most recently, the FRA had to completely halt their safety culture assessment of Union Pacific, citing rampant meddling by management. Associate Administrator for Safety Karl Alexy recently wrote to Union Pacific leadership:

“FRA has discovered that numerous employees were coached to provide specific responses to FRA questions if they were approached for a safety culture interview.

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<sup>4</sup> U.S. Dept. of Transportation, Federal Railroad Administration. *Guidance on Railroad/Employee Consultation Requirements in 49 CFR Parts 270 and 271*, 12 Oct. 2022. <https://railroads.dot.gov/elibrary/guidance-railroademployee-consultation-requirements-49-cfr-parts-270-and-271>. Issued 22 Oct. 2022.

<sup>5</sup> Ibid, page 2.

Reports of this coaching span the UPRR system and railroad crafts. FRA has also encountered reluctance to participate in field interviews from employees who cite intimidation or fear of retaliation...”<sup>6</sup>

This is just a portion of the safety-last ecosystem in which the East Palestine, Ohio derailment occurred.

The repeated statements from our union about the increased risks profiles of each of the Class 1s have been summarily ignored by the rail industry. This may be surprising, after this Subcommittee has repeatedly heard the railroads and their representatives testify about their supposed commitment to safety - but for rail workers, this “say one thing, do another” attitude is just another day on the railroad.

### East Palestine Derailment

In the wake of the East Palestine disaster, Congress and the nation were once again reminded of the dangerous nature of our industry.

The railcar that caused the derailment originated from the Union Pacific Railroad in Texas, and was last inspected in St. Louis, MO. Along its route, the car passed many different yards that used to employ Carmen tasked with inspecting cars. Unfortunately, no Carmen were there, having been the victims of previous rounds of layoffs, nor would they have likely been given the time to perform full inspections had they been present.

While the NTSB did not make a determination if a carmen-performed inspection could have avoided the derailment and identified the failing bearing, we want to be clear: TCU Carmen do in fact find bad bearings every single day on the nation’s network, and they set out those cars accordingly. Often times a bad bearing shows visual signs of failure, such as leaking/flung grease, or a broken/compromised seal. These are tell-tale signs that a bearing must be removed from service. →

Knowing this, it is not unreasonable to wonder if the failure of Norfolk Southern (or any of the other railroads on which the car traversed) to permit adequate and complete inspections played a contributory role in the accident.



Figure 2 NTSB Board Meeting: Norfolk Southern Train Derailment with Subsequent Hazmat Release & Fires (Screenshot at timestamp 2:10:49)

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<sup>6</sup> Alexy, Karl, FRA Assoc. Admin for Safety. “Re: Safety Culture Assessment Data Collection Suspension.” Letter to Elizabeth Whited, President, Union Pacific Railroad, 26 Apr. 2024.

Regardless, due to the operations and practices of the industry, it has become much harder for our Carmen to take the time to be able to spot these warning signs.

In the wake of East Palestine, the press began looking into what we've been alarming for years:

- The Wall Street Journal published a front-page article titled: "Hurry Up and Get It Done': Norfolk Southern Set Railcar Safety Checks at One Minute." The article detailed the time pressures applied to railroad mechanical forces such as our carmen.<sup>7</sup>
- ProPublica did a deep dive on this issue in their investigative piece: "Do Your Job.' How the Railroad Industry Intimidates Employees Into Putting Speed Before Safety"<sup>8</sup>
- Sinclair's National News Desk covered the carmen pressures and syndicated our members' concerns across the country.<sup>9</sup>
- The Fault Lines documentary series, made famous for their Boeing expose, did a 30 minute documentary that covered the inherent safety risk posed by pressuring carmen to inspect too fast, or sometimes not at all. <sup>10</sup>
- We've published videos from TCU's own Advanced Carmen Training Center showing visually the difference between a 3-minute and a 1-minute inspection.

### **FRA Qualitative Time Study on Rail Car Inspections**

Last week the FRA Office of Safety revealed the findings of a qualitative time study of rail car inspections, and it confirms much of what I've testified about today. For reference, I've attached a copy of the study to this testimony.

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<sup>7</sup> Fung, Esther, et al. "Hurry Up and Get It Done': Norfolk Southern Set Railcar Safety Checks at One Minute." *Wall Street Journal*, <https://www.wsj.com/articles/railroads-are-a-lot-more-efficient-are-they-also-less-safe-7c5d2a60>, 30 Mar. 2023.

<sup>8</sup> Sanders, Topher, et al. "How the Railroad Industry Intimidates Employees into Putting Speed before Safety." ProPublica, 15 Nov. 2023, [www.propublica.org/article/railroad-safety-union-pacific-csx-bnsf-trains-freight#:~:text=Bradley%20Haynes%20and%20his%20colleagues.and%20send%20them%20for%20repairs](http://www.propublica.org/article/railroad-safety-union-pacific-csx-bnsf-trains-freight#:~:text=Bradley%20Haynes%20and%20his%20colleagues.and%20send%20them%20for%20repairs).

<sup>9</sup> Pohlman, Duane. "Inspectors Claim 1-Minute Railcar Inspections Not Enough to Flag Faulty Equipment." WKRC, 4 May 2023, [local12.com/news/investigates/inspectors-claim-1-minute-railcar-inspections-not-enough-flag-faulty-equipment-investigates-investigation-trouble-tracks-railroad-trains-train-mechanics-railroading-freight-railway-safety-cincinnati-ohio-east-palestine-norfolk-southern-training](http://local12.com/news/investigates/inspectors-claim-1-minute-railcar-inspections-not-enough-flag-faulty-equipment-investigates-investigation-trouble-tracks-railroad-trains-train-mechanics-railroading-freight-railway-safety-cincinnati-ohio-east-palestine-norfolk-southern-training).

<sup>10</sup> Chekuru, Kavitha and Josh Rushing. "What's behind Train Derailments in the US? | Fault Lines Documentary." Al-Jazeera English, YouTube, 14 June 2023, [www.youtube.com/watch?v=ZJP3kU55JmI](http://www.youtube.com/watch?v=ZJP3kU55JmI).

The study found that approximately 15% of rail cars contain FRA defects – meaning that operating them is illegal and they should NOT be traveling at all. Concerningly, the predominant defect found was inoperable or ineffective brakes.

I ask the Committee: would you fly on a plane if 15% of planes had safety defects?

As an aside, I should note that the NTSB found that 25% of the cars in the East Palestine train contained federal defects.

The study also noted several times throughout that Qualified Mechanical Inspectors – aka Carmen – perform better quality inspections and brake tests - especially when given adequate time. Again, this is readily apparent to any railroad worker – but not to the railroads.

Regarding inspection times, the study notes that carmen today, on average, only provided 1:44 per car to inspect; or, about half of what we believe to be the safe minimum amount of time: 3-4 mins.

But there's a catch: that 1:44 minutes was only when the FRA was present and directly observing.

**After reviewing the railroads' own inspection records, the FRA found that when they aren't present, Carmen are only given approximately 44 seconds per car to inspect.** The FRA observed this as the railroads "going back to normal" once they're gone.

44 seconds. You can barely walk cars in 44 seconds, let alone take any amount of time to properly inspect components.

One FRA Inspector noted in remarks for the study:

"When FRA is on property, they prepare with bringing in extra employees to anticipate all the extra repairs that will be needed to be made. When FRA is not present, they work trains with as little as two employees on outbound, and don't even utilize the in-train repair vehicle because no defects are taken.

When I observed this 49-car head end of the train I found one violation and seven defects. The Carman also found approximately ten additional defects. That is me walking directly behind the Carman, so they know I am on property. **When I am not on property, they might find two [or] three defects in twenty-four hours. It's not realistic."**

These pressures and avoidance maneuvers need to stop. The railroads shouldn't be acting one way when the FRA is watching – and another when they aren't.



But thankfully, legislation in both chambers would help put a stop to it.

### **House and Senate Proposed Legislation**

The Railway Safety Act in the Senate, led by Senators Brown and Vance of Ohio, and now the Railroad Safety Enhancement Act introduced by Chairman Nehls and Congressman Moulton, both include language to prohibit railroads from limiting the time for Carmen to inspect railcars.

This in itself would do wonders for the safety of the industry, the safety of the crews and the safety of the communities our trains pass through.

No longer would our Carmen be harassed to inspect faster.

No longer would they have to choose between mechanical, braking, or safety appliance components.

No longer would managers be able to put targets on your backs if you aren't meeting time constraints.

The nation's freight railroad carmen would finally be able to do what they were hired to do: keep our trains safe.

The bill would also reimagine railcar inspections regime by forcing the Class 1s to identify specific inspection points throughout their networks, and require that QMI Carmen are on-duty to inspect trains. This section was written in an attempt to find a healthy middle ground with the railroads' operating practices, whilst also formalizing the need to have properly-trained personnel like the Carmen perform these inspections, rather than relying on crews or other untrained personnel, which is less safe - as the FRA has noted in their recent study.

My testimony today has been specifically centered around the Carmen craft, but I'd be remiss if I didn't mention that many - if not most - of the same time pressures, time constraints, and utilization of improper crafts to perform inspections applies to the railroad machinists as well, who are represented by our parent union and their IAM District 19. The machinists are tasked with inspecting and maintaining locomotives as well as road way equipment. As noted in the study, their defect ratio is also incredibly high - mostly due to the same pressures applied to the Carmen.

The legislation also mandates two crew members on most freight trains - something long overdue for our colleagues in the operating crafts. We were glad to see this Administration finalize that rule, and fully support it being cemented in statute.

And lastly, the adoption of a Close Call Confidential Reporting System - or C3RS - would be crucial to tamping down on the culture of intimidation in the rail industry. All too often our members see things wrong or unsafe at the rail yard. And sadly, those errors and mistakes

can cause serious damage or death to rail workers and the communities our trains pass through. C3RS has been utilized in the airline industry for decades with their Aviation Safety Action Program (ASAP), and Congress has repeatedly praised the program for improving safety.

In the wake of East Palestine, the railroads announced they would commit to joining a C3RS program. However, with the minor exception of small amounts of workers at only two railroads in specific areas, they've largely abandoned that pledge. In summary, the railroads prefer to adopt "C2RS" – or, dropping the "confidential" nature of the program, which guts the point of the program - encouraging employees to report with the safe haven of anonymity.

Despite 30 railroads – mostly passenger and short lines – adopting C3RS programs already, it appears too hard for the Class 1 railroads.

Our union wholeheartedly endorses Chairman Nehls and Mr. Moulton's legislation just as we support Brown-Vance. We believe it's a major step in the right direction, and we thank them for the inclusion of additional items, including the C3RS requirement, which builds upon the Senate bill.

We're specifically grateful to Chairman Nehls, Senator Vance, and all the Republican cosponsors for having the courage to step away from party orthodoxy that has historically drawn a partisan line between the railroads and rail labor.

And I'd be remiss if I didn't thank our Democratic friends for being long-standing supporters of rail safety efforts and rail workers as well.

It seems that both sides of the aisle can agree: rail safety should never be a partisan issue. Every American agrees that trains need to stay on the tracks.

However, we also believe that more can be done because, as Chair Homendy likes to say, "every accident is preventable," and we couldn't agree more.

That's why we look forward to working with the Chairman and anybody else in Congress to work on additional *real* items, such as:

- **Put More Cops on the Beat** – We drastically need more FRA field inspectors to help hold the railroads accountable, just as Representative Van Orden, a member of the full committee, has advocated for in previous hearings.
- **Improve the Enforcement of the FRA** – First, it should be noted that there's no difference between a violation and an FRA defect – the only difference is that a violation was written up by an FRA inspector and a fine assessed. Many people probably think that writing a violation for the FRA is simply like a police officer writing a ticket. We wish it were that simple.

The process for field inspectors is long and laborious. FRA Inspectors are forced to compile pages and pages of paperwork for each violation. This requires them to be in-office rather than out in the field where they're needed most. FRA should amend their violation-writing mechanism to more resemble that of a police officer writing a parking or speeding ticket. The ability to quickly write violations would greatly aid in the ability of our federal safety enforcement. This small change could drastically improve enforcement abilities while also saving tax dollars.

- **Adopt Technology the Right Way** – There's often a refrain that labor opposes technology – that is false. Our members would love to have access to various technologies that exist on the market right now. What we disagree with are unfounded safety waivers that excuse the railroads from performing regulatory tasks on safety-sensitive components that the proposed technology doesn't even address. Waivers are appropriate as long as the technology at least exceeds current safety metrics AND the Test Committees have proper and full access and authority to review data and administer changes. In some cases, this may mean that the waiver is revoked or rewritten if waiver request or existing waiver does not hold up to safety scrutiny.
- **Access to Data/Imaging** – New machine-vision and machine-learning portals are technologically impressive, but they are best used in the hands of a carman. Our carmen would like to have the imaging and data created by these portals – and any other defect detectors - forwarded to them prior to a train pulling into a yard. But with very few exceptions, that's not how the railroads are utilizing them today. Rather, railroads mostly rely on poorly-staffed mechanical desks with mountains of data coming in, and no ability to process or divert such information to the proper channels. Railroads could dramatically improve both safety and efficiency if they utilized QMI Carmen to both review data/imaging as well as forward that information to Carmen in the yards so that they have near-real time intel as to incoming train defects.

Over the years we've seen countless technologies come forward that could improve rail safety and give frontline employees like the Carmen the ability to more effectively and efficiently fix rail car defects. Unfortunately, while these technologies rarely make it into the hands of our members. Rather, they're used as pawns to extract safety concessions from the FRA.

Railroads should abandon this mentality. If technology can improve operations and safety, they should use them. If they don't want to use it voluntarily, the government should make them.

Again, we believe there are readily-available technologies out there, right now, that the railroads could use or better-utilize to ensure our nation's railroads and rail workers are safe.

Unfortunately, the lingering questions remain:

- Do the railroads actually want to adopt these new technologies?
- Do the railroads want to know how defective their trains are?

We do not believe that they do.

### **The Rail Industry Must Change**

I want to close by saying the following: **nobody has more of a vested interest in the success of the railroads than the people that work there every day. We want our employers to be profitable.** We want them to make money. If they don't make money, our members don't get paid. Period.

That being said, there's a line which the railroads have long-since crossed. That line signifies the difference between profitability and greedy wealth-extraction. The railroads of the pre-Staggers Act (pre-1980) were indeed in shambles. Consolidations were necessary to ensure that railroads had the ability to tap into debt markets and properly fund investments into their own infrastructure.

Today, that is no longer the case – not by a long shot. The pendulum has swung fully in the opposite direction.

Today, railroads are more profitable than they've ever been – but at the cost of safety and service. And it's all driven from Wall Street and private equity firms pushing the so-called Precision Scheduled Railroading (PSR) business model. One by one, the railroads all succumb to the billionaire assaults on their Boards of Directors. Most recently, after a year of making progress post-East Palestine, Norfolk Southern underwent a proxy fight from a minority shareholder Ancora Holdings. One of the key tenets of Ancora's proposed operating changes was to strongly walk back intermodal services – despite most transportation economists indicating intermodal as being a growth sector for the railroads long term as coal's future remains muddled at best.

In short, Ancora's plan aimed to once again cut its way to prosperity, a short-sighted business mindset that railroads must abandon – not embrace.

After all, freight railroads are inherently ancillary businesses. They do not create value themselves, but rather they exist to benefit the broader economy by offering low-cost, safe transportation. They exist to benefit and serve their customers, not to pilfer and squeeze those captive to the industry.

The safety legislation proposed in the House and Senate are one piece of the puzzle that Congress must address. The other is the economic side – forcing railroads to once again serve the country that birthed their existence. Thank you for the opportunity to testify.