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David Sparkman, Editor **Volume 11, Issue 1** **January 15, 2023**

Railroads Face Stepped Up Scrutiny

After five long years of the nation's freight railroads exploiting its customers and damaging the economy in adherence to a totally unreasonable operations model designed only to enrich its shareholders, the nation appears to have finally woken up to just how bad the resulting service deterioration has been and continues to be.

All it took was the threat of a nationwide strike by the industry's unionized workers during the Christmas shopping season to finally gain the attention of the public about the terrible damage PSR has wrought. As the 18th Century English writer Samuel Johnson once put it so aptly, the knowledge that one is going to be hanged in the morning tends to concentrate the mind most wonderfully.

The public and most policymakers were shocked to learn that the threatened strike had nothing to do with wages but instead arose from workers being overworked because PSR drove management to gut the workforce before the Covid 19 pandemic began and cut it again after it started. Even when demand and traffic picked up, the railroads did not rehire staff, meaning more work for those who remained.

In the spring of 2022, hearings that were held by a congressional committee and the Surface Transportation Board revealed the extent of the damage that was continuing to be done by the adherence of most Class 1 railroads to an extreme cost cutting operations model called Precision Scheduled Railroading (PSR).

As a result of massive personnel cuts, railroads became so understaffed that they instituted punitive attendance policies and restricted sick leave to such an extent that it became the main reason for many of the workers rejection of a collective bargaining agreement their leaders had signed off on after President Biden intervened last September.

In early December, Congress passed and the President signed legislation compelling that the unions whose workers had rejected the proposed agreement accept it anyway.

Major news organizations that had virtually ignored alarming deterioration of rail services over the past five years suddenly woke up and began reporting on how shockingly bad it rail service had become.

Just before the end of 2022, the major rail unions also petitioned the President to issue an executive order that would compel the railroads to institute the kind of sick leave policy the workers had demanded earlier in the process.

In mid-December the STB held another two days of hearings where shipper witnesses vividly described the persisting service failures and the economic destruction wrought by PSR. It was made evident how little had changed since last year when the board ordered the railroads take immediate actions to improve their services and were ordered to file regular reports with the board on their progress.

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The result was not pretty. The major railroads filed incomplete and inadequate reports that failed to provide some of the most basic data required by the board's directive, causing STB Chairman Martin J. Oberman to threaten them for not doing so.

The failure of the railroads to comply with the STB's orders could lead to the imposition of fines of up to $8,736 per day. That can add up to more than $3 million a year, which should not be too daunting for companies that in some cases are making annual revenues of tens of billions of dollars. (UP revenues in 2021 were $23.5 billion). Proposed legislation would raise those fines.

Railroads have more to fear from other legislative reforms that could arise in Congress. Separate legislation was introduced in the House and Senate last year to strengthen the STB's role in regulating railroads, but it was only supported by a handful of Democrat representatives and Senators.

Although several Republican Senators backed legislation that would have granted the unions the sick leave terms they sought in the most recent contract negotiations, it is not known how they will react to these proposals in Congress this year.

Some shippers and the unions are calling for Congress to give the STB power to strongly reassert the primacy of the common carrier obligation that has been embodied in federal law regulating the railroads since the 19th Century.

UP in the Cross Hairs

In particular trouble was Union Pacific, which was singled out for service embargoes and the inadequacy of its reports, particularly in regard to staffing levels at the STB hearing two weeks ago.

The board pointed out that UP carries nearly 27% of the nation's freight served by rail and is responsible for almost 11% of all long-distance freight volume.

In the board's cross hairs was the railroad's controversial practice of imposing far more service embargoes than it would if it had not implemented the PSR cost-cutting model. Under an embargo, trains are stopped completely while a railroad works to undo existing congestion on its lines. UP has resorted to embargoes more frequently than is viewed as reasonable because its implementation of PSR also meant large scale mothballing rolling stock along with slashing staff.

"Unfortunately, UP's failure to fully respond to the [STB's data reporting] order has hindered the board in its efforts to understand this increase in the use of embargoes, and their causes and impacts," Oberman declared.

The STB discovered that while UP called only five embargos due to congestion on its lines in 2017, last year the railroad imposed more than 1,000 by the time the hearing took place.

At the hearing, Jeff Sloan, the American Chemistry Council senior director of regulatory affairs, said, "Embargoes disrupt operations, impose significant costs on rail customers, and prolong the nation's supply chain problems. And they are yet another manifestation of the chronic service failures that have plagued the U.S. rail network for more than two years."

Sloan cited the case of one ACC member who was unable to deliver chemicals needed to make gasoline, while another witness said one of his firm's assembly lines was shut down for days due to an embargo.

Tony Cardwell, president of the Brotherhood of Maintenance of Way Employees union, added, "There's an alarming trend out here that should be taken note of the supply chain is going to continue to suffer with the operating systems in place."

In a letter to Oberman, UP Chief Executive Officer Lance Fritz said, "We are taking a hard look at our use of congestion-related embargoes. To facilitate that hard look, we are immediately pausing any additional embargoes under the pipeline inventory management program we began in November."

The heat on UP was so intense that a day after the hearing ended, the company announced that it was pausing the embargo practice for the time being.

At the STB hearing, ACC's Sloan also echoed previous policy changes sought by shippers. These include establishing permanent reporting requirements that would reveal how well major railroads are delivering service to their customers.

Shippers also want the board to institute minimum standards for the delivery of efficient, timely and reliable rail service, as well as complete long-overdue rules for improving access to competitive rail service through the imposition of reciprocal switching, long opposed by the railroads.

Retail Returns Are Flat in 2022

As retail sales continued to grow, the average rate of returned purchases remained flat at 16.5% in 2022 compared with 16.6% in 2021.

This was reported by the National Retail Federation in conjunction with Appriss Retail, a retail returns consultant and solutions provider.

"Even with 29 continuous months of retail sales growth, consumers have remained steady with the overall rate of merchandise returned to retailers this year," said Mark Mathews, NRF's vice president of research development and industry analysis.

"While oftentimes returns represent a lost sale for a retail establishment, returns can also provide recourse through positive customer engagement and, potentially, another purchase."

According to the survey, for every $1 billion in sales, the average retailer incurs $165 million in merchandise returns. It also found that for every $100 in returned merchandise accepted, retailers lose $10.40 to return fraud.

Among the types of return fraud retailers said they have had to deal with in the past year, half (50%) cited returns of used, non-defective merchandise, also known as wardrobing, and 41.4% cited the return of shoplifted or stolen merchandise.

One-fifth (20%) of those surveyed also said they attributed return fraud to organized retail crime.

For the first time since online data has been captured as part of the survey in 2019, online return rates are consistent with the overall rate of returns. Online return rates decreased from 20.8% in 2021 to 16.5% in 2022. NRF said online sales will account for approximately $1.29 trillion of total U.S. retail sales in 2022. Of the approximately $212 billion of returned online purchases, $22.8 billion (10.7%) will be deemed to be fraudulent.

Of the more than $3.66 trillion in expected in-store sales, $603 billion will be returned. Approximately $62.1 billion of those returns – 10.3% -- are expected to have been fraudulent.

OSHA Issues Lift Truck REP

Powered Industrial Trucks (forklifts) are the focus of a new Regional Emphasis Program (REP) that was announced by the Occupational Safety and Health Administration.

The new program covers Colorado, Montana, North Dakota, and South Dakota – which are the federal-OSHA states located in the agency's Region 8.

The new initiative follows another one that was taken earlier this year by the agency. In August, it announced a similar REP aimed at warehouse and logistics operations located in Region 3.

The federal-OSHA states in that region are Pennsylvania, Maryland, West Virginia, Delaware and Washington, DC.

In addition, the Region 3 inspections began on Nov. 23, following a three-month employer education effort. This Region 8 REP stemmed from a consistently high number of forklift inspections and forklift-related citations issued by OSHA.

In recent years, OSHA has been deploying national and regional emphasis programs as part of an effort to target aggressive enforcement efforts against specific industries and workplace hazards.

In these efforts, federal OSHA continues to shift enforcement towards warehousing, logistics, and ecommerce, according to attorneys from the Seyfarth Shaw law firm.

Other REP efforts aimed at the warehousing industry covered industrial trucks were mounted in Region 5 in 2018, in Region 7 in 2019 and Region 4 in 2020

Also launched in 2019 was another REP for powered industrial trucks and other material or personnel handling motorized equipment in construction, general industry and maritime.

C&W Deploys Greening Process

Commercial real estate services leader Cushman & Wakefield has embraced creating net-zero buildings by retrofitting existing property to be energy efficient can help reduce carbon emissions.

"Not only is decarbonizing existing real estate essential to addressing climate impact, but it also offers an environmentally responsible way to reduce the cost of owning and managing commercial property," said CEO John Forrester.

As building regulations for energy consumption and emissions become more stringent, the need to reduce or offset carbon emissions will intensify.

"Cushman & Wakefield aims to empower our clients to increase energy efficiency with economic and social benefits for their investments, businesses and communities," Forrester said.

To accomplish this goal, the company launched C&W Green Buildings, a proprietary digital software assessment tool that identifies custom decarbonization, retrofitting and cost savings opportunities for real estate investors and owners.

The tool is said to offer Cushman & Wakefield clients a fast, cost-effective, accurate and auditable way to estimate energy consumption and create a roadmap to greener real estate assets.

The tool filters 120 building characteristics to assess current carbon emissions and energy efficiency at a property. From climate and location to the cost of energy, materials, labor, local emission factors, carbon prices, building age, size and more, it also uses the data to advise clients on improvement opportunities to reduce their carbon footprints.

The firm says the cost to decarbonize global real estate is about $18 trillion. Addressing decarbonization would see CRE achieve 6.2 gigatons, or 75%, of carbon reduction annually.

Employees Can Learn to Like AI

In spite of the belief that employers derive value from artificial intelligence at the expense of their employees and that AI-powered automation leads to the displacement of workers, 60% of employees view AI as a coworker and not a job threat.

That is the conclusion of a study released recently by MIT Sloan Management Review and the Boston Consulting Group.

The research also found that organizations where employees derive value from AI are 5.9 times as likely to see significant financial benefits than those where employees say they do not get value from AI.

AI use is so pervasive that individual workers may take some of its applications for granted. According to the findings, 66% of individuals report that they do not use AI or use it only minimally.

But when prompted with specific examples of AI-enhanced business applications, such as office productivity applications, calendar schedulers,and customer relationship management software, 43% of respondents acknowledge that they regularly or sometimes use business products with AI.

"When individuals don't know that they are using AI, they naturally have a harder time recognizing its value," said François Candelon, global director of the BCG Henderson Institute and report co-author.

"But our research shows that employees using AI knowingly are 1.6 times more likely to get individual value and 1.8 times more likely to be satisfied with their jobs than those who do not realize they use AI."

The survey found that 64% of survey respondents personally derive at least moderate value from using AI. These workers are 3.4 times as likely to be more satisfied in their jobs than employees who do not obtain value from AI. Only 8% of respondents are less satisfied with their jobs because of AI.

They believe that AI has improved interactions with their team members (56%), with managers (47%), and with other people in their departments (52%).

Past Is Prologue in Truck Safety

When it comes to fleet managers trying to assess where their next truck accident will come from, a close look at their drivers' past behavior will provide them the strongest indicator, research has found.

This was the conclusion of the latest Crash Predictor, an in-depth study conducted by the American Transportation Research Institute, the research arm of American Trucking Associations.

"Having a science-based model for predicting crashes is one of the most important tools the trucking industry can have," according to Dan Horvath, ATA's vice president of safety policy.

"ATRI's Crash Predictor research allows carriers to target and monitor those truck driver behaviors that matter most. With truck crashes increasing, there is no better time to have this data in our hands."

ATRI's analysis identified more than 25 different violations and convictions that can predict possible future crashes, five of which increased future crash likelihood by more than 100%.

Simply having a previous crash increased a truck driver's probability of being involved in a future crash by 113%, which is 28.4% higher than previous ATRI Crash Predictor studies showed.

The new 2022 study, based on data from more than 580,000 individual truck driver records, identified the following top accident predictor factors:

A reckless driving violation increased crash likelihood by 104%, showing an 8.8% decrease from ATRI's 2018 report to this year's study.

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On the other hand, ATRI found that a failure to use or improper signal conviction increased crash likelihood by 116%, registering a 41.5% increase from 2018 to this year.

Prior crash involvement showed a 113% increased likelihood of a driver being involved in a future crash, 28.4% higher than previous reports.

A failure to yield right-of-way violation increased crash likelihood by 141%, a 39.6% increase from 2018 to 2022. In addition, improper or erratic lane changes conviction predictability remains at 79%, unchanged from previous reports, ATRI said.

The 2022 study includes several new analyses, including a safety comparison between 18- to 20-year-old truck drivers and those who were older than 24 years. What ATRI found was that drivers younger than 21 years old have statistically fewer crashes than those older than 24.

When it comes to breaking the law, ATRI found that males continue to be more likely than females to gather violations, convictions and crash involvement for all statistically significant events.

Comparing ATRI's last study in 2018 to the one in 2022, males continued to be significantly more likely than females to commit 11 behaviors that are considered predictive of future crash involvement, the researches explained.

Of these behaviors, three displayed an increased likelihood compared to 2018. These three behaviors include a medical certificate violation (up 49.2% from 2018); failure to obey traffic sign conviction (up 50% from 2018); and failure to obey traffic control device violation (up 26.1% from 2018).

Finally, the report includes an updated list of the 10 Top Tier States for truck safety, as ranked by the relationship between traffic enforcement inspections and crashes. These top-ranked states (in order) were Washington, Indiana, New Mexico, Arizona, Massachusetts, Georgia, Pennsylvania, Illinois, California and Michigan.

Examining the ATRI studies conducted over the years, a correlation has been found between the number of state law enforcement inspections and the total number of truck crash incidents, according to the institute That is, the more inspections conducted that are conducted by a state, the lower that state's number of truck accidents.