



# National Transportation Safety Board

Washington, D.C. 20594  
Safety Recommendation

R-89-65

Log

Date: December 5, 1989

In reply refer to: R-89-65

Honorable Gilbert Carmichael  
Administrator  
Federal Railroad Administration  
400 7th Street S. W.  
Washington, D. C. 20590

At 6:20 a.m. on December 6, 1988, a tractor-semitrailer combination operated by Island Transportation Corporation (Island) and loaded with 8,800 gallons of gasoline collided with a Consolidated Rail Corporation (Conrail) train at the Roosevelt Avenue grade crossing near Lafayette Street in Carteret, New Jersey. The truck overturned and caught fire.

The truckdriver died - - no other persons were injured. The tractor-semitrailer, a pickup truck, and two houses southwest of the crossing were destroyed in the fire. At least three other unoccupied vehicles, other buildings, one locomotive, and several vehicles parked nearby were damaged. 1/

The grade crossing where the accident occurred is located on Conrail's Reformatory Running Track at Roosevelt Avenue, in Conrail's Eastern Region, which at the time of the accident was in Conrail's New Jersey Division. At the time of the accident, trains using the Reformatory Running Track were required to be operated in accordance with Conrail's Timetable No. 1, Eastern Region, effective October 1, 1988, and rules of the Northeastern Operating Rules Advisory Committee (NORAC), effective September 1, 1988. NORAC's Operating Rule 105 required:

When an employee is required to provide protection at a highway crossing, he must use a red flag or fusees by day and fusees or a white light at night to give stop signals to pedestrian and highway traffic.

1/ For more detailed information, read Railroad/Highway Accident Report - - "Consolidated Rail Corporation Train Collision with Island Transportation Corporation Truck, Roosevelt Avenue near Lafayette Street, Carteret, New Jersey, December 6, 1988," (NTSB/RHR-89/01).

Special instruction 105-5 specified that for Roosevelt Avenue where the accident occurred:

Trains or engines must stop before passing over highway crossing and a member of crew must protect the crossing in advance of each movement.

The trainmaster on duty when the crew reported for work the evening before the accident stated that in order to be in compliance with the flagging rule in effect for the Roosevelt Avenue crossing, the train's movement would have to be stopped short of the crossing, a qualified member of the crew (not a trainee) must go out onto the crossing and position himself in the traveled portion of the roadway if there was traffic, and flag the traffic until the crewmember had an indication that the traffic was being controlled and that the oncoming vehicle was going to stop. An indication that an approaching vehicle was going to stop would be an obvious decrease in speed or something of that nature, or a vehicle going slow enough so that it could easily stop upon viewing the flagman or the train.

Although the members of the traincrew reported that the conductor provided flagging protection at the crossing, witnesses east and west of the crossing reported, and the Safety Board's analyses of the facts and circumstances of the accident concluded, that the conductor did not flag the crossing as required by the railroad's special instruction. The National Transportation Safety Board determined that the probable cause of this accident was the conductor's failure to flag the crossing and the truckdriver's failure to stop his vehicle between 15 and 50 feet of the grade crossing as required.

Section 202 of the Federal Railroad Safety Act of 1970 (45 USC 431) requires the FRA to "prescribe as necessary . . . appropriate rules, regulations, orders, and standards for all areas of railroad safety . . . ." After a review of accidents investigated by the Safety Board and the FRA that identified alcohol and drug impairment as a causative factor in several railroad accidents, on July 5, 1983, the FRA published an Advance Notice of Proposed Rulemaking (ANPRM) in the Federal Register soliciting information and views on the problem of alcohol and drug use by employees engaged in railroad operations.

After a review of the comments on the ANPRM, on June 12, 1984, the FRA published a Notice of Proposed Rulemaking (NPRM) that would require the toxicological testing of blood samples obtained from traincrew members who are involved in certain types of accidents. The NPRM included a provision that stated:

However, no test shall be required in case of a collision between railroad rolling stock and a motor vehicle or other conveyance at a rail/

highway grade crossing or in the case of a train incident consisting solely of a fatality or injury to a trespasser.

In its August 15, 1984, comments on the NPRM, the Safety Board stated:

The proposed (grade crossing accident) exclusion should not extend to accidents involving fatalities or serious injuries. The failure of a traincrew to observe slow orders or to sound appropriate warnings has contributed to grade crossing accidents which resulted in deaths or serious injuries.

The NPRM also included a proposal to test "for cause" an employee who has been directly involved in a reportable accident or incident (See 49 C.F.R. Part 225) or an employee who has been involved in a violation of any operating rule or other written directive that directly affects the movement of a train and that could result in an accident.

On August 2, 1985, the FRA issued its final rule concerning toxicological testing of certain railroad employees. In the preamble to the final rule, the FRA stated:

FRA recognizes that the acts and omissions of engine crews and train crews may at times contribute to grade crossing accidents to some extent. However, in the vast majority of cases railroad employees can only be viewed as additional victims of these tragedies.

The final rule retained the provision exempting traincrew members involved in grade crossing accidents from mandatory blood and urine testing. [See 49 C.F.R. 219.201(b).] The final rule also modified the proposed "for cause" breath or urine testing rule. In the case of reportable accident involvement, an employee must be tested only if a supervisor has a reasonable suspicion that the employee's acts or omissions contributed to the occurrence or severity of the accident.

In addition, the provision proposing testing employees involved in a violation of any operating rule or other written directive that directly affects the movement of a train and that could result in an accident was deleted from the final rule. The final rule instead listed six specific rule violations in which "reasonable cause" urine or breath testing was required. Failure to flag a grade crossing as required by an operating rule or timetable special instruction was not one of these six instances. [See 49 CFR 219.301(a)(2) and (3).]

Although it has no legal authority to order it, the Safety Board routinely requests that survivors involved in accidents the Board investigates submit samples of blood and urine for alcohol and drug testing, and did so of the traincrew involved in this accident. The traincrew voluntarily supplied blood samples the afternoon after the accident, and tests performed were negative for the presence of alcohol or illicit drugs.

Conrail's director of operating rules subsequently advised the Safety Board that the traincrew would not have been required by either Conrail or the FRA rule to supply the blood samples, and the samples were supplied only in an effort to cooperate with the Safety Board, because he believed:

- a) the FRA rule requiring mandatory testing specifically exempts traincrew testing after involvement in a grade crossing accident,
- b) "for cause" testing was not indicated because none of the railroad operating rules violations specified in the FRA rule appeared to have occurred, and
- c) Conrail supervisors on scene, based upon the traincrews' statements, had no reason to suspect that a traincrew member's acts or omissions contributed to the accident.

Although the traincrew involved in this accident tested negative for alcohol or illicit drugs, the traincrew could have refused to supply any samples. Since local authorities lacked sufficient probable cause, they also could not require the traincrew to supply any samples, and the fact that the crew was alcohol- and drug-free would not have been determined.

Given the circumstances of this accident, under the present FRA rule the only way a member of the traincrew could have been required to supply samples of blood, breath, or urine for toxicological testing would have been if a Conrail supervisor on scene had reason to believe that a traincrew member's act or omission caused or contributed to the accident. The Safety Board doubts that a traincrew member would voluntarily admit to such an act or omission against his own self-interest.

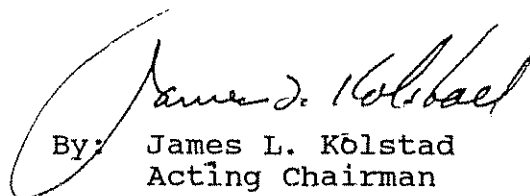
The Safety Board believes that the FRA should amend the rule pertaining to toxicological testing of certain railroad employees to require that traincrew members supply samples of blood and urine for toxicological testing if they are involved in a reportable accident at a grade crossing where the traincrew is required by an operating rule, special instruction, or local ordinance to provide flagging protection at the crossing.

Therefore, the National Transportation Safety Board recommends that the Federal Railroad Administration:

Amend the rule pertaining to toxicological testing of certain railroad employees to require that traincrew members supply samples of blood and urine if they are involved in a reportable accident at a highway grade crossing where the traincrew is required by an operating rule, special instruction, or local ordinance to provide flagging protection at the crossing.  
(Class II, Priority Action) (R-89-65)

Also as a result of its investigation of this accident, the Safety Board issued safety recommendations R-89-62 through -64 to Consolidated Rail Corporation, H-89-35 to the New Jersey Department of Transportation, H-89-36 to the Research and Special Programs Administration, and H-89-37 to the National Tank Truck Carriers, Inc. of the American Trucking Associations.

KOLSTAD, Acting Chairman, and BURNETT, LAUBER, NALL, and DICKINSON, Members, concurred in this recommendation.

  
By: James L. Kolstad  
Acting Chairman