



## VIA ELECTRONIC MAIL

January 31, 2022

Honorable Pete Buttigieg  
U.S. Department of Transportation  
1200 New Jersey Ave., SE  
Washington, DC 20590

Honorable Martin J. Walsh  
U.S. Department of Labor  
200 Constitution Ave., NW  
Washington, DC 20210

Secretary Buttigieg and Secretary Walsh,

We are writing to you out of grave concerns regarding a new attendance policy (“Hi-Viz”) being imposed on trainmen, yardmen, engineers, and yardmasters by the BNSF railroad on February 1, 2022, as well as attendance policies previously adopted by NS, CSX and Union Pacific railroad.

As with the current NS, CSX and Union Pacific policies, there is no doubt that BNSF’s policy, once implemented, will have a negative impact on the safety and health of all affected employees, and that it will also further erode current supply chain issues by exacerbating already waning work-force levels.

The vast majority of engineers and trainmen do not work scheduled shifts, nor do they have scheduled days off. Instead, they are continuously in an *on-call* status, subject to report for duty on as little as an hour and a half notice, 24 hours a day, on weekdays, weekends, and holidays. Once they report for duty, they could return home anywhere from 12 hours to 60 hours later, with no control over when that will occur once that tour of duty has been initiated.

The only tool these engineers and trainmen have to prepare for their unscheduled work shifts are so-called “train lineups,” which in this most recent case is managed solely by the railroad. BNSF has openly admitted that the quality of these lineups and the related predictability for the on-duty times is far from adequate. As a result, engineers and trainmen are routinely called for duty without having had any knowledge or awareness of the potential for work (at that particular time), thus, subsequently preventing them from the ability to be physically rested prior to their being called to work. For example, it is commonplace for these employees to be suddenly called into work for an evening shift when they didn’t expect to be called-in until the morning, according to the available train lineups. Under BNSF’s new Hi-Viz policy, even though they may be fatigued, they are not

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allowed to refuse the unpredicted call for duty without potentially being subjected to employer discipline, up to and including dismissal. Forcing these employees to choose between their job or their safety in the workplace is in complete contradiction to BNSF's obligation to protect public safety, and to provide a safe workplace environment.

The new policy also potentially subjects employees to disciplinary action when they request time off because they are ill, or when they need to tend to sick family members. This includes time-off under the Family Medical Leave Act (FMLA), as this policy disincentivizes employees from utilizing this protected leave by prohibiting "Good Attendance Credit" from ever being gained because of its use.

Like all railroad employees, these *essential employees* have placed their health, and that of their families, on the line since the COVID-19 pandemic began. They have moved the Nation's freight, working night and day, and are now being put in a position where their livelihoods could be at risk for simply following CDC guidelines for time away from work for exposure or care due to a positive COVID-19 test.

This policy and its draconian rules and standards fly in the face of railroad safety laws and regulations, and it disregards government recommendations intended to keep COVID-19 out of the workplace. As a result, available work force levels will be impeded and already historic levels of mid-career resignations will be increased.

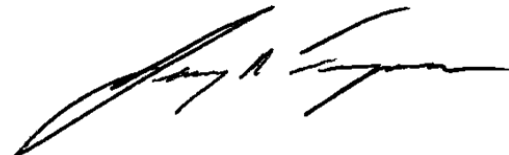
It is imperative that the Department of Transportation and Department of Labor act to address this most egregious railroad policy, as well as those implemented by NS, CSX and Union Pacific and any other railroad with similar policies. The safety and health of the engineers and trainmen who are employed at BNSF, and the safety of the general public stands in the balance.

With warmest personal regards, we remain

Fraternally yours,



National President, BLET



President, SMART Transportation Division

cc: A. Bose, Administrator of the Federal Railroad Administration