

Former locomotive engineer says CSX forced him to complete trip after fatal 2017 accident

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28 February 2022

Join the fight against Hi Viz and “government by injunction”! Join the BNSF Workers Rank-and-File Committee by email bnsfwrfc@gmail.com.

Railroad workers across the country are following with interest and solidarity the opposition by workers at BNSF to a punishing new “Hi Viz” attendance policy, which has thrown the exploitation of railroad workers into sharp relief. Conditions are little better for workers at other Class I railroad carriers, such as Union Pacific and CSX. Like the conductors and engineers at BNSF, workers at the other carriers have learned through experience that the law protects the companies rather than the employees.

The Federal Railroad Administration (FRA) boasts that the US rail network is the “largest, safest, and most cost-efficient freight system in the world.” In fact, fatal accidents have been on the rise for years. After a slight decline in deaths in 2020 due to the impact of the coronavirus shutdowns, 822 people died last year in rail accidents, according to the FRA. Each year over the past decade, between two and four train derailments have taken place in the US every day.

A former engineer for CSX contacted the *World Socialist Web Site* (WSWS) to describe a critical incident that he endured on the job, the company’s callous response and the long ordeal that followed. The engineer, who will be referred to by the pseudonym Jake, has not worked since the incident. He says that CSX broke the law in the way it responded to the event, and he continues to seek compensation.

In 2017, Jake was driving a train from Buffalo, New York, to Syracuse, New York, when a pedestrian walked onto the tracks. Jake initiated an emergency stop and yelled to the conductor to alert him to what was happening. Tragically, there was not enough time to stop the train, and the pedestrian was killed. Jake and the conductor, who radioed the dispatcher, were shaken. When the dispatcher asked Jake whether he was okay, he

replied that he was not. The conductor also notified the road foreman about the incident.

Federal law requires Class I railroads, such as CSX, to adopt and comply with a critical incident stress plan to provide relief and support to workers after traumatic events such as this one. Under the plan that CSX adopted, Jake said, workers are to be removed from the train immediately and, if they do not obviously require medical attention, transported home. A new crew or “recrew” must be called up to drive the train to its destination.

But when the road foreman arrived, he informed Jake and the conductor that no recrews were available. The train would have to be taken to Syracuse, he said. Jake replied, “It’s wrong for the company to be doing this to us. We need to be taken off this train, per policy and procedures.” The road foreman made a perfunctory expression of sympathy but insisted on continuing the route. When he asked Jake whether he was able to drive the train, Jake responded, “No, I am not okay to run the train.”

A field claims agent from CSX arrived shortly after the road foreman did. Neither the road foreman nor the field claims agent made any serious effort to check the crew’s mental or physical health, and the crew was forced to stay on the train while the road foreman drove it to Syracuse. From the Syracuse station, Jake and the conductor were driven to the Buffalo station.

Jake had been having tremors since the incident happened. During his drive home, he had to pull over three times to get a hold of himself. He did “a lot of crying” that night, he said. When his union representative called that evening, he and his wife responded angrily that they would speak to the Federal Railroad Administration (FRA) about the incident.

The day after the incident, Jake noticed pain in his jaw. After several visits to the dentist, to the emergency room and to a specialist, he found out that he had a cracked

tooth and temporomandibular joint disorder. During the incident, Jake had clenched his teeth so hard that it had misaligned his jaw. “I’d never been in so much pain in my entire life,” he said. He also began seeing a therapist, who said that Jake was in immediate need of anti-anxiety medication.

Six days after the incident, Jake and his wife met the union rep at a supermarket. The union rep gave them a copy of the CSX critical incident stress plan and told them that the company had taken Jake out of service. The union rep advised Jake that he would need a lawyer and that he had made an appointment for Jake with a lawyer on the following morning.

Jake filed a complaint with the Occupational Safety and Health Administration (OSHA). “It’s kind of common sense,” Jake told the WWS. “If you don’t follow federal law, you really can’t be a safe employer, can you?” CSX had violated the law by violating its own policy, he added. “It’s a safety issue, so I went to OSHA and filed the complaint.” But the OSHA investigator concluded that no wrongdoing had occurred and dismissed Jake’s complaint.

His lawyer, who had begun preparing a Federal Employers Liability Act (FELA) lawsuit on Jake’s behalf, appealed OSHA’s decision to the U.S. Department of Labor. This appeal took approximately a year to complete. Although the road foreman and field claims agent testified at the hearing, neither the conductor nor the union representative appeared or testified in support of Jake. The appeal was denied, and Jake filed a further appeal to the Administrative Review Board. About a year later, the board affirmed the Labor Department’s decision.

The FRA also investigated the incident, but Jake described its investigation as “smoke and mirrors.” The FRA report repeated the road foreman’s claim that no recrew had been available that day. But later, when he obtained the company documents surrounding the accident, he discovered that a recrew had in fact been available.

Furthermore, the FRA report was only nine pages long. Jake later obtained an FRA report on another incident that had not involved injuries or deaths which totaled 48 pages and included a wealth of documentation and detail. The FRA report about the incident in which Jake was involved is “not real, plain and simple,” he said. Railroad workers believe that the FRA does not do its job of regulating the companies, and the agency has earned a bad reputation, said Jake.

The callous treatment that he has received at the hands of the company and the denial of any compensation may seem remarkable, he went on. “If somebody were to tell me this, I’d be like, ‘You’re out of your mind. This sounds absolutely crazy,’” said Jake. “But it’s the truth. When you go to individuals, when you go to agencies, you expect to have something done when wrong has been done to you. Up to this point in time, nobody’s done anything.”

CSX, BNSF and the other railroads are able to operate in such a fashion with virtual impunity through a system of labor laws designed to benefit the companies. This includes the Railway Labor Act which is designed to all but eliminate strikes in the industry and tie up workers in endless rounds of mediation, lawsuits and arbitration.

Even after a federal judge issued three consecutive rulings upholding injunctions at BNSF blocking workers from striking against the Hi Viz attendance policy, the Brotherhood of Locomotive Engineers and Trainmen (BLET) and International Association of Sheet Metal, Air, Rail and Transportation Workers—Transportation Division (SMART-TD) unions are counseling workers to simply sit on their hands and wait for this pro-corporate “process” to play itself out. But workers know that this will only lead, as it always has, to a victory on all counts for the company.

Instead, a group of workers has founded the BNSF Workers Rank-and-File Committee to wage a fight independently of the union officialdom, “as an alternative source of power against management, well-heeled union bureaucrats and ‘government by injunction.’”

To join the BNSF Workers Rank-and-File Committee, email bnsfwrfc@gmail.com.



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