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Safety Alert: Roadway Worker Good Faith Challenge

This Alert highlights the life-saving importance of a good faith challenge and the absolute right of every roadway worker to initiate such a challenge.

The purpose of a good faith challenge is straightforward: **To provide roadway workers with a non-punitive mechanism for raising and resolving on-track safety concerns so the work can be performed safely.**

A good faith challenge is an opportunity to jointly resolve any on-track safety concerns; it is not a confrontation with your foreman or railroad management. An on-track safety briefing¹ is the first opportunity to make a good faith challenge; however, a challenge can be made at any time. The vast majority of challenges are promptly and fairly resolved between the challenging employee(s) and the Roadway Worker-in-Charge at the job site.

Roadway Worker Protection is governed by Federal Railroad Administration (FRA) regulations, 49 CFR 214, Subpart C, which provides for the good faith challenge procedure. Each railroad has implemented a program under the regulation which affords on-track safety to all roadway workers who perform duties on or in proximity to a track. Each railroad's program must spell out the good faith challenge procedures and the roles and responsibilities of employers and employees in the prompt and equitable resolution of challenges.

The FRA regulation provides, in part:

- §214.311(b): Each employer shall guarantee each employee the absolute right to challenge in good faith whether the on-track safety procedures to be applied at the job location comply with the rules of the operating railroad, and to remain clear of the track until the challenge is resolved.
- §214.311(c): Each employer shall have in place a written procedure to achieve prompt and equitable resolution of challenges made in accordance with §§214.311(b) and 214.313(d).

¹ The FAMES Committee found that insufficient or nonexistent on-track safety briefings or re-briefings were possible contributing factors in 19 (46%) of the analyzed fatalities.

- §214.313(d): Each roadway worker may refuse any directive to violate an on-track safety rule, and shall inform the employer in accordance with §214.311 whenever the roadway worker makes a good faith determination that on-track safety provisions to be applied at the job site do not comply with the rules of the operating railroad.

Labor, Management and FRA fully support a roadway worker's absolute right to initiate a good faith challenge without fear of retaliation or discipline. FAMES reminds roadway workers and supervisors that the good faith challenge process begins when an employee raises an on-track safety concern.

Recommendations:

- Employees should remain clear of track until the challenge is resolved.
- All roadway workers should know where to access the railroad's good faith challenge procedures and understand the resolution process.
- Roadway workers should periodically review the good faith challenge procedures at on-track safety briefings.
- Supervisors and co-workers should actively encourage the use of the good faith challenge.
- Employers should periodically review their on-track safety program to identify and remove any administrative or procedural barriers to the utilization of the good faith challenge.
- While the good faith challenge is specific to Roadway Worker Protection, the FAMES Committee encourages the use of similar concepts to resolve other safety issues.

Remember: If you are uncertain about your safety, trust your instincts; make a good faith challenge. You may be saving your life or the life of a co-worker.

The FAMES Committee consists of safety representatives from a cross section of rail labor, railroad management, and federal regulators. FAMES is a continuous improvement process that relies on the candid sharing of available data and the views of its participants. To enable the process, FAMES explicitly refrains from making any findings regarding whether any past or present practice or protocol satisfies any legal duty or standard of care.

The views, opinions, and recommendations contained in this report are those of the FAMES Committee and do not necessarily represent the views, opinions, or recommendations of any specific railroad, labor organization, or governmental agency.
