

## Escalated Item # 1, first on minutes November 15, 2022 escalated to policy committee on March 6, 2023

February 2021 Medicine Hat minutes escalation to policy committee response in part reads, “CP does not ever want a running trades employee to work when they have not had the proper rest and there are provisions that as a last resort can be exercised to ensure this doesn’t happen”.

Update: T&E AVAILABILITY STANDARD CANADA is a contravention of the Psychological Health and Safety Standard of Canada, contravenes all leave parameters provided in the Code, and may create a contravention of Canada Labour Code 124. Employees are being assessed discipline for using leaves provided by regulation and provisions referenced by the policy committee. This is creating a fear of using provisions to be away from work as required and determined by each individual. Individuals may be at work when they should be off due to fear of reprisal.

Update December 8: 2.1. FATIGUE MANAGEMENT POLICY STATEMENT

CP will enable employees to perform their duties as safely and effectively as possible by mitigating risks associated with fatigue. To this end, CP is committed to develop and maintain a Fatigue Management Program. The objective of the Fatigue Management Program is to prevent, mitigate and manage the risks related to fatigue during CP operations, and to promote health and wellbeing for employees and contractors and for the provision of quality services.

### 4. FATIGUE MANAGEMENT ROLES AND RESPONSIBILITIES

Managing fatigue involves a shared responsibility between CP and its employees. Duties and responsibilities of personnel who have a role in managing fatigue are described in this section.

Individuals are using the tools as advised by the policy committee and outlined in the Canada Labour Code.

Requirements in 4.7, Operating employees use of leaves is a requirement.

To be reviewed between GM and co-chairs for escalation to policy committee?

Update: A meeting will be done with Adam Smith during the week of December 12 with Pat Nahmiash.

Update January 5: Adam cancelled meeting, rescheduled for Jan 3-6. Restructuring at GM level, meeting did not happen.

Contraventions of:

Canada Labour Code

122.1 The purpose of this Part is to prevent accidents, occurrences of harassment and violence and physical or psychological injuries and illnesses arising out of, linked with or occurring in the course of employment to which this Part applies.

Specific duties of employer

125 (v) adopt and implement prescribed safety codes and safety standards.

(z) ensure that employees who have supervisory or managerial responsibilities are adequately trained in health and safety and are informed of the responsibilities they have under this Part where they act on behalf of their employer.

Corporate Safety Policy

Meet or exceed all applicable safety laws and regulations.

Provide the leadership, training, tools and resources needed to maintain a safe work environment.

Maintain and continuously improve our safety culture, processes, technologies and management systems.

Empower all employees to perform their work safely and to participate in safety processes.

Update Jan 12: Chris Gingras to arrange meeting with John Bell and Patrick Nahmiash. Meeting to be scheduled for January 20.

Recommendation:

T&E availability standard needs to be revised to meet the leaves identified in the Canada Labour Code and approved by the Policy Committee. No Canada Labour Code contraventions may be present.

Current contraventions part 2 of the Canada Labour Code.

122.1 The purpose of this Part is to prevent accidents, occurrences of harassment and violence and physical or psychological injuries and illnesses arising out of, linked with or occurring in the course of employment to which this Part applies.

125 (1) (v) adopt and implement prescribed safety codes and safety standards; - Psychological health and safety in the workplace, National Standard of Canada.

The updates need to include provisions for The Fatigue Management Plan. 13 f. (i) measures to ensure that employees are protected from adverse actions that would discourage reporting, consistent with the railway company’s safety management system Process for Reporting Contraventions and Safety Hazards.

The February 2021 response states the expectation for Medicine Hat employee’s attendance. Assed discipline from February 2021 to date should be reviewed by co-chairs, GM and labour policy committee co-chair. If determination that the Code was contravened, discipline to be expunged.

Update February 6: No response to GM meeting date or Jan 6 email. Escalation to GM as per escalation policy.

Update (Feb 9): This will be escalated to the GM. Pat Nahmiash will send to GM John Bell.

Update March 6: *First of all, I apologize for the response being over the 15-day response period. However, I would ask that you review my response and if you would like to discuss later this week or early next week, I will make*

myself available. Either way, if we cannot find a resolution between you and I, this will still proceed as you requested to the Policy Committee.

Reviewing the documentation provided, the concern that you raised is a matter of reporting unfit for duty and the resulting potential for disciplinary action. The TE Availability Standard is being cited as being in contravention to the Canada Labour Code, by not allowing employees to use leaves provided by regulation and provisions referenced by policy committee. The Workplace Health and Safety Committee is not the correct forum to determine if the discipline assessed to the employees in the examples provided was assessed correctly. These cases can be raised through the grievance process. A dispute about whether a policy is unlawful is also a matter that the Union would have to advance via the grievance process.

Regarding the Fatigue Management Plan, developed pursuant to the Duty and Rest Period Rules for Operating Employees (2020) (DRPR), the DRPR allows for CP's attendance management policy to be used in conjunction with the Fatigue Management Plan:

In Part D of the DRPR, Section 13.1(d) states:

"13.1 Taking into consideration the requirements prescribed in Part B and C of these Rules, the FMP shall include or reference a process to:

d. report by employees that they are not fit for duty prior to a duty period that takes into account attendance management;"

There is also nothing in the DRPR that prohibits any absence from being reviewed.

I do think it is important to discuss your concerns, and any potential opportunities to improve these processes.

I look forward to discussing this, and again, I will set up a meeting if you wish to discuss further.

Thank you,

John Bell

Update (Mar 9): Pat will give John Bell a call to discuss.

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## Escalated Item # 2, first on minutes November 15, 2022 escalated to policy committee on January 28, 2023

Training for T&E members for Duty and Rest Period Rules section 5-part B, on October 17, 2022, labour co-chair requested T&E committee members participate and provided peer to peer training. And requested timelines for the training. Individuals are being texted, contacted while on vacation, and approached in the station and being signed off as completed, with no training. Confusion continues to be ongoing; the June minutes identify that no Fatigue Management plan has been provided as outlined and required in the Duty and Rest Period Rules. Contacting individuals that are away and off work is a contravention of the Psychological Health and Safety Standard of Canada. TC James Moran did respond that the Fatigue management is to be rolled out by CP Rail by November 25, 2022. The Company is rolling this out presently to all employees.

Update December 8: Email sent to Paul Jorundson, Brian Gornik on December 5.

Individuals logging on to CP employee station to complete the required training are already shown as completed without having completed the training.

Confusion still persists due to contravention of.

Specific duties of employer 125

(q) provide, in the prescribed manner, each employee with the information, instruction, training and supervision necessary to ensure their health and safety at work.

(z.06) consult the workplace committee or the health and safety representative in the implementation of changes that might affect occupational health and safety, including work processes and procedures.

Fatigue management plan ongoing issues: when crews get swapped trains status of fatigue disappears, individuals are confused when reporting red why are they still working, individuals are fearful of reprisal when reporting fatigue status even though the Duty and Rest Period rules part D:

13 f. (l) measures to ensure that employees are protected from adverse actions that would discourage reporting, consistent with the railway company's safety management system Process for Reporting Contraventions and Safety Hazards.

Update: Pat Nahmiash, Darren Burzminski and Ryan Marshall will give Amy Shields a call today to discuss.

Update Jan 5: list of questions sent on December 8 & 11.

Do you have to advise all crew members of your fatigue status?

2) Can fatigue status change from green to yellow enroute?

3) Can fatigue status change from red to yellow?

4) What is process to use if the RTC doesn't respond in a timely manner when changing fatigue status?

5) When called for duty, how long does an employee have to change status after accepting call?

6) Sleeping when called for work, individuals are not provide the time, nor are they alert enough to determine KSS.

How is this reported once awake and assessment is completed?

7) Different red status while working examples need to be provided. Example: red unfit – unfit to continue, red able to continue.

8) Training has been inadequate, when will more training be provided?

9) Will the FMP be revised to include tools to stay awake, such as; napping, music, other than company reading material, etc.?

10) When tying up at facilities without CP terminals with no access to fax (ex: hotels), and when outages in access to CMA. Individuals are unable to tie up as the system will not allow progression until fatigue status is reported?

[another example; using smart phone to tie up, but not all individuals have smart phone to log in and update fatigue status]

11) When an individual accepts a call with the caveat that they are yellow for fatigue, is the requirement to report to the RTC all fatigue changes while implementing fatigue measures while staying in the yellow?

Update Jan 5: Confusion persists with use of the plan. Members are being assessed discipline for use of the plan; 13 f. (i) measures to ensure that employees are protected from adverse actions that would discourage reporting, consistent with the railway company's safety management system Process for Reporting Contraventions and Safety Hazards.

Jan 5: Email sent by Chris Gingras for info to be provided by January 12.

Jan 12: Question 4,5,6,8 and 10 were not posted. These will be resubmitted.

Update January 12: Conductor envelopes are not equipped with FMP self- assessment forms and the forms are not always available.

Fear of reprisal due to company discipline is leading to the opposite of what the plan is intended for.

System Bulletin Dated January 9, 2023

"Q: What happens if I book unfit for duty (RED) due to fatigue?

A: *Section 5.6 of the DRPR states:*

*"Every employee shall be permitted to report in accordance with sections 5.2, 5.4 and 5.5 without fear of reprisal" However, a formal investigation may take place to establish the facts and if, after a fair and impartial investigation abuse of the provision(s) has been established, the employee may be subject to discipline. "*

Formal investigations for fatigue status reporting contravention:

The purpose of the Duty and Rest Period Rules.

The Fatigue Management Plan. 13 f. (I) measures to ensure that employees are protected from adverse actions that would discourage reporting, consistent with the railway company's safety management system Process for Reporting Contraventions and Safety Hazards.

Canada Labour Code 122.1 The purpose of this Part is to prevent accidents, occurrences of harassment and violence and physical or psychological injuries and illnesses arising out of, linked with or occurring in the course of employment to which this Part applies.

Canada Labour Code 125 (1) (v) adopt and implement prescribed safety codes and safety standards; - Psychological health and safety in the workplace, National Standard of Canada.

Corporate Safety Policy

Corporate Commitment

Provide the leadership, training, tools and resources needed to maintain a safe work environment.

Maintain and continuously improve our safety culture, processes, technologies, and management systems.

Manager Accountability

Ensure the safety of our workplace and our corporation is our first priority and personal responsibility.

Empower all employees to perform their work safely and to participate in safety processes.

Q: What do I do with my form after my shift? Members are not provided the tools to send emails, fax number is required.

Recommendation:

Train and Engine personal (labour) from the Health and Safety committee to be trained in the FMP. To complete a T&E Footboard with 100% of active employees. Reasoning: peer to peer is non-judgemental with no fear of reprisal, leading to open and honest conversations, resulting in thorough understand of the plan and the requirements.

Rescind and remove formal investigations – the intent by Transport Canada as indicated: *13 f.(i)measures to ensure that employees are protected from adverse actions that would discourage reporting, consistent with the railway company's safety management system Process for Reporting Contraventions and Safety Hazards.* – create a sub-committee; the sub-committee will meet monthly, review, track and provide recommendations on alleviating fatigue relevant to local issues.

Create an auto prompt system on CMC, members to call back within 10 minutes of call time to report Fatigue status; correct self-assessment is not possible when asleep and taking a call for work.

Create and provide a Conductor/Train Person, Locomotive Engineer logbook with self-assessment information along with trip information. Forms are not accessible at all locations or in the conductor's envelope. A logbook is the least wasteful process to have self-assessment forms available for each trip.

Patrick to send escalation to the GM.

Update Feb 6; no response from GM, escalated to policy committee on Jan. 28 as per escalation policy.

Update March 6: *First of all, I apologize for the response being over the 15-day response period. However, I would ask that you review my response and if you would like to discuss later this week or early next week, I will make myself available. Either way, if we cannot find a resolution between you and I, this will still proceed as you requested to the Policy Committee.*

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Regarding the Fatigue Management Plan, developed pursuant to the Duty and Rest Period Rules for Operating Employees (2020) (DRPR), the DRPR allows for CP's attendance management policy to be used in conjunction with the Fatigue Management Plan:

In Part D of the DRPR, Section 13.1(d) states:

"13.1 Taking into consideration the requirements prescribed in Part B and C of these Rules, the FMP shall include or reference a process to:

d. report by employees that they are not fit for duty prior to a duty period that takes into account attendance management;"

There is also nothing in the DRPR that prohibits any absence from being reviewed.

I do think it is important to discuss your concerns, and any potential opportunities to improve these processes.

I look forward to discussing this, and again, I will set up a meeting if you wish to discuss further.

Thank you,

John Bell

Update (Mar 9): Pat will give John Bell a call to discuss.

Update: March 29 call between Co-Chairs and GM.

April 13: Updated CMA tie up system for reporting fatigue is not functional, will not allow report of fatigue, CMC advising employees to contact union representatives to get guidance. No training has been provided for union representatives or the members. Contravention of part 2 of the CLC, in part states, "consult the workplace committee or the health and safety representative in the implementation of changes that might affect occupational health and safety, including work processes and procedures;" - no consultation to date as required.

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## Escalated Item # 3, first on minutes May 18, 2023 escalated to policy committee on October 1, 2023

Fire Extinguishers - No training is being provided.

*On Board Trains Occupational Health and Safety Regulations  
Instructions and Training*

*13.9 Every employee shall be instructed and trained in*

*(b) the location, use and operation of fire extinguishers and emergency equipment provided by the employer.*

**Update June 13:** This is being provided to all new hires. There are records shown since 1979 but not prior to 1996. Patrick Nahmiash will validate with Transport Canada.

**Update June 13:** Part 2 of CLC 125 (q) provide, in the prescribed manner, each employee with the information, instruction, training and supervision necessary to ensure their health and safety at work:

IPG 937-1-IPG-038 attached.

**Update:** Message will be sent to the training group to see if it can be coordinated with RQ.

**Update June 15:** email sent to Tom Doherty to see if there are any plans from the Policy Committee to implement ongoing training.

Chris Gingras added the below "To be completely clear however, every employee that has hired on have had training provided in all aspects of the fire extinguishers in the conductor training program.

This is and has been documented by the training team as far back as 1996. "Labour Co-Chair recommends:

Footboard to be completed with viewing of LMS course to employees that have not completed training in the past 3 years. IPG 937-1-IPG-038 identifies on-going instruction, shall participate [135. (7)(b)136(5)(d)]. 2 appointed

members can start the footboard (coordinate with new Train & Engine safety rule book and fall footboard) with

completion by end of October. Update September 14: as per GM Scott McGraw, escalate to policy committee. Patrick Nahmiash to gather evidence and forward to GM for written response as per escalation procedure.

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## Escalated Item # 4, first on minutes May 18, 2023 escalated to policy committee on November 6, 2023

Duty and Rest Period Rules for Railway Operating Employees, May 25, 2023, implementation – No information/guidance has been provided for Part A, B, and C that are in effect May 25, 2023.

Part B;

- 4 c. providing scheduled employees with their schedule in accordance with this Rule; switchers' schedules are as indicated, 0800 and 1800. closed
- 4 d. providing employees with the training required under this Rule; no training to date as required by May 25, 2023.
- 4 f. are employees required to record time data or is a system in place? When will training be provided? Update: CMC will be tracking hours as per system bulletin dated: May 17, 2023. Closed.

Part C;

- 7 d. when will a controlled napping protocol be released?
- 7 e. when will a task rotation protocol be released?

Administrative duties: Will cessation by management of contacting members occur on May 25 or is a system in place to record and add time towards duty periods and to cumulate towards the reset break?

No information / training on how to record time towards duty periods and towards the reset break in regard to union time, health and safety, online training (27.02 collective agreement), and minimum standards classes.

9. Maximum cumulative duty period time. Are subdivision run times plus a turn away from home [Maple Creek sub 24 hours (7hrs each direction plus a turn), Brooks sub 27.5 hours (8.5hrs + 9hrs plus turn)] used for the determining to not exceeding the 60 hours in any consecutive 7 days. How will each individual be advised they are on the reset break?

If a duty period consist of 4 hours, will the employee have 8 hours remaining (if fatigue status is green) to start and complete another duty period for a total of 12 hours in a 24-hour day, then be required to use a minimum rest period depending on location (8.1 or 8.2)? Yes. Closed.

Reset break notification will be provided to each individual at the completion of the duty period preceding the reset break?

Further, 12 questions were sent on March 29 and April 13, 2023, to start the process – no clarification to date as required.

Update June 13: DRPR Application document is not being adhered with. In specific the reset break page 29 section 10 - minimum time free from work, in part reads; The DRPR include provisions that provide a balance between work assignments and necessary periods away from work. Providing a reset break that is scheduled and at home provides employees with the ability to plan their time away from work, to balance work and personal responsibilities, and is supported by fatigue science. CMC 007-23 contravenes the DRPR, states in part, "This rest will normally be updated prior to 18:00 on the 2nd night of the 'undisturbed period', however the Company reserves the right to extend this period up to 2200 on a case-by-case basis if required."

Email provided to Committee on September 14, 2023; information provided by TC: clarification in the application of Part C, 9 and 10.

### 9. Maximum Cumulative Duty Period Time

9.1 A railway company shall not assign a duty period to an employee, if the duty period would result in the employee's cumulative duty

period exceeding 60 hours in any consecutive 7 days.

9.2 A railway company shall not assign a duty period to an employee, if the employee's cumulative duty period would, as a result, exceed 192 hours in any consecutive 28 days.

### 10. Minimum Time Free from Work

10.1 Freight railway companies shall provide a reset break that begins within any consecutive 7 days.

Are the following to be considered time towards total hours / days and Is the carrier required to provide a mechanism to record and add time for each individual?

For the following;

- Union work initiated by the Carrier (ex; representing division members in carrier-initiated statements, meeting with management).

Yes, this would be considered work as part of employment and as such, it would count towards an employee's cumulative duty period times for the 60 hours in any consecutive 7 days and 192 hours in any consecutive 28 days.

- Health and Safety work as required by the local terms of reference and part 2 of the Canada Labour Code.

Yes, as a health and safety committee member, any work performed in relation to the committee would count towards an employee's cumulative duty period times for the 60 hours in any consecutive 7 days and 192 hours in any consecutive 28 days.

- Courses outlined in the collective agreement that are required to be completed in off duty hours (attached snippet). Yes, courses you are required to take as part of your employment would count towards an employee's cumulative duty period times for the 60 hours in any consecutive 7 days and 192 hours in any consecutive 28 days.

- Union work not initiated by the carrier but required as part of the union role (ex; writing grieves, writing appeals, writing complaints).

I will have to seek further guidance on this question. I do believe it would count as it is a part of your role being employed by an employer who has unionized employees. That said, it would have to be union work relating to your employment. \*I will seek further guidance and provide an official response to this\*

- When contacted by the carrier representative (management, CMC, etc.).

This would have to be looked at on each individual circumstance as to why the employee was contacted, what the discussion consisted of and how long this discussion took.

Some examples of contact that may not be considered as time that would be counted towards an employee's cumulative duty period times for the 60 hours in any consecutive 7 days and 192 hours in any consecutive 28 days:

- a call to proactively inform an employee they are being put into a status – CMC called to inform you that you were put on a reset break
- a call to inform an employee that they are required to attend a meeting or training – you are called proactively to inform you that you are required to attend a meeting or training on a specific date and time
- a call to inform of a start time for an assignment with a floating window – an employee is on an assignment that can be called between a specific window of time each day and the employee receives a call the day ahead of the assignment in an interest to proactively inform them of the time they will be called the following day.

Some examples of contact that would count towards an employee's cumulative duty period times for the 60 hours in any consecutive 7 days and 192 hours in any consecutive 28 days:

- A call requesting an employee to immediately attend a meeting, whether it be in person or virtual – the time of the meeting would count
- A call requesting an employee to provide information regarding a situation, incident or accident that occurred – an employee is required to give a detailed account that takes an excessive amount of time
- A call requesting an employee to provide witness statement, participate in an interview, provide feedback whether it be in person or virtually via the phone – the time required to perform these tasks would count

Please note the following:

- An employee who is on a reset break must receive 2 periods of 8 hours undisturbed between 22:00 – 08:00 within a minimum 32-hour continuous period free from duty – any call that occurs during an 8-hour period between 22:00 – 08:00 would be considered a disruption.
- The examples above are only as reference and EVERY situation must be looked at separately to determine whether or not the contact would count towards an employee's cumulative duty period times for the 60 hours in any consecutive 7 days and 192 hours in any consecutive 28 days

Update (Sept 15): September 14, GM Scott McGraw to gather information and provided to CPKC DRPR group for guidance and procedures.

Update (Oct 12): This will be added as an appendix. Patrick Nahmiash will follow the escalation procedure.

No response from GM escalation, sent on October 20, 2023, escalated to policy committee on November 6, 2023

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