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Alaska State Legislature

Senate Transportation Committee



Sen. John B. (Jack) Coghull, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Abood
Sen. Jan Fuks
Sen. Joe Josephson

Douch V
Juneau, Alaska 99811

May 2, 1986

TO: All Committee Members

FROM: Committee Staff

RE: CS HB 436 (Rules), "An Act requiring a properly equipped and staffed caboose on certain trains."

CS HB 436 would require a caboose on trains that exceed 1,000 feet in length, excluding 1) a train made of only locomotives and passenger coaches; 2) a train 1,825 feet in length composed of flat cars or trailers or containers on flat cars, on which toxic materials are carried in the first 1000 feet of the train; 3) or when an emergency situation prevents compliance.

A defective car may be entrained behind the caboose and moved to the nearest repair point if necessary.

Each violation of this section is punishable by a fine of not less than \$500 or more than \$1000.

The Alaska Railroad does not view this as a safety issue, but more as a collective bargaining issue. The railroad would like this to be a matter of contract negotiations rather than a legislatively mandated decision.

On the other hand, the United Transportation Union believes that there is a genuine issue of safety involved and for this reason should be legislatively mandated.

The backup information in the committee packets takes up each of these positions.

The committee staff has a drafted committee substitute which modifies the exceptions to include trains with baggage cars, increases the length of flat cars with containers or trailers to 2500 feet in length and provides that if the railroad and the appropriate collective bargaining unit do not include provisions relating to cabooses on trains in their agreements, then cabooses are not necessary.

Offered: 4/2/86
Referred: Rules

Original sponsors: Cato, Hurley,
Koponen, et al.

1 IN THE HOUSE

BY THE RULES COMMITTEE

2

CS FOR HOUSE BILL NO. 436 (Rules)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act requiring a properly equipped and staffed
caboose on certain trains."

7

8

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9

* Section 1. AS 42.30 is amended by adding new sections to read:

10

ARTICLE 6. CABOOSE REQUIRED.

11

Sec. 42.30.250. CABOOSE REQUIRED. (a) A train that exceeds

12

1,000 feet in length including locomotives shall have a properly

13

maintained and equipped caboose, that is staffed by a qualified train

14

conductor or brakeman, attached as the rear car while the train is

15

moving over tracks outside a yard or terminal.

16

(b) This section applies to a railroad that transports goods or

17

passengers for a fee.

18

Sec. 42.30.260. EXCEPTIONS. (a) AS 42.30.250 does not apply

19

(1) to a train composed only of locomotives and passenger

20

coaches;

21

(2) to a train not exceeding 1,825 feet in length, includ-

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ing locomotives, composed only of trailer on flat car equipment or

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container on flat car equipment provided that any hazardous or toxic

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materials on the train are located in the first 1,000 feet of the

25

train as measured from the lead locomotive; or

26

(3) if an emergency occurs in route that prevents compli-

27

ance with that section.

28

(b) Notwithstanding AS 42.30.250, a defective car that cannot be

29

entrained except behind the caboose may be attached as the rear car on

1 a train and moved to the nearest terminal where it can be repaired.

2 Sec. 42.30.270. PENALTY. Violation of AS 42.30.250 is an of-
3 fense punishable by a fine of not less than \$500 and not more than
4 \$1,000. Each violation is a separate offense.

Introduced: 5/9/85
Referred: State Affairs
and Transportation

1 IN THE HOUSE

BY CATO

2

HOUSE BILL NO. 436

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act requiring a properly equipped and staffed
caboose on certain trains."

7

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May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Transportation Committee 3/6/86, 7:00 am
House State Affairs Committee 2/14/86, 3:00 pm
House Rules Committee 4/1/86, 8:01 am

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

P.O. Box K
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600
465-3603

May 6, 1986

Mr. Blake Call, Secretary
Senate Transportation Committee
Alaska State Senate
P.O. Box V
Juneau, AK 99811

Re: CS for HB 436

Dear Mr. Call:

I would like to call your attention to two typographical errors in our bill review letter to you dated May 2, 1986.

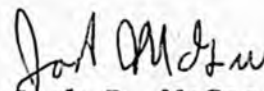
On page 1 and elsewhere in our letter, the bill under review is referred to as HB 436. The more accurate identification of the bill reviewed is CS for HB 436. (A copy of CS for HB 436, the bill we reviewed in our May 2 letter, is attached.)

On page 2, approximately nine lines up from the bottom, a reference is made to HB 341. The intended reference here should have been to CS for HB 436.

Sincerely,

HAROLD M. BROWN
ATTORNEY GENERAL

By:


Jack B. McGee

Assistant Attorney General

JBM:ebc
Enclosure

Offered: 4/2/86
Referred: Rules

Original sponsors: Cato, Hurley,
Koponen, et al.

1 IN THE HOUSE

BY THE RULES COMMITTEE

2 CS FOR HOUSE BILL NO. 436 (Rules)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act requiring a properly equipped and staffed
7 caboose on certain trains."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 42.30 is amended by adding new sections to read:

10 ARTICLE 6. CABOOSE REQUIRED.

11 Sec. 42.30.250. CABOOSE REQUIRED. (a) A train that exceeds
12 1,000 feet in length including locomotives shall have a properly
13 maintained and equipped caboose, that is staffed by a qualified train
14 conductor or brakeman, attached as the rear car while the train is
15 moving over tracks outside a yard or terminal.

16 (b) This section applies to a railroad that transports goods or
17 passengers for a fee.

18 Sec. 42.30.260. EXCEPTIONS. (a) AS 42.30.250 does not apply

19 (1) to a train composed only of locomotives and passenger
20 coaches;

21 (2) to a train not exceeding 1,825 feet in length, includ-
22 ing locomotives, composed only of trailer on flat car equipment or
23 container on flat car equipment provided that any hazardous or toxic
24 materials on the train are located in the first 1,000 feet of the
25 train as measured from the lead locomotive; or

26 (3) if an emergency occurs in route that prevents compli-
27 ance with that section.

28 (b) Notwithstanding AS 42.30.250, a defective car that cannot be
29 entrained except behind the caboose may be attached as the rear car on

1 a train and moved to the nearest terminal where it can be repaired.

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3 fense punishable by a fine of not less than \$500 and not more than
4 \$1,000. Each violation is a separate offense.

ALASKA STATE AFL-CIO

2501 Commercial Dr.
Anchorage, Alaska 99501
(907) 338-6284



819 1st Ave.
Fairbanks, Alaska 99701
(907) 456-2030

May 2, 1986

MANO FREY
Executive President

Dixie Hudish
AFL-CIO Legislative
Representative

TESTIMONY ON CS HB 436 "Caboose Bill"

Mr. Chairman, members of the Committee:

For the record, my name is Dixie Hudish and I'm here representing the Alaska State AFL-CIO.

The Alaska State AFL-CIO wishes to go on record in support of CS.R 436.

This bill which requires the Alaska Railroad to properly equip and staff a caboose on certain trains, is essentially and unequivocally a safety issue. The Alaska Railroad management, in their previous testimony before the House State Affairs and Transportation Committees, would have us believe otherwise, as they state the Alaska Railroad Corporation has already been directed by the Legislature to provide a safe railroad operation. We contend it is one thing to direct the Alaska Railroad to run a safe operation and it is another thing to legislate safe operations..

The Alaska Railroad management also contends that the legislature should not be interfering with how they run the railroad. Let me assure you that when the Alaska Railroad Coproration Act was established, the residents of Alaska did not "give up" their legilative ability to regulate rail safety. Uppermost, we should keep in mind

that the Alaska Railroad is owned by the State and the right to regulate rail safety is the State of Alaska's responsibility. The State should do no less than to insure not only the safety of its employees but of the public.

Many of you have heard that modern technology now provides various automated devices that are supposed to reduce the risk of operating caboosless trains, yet all these devices cannot replace the manned caboose, as was clearly pointed out by a Federal Judge in Nebraska in a court decision issued in May, 1985. Judge Urbom concluded in his decision that there is ample evidence that a crew member at the end of a train may see a safety threat that the electronic detector cannot see. The State had shown that detectors are fallible, that in the past they have failed to detect problems that the caboose crew was able to discover before they led to derailments and that the retention of the manned caboose plays a real role in the detection of equipment defects before they can cause derailments.

With increased transportation of hazardous and toxic materials on the Alaska Railroad, the safety of the public demands the stiffest assurance of rail safety on our trains. As we all know, it only takes one derailment incident involving hazardous and toxic materials to affect an entire community. The AFL-CIO is not saying that keeping cabooses on trains will insure no accidents. We are saying, that requiring cabooses on certain trains over 1,825 feet in length, with insurance that hazardous and toxic materials will be carried up front on the first 1,000 feet of the train, will certainly decrease the possibility of an incident.

Further, the Alaska Railroad management pointed out in their previous testimony before the House State Affairs Committee, that eliminating cabooses would be an economic saving factor. I would like to reply by quoting Craig Stoskopf, Safety Representative for the United Transportation Union in his letter to the Anchorage Daily Times, as I couldn't say it better. As quoted,

"an employee spotting trouble early can mean the difference between an incident and disaster costing millions of dollars and loss of life. Any short term cost savings would be instantly nullified in such a disaster."

We do not believe it is worth the dollars in labor costs to the Alaska Railroad to compromise the safety of the public and the train crew involved.

With this, the Alaska State AFL-CIO urges the Senate Transportation Committee to support CSHB 436.

Thank you

Alaska State Legislature

Senate Transportation Committee



Douch V
Juneau, Alaska 99811

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-chairman
Sen. Mitch Abood
Sen. Jan Fuiks
Sen. Joe Josephson

DAVE ROYER
ATTNEY

May 2, 1986

TO: Senator Coghill

FROM; EZ

Today the committee will hear CSHB 436 (Rules), the caboose bill. We will hear from Rep. Cato, the Railroad and the United Transportation Union. The Railroad will testify via teleconference.

(Hear from Cato first, then the Railroad, then the Union.)

After the testimony explain why you feel it should be a collective bargaining issue and draw the committee's attention to the committee substitute.

Paul Fischer will probably be amenable to moving the CS before the committee.

Buddy Gray
12 years ARR

Ray Pinder
36 years ARR

R. PALMER
33 years ARR

Gerald Maloney - 1942
Int. V. Pres. - I.T.U.

Mervel Frank
49 years

Dixie Hudish
30 years mfg-Dispatcher
AFLCIO

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

P.O. Box K
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600
465-3603

May 2, 1986

Mr. Blake Call, Secretary
Senate Transportation Committee
Alaska State Senate
P.O. Box V
Juneau, AK 99811

Re: Legal Review of HB 436

Dear Mr. Call:

You have requested our review of HB 436 with particular reference to § 1207(a)(4) of the Alaska Railroad Transfer Act (45 U.S.C. § 1201 et seq.).

Proposed Sec. 42.30.250(a) of this bill requires any train operating in Alaska that is more than 1000 feet long to have "a properly maintained and equipped caboose" attached as the rear car and staffed by a train conductor or a brakeman. This requirement does not apply to trains operating inside a railroad yard or terminal area. 1/

Since the only trains now operating in Alaska are those of the Alaska Railroad Corporation, our review of this bill must begin with a brief discussion of the practical effect of this bill on the Alaska Railroad and then an analysis of § 1207(a)(4) of the Alaska Railroad Transfer Act as it relates to this effect.

Except for passenger trains, it is our understanding that the Alaska Railroad presently operates only one train, the

1/ Other exceptions to this requirement include 1) trains exclusively composed of passenger coaches, 2) trains exclusively composed of flat cars carrying trailers or containers, provided such trains do not exceed 1825 feet in length and provided that any hazardous or toxic material are located in the first 1000 feet of the train, and 3) an emergency that prevents compliance with this requirement. See Sec. 42.30.260 of the bill.

Mr. Blake Call, Secretary
Senate Transportation Committee
Re: HB 436

May 2, 1986
Page 2

Arctic Fox, without a caboose. This train operates with a crew of two persons, both of whom are required to be in the locomotive unit of the train. 2/ Should this bill become law, the Arctic Fox would fall within the criteria of Sec 42.30.250 and would be required to operate with a caboose. This would mean at least one additional crew member for this train, i.e., a train conductor or a brakeman. The practical effect of HB 436 on the Alaska Railroad thus would be to specify a minimum number of crew members that must be employed in the operation of one of its trains. And herein lies a legal difficulty. § 1207(a)(4) of the Alaska Railroad Transfer Act (ARTA) exempts the Alaska Railroad from any "requirement of any state or local law which specifies the minimum number of crew members needed to operate a train." § 1207(a)(4) of ARTA reads as follows:

The operation of trains by the State-owned railroad shall not be subject to the requirement of any State or local law which specifies the minimum number of crew members which must be employed in connection with the operation of such trains.

On its face, § 1207(a)(4) appears to conflict with HB 341. If in fact this is the case, it is clear that the federal law must prevail. 3/

Now as to whether there is a real conflict here, it might be argued that § 1204(a)(4) should be interpreted to refer only to state or local laws in existence at the time of the passage of ARTA and is not meant to include state laws that might be passed after the effective date of ARTA. 4/ Such an interpretation, if correct, would remove the possibility of a conflict with ARTA.

2/ This factual data is taken from the position paper submitted by the Alaska Railroad on HB 436 dated February 14, 1986.

3/ Article VI, § 2 of the U.S. Constitution (the Supremacy Clause) requires that when a state and federal law conflict, the state law must yield to the federal law. See Tarbles case, 80 U.S. 397 (1872).

4/ There is of course a vast difference in meaning between "any state or local law" and "any existing state or local law."

Mr. Blake Call, Secretary
Senate Transportation Committee
Re: HB 436

May 2, 1986
Page 3

There are, however, two major difficulties with the view that § 1204(a)(4) refers only to "existing" state laws. The first is that this is not what § 1204(a)(4) says; its text is clear and unambiguous. There is no particular mystery or complexity surrounding the concept of "existing laws." If this concept had been the one intended by Congress, it surely would have used the word "existing" in the section. That Congress obviously did not leads one to the reasonable judgment that they did not intend to limit the prohibition of § 1204(a)(4) to existing state laws. This being the case, established canons of statutory interpretation do not comfortably permit one to read the word "existing" into § 1207(a)(4). See, 2A, N Singer, Sutherland Statutory Construction (4th ed. 1984), §§ 4601, 46.01; Also see Wilson v. Municipality of Anchorage, 669 P.2d 569 (Alaska 1983). Accordingly, it is our opinion that a court construing § 1207(a)(4) of ARTA would rely on its plain meaning and would interpret the phrase "any law" to encompass both existing state laws and state laws enacted after the passage of AKTA.

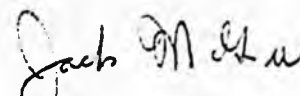
Secondly, it is difficult to make much sense of the meaning of § 1207(a)(4) if it is to be read to refer only to existing state laws. Such an interpretation would mean that if there were any such state laws in existence at the time of the passage of ARTA, a state legislature, at some time after the effective date of ARTA, could simply repeal and then reenact the law thereby avoiding the § 1207(a)(4) prohibition. Since a law is never presumed to codify unreasonableness or futility, an interpretation leading to such a result is not likely to be readily accepted by a court. See 2A, N. Singer, Sutherland Statutory Construction, (4th ed. 1984), § 45.12; Also see Markham v. Cabell, 326 U.S. 404 (1945) and Glover v. Marine Banks of Beaver Dam, 345 N.W.2d 449 (Wisc. 1984).

In summary, it is our opinion that HB 436, should it be enacted into law, would more likely than not be found to conflict with § 1207(a)(4) of ARTA.

Sincerely,

HAROLD M. BROWN
ATTORNEY GENERAL

By:



Jack B. McGee
Assistant Attorney General

JBM:bap

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

May 2, 1986

SUBJECT: Requiring cabooses on certain trains
(CSHB 436(Rules))

TO: Representative Bette Cato

FROM: Tamara Brandt Cook *TBC*
Director
Division of Legal Services

You have asked whether CSHB 436(Rules) requiring a properly equipped and staffed caboose on a train conflicts with 45 USC 1207(a)(4) (Alaska Railroad Transfer Act) which provides

The operation of trains by the State-owned railroad shall not be subject to the requirement of any State or local law which specifies the minimum number of crew members which must be employed in connection with the operation of such trains.

Since CSHB 436(Rules) requires that a caboose be used on a train and that it be staffed by a train conductor or brakeman, an argument could be made that this constitutes a specification of the minimum number of crew members in violation of the federal law. However, I believe that the better interpretation would be that CSHB 436(Rules) does not violate the federal law because it does not directly specify a minimum number of total crew members on a train, but only that, whatever the number of crew members may be, one conductor or brakeman staff the caboose.

This interpretation is supported by the history behind enactment of 45 USC 1207(a)(4). That provision was intended to avoid a law in Alaska that very specifically established minimum crew sizes for trains and that was repealed under chapter 40, SLA 1983. Before its repeal AS 23.10.420 provided

(a) No person operating an Interstate Commerce Commission-regulated railroad offering passenger service in this state may operate a train or engine, outside of

yard limits, regardless of the form of energy used for propulsion, unless it meets the following requirements:

(1) a passenger train shall have at least a minimum passenger crew, which shall consist of one locomotive engineer, one locomotive fireman (or helper), one conductor, one brakeman, and one flagman;

(2) a freight train shall have at least a minimum freight crew, which shall consist of one locomotive engineer, one locomotive fireman (or helper), one conductor, and two brakemen;

(3) a light engine without cars shall have at least a minimum light engine crew, which shall consist of one locomotive engineer, one locomotive fireman (or helper), and one conductor.

(b) Except for hostling movements and duties as negotiated for each railroad company, no person operating an Interstate Commerce Commission-regulated railroad offering passenger service in this state may operate an engine or locomotive, regardless of the form of energy used for propulsion, for switching cars or in transfer movements, unless every engine or locomotive is manned by a minimum crew consisting of one locomotive engineer, one conductor, and one brakeman.

(c) In this section "engine" includes connected, multiple units under single control

(d) A person who violates a provision of this section may be fined up to \$500 upon conviction. Each violation constitutes a separate offense.

Since CSHB 436(Rules), while it contains a requirement regarding the staffing of trains, does not specify a minimum number of crew members like former AS 23.10.420 did and because the federal law prohibits the state from applying a law that ". . . specifies the minimum number of crew members . . ." but does not directly prohibit the state from enacting laws establishing other requirements regarding the staffing of trains, I believe that CSHB 436(Rules) could withstand a challenge if enacted. However, at the very best CSHB 436(Rules) would be open to a challenge under the federal law and it cannot be determined with certainty what the outcome to such a challenge would be.

JERMAIN, DUNNAGAN & OWENS

ATTORNEYS AT LAW

3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503
(907) 563-8844

WILLIAM K. JERMAIN
CHARLES A. DUNNAGAN
BRADLEY D. OWENS
RANDALL G. SIMPSON
HOWARD S. TRICKEY
GREGORY C. TAYLOR
GARY C. SLEEPER

GEORGE T. FREEMAN
JERALD M. REICHLIN
CONSTANCE E. LIVSEY
D. KENNETH FORD

OF COUNSEL
ERIC OLSON
DAVID J. WALSH

January 30, 1986

HAND-DELIVERED

Clinton Gray
Legislative Representative
UNITED TRANSPORTATION UNION

Re: Alaska Caboose Legislation

Dear Mr. Gray:

The State Legislature is currently considering Senate Bill 313 and House Bill 436, which provide for a properly equipped and staffed caboose on freight trains over 1,000 feet in length. The bill is a public safety measure. Four other states have passed legislation requiring cabooses on freight trains, they are Virginia, Oregon, Montana, and Nebraska. I understand also that many states are adopting regulations or considering legislation on this same issue. While this legislation is not a "jobs" bill, it may effect the minimum number of crew members required to be employed for the operation of a train. Accordingly, you have asked whether this state enactment would be prohibited under the Alaska Railroad Transfer Act. For the reasons set out below, it is my opinion that the Alaska caboose legislation now proposed does not violate, and is not prohibited by, the Alaska Railroad Transfer Act (ARTA).

ARTA at 45 U.S.C. §120-7(a)(4) provides that:

(a)(4) The operation of trains by the State-owned railroad shall not be subject to the requirement of any state or local law which has specified the minimum number of crew members which must be employed in connection with the operation of such trains.

The question of whether this federal law prohibits Alaska from regulating its own railroad can be approached in a number of ways. I will begin with a review of the legislative history.

When construing the statute, the court will examine the language of the statute first. However, after reviewing the language of the statute itself, the court will then refer to the legislative history to gain insight that may be helpful in determining the statute's meaning. City and Borough of Sitka v. IBEW, 653 P.2d 332 (Alaska 1982). The wording of 45 U.S.C. §1207(a)(4) can be construed as prohibiting the State from enacting any legislation which impacts the number of crew members employed in connection with the operation of trains. However, the legislative history indicates that the legislative intent, was to exempt the Alaska Railroad only from "existing" laws.

At the time of the Alaska Railroad Transfer Act, Alaska law strictly regulated the minimum crews necessary for passenger trains, freight trains, light engines, etc. AS 23.10.420. ARTA clearly exempted the state-owned railroad from that law. But, did ARTA also exempt the Alaska Railroad from any future enactments? The legislative history provides clear guidance. A report of the Committee of Commerce, Signs and Transportation states as follows:

Section 8 of the bill governs the application of various federal and state laws to the state-owned railroad after its transfer to the state. . . . In general the Committee believes that in the future this state-owned railroad should be treated like all other railroads subject to federal and state laws. . . . Third, the Committee believes it would be inappropriate for the federal government to dictate to the state how it should set up and operate the railroad beyond what generally applies to all rail carriers under existing laws. Report of Committee on Commerce, Signs and Transportation, S.Rep. No. 97-479, 97th Cong. 2d Ses. Calendar No. 862EG10-12, 20 (1982).

Emphasis added. The legislative history speaks specifically to "existing laws." The history notes that "in the future" the Alaska Railroad should be like other railroads. This is a clear indication that Congress, when enacting ARTA, intended to deal only with the laws that were on the books at the time, and did not intend to prohibit the State from future regulation of its wholly owned railroad.

Another rule of statutory construction is that statutes relating to the same subject matter should be read together as a

whole so that the total regulatory scheme is preserved. Nash v. State Commercial Fisheries, 679 P.2d 477 (Alaska 1984). In addition, federal statutes must be construed consistently with one another. Get Oil Out v. Exxon Corp., 586 F.2d 726 (9th Cir. 1978). These statutory guidelines mean that §1207(a)(4) of ARTA must be viewed in the context of other federal regulations concerning railroads. Federal law generally allows states to enact caboose legislation. Federal law in Alaska should be no different.

ARTA makes the state-owned railroad subject to the Interstate Commerce Commission and the federal Railroad Safety Act. 45 U.S.C. §421, et seq. The federal Railroad Safety Act states at 45 U.S.C. §434:

A state may adopt or continue in force any law, rule, regulation, order, or standard relating to railroad safety until such time the secretary has adopted a rule, regulation, order, or standard covering the subject matter of such state requirements. A state may adopt or continue in force an additional or more stringent law, rule, regulation, order, or standard relating to railroad safety when necessary to eliminate or reduce an essentially local safety hazard and when not incompatible with any federal law, rule, regulation, order, or standard and when not creating an undue burden on commerce. (Emphasis added.)

In Burlington Northern Railroad Co. v. State of Nebraska, C.B. 83-L423 (F.D.N.D., May 10, 1985), the court stated that because the Interstate Commerce Commission has not provided any guidance or any statutes regarding cabooses and the manning of cabooses, states are free to legislate in that area until the time that the Commission does regulate that area. Thus, in order for ARTA to be consistent with federal law, Alaska must be considered as having the right to pass safety measures concerning cabooses.

Even if Congress intended to exempt the state-owned railroad from future laws on crew size, it could not have intended that the state-owned railroad be exempt from state safety laws. In determining this kind of legislative intent the pre-enactment history is relevant, including the statutes in effect at the time that ARTA was passed. 2A Singer, N.J. Sutherland's Statutory Construction §48.03 (1984). In Section 1207(a)(4) and in the

legislative history, there is no indication that the purpose was specifically to prevent featherbedding. However, looking at the law in effect at the time ARTA was passed, and discussing the matter with persons knowledgeable in the industry, it is clear that the law required more employees than was necessary. Clearly, Section 1207(a)(4) was enacted to prevent featherbedding. Since the Alaska caboose legislation is a bona fide safety measure and not a featherbedding measure, then it will not be in conflict with Section 1207(a)(4), regardless of the fact that it has some impact on railroad manning. In this regard, it is instructive to note that the court in the North Dakota case found that the caboose legislation was reasonably related to the protection of the health and safety of the citizens of the state. Burlington Northern, supra at 7.

In researching this question, we have examined a number of other issues. I will not discuss in depth the work that we have done. However, we do not believe that Section 1207(a)(4) is a violation by Congress of Alaska's Tenth Amendment rights. See, Garcia v. San Antonio Metro Transit Authority, 105 S. Ct. 1005 (1985). In addition, it does not appear that Congress is prohibited from addressing Alaska's law on minimum sizes of crewmen in a bill that does not address that problem with regard to the other states in the Union. See generally, State of South Carolina v. Katzenbach, 383 U.S. 301 (1966), where the Supreme Court upheld the Voting Rights Act of 1965 that was imposed on three particular states.

If you have any questions or if I can be of any further assistance, don't hesitate to contact me at your convenience.

Sincerely,

JERMAIN, DUNNAGAN & OWENS



Charles A. Dunnagan

CAD/bh

Cook
4/30/86 ✓

Original sponsors: Cato, Hurley,
Koponen, et al

1 IN THE HOUSE

BY THE TRANSPORTATION COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 436 (Transportation)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act requiring a properly equipped and staffed
7 caboose on certain trains."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 42.30 is amended by adding new sections to read:

10 ARTICLE 6. CABOOSE REQUIRED.

11 Sec. 42.30.400. CABOOSE REQUIRED. (a) A train that exceeds
12 1,000 feet in length including locomotives shall have a properly
13 maintained and equipped caboose, that is staffed by a qualified train
14 conductor or brakeman, attached as the rear car while the train is
15 moving over tracks outside a yard or terminal.

16 (b) This section applies to a railroad that transports goods or
17 passengers for a fee.

18 Sec. 42.30.410. EXCEPTIONS. (a) AS 42.30.400 does not apply

19 (1) to a train composed only of locomotives, passenger
20 coaches, and baggage cars;

21 (2) to a train not exceeding 2,500 feet in length, includ-
22 ing locomotives, composed only of trailer on flat car equipment or
23 container on flat car equipment provided that any hazardous or toxic
24 materials on the train are located in the first 1,000 feet of the
25 train as measured from the lead locomotive;

26 (3) if an emergency occurs in route that prevents compli-
27 ance with that section; or

28 (4) unless a collective bargaining agreement between the
29 railroad and an appropriate bargaining unit contains a provision

1 requiring compliance with AS 42.30.400.

2 (b) Notwithstanding AS 42.30.400, a defective car that cannot be
3 entrained except behind the caboose may be attached as the rear car on
4 a train and moved to the nearest terminal where it can be repaired.

5 Sec. 42.30.420. PENALTY. Violation of AS 42.30.400 is an of-
6 fense punishable by a fine of not less than \$500 and not more than
7 \$1,000. Each violation is a separate offense.
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Offered: 4/2/86
Referred: Rules

as defined in their Collective Bargaining agreement -

Original sponsors: Cato, Hurley,
Koponen, et al.

Wave 5 Day Rule -

1 IN THE HOUSE

BY THE RULES COMMITTEE

2

CS FOR HOUSE BILL NO. 436 (Rules)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act requiring a properly equipped and staffed

7

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10

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11

Sec. 42.30.250. CABOOSE REQUIRED. (a) A train that exceeds

12

1,000 feet in length including locomotives shall have a properly

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maintained and equipped caboose, that is staffed by a qualified train

14

conductor or brakeman, attached as the rear car while the train is

15

moving over tracks outside a yard or terminal.

16

(b) This section applies to a railroad that transports goods or

17

passengers for a fee.

18

Sec. 42.30.260. EXCEPTIONS. (a) AS 42.30.250 does not apply

19

(1) to a train composed only of locomotives and passenger

20

coaches;

21

(2) to a train not exceeding ²⁰⁰⁰ 1,825 feet in length, includ-

22

ing locomotives, composed only of trailer on flat car equipment or

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container on flat car equipment provided that any hazardous or toxic

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materials on the train are located in the first 1,000 feet of the

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train as measured from the lead locomotive; or

26

(3) if an emergency occurs in route that prevents compli-

27

ance with that section.

28

(b) Notwithstanding AS 42.30.250, a defective car that cannot be

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entrained except behind the caboose may be attached as the rear car on

1 a train and moved to the nearest terminal where it can be repaired.

2 Sec. 42.30.270. PENALTY. Violation of AS 42.30.250 is an of-
3 fense punishable by a fine of not less than \$500 and not more than
4 \$1,000. Each violation is a separate offense.

Cook
4/30/86

Original sponsors: Cato, Hurley,
Koponen, et al

1 IN THE HOUSE BY THE TRANSPORTATION COMMITTEE
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22 ing locomotives, composed only of trailer on flat car equipment or
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ALASKA RAILROAD CORPORATION

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P.O. Box 7-2111 • Anchorage, Alaska 99510-7069



FACT SHEET

March 6, 1986

Contact: Vivian Hamilton
265-2675

HISTORY OF CABOOSES

Caboose date back to the beginnings of railroading and served as a traveling office for the conductor. From the caboose the conductor and crewman could monitor the train's performance and apply the hand brakes when the engineer's whistle sounded. The entire crew often ate and slept in the caboose at terminals away from home. Today cabooses are less necessary. Computerization has replaced most of the conductor's paperwork duties. New technologies provide automatic detection systems for train problems and automatic braking systems are used in favor of hand brakes. Crews rarely have to sleep in cabooses anymore.

NATIONWIDE RAIL INDUSTRY TRENDS

In 1982 the national United Transportation Union (UTU), which represents trainmen, enginemen and conductors, and the nation's railroads agreed upon rules that called for the eventual elimination of cabooses on trains. As a result, most of the nation's biggest railroads have dropped cabooses from roughly one-fourth of their long distance freight trains. The 1982 agreement provided that railroads no longer have to purchase new cabooses or refurbish existing cabooses. Once its useful life has ended, a caboose need not be replaced. A more recent 1985 agreement has

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sped the elimination of cabooses. Apparently frustrated with these negotiated agreements, and rebelling at the notion of losing cabooses, UTU has repeatedly taken its case to legislatures. Yet some 25 states have rejected the implementation of a caboose law; only four states currently require a caboose on freight trains, (only two adopted since the negotiated 1982 agreements.)

CABOOSES AT THE ALASKA RAILROAD CORPORATION

The Alaska Railroad Corporation has never eliminated a caboose from an existing freight train or commodity service. A new service begun in May 1985, the Arctic FOX (Freight Overnight Express), is a cabooseless train. Because the FOX is a short, fast, daily train which carries trailers and containers on flat cars, the union and Railroad managers agree that it does not require a caboose. Assigned with only two engines and entirely new equipment, the service also has no intermediate switching needs. Only a two-person crew is required.

Type of freight hauled, age of equipment, switching needs, and length of the train are key points in determining train makeup and crew assignments. Cabooses will be needed on most freight trains until new technologies such as wayside detectors are available to help reveal any train malfunctions.

MAJOR POINTS OF THE PROPOSED BILL

House Bill 436, as proposed, would require a manned caboose on all freight trains over 1,000 feet in length, including locomo-

tives. This would apply to nearly all ARRC freight trains. A fine would be imposed for violations.

WHY THE ARRC OPPOSES HB 436

By requiring cabooses on all freight trains, this legislation would effectively limit the Railroad's ability to introduce innovative operations for a safer, more efficient enterprise.

Legislative intervention in matters of ARRC management would also contradict a previous legislative directive that the Railroad "carry out its responsibilities on a self-sustaining basis" and "provide for the prudent operation of the Railroad." The ARRC has been operating according to sound business management practices and will continue to do so without additional legislation.

Mandatory caboose legislation would also undermine the bargaining process between unions and railroads, which have already addressed and resolved the caboose issue. If either side may use legislative processes to overturn agreements, contract negotiations will become virtually meaningless.

IS SAFETY AT STAKE?

The ARRC is already directed by the Legislature, the Federal Railway Administration and a host of other regulatory and occupational safety provisions to provide for safe rail operations. Additionally, the collective bargaining and arbitration process protects legitimate safety concerns while permitting railroads to implement more cost-effective technologies.

Summary

1. The historical purpose for the caboose has been eliminated by modern day technology.

The caboose has become a relic of a bygone era of railroading. Most major mainlines are now equipped with centralized traffic control, eliminating the need for a flagman on a halted train to walk back to flag following trains. In a centralized traffic control system, a dispatcher in an office often hundreds of miles away operates switches automatically and signals activated by the train itself warn off those behind it. It has been a long time since brakemen had to go over the tops of cars to set hand brakes on individual cars. The engineer controls air brakes on the entire train. Lighted electronic end-of-train devices mark the end of the train and electronic trackside detectors monitor overheated journal bearings and dragging equipment, a chore once performed visually by crewmen from the caboose. Finally, the use of cabooses by train crews as a home away from home where they bunked and ate their meals also belongs to a long gone era. Today, crews are provided with lodging and meals by the railroad.

2. A comprehensive study of the need for cabooses for safety purposes by a Presidential Emergency Board in 1982 stated:

"...cabooses may be eliminated in each class of service without undermining safety and operational considerations."

The Federal Railroad Safety Act of 1970 (45 U.S.C. 421 et seq.) was enacted by Congress to establish uniform railroad safety standards for the benefit of the public and railroad employees. The Act was designed to eliminate a hodgepodge of conflicting local railroad regulations which were a burden on interstate commerce and a burden to the pocketbooks of consumers. The Federal Railroad Administration, the agency responsible for administering the Federal Railroad Safety Act, has never determined that occupied cabooses contribute to safety.

3. The use of cabooses has historically been an item for labor/management negotiations.

The United Transportation Union reached a national agreement with the railroads on October 15, 1982 which specifically permitted and recognized the right of railroads to eliminate cabooses subject to certain guidelines. Today, elimination of cabooses continues to be negotiated or arbitrated pursuant to the National Agreement.

4. Cabooses are a financial burden to deregulated railroads.

Continued operation and maintenance of obsolete cabooses constitutes a costly and unnecessary waste of limited resources. If railroads and the jobs they provide are to survive in the highly competitive transportation market, they must eliminate wasteful spending of capital which inevitably is translated to higher shipping rates.

§ 1207. State operation

(a) Laws, authorities, etc., applicable to State-owned railroad with status as rail carrier engaged in interstate and foreign commerce

(1) After the date of transfer to the State pursuant to section 1203 of this title, the State-owned railroad shall be a rail carrier engaged in interstate and foreign commerce subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of subtitle IV of Title 49, and all other Acts applicable to rail carriers subject to that chapter, including the antitrust laws of the United States, except, so long as it is an instrumentality of the State of Alaska, the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.), the Railroad Retirement Tax Act (26 U.S.C. 3201 et seq.), the Railway Labor Act (45 U.S.C. 151 et seq.), the Act of April 22, 1908 (45 U.S.C. 51 et seq.) (popularly referred to as the "Federal Employers' Liability Act"), and the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.). Nothing in this chapter shall preclude the State from explicitly invoking by law any exemption from the antitrust laws as may otherwise be available.

(2) The transfer to the State authorized by section 1203 of this title and the conferral of jurisdiction to the Interstate Commerce Commission pursuant to paragraph (1) of this subsection are intended to confer upon the State-owned railroad all business opportunities available to comparable railroads, including contract rate agreements meeting the requirements of section 10713 of Title 49, notwithstanding any participation in such agreements by connecting water carriers.

(3) All memoranda which sanction noncompliance with Federal railroad safety regulations contained in 49 CFR Parts 209-236, and which are in effect on the date of transfer, shall continue in effect according to their terms as "waivers of compliance" (as that term is used in section 431(c) of this title).

Portion prohibiting the State of Alaska from requiring
a minimum number of personnel on trains

45 § 1207

RAILROADS 496

(4) The operation of trains by the State-owned railroad shall not be subject to the requirement of any State or local law which specifies the minimum number of crew members which must be employed in connection with the operation of such trains.

(5) Revenues generated by the State-owned railroad shall be retained and managed by the State-owned railroad for railroad and related purposes.

(6)(A) After the date of transfer, continued operation of the Alaska Railroad by a public corporation, authority or other agency of the State shall be deemed to be an exercise of an essential governmental function, and revenue derived from such operation shall be deemed to accrue to the State for the purposes of section 115(a)(1) of Title 26. Obligations issued by such entity shall also be deemed obligations of the State for the purposes of section 103(a)(1) of Title 26, but not obligations within the meaning of section 103(b)(2) of Title 26.

(B) Nothing in this chapter shall be deemed or construed to affect customary tax treatment of private investment in the equipment or other assets that are used or owned by the State-owned railroad.

(b) Procedures for issuance of certificate of public convenience and necessity; inventory, valuation, or classification of property; additional laws, authorities, etc., applicable

As soon as practicable after January 14, 1983, the Interstate Commerce Commission shall promulgate an expedited, modified procedure for providing on the date of transfer a certificate of public convenience and necessity to the State-owned railroad. No inventory, valuation, or classification of property owned or used by the State-owned railroad pursuant to subchapter V of chapter 107 of Title 49, shall be required during the two-year period after the date of transfer. The provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and section 6362(b) of Title 42 shall not apply to actions of the Commission under this subsection.

(c) Eligibility for participation in Federal railroad assistance programs

The State-owned railroad shall be eligible to participate in all Federal railroad assistance programs on a basis equal to that of other rail carriers subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of subtitle IV of Title 49.

(d) Laws and regulations applicable to National Forest and Park lands; covered lands; limitations on Federal actions

After the date of transfer to the state pursuant to section 1203 of this title, the portion of the rail properties within the boundaries of the Chugach National Forest and the exclusive-use easement within the boundaries of the Denali National Park and Preserve shall be subject to laws and regulations for the protection of forest and park values. The right to fence the exclusive-use easement within Denali National Park and Preserve shall be subject to the concurrence of the Secretary of the Interior. The Secretary of the Interior, or the Secretary of Agriculture where appropriate, shall not act pursuant to this subsection without consulting with the Governor of the State of Alaska or in such a manner as to unreasonably interfere with continued or expanded operations and support functions authorized under this chapter.

(Pub.L. 97-468, Title VI, § 608, Jan. 14, 1983, 96 Stat. 2573.)

References in Text. The antitrust laws, referred to in subsec. (a)(1), are classified generally to section 1 et seq. of Title 15, Commerce and Trade.

The Railroad Retirement Act of 1974, referred to in subsec. (a)(1), is Title I of Pub.L. 93-445, Oct. 16, 1974, 88 Stat. 1305, and is classified generally to subchapter IV (section 231 et seq.) of chapter 9 of this title. Such Title I completely amended and revised the Railroad Retirement Act of 1937 (approved June 24, 1937, c. 382, 50 Stat. 307), and as thus amended and revised, the 1937 Act was redesignated the Railroad Retirement Act of 1974. Previously, the 1937 Act had completely amended and revised the Railroad Retirement Act of 1935 (approved Aug. 29, 1935, c.

812, 49 Stat. 967). Section 201 of the 1937 Act provided that the 1935 Act, as in force prior to amendment by the 1937 Act, may be cited as the Railroad Retirement Act of 1935; and that the 1935 Act, as amended by the 1937 Act, may be cited as the Railroad Retirement Act of 1937. The Railroad Retirement Acts of 1935 and 1937 were classified to subchapter II (section 215 et seq.) and subchapter III (section 228a et seq.), respectively, of chapter 9 of this title. For complete classification of this Act to the Code, see section 231t of this title and Tables volume.

The Railroad Retirement Tax Act, referred to in subsec. (a)(1), is Act Aug. 16, 1954, c. 736, §§ 3201, 3202, 3211, 3212, 3221, and 3231 to 3233, 68A Stat. 431, which is classified generally

What's the real issue? Who should decide?

THE NOSTALGIC PICTURE of a brightly painted caboose tagging along behind a meandering freight train is part of the colorful tradition of railroading in Alaska and elsewhere. This historical perspective regarding cabooses has created through the years a very strong emotional reaction among railroaders, the general public, and now, most recently, from Alaska's legislators.

The status of the caboose has been debated in nearly 30 states in the last several years with only two states actually passing legislation requiring cabooses. Now it is Alaska's turn to look at the issue. The argument is a classic struggle between railroad companies who wish to modernize and improve system efficiencies and railroad unions who are seeking to protect jobs.

The proposed legislation being discussed in Juneau, HB 436, would require a manned caboose to accompany freight trains longer than 1,000 feet. The issue has been introduced under the label of "safety," but the real argument probably revolves around three separate questions:

1. Who should decide when to assign cabooses? The unions? The legislature? Or the Alaska Railroad management?

2. Is the railroad union leadership using safety as a guise for job protection?



Point

by
Frank G.
Turpin

tion?

3. Is the Alaska Railroad operating a safe and efficient system without a mandatory boose law?

BEFORE EXPLORING these questions it is important to state for the record that the Alaska Railroad does not plan to eliminate cabooses from its train operations in the near future. Until the railroad can install modern, automated equipment and invest in the detection devices that would allow elimination of cabooses, the railroad will continue to use them.

The technology and modernization that would be required to transform the Alaska railroad to a total "cabooseless" system is many dollars and years away from us right now. The railroad has never eliminated a caboose from an existing freight train. We believe, however, that it is inappropriate for a state legislature to interfere in what is

essentially and historically a management or collective bargaining issue.

Currently the Alaska railroad operates only one train, the Arctic Fox, without a caboose. It has never had a caboose. The 10 to 15 car configuration and new, modern equipment deployed in this train allow for safe and efficient operation. This is a new service, providing fast trailer and container service between Anchorage and Fairbanks and expanding the number of total railroad jobs available. It has been accident-free since its inception last summer. Because the articulated flat cars are each 100 feet long, even this new train service would require a caboose if the proposed legislation is passed.

Despite much rhetoric from union spokespeople, safety and cabooses are not irrevocably linked as they insist. A recent National Railway Labor Conference study determined there was no significant difference from a safety standpoint whether a train was operated with or without a caboose. The accident frequency rate per million train miles for trains with cabooses was 5.19, while the frequency rate per million train miles for cabooseless operations was slightly better at 5.15. The bottom line is that a caboose is not essential for safety, or for its other traditional functions, such as

administration, fuel and lodging, with the advent of modern railroad technology.

UNTIL THIS modern technology is added to the Alaska Railroad, inspections are made by crew members either from their vantage point in the locomotive when they meet opposing trains or on the ground during an inspection known as a "roll by."

A "roll by" requires a crew member to leave the locomotive and stand at trackside to visually inspect the train as it is slowly pulled forward. After the train has passed the crewman completely, he crosses the tracks to inspect the opposite side of the train as it is backed up. He then returns to the locomotive. At least five of these inspections are performed on all freight trains traveling between Anchorage and Fairbanks.

Finally, all trains are inspected by railroad employees living and working along the tracks. Known as "maintenance of way" personnel, these employees are stationed about every 30 miles along the line.

The caboose legislation is essentially asking legislators to act on an issue that has already been resolved nationally in agreements between the union and the railroads. In 1982 both factions agreed to the eventual elimi-

nation of cabooses nationwide. Therefore, this kind of legislation is not needed, a conclusion reached by 26 other states when they rejected this effort by the national union to nullify the negotiated agreements through implementation of mandatory caboose laws. If passed, HB 436 would seriously restrict the future improvement, efficiency and productivity of the Alaska Railroad Corporation.

I FIRMLY BELIEVE that the caboose issue is a matter to be resolved by safety-conscious railroad managers on a train-by-train basis as they evaluate train configurations, work assignments, and the availability of new technologies. The Alaska Railroad's safety record is excellent and we constantly seek ways to improve our performance. In fact, we are currently rated by the Federal Railroad Administration as the second safest in a class of 24 similar sized railroads nationwide.

I can assure you that the management and the employees of the Alaska Railroad Corporation are proud to work in Alaska and pledge that the Alaska railroad will continue to provide safe, efficient transportation for all Alaskans.

Frank G. Turpin is President and Chief Executive Officer of the Alaska Railroad.

When it comes to safety, technology can't replace experience

POSE THE QUESTION, "What is a railroad caboose?" to any Alaskan in the state, and you will find that the number of different answers you will hear is directly related to the number of times that you ask the question.

Try it on yourself. What does "caboose" mean to you?

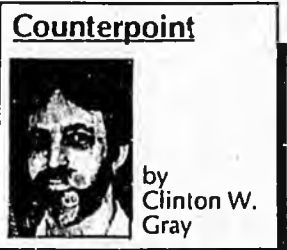
Is a caboose the little red car on the end of the train that was (and still is) the featured character in the first book that you were able to read on your own as a child?

Is it merely the last car on a railroad train going across the road crossing? Is it the one car on that train that you are interested in enough to watch for, knowing that when it is clear of the crossing, you can now continue on with your business or trip?

Is the caboose (as one 9-year-old stated) "where the man stays and comes out and yells at us to quit playing on the track?"

Or is the caboose still the home-away-from-home for that "quaint" and unusual breed of men that work on those mysterious trains that come and go in the night carrying their equally mysterious cargo?

The answer to me, and to many oth-



Counterpoint

by
Clinton W.
Gray

ers, is easy. It is easy for virtually hundreds of reasons. The purpose of a caboose is to protect against hazards associated with train derailments, shifted cargo, burning wheel bearings, right-of-way fires, highway-rail crossing accidents and many other mishaps.

There is ample evidence recorded to illustrate that each of these threats to the public and operating employees' safety is real and occurs with some degree of regularity. In my opinion, manned cabooses, used in conjunction with other safety devices, are the best means currently available to minimize the potentially disastrous effects of many of these safety threats.

SOME CRITICS of the present legislation to retain cabooses, including the Alaska Railroad Corporation, contend that electronic monitoring devices adequately detect failed equipment, fires and other safety threats without a manned caboose. First, I'd like to point out that the Alaska Railroad has few of these devices, and to my knowledge they are not planning to install additional devices in the near future. As important, the Outside railroads that have these monitoring devices have discovered they are not failsafe. It is recorded that trainmen have found that you can actually have a burning box car pass over a "hot box detector" without activating it. Moreover, these alternatives do not and cannot meet every need that is currently met by a manned caboose.

I will acknowledge that there is less need now for a manned caboose in certain situations, and I support the use of all available mechanical monitoring devices. But there is ample evidence that a crew member at the end of a train can see a safety threat that electronic devices cannot detect and that retention of manned cabooses still plays an essential role in the early de-

tection of equipment defects and other problems before they can cause derailments or other damages.

The Alaska Railroad management has testified that the caboose is a collective bargaining issue that should be negotiated. There would only be management and labor at the bargaining table. Unfortunately, no one would be there to represent the Alaskan public.

The Alaska Railroad has also testified that they already must comply with many federal safety regulations. While this general statement is not particularly relevant to the caboose issue, I nevertheless would like to point out that railroad safety legislation was a result of unnecessary accidents or worse yet, deaths of railroad employees or members of the public. I would hope that the Alaska legislature does not intend to play Russian roulette with whether unrelated safety regulations, new technology or no technology, could provide a safe rail system in Alaska. We should not forget the recent lessons of the Crown Point Alaska gas leak or the tragic space shuttle Challenger disaster.

THE CABOOSE is the single most

important safety feature on a train, and a train needs all of its safety features, particularly in Alaska where long trains often carrying hazardous materials are transported through varied terrain and under many adverse conditions in highly populated and remote areas. It is simply not possible to replace with one or more machines, the eyes, ears, nose, voice and brain of an experienced employee who can see views of a moving train that cannot be seen from any other position, and who can detect and respond to a variety of problems at a moment's notice.

For these reasons, the Alaska legislature in its wisdom has the right and the obligation to take every reasonable step to guarantee that cabooses will continue to be used under appropriate circumstances to protect the safety of the general public and of our train crews. It is not enough to simply leave it to the Alaska Railroad Corporation to do the "right thing."

Clinton W. Gray worked as a conductor for 12 years on the Alaska Railroad and is Legislative Representative for the United Transportation Union Local 1626.



Editori

The obsolete caboose

THE FIRST QUESTION raised by the derailment of an Alaska Railroad coal train yesterday was, "Did it have a caboose?"

The answer is "yes."

That question and answer are pertinent because the House at Juneau voted approval on Monday of a bill that would require cabooses on most freight trains for safety reasons.

The records of the Alaska Railroad show that every freight train that has had a derailment — and there have been a half dozen or so since the state took over the railroad a year ago — has had a caboose. Conversely, the record shows that no freight train without a caboose has ever had an accident of any sort.

That last statement, although factual, has only limited significance because the railroad has only one train — the Arctic Fox — that operates without a caboose. However, railroads Outside have long records of operations without cabooses.

The national record for all railroads show there have been about the same number of accidents with cabooses as without. That means the presence of a caboose has nothing to do with the occurrence of accidents.

THE LEGISLATION requiring cabooses has the strong support of the United Transportation Union. It has approved the Alaska operations of the Arctic Fox, but now seeks to retain cabooses on all other trains. While the union claims the caboose will assure public safety, there is no factual basis to support it.

Railroad management contends economics and

technology have made the caboose obsolete. The cars cost \$80,000 each and weigh 27 tons. They are being replaced by a machine, known as an end-of-train device, that blinks a red light to warn following trains.

The original purpose of cabooses was to provide living quarters for train crews in the old days of long distance runs. Crews would be away from home for four or five days, or even more. The caboose was their rolling hotel.

With passage of time, operating speeds have increased, transit time decreased. The runs are shorter and crew time on duty is less.

WHEN THE STATE took over the railroad, the legislature forbade any state law that specified the number of crew members a train must have. In 1982 the UTU agreed to the elimination of cabooses under certain conditions. In 1985 it agreed to expedite their removal.

Those agreements showed the union's willingness to live with the newest trends and technology, as they did when coaling stations and water tanks were eliminated when steam locomotives were replaced by diesels.

The state has made it public policy to allow the railroad corporation to operate as a private enterprise, free of politics insofar as possible. The House is violating that policy by passing this bill, which would inject politics into railroad management.

To serve Alaskans best, the railroad must be allowed to operate like a railroad, not a political plaything.

Trainman says caboose unsafe, unnecessary

Dear Editor:

I recently retired from the Alaska Railroad after 35 years of service. At the time of retirement, I occupied the number one position on the conductor's seniority roster. From 1951 through 1974, I performed service as a brakeman conductor. I also served as vice-chairman of the grievance committee, as safety representative, and alternate legislative representative for the Brotherhood of Railroad Trainmen (predecessor organization to the United Transportation Union (UTU)), and had 30 years continuous membership in the Brotherhood of Railroad Trainmen and UTU combined.

Since 1974, I have held the positions of relief yardmaster, trainmaster, and retired as superintendent of transportation.

My entire railroad career of 35 years was spent as an operating employee, trainman, and/or officer. During that time, I have worked and ridden in wooden cabooses with coal stoves and oil lamps and in "new" steel cabooses with oil stoves and electric lights. They all, every one, have been hot and dusty in the sun-

Letters to the editor

mer, cold and odorous in the winter, and always noisy, uncomfortable and downright dangerous when moving.

The lookout function, which the UTU has alleged as most critical, has in this day and age of longer and faster trains become ineffective. The historic limitations of darkness, rain, blowing, swirling snow, and/or dust, plus track curvature which generally result in the inability of either the head end (engine) crew or the rear end (caboose) crew to see much more than a few cars ahead of the caboose or behind the engines, are further diminished by train length, with the majority of the train in the middle not being observed at all, or if observed, not clearly so. Therefore, railroad standard operating rules still require that roll-by (wayside) inspections be made by the train's crew and also require all other employees on the wayside (along the track) or on other trains, to likewise inspect each passing train.

The moving roll-by (wayside) inspection has proven to be, by far, the most reliable and effective manner of train inspection. The implication made by the UTU that train operation is safer with a manned caboose on the rear is just not so!

It is also notable that while no injuries to the public, communities, or families, etc., have occurred as a result of derailments on the ARR over the past five years, there were during that five-year period a total of seven personal lost-time injuries sustained by brakemen or conductors, either riding in or getting on or off a caboose.

One could easily conclude, and rightly so, that not only has "The Little Red Caboose" (which most people regard fondly as a reminiscent symbol of railroading) outlived its usefulness, but has in fact, become a negative factor in regard to railroad train safety.

The benefits of its continued use in almost all situations is not commensurate with the risk of injury to which its occupants are exposed nor with the expense of its operation and maintenance.

Robert W. Davison

Lake Havasu City, Ariz.

Wagstaff, Pope & Rogers
Lawyers

Robert A. Wagstaff & Associates
912 West Sixth Avenue
Anchorage, Alaska 99501
(907) 277-8611

Douglas Pope
David S. Rogers
124 West 5th Street
Juneau, Alaska 99801
(907) 586-1151

Affiliated with:
Hobbs, Straus, Dean & Walker
1819 K Street, N.W., Suite 800
Washington, D.C. 20006
(202) 738-5100

March 14, 1986

The Honorable Representative Cato
House of Representatives
P.O. Box V
Juneau, Alaska 99811

Dear Representative Cato:

I am writing of behalf of the United Transportation Union, Local 1826 regarding proposed amendments to HB436, An Act requiring a properly equipped and staffed caboose on certain trains. My clients have asked me to advise you that they intend to propose, through Representative Pignalberi and the House Rules Committee, the following amendments:

1) Line 12, after "property", add the words maintained and. This section would then read:

"(1) A train that exceeds 1,000 feet in length including locomotives shall have a properly maintained and equipped caboose...."

This amendment should help assure that cabooses are used for their full useful lives and are not taken out of service prematurely due to lack of normal preventive maintenance.

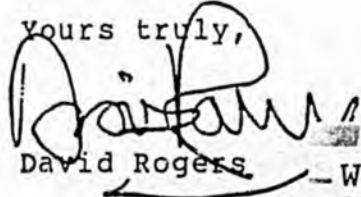
→ 2) An additional exception in 42.30.260 offered in the spirit of compromise which effectively would exempt the "FOX" from the requirements of 42.30.250 to read as follows:

"3) to a train composed exclusively of TOFC (Trailer on Flat Car)/COFC (Container on Flat Car) equipment not exceeding 1825 feet in length including locomotives, provided that hazardous or toxic materials are located in the first 1,000 feet of the train as measured from the lead locomotive."

If you have any questions or comments, please give me a call.

Thanks.

Yours truly,


David Rogers

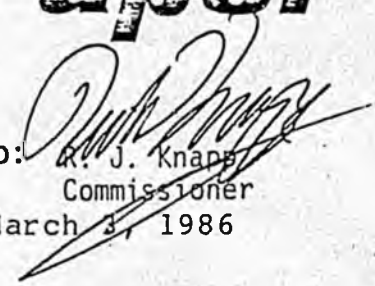
Wagstaff, Pope, and Rogers
UTU Proposed amendments to Original Bill



Dept. of Transportation & Public Facilities

Position Paper

BILL NO: HB 436 and SB 313

APPROVED: 
R. J. Knapp
Commissioner

TITLE: An Act requiring a properly equipped and staffed caboose on certain trains. DATE: March 3, 1986

Although not an issue of direct concern to the Department of Transportation and Public Facilities (DOT&PF), it is appropriate to provide certain comments given the DOT&PF Commissioner's role on the Board of Directors of the Alaska Railroad Corporation (ARRC). However, it is important that these comments not be construed as the official position of the ARRC regarding HB 436. ARRC management should be contacted separately to solicit their formal views on this matter.

The central question underlying this legislation is whether to mandate by statute the use of cabooses for certain types of trains, with little regard for technological improvements and variety in train consists that may have a direct bearing on the need for cabooses. Evidence from the rail industry and at the Alaska Railroad suggests this sort of non-discretionary arrangement is unwarranted and may add unnecessary costs to train operations. More detailed information regarding these issues can be found in the ARRC's Position Paper on HB 436, dated February 14, 1986.

Another concern is DOT&PF's perception that this type of legislation may be inconsistent with the spirit and intent of the state Alaska Railroad Corporation Act (ARCA), which established the ARRC as an independent, public corporation to own and operate the Alaska Railroad under state ownership. ARCA sets out explicit direction regarding goals and objectives for operation and management of the Alaska Railroad, and provides broad powers for the ARRC Board of Directors to oversee and manage these responsibilities. Included are the requirements to provide "safe, efficient, and economical transportation," to "be exclusively responsible for the management of the financial and legal obligations of the Alaska Railroad," and to "carry out its responsibilities on a self-sustaining basis." HB 436 appears to run counter to this approach by attempting to limit management's ability to meet these different goals. This is unfortunate coming so soon following passage of ARCA, and the apparent absence of evidence that ARRC management has failed to meet its statutory responsibilities.

In summary, DOT&PF is unaware of any real evidence that suggests this legislation is warranted, and respectfully submits that HB 436 contradicts the spirit and intent of ARCA by unnecessarily attempting to legislate decisions reserved for management.

For further information

DOT/PF POSITION PAPER

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