

Executive Director

FORMAL COMPLAINT NO. 1236

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DISSENT:

The action of the majority in overruling the special appearance is erroneous and contrary to the Commission's holding in Faulder v. Burlington Northern Railroad, RC-3, which involved precisely the same facts and legal issues raised by this formal complaint.

Subparagraphs (b), (c), and (g) of the Formal Complaint related to the training, examination, and certification of employees operating locomotives (engineers). On June 19, 1991, the FRA enacted the Rules and Regulations pursuant to 45 USC §431 related to engineer certification by prescribing the federal safety requirements for the training, testing, certification, and monitoring of all locomotive engineers. The railroad's certification program under these regulations must be approved by the FRA. The regulations state that the program will be considered approved and may be implemented by the railroad 30 days after filing, unless the FRA notifies the railroad in writing that the program does not conform to the criteria set forth in the regulations. 49 CFR §240, Subparts A, B, C, D, and E.

Burlington submitted to FRA its certification program on July 7, 1992, and as found by this Commission in its Order of September 1, 1992, since there was no rejection by FRA within 30 days, the standards were deemed approved and the FRA has jurisdiction of this matter.

It is quite clear under the federal law that FRA retains the exclusive jurisdiction to enforce compliance with its regulations, which include the Blue Flag law, engineer certification and filing and instruction program for the Operating Rules. The authority of this Commission under its agreement with the FRA is limited to investigation of compliance with these regulations by the railroad. If, and only if, the FRA has not acted upon a State request can the State thereafter proceed to bring an action for civil penalties, and that must be filed in the federal district court, or injunctive relief may be sought through the U.S. Attorney General.



Commissioner Eric Rasmussen



Commissioner Frank Landis